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## **TITLE XIX - LABOR AND EMPLOYMENT**

### **ARTICLE 1 - RIGHT-TO-WORK**

#### **Sec. 19-1-1 Definitions**

For the purposes of this Article, the following terms shall have the following meanings:

A. "Labor organization" means any group of persons organized for the purpose of dealing with employers concerning working conditions, grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment.

B. "Employer" means any person, firm, association, corporation or other entity, including the Pueblo and any such entity wholly or partially owned by the Pueblo, lawfully operating on Pueblo Lands, that employs any person as a regular aspect of its activities on Pueblo Lands.

Enacted by Resolution Number 07-R-49, signed October 25, 2007.

#### **Sec. 19-1-2 Declaration of Policy**

It is the policy of the Pueblo that the right of persons to work on Pueblo Lands shall not be denied or abridged on account of membership or non-membership in any labor organization.

Enacted by Resolution Number 07-R-49, signed October 25, 2007.

#### **Sec. 19-1-3 Prohibited Activities**

A. No employer shall require any person to become or remain a member of any labor organization as a condition of employment or continuation of employment by such employer.

B. No employer shall require any person to abstain or refrain from membership in any labor organization as a condition of employment or continuation of employment by such employer.

C. No employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor organization or to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessments or other charges regularly required of members of a labor organization.

D. No contract shall require that, to work for an employer, an employee or an applicant for employment:

1. must be or may not be a member of a labor organization; or

2. must remain or may not remain a member of a labor organization; or
3. must pay any portion of such employee's salary or wages as dues to or for the benefit of any labor organization.

Any contract that violates any provision of this section shall be void.

E. No person shall make any representation to another person that membership or non-membership in a labor organization, or payment of dues, fees, or other charges to any labor organization, or to a third party in lieu of such payments, is a requirement for employment or continuation of employment on Santa Ana Pueblo Lands.

Enacted by Resolution Number 07-R-49, signed October 25, 2007.

#### Sec. 19-1-4 Penalties

A. Civil Penalties. Any person who violates any provision of this Article shall be liable for a civil penalty not exceeding \$1,000.00 for each separate violation and may be subject to exclusion from Pueblo Lands.

B. Criminal Penalties. Any Indian who violates any provision of this Article shall be punishable, for each separate violation, by a fine not to exceed \$1,000.00, by a term of imprisonment not to exceed six months, or both.

Enacted by Resolution Number 07-R-49, signed October 25, 2007.

#### Sec. 19-1-5 Civil Remedies

A. Any person injured as a result of any violation or threatened violation of any provision of this Article shall be entitled to injunctive relief from the Tribal Court or any other court of competent jurisdiction and may, in addition, recover from the person, firm, corporation, labor organization, or association, causing or threatening to cause such violation, whether acting separately or in concert, such damages as he may have sustained and the costs of the suit, including reasonable attorney fees, resulting from the violation or threatened violation. If such person, firm, corporation, labor organization or association acted willfully or with reckless indifference to the rights of others, punitive damages may be assessed.

B. Upon complaint made in writing to the Office of the Governor by any person claiming injury or threatened injury because of a violation or threatened violation of any provision of this Article, the Pueblo shall have the authority to seek injunctive relief from the Tribal Court or any other court of competent jurisdiction to enforce the provisions of this Article, and shall in addition be entitled to recover from the person, firm, corporation, labor organization, or association, causing or threatening to cause such violation a civil penalty as set forth in Sec. 19-1-4 hereof, and its costs of suit, including reasonable attorney fees.

C. The Tribal Council may direct the Pueblo's attorneys to initiate in the Tribal Court, in accordance with tribal law, a petition to exclude permanently from Pueblo Lands any

non-Indian person or entity found by the Tribal Court to have knowingly and willfully violated any provision of this Code.

Enacted by Resolution Number 07-R-49, signed October 25, 2007.

## **ARTICLE 2 – WORKERS’ COMPENSATION**

### **Chapter 1: General Provisions**

#### **Sec. 19-2-1 Title**

This Article shall be known as the Santa Ana Pueblo Workers’ Compensation Code.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### **Sec. 19-2-2 Purpose**

The purpose of this Code is to establish the rights and benefits of employees of the Pueblo of Santa Ana, Pueblo-owned entities, and Indian-owned entities on Pueblo Lands for on-the-job bodily injuries and occupational diseases.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### **Sec. 19-2-3 Definitions**

A. “Accident” means an unforeseen or unplanned event causing Injury to an Employee while in the course of his or her employment.

B. “Administrator” means the insurance company providing workers’ compensation insurance to an Employer, or a third-party entity appointed by such insurance company to administer the workers’ compensation program under this Code.

C. “Average Weekly Wage” means the weekly wage earned by the Employee for the twenty- six (26) weeks immediately prior to the time of the Employee’s Injury, including overtime pay and gratuities, as well as the reasonable value of board, rent, housing, and lodging received from the Employer, but excluding all fringe and other employment benefits and bonuses. Gratuities shall include those gratuities reported to a governmental revenue service by or for the worker. The average weekly wage shall be determined by computing the total wages paid to the Employee during the twenty-six (26) weeks immediately preceding the date of the injury, including personal time off, divided by the number of calendar weeks during the twenty-six (26)-week period that the Employee actually worked. If the Employee has worked for the Employer for less than twenty-six (26) weeks, only actual weeks worked shall be included in the calculation. If the Employee has transferred to a new position with the Employer during the twenty-six (26)-week period, compensation of Average Weekly Wage shall be calculated from date of transfer to the new position even if the period is less than twenty-six (26) weeks. For purposes of the number of weeks the Employee actually worked, weeks during which the Employee has received compensation for personal time off shall be included as working days.

D. “Code” means this Santa Ana Pueblo Workers’ Compensation Code.

E. “Dependent” means a Dependent Spouse, a Dependent Child, a parent or grandparent of an Employee that is dependent wholly or partially on an Employee, or a grandchild, brother, or sister of an Employee if under eighteen years of age or incapable of self-support and wholly dependent upon the Employee.

F. “Dependent Child” means a natural child, adopted child, stepchild, and posthumous child of an Employee, who is unmarried and under eighteen years of age, or under twenty-three years of age if enrolled as a full-time student in any accredited educational institution, or older than eighteen and incapable of self-support and wholly dependent on the Employee. Adopted children include persons who are treated by the Employee as adopted as well as those of legal adoption.

G. “Dependent Spouse” means the wife or husband of the Employee if living with the Employee at the time of death or legally entitled to be supported by the Employee, including a divorced spouse entitled to alimony. Dependent Spouse shall include a domestic partner that has cohabitated with the Employee for more than twenty-four months.

H. “Employee” means a natural person hired by an Employer, who is paid or owed actual wages for work performed on the Employer’s behalf on Pueblo Lands. Employee does not mean a broker, agent, commission merchant, consignee, or Independent Contractor.

I. “Employer” means the Pueblo and any entity operating on Pueblo Lands that has three or more Employees that is at least fifty-one percent (51%) owned by the Pueblo, a member of the Pueblo, another Indian tribe, or a member of another Indian tribe. The term Employer includes the Pueblo’s agencies, departments, commissions, and majority-owned business entities with three or more Employees.

J. “Independent Contractor” means a person or entity hired by an Employer to perform a specific job or function over a specified time, where the Employer does not control the work schedules, furnish tools or equipment, hire or fire employees, or take employment or tax information.

K. “Injury” means harm to the Employee’s body, including specific injury, repetitive traumatic injury, Occupational Disease or Illness, or death, that arises out of and in the course of employment, and that is not otherwise excluded under this Code.

L. “Maximum Medical Improvement” means that no significant recovery from or significant lasting improvement to an Injury can be anticipated, based upon reasonable medical probability, as determined by a Primary Healthcare Provider.

M. “Occupational Disease or Illness” means any disease or illness peculiar to the occupation in which the Employee was engaged, that was suffered due to causes in excess of the ordinary hazards of employment.

N. “Permanent Partial Disability” means an Injury causing a permanent impairment to the Employee that exists after the date of Maximum Medical Improvement.

O. “Permanent Total Disability” means an Injury that exists after the date of Maximum Medical Improvement, and which is proven by clear and convincing evidence to have rendered an Employee unable to engage in any employment activities that would yield an income. The permanent and total loss of use of both hands, both arms, both feet, both legs, both eyes, or any two of the foregoing body parts, or a brain injury that causes a permanent impairment of thirty percent or more, as determined by the current American Medical Association guide to the evaluation of permanent impairment, exclusive of any preexisting impairment of any kind, shall constitute a Permanent Total Disability.

P. “Premises” means the specific geographic area within which the Employee fulfills his or her duties and responsibilities to the Employer in the normal course of employment.

Q. “Primary Healthcare Provider” means a licensed medical doctor, physician’s assistant or certified nurse practitioner located and practicing within 100 miles of the Employee’s home, at the time of Injury, and from whom the Employee receives medical treatment for an Injury. A Chiropractor cannot be considered a Primary Healthcare Provider.

R. “Pueblo” means the Pueblo of Santa Ana.

S. “Pueblo Lands” means all lands within the exterior boundaries of the Santa Ana Pueblo Grant, the lands known as the El Ranchito Grant, and the Santa Ana Indian Reservation, as those tracts exist at the time of enactment of this Code and as enlarged or modified thereafter, whether or not such land is owned by or on behalf of the Pueblo, and any other lands owned by the Pueblo and subject to federal law restrictions against alienation, or owned by the United States of America in trust for the Pueblo.

T. “Referral Healthcare Provider” means a licensed medical doctor, physician’s assistant, certified nurse practitioner, or chiropractor to whom the Employee is referred by the Primary Healthcare Provider for further specialized treatment and who has been pre-approved by the Administrator.

U. “Temporary Partial Disability” means an Injury, as determined by a Primary Healthcare Provider, that prior to the date of Maximum Medical Improvement prevents the injured Employee from earning the equivalent of the Employee’s pre-Injury Average Weekly Wage.

V. “Temporary Total Disability” means an Injury, as determined by a Primary Healthcare Provider, that prior to the date of Maximum Medical Improvement prevents an Employee from performing any work activities.

W. “Volunteer” means any person performing volunteer services for an Employer as part of an activity, event or program sponsored and controlled by the Employer, who receives no compensation for those services and acts under the supervision and direction of the Employer. This does not include volunteering to play on an Employer sponsored athletic team. A Volunteer does not include any person defined as an Employee under the coverage definitions of this Code.

Sec. 19-2-4 Employer Obligations

Every Employer shall:

- A. Maintain a safe workplace;
- B. Purchase a workers' compensation insurance policy that meets the requirements of this Code;
- C. Designate an Employee who is familiar with this Code as having the primary responsibilities for fulfilling the Employer's obligations under this Code;
- D. Display the workers' compensation notice required under this Code in a conspicuous location at the place of employment;
- E. Make the notice of accident form required under this Code easily available to all Employees;
- F. Sign and date each notice of accident form received from an Employee;
- G. Return a dated copy of each notice of accident form to the Employee;
- H. Promptly report all Injuries to the Administrator once the Employer has actual knowledge of any such Injury or has received notice of any such Injury from an Employee;
- I. Provide Employees with any additional information they need or request to make a claim for benefits under this Code;
- J. Cooperate with and assist the Administrator in administering claims made under this Code, including providing requested information or documents relating to a claim; and
- K. Not retaliate against an Employee for filing a valid notice of accident form.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

Sec. 19-2-5 Workers' Compensation Notice

A notice containing the following text in no less than 18-point type shall be posted in a conspicuous location at the place of employment:

**NOTICE REGARDING THE SANTA ANA PUEBLO WORKERS'  
COMPENSATION CODE**

As employees subject to the jurisdiction of the Pueblo of Santa Ana, you are insured for on-the-job injuries under the Santa Ana Pueblo Workers' Compensation Code.



If you are injured or sustain an occupational disease while at work, you must NOTIFY YOUR EMPLOYER IMMEDIATELY OF ANY INJURY, NO MATTER HOW SLIGHT.

You must notify your employer about an accident WITHIN 15 DAYS, using the Notice of Accident Form available from your Employer. If you fail to do so, you may lose your benefits.

Your exclusive remedy for any work connected injury or disease is through the Santa Ana Pueblo Workers' Compensation Code. The New Mexico State's Workers' Compensation System has no authority to accept a claim from you as you are subject to the jurisdiction of the Pueblo of Santa Ana and are exclusively under the jurisdiction of the Santa Ana Pueblo's Workers' Compensation Code.

If the Employer or Administrator has selected a Primary Healthcare Provider for Employees to use for workers' compensation claims, the Primary Healthcare Provider should also be identified on the notice. The notice shall be posted in both English and Spanish.

The Administrator may provide its own notice to an Employer, but such notices must contain all of the information in the notice above, including the deadline by which the Employee must provide the Employer with notice of an Accident.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

Sec. 19-2-6 Notice of Accident Form

A notice of accident form shall be made available to all Employees. Employers shall use the following form, unless some other form is required by the Administrator:

**NOTICE OF ACCIDENT OR OCCUPATIONAL DISEASE OR ILLNESS**

I, \_\_\_\_\_(name), was involved in an on-the-job accident or was disabled by an occupational disease or illness at approximately \_\_\_\_\_ (time), on \_\_\_\_\_, 20\_\_\_\_ (date). The accident occurred at the following location: \_\_\_\_\_  
. The following is a description of what happened:

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

Signed: \_\_\_\_\_ (employee). Date: \_\_\_\_\_.

**TO BE COMPLETED BY EMPLOYER:**

Received on \_\_\_\_\_, 20\_\_\_\_. (date).

Signed: \_\_\_\_\_(employer). Date: \_\_\_\_\_.

Once signed by both Employer and Employee, the Employer shall keep a copy and provide the Employee with a copy.

Employer shall provide a copy of a fully-executed Notice of Accident or Occupational Disease of Illness form to the Employer's Workers' Compensation insurance company within 24 hours after receiving it. The Administrator has notice of an Injury when the Employer has notice.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-7 Employee Notice of Injury

In order to claim benefits under this Code, an Employee must notify his or her Employer no later than fifteen (15) days after the date of the Injury.

No compensation shall be due under this Code unless the Employee notifies the Employer of the Injury within fifteen (15) days after the occurrence of the Accident, unless the Employer independently knows, or reasonably should have known, of the Injury. If an Employee is prevented from giving notice within fifteen (15) days due to the Employee's Injury or some other cause beyond the Employee's control, the notice period shall be extended to sixty (60) days.

A repetitive traumatic Injury or Occupational Disease or Illness is deemed to have occurred for purposes of providing notice when the Employee knows or should have known that the Injury caused the Employee to be unable to work.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-8 Confidentiality

All Employee health and medical records shall be kept confidential by the Employer and Administrator and shall be handled in accordance with all applicable laws, including the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

### **Chapter 2: Compensation Benefits and Limitations**

#### Sec. 19-2-9 Entitlement to Benefits

Every Employee who sustains an Injury that arises out of and in the course of the Employee's employment shall be entitled to receive the benefits set forth in this Code, unless some limitation or exclusion in this Code applies. In the event of an Employee's death, the Dependents of such Employee shall be entitled to benefits as set forth in this Code.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-10 Exclusive Remedy; Recoupment

This Code provides the exclusive remedy for an Employee or an Employee's Dependents for an Injury. This Code replaces any and all rights and remedies an Employee or an Employee's Dependents may have against the Employer for any Injury under applicable federal, state, or Pueblo law.

Any and all expenses incurred by the Pueblo, Employer, or the Administrator resulting from an Employee's pursuit of claims covered by this Code by proceedings not sanctioned by this Code, shall be recouped from future payments of compensation to the Employee, whether for the same Injury or not, and from the Employee's wages from the Employer, if any, but such recoupment against future payments shall not exceed twenty-five percent (25%) of each future payment, except in cases of lump sum payment of Permanent Partial Disability benefits, or final payment of wages upon the Employee's resignation or termination.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-11 Right of Action - Election by Employee

Whenever an Injury for which benefits are payable under this Code occurs under circumstances creating a legal liability for the same Injury in a person or entity other than the Employer, the injured Employee may either claim benefits under this Code or proceed at law against such other person to recover damages. In no case, however, shall Employee be permitted to collect from both.

A. If the Employee proceeds against a person other than the Employer with respect to such Injury and recovers any amount, that action shall constitute an irrevocable election to proceed against such person and the Employee shall have no rights to any compensation under this Code with respect to such Injury or condition.

B. If benefits have been awarded or paid under this Code and the Employee has suffered damages for which another person, other than the Employer, is legally liable on account of the same Injury for which benefits were paid, the Employer may collect in its own name or that of the injured Employee against the other person in an amount equal to the benefits paid by the Employer to the Employee. Acceptance of benefits under this Code constitutes an assignment of the Employee's rights to the Employer to the extent of benefits paid or payable.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-12 Authorization of Disclosure of Records

Immediately upon request by the Administrator, the Employee shall authorize access to or provide medical, employment, social security, state agency, education, or other pertinent information necessary to adjust the claim. Failure to provide the requested authorization or information may result in delay or suspension of benefits or a dismissal of the claim, at the discretion of the Administrator.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

### Sec. 19-2-13 Health Care Benefits

For any Employee who sustains an Injury under this Code, the Employee's benefits shall include payment of, or reimbursement for, all reasonable and necessary health care expenses of such Employee, but only if such expenses are incurred with a Primary Healthcare Provider or Referral Healthcare Provider. Health care expenses shall be limited to reasonable and customary charges, as determined by the Administrator.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

### Sec. 19-2-14 Medical Mileage

Medical mileage, resulting from an Injury, shall be paid at the same rate per mile as business travel for which the Employee is reimbursed, not to exceed one hundred (100) miles per trip unless preauthorized by the Administrator. The Administrator shall also authorize lodging costs and reasonable meal reimbursements for the Employee, if such expenses are required. Other expenses such as parking, childcare, or the lost wages of others are not covered.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

### Sec. 19-2-15 Prosthetic Devices

The Employee shall receive payment for the purchase, repair, or replacement of prosthetic or orthotic devices, splints, braces, hearing aids, prescription eyeglasses, eyeglass frames, or contact lenses if such items were necessitated by, or that were damaged or destroyed in, an Accident that results in an Injury.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

### Sec. 19-2-16 Chiropractic Care

An Employee may receive chiropractic care when recommended by the Primary Healthcare Provider, but such chiropractic care shall be limited to sixty (60) days from the date of referral by the Primary Healthcare Provider or twenty-four (24) treatments, whichever is less, except for good cause clearly shown. The burden of proving the reasonableness and necessity of additional chiropractic care shall be on the Employee.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

### Sec. 19-2-17 Primary Healthcare Provider

An Employee shall have only one (1) treating Primary Healthcare Provider at a time, who shall coordinate the Employee's medical care. The Administrator may select a Primary Healthcare Provider for an Employee, but the Employee may request a change in Primary Healthcare Provider for good cause shown. The Administrator must approve any change in the Primary Healthcare Provider and any referral to a Referral Healthcare Provider, except that approval by the Administrator is not required in emergency situations. Services rendered by a new provider prior to required approval shall not be paid.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

### Sec. 19-2-18 Second Opinion

An Employee may not be compelled to undergo surgery or other invasive procedures. If an Employee desires a second opinion on the necessity of recommended surgery or other invasive procedures, the Employee shall pay the cost of obtaining any second opinion. Except in cases of emergency surgery, the Employer, at the Employer's expense, may require the Employee to obtain a second opinion on the reasonableness and the necessity of the surgery before the Employee undergoes surgery. The Employee shall submit to recommended pre-surgery tests that are generally medically accepted to determine the reasonableness, necessity or advisability of an Employee's surgery.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

### Sec. 19-2-19 Emergency Medical Services

If, due to a medical emergency, an Employee requires medical services or surgery for which the services of the Primary Healthcare Providers are not reasonably available, the Employee shall receive payment for the reasonable, necessary and customary charges of emergency healthcare providers. The Employee must obtain follow-up care and treatment from a Primary Healthcare Provider.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

### Sec. 19-2-20 Examinations

An injured Employee must submit to reasonable examinations by an independent medical examiner if requested by the Administrator. The Employee shall receive payment for the costs of such examinations and reasonable travel expenses incurred by the Employee in attending the examinations.

If an Employee fails to attend a scheduled examination without good cause, the payment of any cancellation fee shall be recouped from future payments of compensation to the Employee, whether for the same Injury or not, or from the Employee's wages with the Employer, if any, but such recoupment against future payments shall not exceed twenty-five percent (25%) of each future payment except in cases of lump sum payment of Permanent Partial Disability benefits. The cancellation fee may not be recouped from medical expenses due or payable.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

### Sec. 19-2-21 Disability Benefits

The amount of benefits for Temporary Total Disability, Temporary Partial Disability, Permanent Partial Disability, and Permanent Total Disability shall be determined by the Administrator in accordance with this Code.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-22 Temporary Total Disability

An Employee who is deemed to have a Temporary Total Disability shall receive compensation equal to sixty-six and two-thirds percent (66 2/3%) of the Employee's Average Weekly Wage, subject to a maximum compensation rate per week set annually by the State of New Mexico Workers' Compensation Administration. When an Employee's Average Weekly Wage is less than \$36.00 a week, the compensation to the Employee shall be the Employee's full weekly wage.

Temporary Total Disability benefits shall cease immediately upon the Employee's return to work or a determination that the Employee has reached Maximum Medical Improvement, whichever occurs first. In no case shall Temporary Total Disability benefits be paid beyond seven-hundred (700) weeks from the date of Injury.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-23 Temporary Partial Disability

An Employee who is deemed to have a Temporary Partial Disability, shall receive compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference between the Employee's pre-Injury Average Weekly Wage and the amount of the Employee's post-Injury weekly wage, subject to a maximum compensation rate per week set annually by the State of New Mexico Workers' Compensation Administration. Temporary Partial Disability benefits are not payable beyond seven-hundred (700) weeks from the date of Injury.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-24 Permanent Partial Disability

A. For an Employee who is deemed to have a Permanent Partial Disability due to an Injury to a specific body part identified in Section 19-2-25, compensation is determined in accordance with Section 19-2-25 of this Code. For all other Employees deemed to have a Permanent Partial Disability, compensation is determined as follows in this Section 19-2-24.

B. An Employee with a Permanent Partial Disability who has reached Maximum Medical Improvement shall be assigned an impairment rating percentage based upon objective medical evidence, meaning reproducible and consistent clinical findings. The most recent edition of the American Medical Association's guide to the evaluation of permanent impairment shall be adhered to when rating the percentage of permanent impairment to the whole person (body as a whole). The Permanent Partial Disability benefit is calculated by multiplying the impairment rating percentage by the compensation rate for a Temporary Total Disability, as calculated under Section 19-2-22. Where the Employee's permanent impairment rating is equal to or greater than eighty percent (80%), the maximum period is seven-hundred (700) weeks. When the Employee's permanent impairment rating is less than eighty percent (80%), the maximum period is five-hundred (500) weeks. The maximum period shall be reduced by the number of weeks that the Employee received temporary disability benefits, if any.

C. If an Employee with a Permanent Partial Disability does not return to work after reaching Maximum Medical Improvement, or returns to work and earns less than his or her pre-Injury wage, the calculation of the Permanent Partial Disability benefits shall be adjusted using the modifier formulas found in the New Mexico Workers' Compensation Act, which are currently located at NMSA §§ 52-1-26.1–26.4. The modifier formula shall not be applied, however, if the Employer makes a reasonable work offer at or above the Employee's pre-Injury wage and within the Employee's medical restrictions, and the Employee rejects the offered employment, or if the Employee is terminated for misconduct connected to the employment that is unrelated to the workplace Accident.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

**Sec. 19-2-25 Permanent Partial Disability for Injury to Specific Body Part**

A. A worker who has lost, or lost the use of, the following specific body part as a result of an Injury shall receive benefits equal to the compensation rate for a Temporary Total Disability, as calculated under Section 19-9-22, for the following number of weeks:

- |  |           |
|--|-----------|
| 1. one arm at or near shoulder, dextrous member        | 200 weeks |
| 2. one arm at elbow, dextrous member                   | 160 weeks |
| 3. one arm between wrist at elbow, dextrous member     | 150 weeks |
| 4. one arm at or near shoulder, nondextrous member     | 175 weeks |
| 5. one arm at elbow, nondextrous member                | 155 weeks |
| 6. one arm between wrist and elbow, nondextrous member | 140 weeks |
| 7. one hand, dextrous member                           | 125 weeks |
| 8. one hand, nondextrous member                        | 110 weeks |
| 9. one thumb and the metacarpal bone thereof           | 55 weeks  |
| 10. one thumb at the proximal joint                    | 34 weeks  |
| 11. one thumb at the second distal joint               | 22 weeks  |
| 12. one first finger and the metacarpal bone thereof   | 28 weeks  |
| 13. one first finger at the proximal joint             | 22 weeks  |
| 14. one first finger at the second joint               | 17 weeks  |
| 15. one first finger at the distal joint               | 12 weeks  |
| 16. one second finger and the metacarpal bone thereof  | 22 weeks  |

17. one second finger at the proximal joint	17 weeks
18. one second finger at the second joint	12 weeks
19. one second finger at the distal joint	10 weeks
20. one third finger and the metacarpal bone thereof	17 weeks
21. one third finger at the proximal joint	12 weeks
22. one third finger at the second joint	10 weeks
23. one third finger at the distal joint	10 weeks
24. one fourth finger and the metacarpal bone thereof	14 weeks
25. one fourth finger at the proximal joint	14 weeks
26. one fourth finger at the second joint	10 weeks
27. one fourth finger at the distal joint	7 weeks
28. loss of all fingers on one hand where thumb and palm remain	70 weeks
29. one leg at or near hip joint, so as to preclude the use of an artificial limb	200 weeks
30. one leg at or above the knee, where stump remains sufficient to permit the use of an artificial limb	150 weeks
31. one leg between knee and ankle	130 weeks
32. one foot at the ankle	115 weeks
33. one great toe with the metatarsal bone thereof	35 weeks
34. one great toe at the proximal joint	17 weeks
35. one great toe at the second joint	12 weeks
36. one toe other than the great toe with the metatarsal bone thereof	14 weeks
37. one toe other than the great toe at the proximal joint	10 weeks
38. one toe other than the great toe at second or distal joint	8 weeks
39. loss of all toes on one foot at proximal joint	40 weeks



40. eye by enucleation	130 weeks
41. total blindness of one eye	120 weeks
42. total deafness in one ear	40 weeks
43. total deafness in both ears	150 weeks

B. For partial loss of use of one of the body parts or physical functions listed in Subsection 1 of this Section, the worker shall receive compensation computed on the basis of the degree of such partial loss of use, payable for the number of weeks applicable to total loss or loss of use of that body part or physical function.

C. If an Employee has a scheduled Injury under this Section that, as determined by a Primary Healthcare Provider, prevents an Employee from performing any work activities, the number of weeks listed in Subsection 1 shall be increased by the number of weeks between the date of the Injury and the date that the Employee is released from regular treatment from his or her Primary Healthcare Provider. But in no event shall the Employee be entitled to compensation for a period in excess of seven hundred weeks.

D. For serious permanent disfigurement of the face or head, the Employee shall receive an additional compensation in the amount of \$2,500.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

**Sec. 19-2-26 Apportionment of Permanent Partial Disability Due to Pre-Existing Condition**

If any portion of the permanent impairment rating is attributable to a pre-existing condition, whether previously rated or not, the Employee shall receive Permanent Partial Disability payments only for that portion of the permanent Injury attributable to the Accident, as determined by the Employee's Primary Healthcare Provider or Referral Healthcare Provider.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

**Sec. 19-2-27 Payment of Permanent Partial Disability Benefits**

No Permanent Partial Disability benefits shall be paid until the Employee reaches Maximum Medical Improvement. When the extent of the permanent impairment is not disputed, and if the Employee has been employed at least part-time for ninety (90) days post-Injury, payment of Permanent Partial Disability benefits shall be made in a lump sum within thirty (30) days after receipt of the medical report containing the undisputed rating. If the Employee is not working at the time Maximum Medical Improvement is reached and the permanent impairment is rated, Permanent Partial Disability benefits shall be paid periodically at the same rate and at the same intervals as any temporary disability benefits were being paid. Periodic Permanent Partial Disability benefits and temporary disability benefits shall not be paid concurrently. If the Employee begins working and continues working for a period of thirty days after the commencement of periodic Permanent Partial Disability benefits, the remaining unpaid Permanent Partial Disability benefits, if any, shall be paid in a lump sum if requested by the Employee.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

Sec. 19-2-28 Disputes Regarding Permanent Impairment Rating

If the extent of permanent impairment is disputed, the party disputing the rating may request, at its expense, the appointment of a neutral medical examiner by the Administrator to determine the extent of permanent impairment. The determination of the neutral medical examiner shall be binding on both parties and payment of the Permanent Partial Disability benefits shall be made within thirty (30) days after receipt of the neutral medical examiner's report by the Administrator.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

Sec. 19-2-29 Permanent Total Disability

An Employee who is deemed to have a Permanent Total Disability shall receive compensation at the same compensation rate as for a Temporary Total Disability under Section 19-2-25 of this Code. Permanent Total Disability benefits are payable for the Employee's lifetime and shall cease upon the date of the Employee's death or upon a change in the Employee's medical condition that affects the Employee's ability to secure employment. No Permanent Total Disability benefits shall be paid for an Injury that is not proven, by clear and convincing evidence, to result in an inability of the Employee to engage in any employment.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

Sec. 19-2-30 Coordination of Benefits

The amount of compensation payable to an Employee, who receives or is entitled to receive any other disability benefits, shall be reduced dollar for dollar by the amount of other disability benefits, which include but are not limited to:

- A. Unemployment benefits,
- B. Private disability benefits,
- C. Social Security disability benefits,
- D. PERA benefits,
- E. Public or private retirement benefits or annuities,
- F. Social Security retirement benefits,
- G. Other disability benefits provided by the Employer, but not including any benefits provided by the Pueblo to its members.

An Employee receiving benefits under this Code has an ongoing obligation to apply for any other public or private disability or retirement benefits to which the Employee may be entitled. If an Employee is entitled to receive these benefits, they shall be primary over any benefits under this Code, and the sum of the two or more benefits shall not exceed the amount of

benefits payable under this Code. An Employee's weekly benefits may be suspended for the Employee's failure to apply for such other benefits which are reasonably attainable.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-31 Incarceration Limitation

Compensation shall not be paid under this Code for any period during which the Employee is incarcerated. Such incarceration shall not reduce or expand the benefit period for which the Employee is eligible for benefits.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-32 Termination of Benefits

Disability benefits shall be terminated, and shall not recommence, if the Employee:

- A. Declines work that is within the Employee's physical restrictions, as determined by the Primary Healthcare Provider or an independent medical examiner, or
- B. Voluntarily resigns from the Employer, or
- C. Is terminated for cause, or
- D. Fails to make diligent effort to find employment, or
- E. Fails to maintain contact with the Employer at least one time per week, or
- F. Fails to cooperate with reasonable medical or vocational rehabilitation.

This Section shall not be construed to require the Employee to undergo invasive medical procedures nor to require the Employer to provide vocational rehabilitation.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-33 Rehabilitation Benefits

To be eligible for rehabilitation benefits, an Employee who has reached Maximum Medical Improvement and has been rated with a permanent impairment, and is released to return to work with restrictions, but is unable to return to the Employee's pre-Injury wage level, with or without modification, must engage in a reasonable and diligent search for employment. At the option of the Administrator and the Employer, the Employee may receive temporary rehabilitation or vocational training benefits while the Employee is actively engaged in a program of rehabilitation, which is reasonable and designed to restore the Employee to gainful employment. Rehabilitation and vocational benefits may be provided to the Employee at the sole option of the Administrator and the Employer.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-34 Death Benefits

If, as a result of an Injury found compensable under this Code, an Employee dies within two (2) years of the Injury, the following compensation shall be paid:

A. If the Employee has no Dependents, the compensation shall be limited to funeral expenses, not to exceed \$7,500, medical and hospital service expenses for the deceased, and all other sums that the deceased should have been paid for compensation benefits up to the time of the Employee's death.

B. If the Employee has eligible Dependents, the compensation shall include sixty-six and two-thirds percent (66 2/3%) of the Employee's Average Weekly Wage for the remaining compensation period that the Employee would have received benefits if alive or until the Dependent no longer qualifies as a Dependent under this Code, whichever occurs first, plus up to \$7,500 for funeral expenses and expenses provided for medical and hospital services for the deceased, and all other sums that the deceased should have been paid for compensation benefits up to the time of the Employee's death. Compensation to Dependents shall not exceed the maximum weekly compensation benefits that the Employee was or would have been entitled to receive under this Code prior to death. The maximum period for which Dependents may receive under this Section is seven-hundred (700) weeks from the date of the Injury.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-35 Appointment of Guardian

The Administrator may require the appointment of a guardian or conservator to receive payments on behalf of a minor or incompetent Dependents.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-36 Allocation of Death Benefits

In the event that the Employee is survived by more than one Dependent, the payments made by the Employer shall be divided among the multiple Dependents equally. All payments to minor children will be made to the Dependent Children's surviving parent or guardian.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-37 Volunteer Benefits

For any Volunteer who sustains an Injury as defined in this Code, the Employer shall be liable for payment of the following benefits only. The Employer is not liable for any wage loss benefits and wage loss benefits are specifically excluded from this coverage.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

Sec. 19-2-38 Health Care Benefits: Volunteers are entitled to the same Health Care Benefits as an Employee under this Code, Subject to a Maximum Limit of \$25,000 per Volunteer, per Accident.

A. Permanent Partial Disability Benefits: Volunteers are entitled to the same Permanent Partial Disability Benefits as an Employee under this Code, however, paid at a rate of \$250 per week.

B. Death Benefits: If, as a result of an Injury, a Volunteer dies leaving any Dependents, the Employer shall be liable for a lump sum payment in the amount of \$10,000 per Dependent, subject to a maximum of \$50,000 per Volunteer.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

Sec. 19-2-39 Limitations on Benefits

Benefits under this Code may be denied for any of the following reasons:

- A. The Injury occurred outside the Employee's course of employment.
- B. The Employee failed to provide notice of the Injury as required under this Code, unless the Employer otherwise had knowledge of the Injury.
- C. The Injury was intentional or self-inflicted by the Employee, including suicide.
- D. The Injury was intentionally caused by any persons, including co-workers, for personal reasons that are not related to the Employee's job duties or employment.
- E. The Injury resulted from the gross negligence or misconduct of the Employee.
- F. The Employee engaged in horseplay, which caused or contributed to the Injury.
- G. The Employee disregarded the Employer's instructions or established work or safety procedures, whether verbal or written, which if followed would have reasonably prevented or reduced the likelihood of the Injury.
- H. The Employee failed to disclose a known physical or medical condition prior to commencement of employment, which prevented the Employee from safely performing the work for which the Employee was hired, or which was a substantial contributing factor to the Injury.
- I. The Employee was under the influence of alcohol or illegal substances, or was abusing prescription medications, at the time the Injury occurred. Compensation benefits shall be reduced by the degree to which the intoxication or influence contributed to the Injury or death, provided that the reduction shall be a minimum of ten percent, but no more than ninety percent. Employers may require post-Accident drug or alcohol testing conducted in conformance with generally accepted standards and procedures in the medical community.
- J. The Injury arose from an emotional or mental condition, whether or not related to a workplace Injury. The exception to this exclusion is for mental impairments that result from a

severe and unusual workplace event, as diagnosed by a medical professional. Mental impairment cannot result from disciplinary action, work evaluation, job transfer, lay off, emotion, promotion, termination, retirement, or similar action taken by the Employer.

K. The Injury is idiopathic, arising from an unknown cause.

L. The Injury was suffered by a non-Employee, including an Independent Contractor or its Employees, whether or not there is insurance and whether or not the Injury occurred on Pueblo Lands.

M. The Injury is an environmental illness or chemical sensitivity caused by agents to which the general public is exposed on the Employer's Premises or any other public location.

N. The Injury occurred off the Employer's Premises, such as during an off-Premises break or while traveling to or from the Employer's Premises. However, this exclusion does not apply if the Employee was engaged in business travel required by the Employer, or if the Injury occurred while the Employee was in the Employer's parking lot while in route to the Employee's next scheduled work shift for the Employer.

O. The Injury arose from participation in recreational, social, volunteer activities, or athletic activities that do not provide a benefit to the Employer, unless the Employer required the Employee to attend such activities.

P. The Injury was due to a preexisting degenerative condition, established by objective medical evidence, whether pre- or post-Injury, which aggravated or contributed to the disability or need for medical treatment, unless the work-related event caused a new and specific Injury, whether super-imposed on the pre-existing degenerative or congenital condition or involves a new body part. In the case of a work-related event causing a new and specific Injury, benefits shall be paid until the Employee reaches Maximum Medical Improvement or returns to their pre-Injury condition for the new and specific Injury. If a work-related Injury causes a temporary aggravation of a pre-existing degenerative condition, medical benefits may be payable up to a maximum of \$10,000. For purposes of this section, a preexisting degenerative condition includes, but is not limited to, a degenerative disease, congenital condition or chronic illness or Injury.

Q. The Injury resulted from the refusal or failure of the Employee to use a safety device furnished by the Employer which if used would have reasonably prevented or reduced the likelihood of Injury.

R. The Injury resulted from the Employee's failure to work within documented medical restrictions.

### **Chapter 3: Claim Administration and Appeals**

#### **Sec. 19-2-40 Responsibility for Payments**

Benefit payments required under this Code shall be paid directly by the Administrator, including any benefits payments ordered by the Contemporary Court. The Employer shall ensure its contract with the Administrator provides that the Administrator will comply with an order from the Contemporary Court to make payments required under this Code. If an Administrator refuses to pay benefits required under this Code, as ordered by the Contemporary Court, the Employer is ultimately responsible for making such benefit payments to the Employee.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### **Sec. 19-2-41 Time and Method of Payment**

A. The Administrator shall make an initial payment of compensation within fourteen days of notice to or knowledge by the Employer of an Injury determined to be compensable under this Code.

B. Compensation benefits shall be paid every two weeks thereafter.

C. Medical expenses shall be paid within forty-five days after receipt by the Administrator. Health care providers will submit itemized billing and medical records or reports, at no cost to the Administrator, documenting the reasonableness and necessity of the authorized medical services.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### **Sec. 19-2-42 Denial of a Claim or Discontinuance of Benefits**

A denial of a claim or discontinuance of benefits must:

A. Be made in writing by the Administrator;

B. Be given to both the Employee and the Employer;

C. Contain the specific reason for the denial in language easily readable and understandable to a person of average intelligence and education; and

D. Clearly state the facts forming the basis for the denial.

E. Also include the following information:

1. Employee name;

2. The date of the claimed Accident;

3. A claim number;

4. The type of benefits being reduced or discontinued;

5. An itemization of previous benefits paid;
6. The name and telephone number of the person making the decision;
7. Copies of any evidence, medical or otherwise, upon which the denial or discontinuance is based;
8. The procedure and time limitations for challenging the denial; and
9. A claim petition form with instructions for completing and filing.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-43 Method of Service

All notices, decisions or orders provided for in this Code may be served personally or by United States mail. Time periods shall be calculated starting on the day following the beginning of the period and shall include weekends and holidays. However, if the last day of the period falls on a weekend or holiday, the time shall be extended to the next business day. When an attorney represents a party, service must also be made on the attorney. Where service is by mail, service is affected on the date mailed if properly addressed and stamped.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-44 Claim Petition

The Administrator shall provide the Employee with a claim petition form with every notice of denial, reduction, or discontinuance of benefits. If an Employee objects to the denial of a claim, or to a reduction or discontinuance of benefits, the Employee may file a claim petition with the Administrator within thirty (30) days after receipt of the denial, reduction, or discontinuance.

The claim petition shall contain the following information:

- A. Employee name;
- B. Date of Injury;
- C. Claim number;
- D. Type of benefits being sought;
- E. The basis of the claim for benefits;
- F. All evidence, medical or otherwise, that Employee relies upon in support of the Employee's claim; and
- G. Identification of the nature and location of any additional evidence that is not currently in Employee's possession, but which Employee believes would support his or her claim.



All outstanding disputed claim issues should be addressed in a single claim petition. Failure to file the claim petition within thirty (30) days after receipt of the denial, reduction, or discontinuance will result in the loss of the right of the Employee to pursue those benefits affected by the denial or discontinuance.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-45 Claim Petition Review

Each claim petition shall be reviewed by the Administrator. The Administrator shall make a review of the denial of claims or discontinuance of benefits, the claim petition of the Employee, and any written evidence submitted by the Employee. The Administrator may request that the Employer provide any evidence in its possession that the Employee has identified as potentially supporting its claim. The Administrator may also request such additional written evidence as the Administrator deems necessary or equitable to render a decision. The Administrator shall then provide a final written decision on the claim petition, which shall be served on all parties within thirty days of the filing of the claim petition or receipt of any additional written evidence requested by the Administrator, whichever occurs later.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-46 Appeal to Contemporary Court

Any interested party that disagrees with the Administrator's final decision on a claim petition may appeal such decision to the Pueblo's Contemporary Court. The appeal shall be governed by the procedures set forth in the Rules of Procedure for the Contemporary Court. The Contemporary Court shall review the Administrator's decision and shall affirm the decision unless it was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, or if it was taken without observance of a procedure required by law. The Contemporary Court's review shall be based solely on the materials available to the Administrator at the time of decision, including the claim petition and any evidence submitted in support of the claim petition. The Contemporary Court shall only consider other evidence or materials that were not in the Administrator's possession upon a showing that such evidence or materials were not reasonably available to the Employee at or prior to the time of the Administrator's decision and that such evidence or materials could reasonably have altered the Administrator's decision.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-47 Contemporary Court Decision

The Contemporary Court shall issue a written decision on each appeal under this Code stating the Contemporary Court's reasons for its decision. The Contemporary Court can affirm, reverse, or modify the decision of the Administrator, or it can remand back to the Administrator for further consideration. The Contemporary Court's decision is final and not appealable in any forum.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-48 Decision Binding

The Administrator, Employer, and Employee shall be bound by the decision of the Contemporary Court and shall pay any amounts required by such decision.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-49 Intervention

The Employer and Administrator shall be permitted to participate in any proceeding under this Code, but no third party who had paid benefits of any kind to or on behalf of an Employee whose Injury is compensable under this Code shall have the right to intervene in any proceedings under this Code or to otherwise be reimbursed by the Administrator or Employer.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-50 Settlement

If the Administrator and Employee reach an agreement to settle all or any part of the Employee's claims for benefits under this Code while an appeal is pending in the Contemporary Court, a written and executed memorandum of the agreement shall be filed with the Contemporary Court. The memorandum shall recite the terms and conditions of the agreement and shall be signed by the parties to the agreement. Upon filing of the memorandum with the Contemporary Court, the agreement becomes binding and enforceable by the parties, and the appeal shall be dismissed.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-51 Right to Legal Counsel

Either party may be represented by an attorney licensed to practice in the Contemporary Court at any stage of the proceedings. Attorney fees and costs shall be borne by the party incurring them. No attorney fees shall be awarded against the Employer or an Employee in connection with any dispute under this Code.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

#### Sec. 19-2-52 Reimbursement of Overpayments

Payment of compensation made under a mistake of fact or law by the Employer or the Administrator may be recouped from future payments of compensation to the Employee, whether for the same Injury or not, or from the Employee's wages with the Employer, if any, such that the recoupment against future payments shall not exceed twenty-five percent (25%) of each future payment except in cases of lump sum payment of Permanent Partial Disability benefits. Overpayments may not be recouped against medical expenses due or payable. Intentional misrepresentation by an Employee resulting in benefits paid under the Code shall allow the Employer to bring an action at law in any court of competent jurisdiction against the Employee to collect benefits paid as a result of the intentional misrepresentation.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.

Sec. 19-2-53 Sovereign Immunity

The Pueblo's sovereign immunity shall not be available as a defense for claims brought by an Employee, or by his or her Dependents, in the Pueblo's Contemporary Court to enforce a claim for benefits under this Code. This limited waiver applies only to claims for benefits under this Code and does not include any other claims that such Employee or Dependents may seek to assert, nor does this limited waiver apply to proceedings in any forum other than the Pueblo's Contemporary Court. No other provision of this Code shall be interpreted to waive the sovereign immunity of the Pueblo, its entities or officials, or any Pueblo-owned businesses.

Enacted by Resolution Number 2020-R-17, signed May 15, 2020.