



THE MILLE LACS BAND OF  
OJIBWE INDIANS

*Legislative Branch of Tribal Government*

**JOINT RESOLUTION 11-04-02-06**

**A JOINT RESOLUTION TO ENDORSE AND ADOPT THE  
MILLE LACS BAND SELF INSURED WORKERS' COMPENSATION  
PLAN**

WHEREAS, the Mille Lacs Band Assembly is the duly-elected governing body of the Mille Lacs Band of Ojibwe, a federally-recognized Indian Tribe; and

WHEREAS, the Band Assembly recognizes that significant cost saving can be realized by adopting a self-insured Workers' Compensation Plan; and

WHEREAS, this Plan is a self-funded, self-insurance program of the Mille Lacs Band of Ojibwe, a sovereign Indian Tribal Government and is operated solely for the benefit of its employees, and

WHEREAS, the purpose of the Plan is to provide a system of compensation and medical benefits for Employees, as defined in the attached Plan of the Mille Lacs Band of Ojibwe, who suffer compensable injuries while in the Employment of the Mille Lacs Band of Ojibwe; and

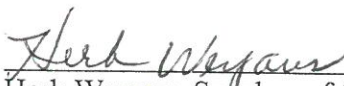
WHEREAS, all Employees of the Mille Lacs Band of Ojibwe are covered for Compensable Bodily Injuries whether the Accident or Bodily Injury occur on or off the Reservation as long as the activity occurred while pursuing an employment related activity; and

WHEREAS, the Mille Lacs Band of Ojibwe endorses and supports the adoption of the Mille Lacs Band's Self Insured Workers' Compensation Plan.

NOW, THEREFORE, BE IT RESOLVED, that the Mille Lacs Band of Ojibwe, does hereby endorse and adopt the Mille Lacs Band Self Insured Workers' Compensation Plan.

WE DO HEREY CERTIFY, that the foregoing resolution was duly concurred and adopted at a regular session of the Band Assembly in Legislative Council assembled, a quorum of legislators being present held on the 4th of October, 2005 at Vineland, Minnesota by a vote of 3 FOR, 0 AGAINST, 0 SILENT.

IN WITNESS WHEREOF, we the Band Assembly hereunto cause to have set the signature of the Speaker of the Assembly to be affixed to this resolution.

  
Herb Weyaus, Speaker of the Assembly

*DISTRICT I*

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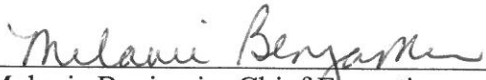
*DISTRICT II*

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*DISTRICT III*

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(320) 384-6240 • Fax (320) 384-6190

IN CONCURRENCE, with the action of the Speaker of Assembly, I Chief Executive have set my hand to this resolution.

  
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Melanie Benjamin, Chief Executive

**OFFICIAL SEAL OF THE BAND**

# **Mille Lacs Band of Ojibwe Workers' Compensation Plan**

## **SECTION 1 Definitions**

- 1.001 Mille Lacs Band of Ojibwe**  
The Mille Lacs Band of Ojibwe also referred to as the Employer, or its designee.
- 1.002 Employer**  
The Mille Lacs Band of Ojibwe where it has obtained the labor services of a person for hire.
- 1.003 Employee**  
Any person who performs labor services alone for the Mille Lacs Band of Ojibwe for hire at an established wage or salary. Contract labor services are specifically excluded from the provisions of this Plan.
- 1.004 Weekly Wage**  
For a full-time Employee, the Weekly Wage is the weekly Mille Lacs Band of Ojibwe salary or the Mille Lacs Band of Ojibwe wage normally earned in a normal full-time week. If the hours worked are irregular or difficult to determine, the average daily wage is determined by totaling the earnings from Mille Lacs Band of Ojibwe employment over the 26 calendar weeks prior to the injury and dividing the sum by the number of days worked in the same period. The number of days worked is then divided by the number of calendar weeks within the 26 week period in which the Employee had Mille Lacs Band of Ojibwe earnings to determine the average work week. The average work week is then multiplied by the average daily wage to arrive at the Weekly Wage. In no case are overtime wages considered in determining the Weekly Wage. If an Employee is employed in more than one capacity by the Mille Lacs Band of Ojibwe, the earnings of the Employee in each capacity will be considered in determining Weekly Wage.
- 1.005 Compensation Rate**  
66 2/3% of the Weekly Wage as determined under 1.004, subject to a maximum to \$610.00 per week.
- 1.005A Waiting Period**  
The first two scheduled work days lost, for which no wage loss benefits will be paid however, any necessary medical expense will be paid by the Plan. The scheduled workday will be counted from the first day of disability due to a Compensable Injury.
- 1.006 Compensable Injury**  
A Compensable Injury is one arising out of and in the course of employment, but does not cover an employee except while engaged in, on, or about the premises where the employee's services required the employee's presence as a part of that service at the time of the Compensable Injury and during the hours of that service. Injury caused by an accident when an employee is engaged in business travel required by the Employer, or wherever and whenever the Employer requires the Employee to perform the employment duties, is compensable under the Plan. Where the Employer regularly furnished transportation to employees to and from the place of employment, those employees are subject to this Plan while being so transported.

- 1.006 Compensable Injury (Continued)**  
Compensable Injury does not include an injury caused by the act of a third person or fellow employee intended to injure the employee. If the employee intended to injure, then injury does not arise out of the Employment and is not compensable under this Plan. If the injured employee is found to be under the influence of alcohol or illegal drugs, the claim is not compensable under this Plan.
- 1.007 Bodily Injury or Injury**  
Actual physical injury to the body, which arises by Accident under circumstances that constitute a Compensable Injury as defined in 1.006. Cumulative trauma, repetitive, overuse and idiopathic injuries are covered if they can be construed to be caused by, aggravated or accelerated by the employment.
- 1.008 Accident**  
A specific occurrence neither expected nor intended that causes Bodily Injury to an Employee and arises under circumstances constitutes a Compensable Injury. Accident does not include a self-inflicted injury or injury suffered while the Employee is under the influence of alcohol or non-prescription drugs.
- 1.009 Dependent Child**  
A natural or adopted unmarried child of the Employee including posthumous child, under eighteen years of age, or under the age of twenty-two if the child is regularly attending a high school, college, university, or vocational or technical school as a full-time student.
- 1.010 Dependent Spouse**  
The lawful wife or husband of the Employee, unless voluntarily living apart from the Employee at the time of the Employees' injury or death. Does not include a "common law" spouse. A marriage is recognized if valid in the state where the marriage occurred.
- 1.011 Other Dependents**  
Stepchildren, grandchildren, nieces and nephews may be considered dependent but only to the extent that actual dependency can be shown. Must prove there was actual dependency on the employee for financial welfare.
- 1.012 Primary Physician**  
A licensed medical doctor located and practicing within 100 miles of the employees home at the time of injury and from whom the Employee receives medical treatment for a Compensable Bodily Injury. Chiropractor care will be covered if referred by Primary Physician. A Chiropractor cannot be the Primary Physician.
- 1.013 Referral Physician**  
A licensed medical doctor or chiropractor to whom the Employee is referred by the Primary Physician for further specialized treatment with the approval of the Administrator or the Mille Lacs Band of Ojibwe.
- 1.014 Independent Medical Examination**  
A medical examination or evaluation of the Employee scheduled by the Employer or Administrator, at the Employer's expense, for the purpose of obtaining medical information or opinion.

- 1.015 Administrator**  
Berkley Risk Administrators Company, whom the Mille Lacs Band of Ojibwe has contracted with to act on behalf of the Mille Lacs Band of Ojibwe in the administration of this Plan.
- 1.016 Limited Waiver of Sovereign Immunity**  
Any limited waiver of sovereign immunity is limited to the scope of this Plan.
- 1.017 Mille Lacs Band of Ojibwe Court of Central Jurisdiction**  
Any reference to Tribal Court is a reference to the Mille Lacs Band of Ojibwe Court of Central Jurisdiction.

## **SECTION 2**

### **Purpose and Scope**

- 2.001** The purpose of the Mille Lacs Band of Ojibwe Workers' Compensation Plan (the "Plan") is to provide a system of compensation and medical benefits for Employees of the Mille Lacs Band of Ojibwe who suffer Compensable injuries in the Employment of the Mille Lacs Band of Ojibwe. Benefits under the Plan are the Employees' exclusive remedy against the Employer. Benefits payable through the Veterans Administration or under any policy of no-fault Automobile Insurance will be primary to benefits payable under this Plan.
- 2.002** All Employees of the Mille Lacs Band of Ojibwe are covered for Compensable Bodily Injuries whether the Accident and Bodily Injury occur on or off the Reservation. Benefits are limited as indicated in the following Sections.
- 2.003** This Plan is a self-funded, self-insurance program of the Mille Lacs Band of Ojibwe, a sovereign Indian Tribal government and is operated solely for the benefit of its employees.
- 2.004** Nothing in this Plan, including any assertion of right or privilege, shall waive, or be construed to work as a constructive waiver of the Mille Lacs Band of Ojibwe's sovereign immunity from suit by any party except as provided in this Plan.

## **SECTION 3**

### **Reporting Obligations**

- 3.001** An Employee must report any injury, no matter how slight, to his/her supervisor within twenty-four hours of the Accident causing the Bodily Injury. If the Bodily Injury incapacitates the Employee, the twenty-four hours will not begin to run until the incapacity ends. A Bodily Injury may be reported by another on behalf of the Employee.
- 3.002** A Supervisor, receiving a report or notice of a Bodily Injury from the Employee or another acting in the Employees' behalf, must promptly report the claim to the Administrator or to the Mille Lacs Band of Ojibwe's designee for reporting.

## **SECTION 4**

### **Medical Benefits**

- 4.001** The Plan will pay the cost of all reasonable and necessary First Aid, Medical, Surgical and Hospital services incurred by the Employee as a direct result of a Compensable Bodily Injury subject to the following restrictions and limited to a maximum benefit of \$125,000.00 for any Injury. Benefits payable through the Veterans Administration or under any policy of no-fault Automobile Insurance will be primary to benefits payable under this Plan.
- 4.002** Once an Employee has made a second visit to a physician, that physician is the Employee's Primary Physician under the Plan. After this second visit, the Employee may not change Primary Physicians without the approval of the Administrator or the Mille Lacs Band of Ojibwe.
- 4.003** The Plan will pay hospital and related charges only for services ordered by the Primary or Referral Physician.
- 4.004** The Plan will pay the cost of medicines and supplies and equipment of a therapeutic nature necessary to treat the Bodily Injury only if ordered by the Primary or Referral Physician.
- 4.005** The Plan will pay surgical charges only if the surgery is done on an emergency basis or if the Administrator or the Employer has previously approved it. Any surgical procedures which are not pre-approved will not be covered by the Plan. The Administrator or the Employer may require a second opinion prior to approving any surgical procedure.
- 4.006** The Plan will reimburse the Employee for the reasonable cost of mileage and other related expenses necessarily incurred to obtain medical treatment other than the cost of childcare.
- 4.007** The Plan will pay reasonable and necessary medical care costs up to the maximum allowed for similar services by the Medical Fee Schedule of the Minnesota Department of Labor and Industry for medical services in Minnesota Workers' Compensation cases.
- 4.008** If the Employee fails to appear for two scheduled Independent Medical Examinations, the responsibility of the Employer for payment under this Plan of medical expenses incurred after the scheduled date of that second Examination ceases. Likewise, the Employer's responsibility for payment of all other benefits accruing under this Plan ceases immediately upon that second failure to appear.
- 4.009** The Administrator or Mille Lacs Band of Ojibwe may contract for the services of a rehabilitation consultant to assist the Employee in rehabilitation and return to work efforts. If the Employee fails to cooperate in rehabilitation efforts the responsibility of the Employer for payment of all benefits and medical expenses under this Plan will cease.
- 4.010** The Employee must provide written authorization for present and past medical records when requested by the Administrator or the Mille Lacs Band of Ojibwe. If the Employee fails to provide authorization within 45 days of a written request to do so, the responsibility of the Employer for payment of all benefits and medical expenses under this Plan will cease.

## **SECTION 5**

### **Disability Benefits**

#### **5.001 Temporary Total Disability**

That time when, solely as a direct result of the Bodily Injury, the Employee is totally disabled from performing for the Mille Lacs Band of Ojibwe the Employee's normal duties which the Employee was engaged in at the time of the Bodily Injury, or of other light, restricted or modified work which the Employer offers. Total Disability must be evidenced by medical opinion based on examination and treatment rendered at the time of the claimed disability. The weekly benefit for Temporary Total Disability is limited to the applicable Compensation Rate under 1.004 and 1.005 above.

#### **5.002 Temporary Partial Disability**

Loss of actual earnings suffered by an Employee who has returned to light duty, restricted or modified work offered by the Employer solely because of the ongoing effects of the Bodily Injury and the Employee's physical inability to return to the Employee's normal duties of Employment with the Mille Lacs Band of Ojibwe which the Employee was engaged in at the time of the Bodily Injury. The weekly benefit for Temporary Partial Disability is 66 2/3% of the difference between the Weekly Wage at the time of the Bodily Injury as determined under 1.004 and the wage the Employee is able to earn in the light duty, restricted or modified work which the Employer offers. Temporary Partial Disability benefits are limited to the maximum Compensation Rate under 1.005.

**5.003** If an Employee refuses light, restricted or modified work offered by the Employer or becomes voluntarily unemployed, all benefits, except medical benefits, will cease.

**5.004** Payments of Temporary Total and/or Temporary Partial disability benefits will not be paid beyond 104 calendar weeks from the first day of disability and will cease at that time or upon the rating and commencement of payment of Permanent Partial Disability benefits, whichever comes first.

#### **5.005 Permanent Partial Disability**

This benefit is intended to compensate the injured Employee for any permanent loss of or loss of use to the body as a whole suffered directly as a result of a Compensable Bodily Injury. Pre-existing disabilities are not to be considered in rating Permanent Partial Disability. A rating of Permanent Partial Disability must represent only that loss resulting solely from the Compensable Bodily Injury. All ratings of Permanent Partial Disability shall be based on the Permanent Disability Schedules adopted by the Mille Lacs Band of Ojibwe and attached to this Plan and designated as Addendum Number 1. The percentage of disability determined under the Schedule shall be multiplied by \$75,000.00 to determine the dollar amount payable to the Employee. The amount payable to the Employee shall be paid in weekly installments at the Compensation Rate to which the Employee is entitled under 1.004 and 1.005. Periodic payments will begin as soon as reasonably possible after receipt of the rating by the Administrator but no later than 30 days after receipt unless the Administrator has scheduled an Independent Medical Examination.

**5.006** Permanent Partial Disability benefits are not payable concurrently with Temporary Total, Temporary Partial, or Dependency benefits.

**5.007** The Mille Lacs Band of Ojibwe or the Administrator may, at their option, pay disability benefits in two-week increments.

- 5.008 If a Bodily Injury results in disability which is partially due to a congenital condition or a prior disease or injury, the benefits payable for the disability will be reduced by the proportion of the disability which is due to the pre-existing disability.
- 5.009 If the Employee fails to appear for two scheduled Independent Medical Examinations, the liability of the Employer for payment of disability benefits ceases. Likewise, the Employer's responsibility for payment of all other benefits accruing under this Plan ceases immediately upon that second failure to appear.
- 5.10 Receipt by the Employee of Social Security Retirement Benefits will be considered conclusive evidence of retirement and the liability of the Employer for payment of further disability benefits will cease. The presumption of retirement is age 67 whether or not employee is receiving retirement benefits, if they are Permanently Totally Disabled.
- 5.11 **Permanent Total Disability**  
Permanent Total Disability benefits start after the 104 weeks have been met and end on the Employees 67th birthday or "5" years after the first day of disability, whichever comes first.

## SECTION 6

### Dependency Benefits

- 6.001 In the event of the death of an Employee due to a Compensable Injury, payment of all disability and medical benefits shall cease and a maximum of \$75,000.00 will be payable to the Dependents of the deceased Employee. Dependents will receive weekly payments equal to the indicated percentage of the Weekly Wage as determined under 1.004. Weekly payments are subject to the maximum Compensation Rate under 1.005, and will be paid as described in 6.002 through 6.011.
- 6.002 Dependent Spouse alone-50% of the Weekly Wage.
- 6.003 Dependent Spouse and one or more Dependent Children-66 2/3% of the Weekly Wage.
- 6.004 One Dependent Child, but no Dependent Spouse-40% of the Weekly Wage.
- 6.005 Two or more Dependent Children, but no Dependent Spouse-60% of the Weekly Wage.
- 6.006 Other Dependents will receive benefits in the percentage that their provable dependency on the decedent bears to the maximum benefit available and to the dependency of other Dependents. Regardless of the number of Dependents, the maximum benefit will not exceed 66 2/3% of the Weekly Wage at the time of the Injury.
- 6.007 If a Dependent Spouse remarries, no further benefits shall be payable to that Spouse. If one or more Children remain Dependent, benefits will continue to be paid for the benefit of the Child or Children, pursuant to 6.004 or 6.005 above until they cease to be Dependent.
- 6.008 Benefits payable to Dependents shall be paid to them or to any guardian or other responsible party as directed by the Mille Lacs Band of Ojibwe for the use and benefit of the Dependents.



- 6.009** If a Dependent Child, upon reaching the age at which that Child would cease to be Dependent, is totally disabled due to a physical or mental impairment, benefits will continue to be paid under the appropriate provision above until the disability ends or the maximum is paid, whichever comes first.
- 6.010** The Mille Lacs Band of Ojibwe or the Administrator may, at their option, pay Dependency benefits in 2-week increments.
- 6.011** In all cases where an Employee's death results from a Compensable Injury, the reasonable expenses of burial, not to exceed \$2,000.00, will be paid in addition to any other benefits payable under this Section.

## **SECTION 7**

### **Recurrence**

- 7.001** If, within one year from the date on which an Employee has returned to full-time, light, restricted or modified work, the Employee, while in the course of Mille Lacs Band of Ojibwe employment, suffers a Recurrence of the original Compensable Bodily Injury, the Recurrence will be considered a continuation of the earlier claim and injury and subject to the monetary and time limitations of the initial claim. A Recurrence occurring in other non-Mille Lacs Band of Ojibwe employment is not compensable under this Plan.

## **SECTION 8**

### **Election of Remedies**

- 8.001** If an Employee's Compensable Bodily Injury or death is caused or contributed to by a party other than the Employee or the Employer and the Employee or Dependents could file a claim or lawsuit against the other party, the Employee or Dependents may not present claims under this Plan and against the other party.
- 8.002** If the Employee or Dependents elect to claim benefits under this Plan, the Employee or Dependents must assign their cause of action against the other party to the Mille Lacs Band of Ojibwe and cooperate with the Mille Lacs Band of Ojibwe and the Administrator in the pursuit of that action. Once assigned, the Employer shall bear all costs of collection. If the Employee or the Dependents fail to assign the cause of action or fail to cooperate in the pursuit of that action, all benefits under this Plan will cease and the Employee or Dependents will be required to reimburse the Mille Lacs Band of Ojibwe for any benefits paid to or on behalf of the Employee or the Dependents under the Plan.
- 8.003** If the Employee or Dependents elect to pursue a cause of action against the other party, no benefits will be payable under this Plan unless, within 180 days of the injury, the Employee or Dependents assign their claim to the Mille Lacs Band of Ojibwe and agree to cooperate in pursuit of the action. In that event, only benefits accruing or medical or collection expenses incurred after the date of the assignment will be paid under this Plan by the Employer.

8.004 If an Employee or Dependents have assigned a cause of action to the Mille Lacs Band of Ojibwe under this Section and if the recovery from that cause of action exceeds the amounts paid or payable to the Employee or Dependents, any excess, after reimbursement to the Mille Lacs Band of Ojibwe of the benefits paid or payable under this Plan and deduction of the costs of collection, will be paid over to the Employee or Dependents.

## **SECTION 9**

### **Administrator**

9.001 The Administrator will act on behalf of the Mille Lacs Band of Ojibwe in receiving and processing Workers' Compensation claims under this Plan. The responsibility of the Administrator to make determinations and decisions will include, but not be limited, to the following areas:

- A) Based upon investigation and available medical information, the Administrator will make a determination of the responsibility of the Employer and will either accept or deny a claim. Within 30 days of receipt of a First Report of Injury, the Administrator will advise the Employee and Employer of its determination.
- B) The Administrator will determine the reasonableness and necessity of medical care and charges under Section 4 and will determine amounts payable under this Plan. The Administrator will also approve or disapprove any change of Primary Physician, referral to a Referral Physician, or Surgical Procedure.
- C) Based on information supplied by the Employer and/or Employee, the Administrator will determine the Compensation Rate payable for Temporary Total, Temporary Partial, and Permanent Partial Disability, and for Dependency.
- D) The Administrator will determine the length of time during which Temporary Total Disability or Temporary Partial Disability Benefits are payable.
- E) The Administrator will determine the amount of Permanent Partial Disability Benefits payable.
- F) The Administrator will determine the eligibility of Dependents and the term of any Dependency Benefits payable.
- G) In the event of the need to allocate Dependency Benefits between Dependents living in different households, the Administrator will make the necessary allocation, based on the obligations, legal or otherwise of the decedent.
- H) If an Employee claim is subject to the limitations of Section 7, the Administrator will advise the Employee and Employer of the effect of this limitation in writing.
- I) The Administrator will, on behalf of the Employer, vigorously pursue any cause of action assigned to the Employer under Section 8.

## SECTION 10

### Appeals

- 10.001** The Mille Lacs Band of Ojibwe Court of Central Jurisdiction will hear any issues and make any necessary final determination relative to Compensability of a Bodily Injury, Medical care or charges, extent of Disability, Dependency, or any other issue that may arise under this Plan. The terms of the Plan shall be strictly construed in accordance with the plain language of the Plan.
- 10.002** The Tribal Court will consider evidence, hear witnesses and receive exhibits in keeping with its goal of making a just final determination.
- 10.003** The Tribal Court will weigh the evidence, testimony of witnesses, and exhibits and will make its decision on the basis of the preponderance of evidence and credibility of the evidence and witnesses. The federal rules of evidence apply for all Tribal Court hearings, unless the Court of Central Jurisdiction has adopted it's own Tribal Court rules of evidence.
- 10.004** The burden of proof in any hearing before the Tribal Court will be on the Employee or Dependents bringing the suit.
- 10.005** The Employee or Dependents may have legal representation at any hearing before the Court of Central Jurisdiction. The cost of representation will be borne by the Employee or Dependents.
- 10.006** Any Employee or Dependent who disagrees with a determination made by the Administrator may request a hearing in writing within **thirty (30) days** of the Administrator's final decision.
- 10.007** A hearing will be scheduled before the Tribal Court within 60 days of the receipt of the request for a hearing from the Employee or Dependents. The Employee or Dependents may request an extension of up to 90 days, which must be granted by the Tribal Court.
- 10.008** The Mille Lacs Band of Ojibwe provides a limited waiver of sovereign immunity. Employees may appeal claims denied by the Administrator.
- 10.009** All appeals must be brought within one year of denial. Failure to file within one year will bar the employee from bringing the claim into the Court of Central Jurisdiction.
- 10.010** Claims appealed are strictly limited to benefits provided in this Plan.
- 10.011** Any claim in excess of funding provided for in this Plan, or for punitive damages, attorney fees, or for any damage, emotional injury or loss is barred by the sovereign immunity of the Mille Lacs Band of Ojibwe.