

Cherokee Nation Code Annotated

Title 85: Workers' Compensation

Chapter 1: General Provisions

§ 2. Definitions

Cite as: 85 CNCA § 2

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 undesigned occurrence; or the effect of an unknown cause or, the cause, being known, an unprecedented consequence of it, provided, however, that no incident shall be considered an accident that does not involve a sudden and discernable physical trauma or event, and provided that the accident must occur during the course and scope of employment.

2. **"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.

Historical Data

LA 08-04, eff. April 21, 2004. Amended LA 31-05, eff. October 16, 2005; LA 21-06, eff. October 19, 2006; LA 20-10, eff. August 15, 2010.