

ORDINANCE 29
TRIBAL MEMBER EMPLOYEE BENEFIT ORDINANCE
SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN

Section 1. Definitions

- a. “Administrator” shall mean the Saginaw Tribe Benefits Manager. The system established by this Ordinance shall be implemented and carried out by the Administrator. If the Saginaw Tribe Benefits Manager or Human Resources Manager is an Applicant, then the Administrator shall be the Tribal Council and the duties of the Administrator may be delegated by the Council as it deems necessary provided that the final review and action under this Ordinance of the Benefits Manager’s application is made by the Tribal Council.
- b. “Applicant” shall mean a person who has submitted an application for Benefits under this Ordinance.
- c. “Benefit” shall mean the Incentive Benefit and the Elders Benefit collectively as those terms are defined herein.
- d. “Employee” or “Employment” shall mean, for purposes of this Ordinance, any Tribal Member of the Saginaw Chippewa Indian Tribe of Michigan who is or was employed by the Tribe or any of its governmental subdivisions, departments, agencies, enterprises or companies including any employment funded by the Inter-Tribal Council of Michigan or the Michigan Indian Employment and Training Program if the Employee was/is stationed solely within the boundaries of the Isabella Indian Reservation during the course of such funded employment. Years of employment shall include all employment with the Tribe that occurred prior to the date upon which the person was certified as a Tribal Member. A Member who is designated as an independent contractor shall not be considered to be an employee unless otherwise provided herein.
- e. “Employer” shall mean the Saginaw Chippewa Indian Tribe of Michigan and any of its governmental subdivisions, departments, agencies, or enterprises and all business entities wholly owned by the Tribe or of which the Tribe is the sole shareholder or member.
- f. “Full Time” shall mean 32 hours per week or greater of Employment.
- g. “Elders Benefit” shall mean the one time payment to Employees who are Tribal Elders and who have been determined by the Administrator to have been an Employee of the Tribe. The amount of payment shall be based on the number of years of Employment and shall be established by Tribal Council resolution.

- h. “Incentive Benefit” shall mean the one time payment to Employees who have been determined by the Administrator to have at least 25 years of Employment. The amount of such payment will be determined by Tribal Council resolution.
- i. “Part Time” shall mean less than 32 hours per week of Employment
- j. “Tribal Council” shall mean the Saginaw Chippewa Indian Tribal Council, which is the governing body of the Saginaw Chippewa Indian Tribe of Michigan.
- k. “Tribe” shall mean the Saginaw Chippewa Indian Tribe of Michigan.
- l. “Tribal Elder” shall mean a member of the Saginaw Chippewa Indian Tribe of Michigan who is at least 55 years of age.
- m. “Tribal Member” shall mean a member of the Saginaw Chippewa Indian Tribe of Michigan.

Section 2. Purpose and Scope

- a. The purpose of this Ordinance is to provide an incentive to Tribal Members to work for the Tribe by providing benefit to Tribal Members for substantial years of service as Employees of the Tribe.
- b. The system established by this Ordinance is operated solely for the benefit of the Tribal Members and the Tribe.
- c. Except as may be otherwise explicitly provided for, nothing in this Ordinance shall be construed as a waiver of the Tribe’s sovereign immunity from suit.
- d. The provisions of this Ordinance shall supercede any contradictory provisions of any other previously enacted ordinance, code or resolution.

Section 3. Effective Date

- a. This Ordinance shall take effect on August 10, 2009.

Section 4. Benefits

- a. Payment of Benefits under this Ordinance shall be made exclusively from income of the Ben Quigno Memorial Investment Fund (Tribal Ordinance No. 16)
- b. The amount of the Benefit payable to approved Employees under this Ordinance shall be an amount determined by formal Tribal Council Resolution.

- c. Employees shall be limited to a single one time Benefit payment of either an Incentive Benefit or an Elders Benefit under the provisions of this Ordinance. The type of Benefit shall be determined by the Administrator based on the application filed by the Employee.
- d. It shall be the obligation of the Tribe to pay the Benefit provided under the terms of this Ordinance upon approval of a Benefits Application by the Administrator on a schedule and in a manner consistent with the provisions of this Ordinance.
- e. Issues relating to the entitlement to Benefits, shall be resolved in accordance with the substantive provisions of this Ordinance.

Section 5. Duties of Administrator

The Administrator shall have the following authorities and duties on behalf of the Tribe:

- a. To accept and review properly submitted applications for Benefits made under this Ordinance.
- b. To make or cause to be made examinations of records, or documents relating to applications for Benefits under this Ordinance.
- c. To undertake any other activity that is reasonable and necessary to implement this Ordinance.
- d. Promulgate such rules and procedures as are necessary to implement this Ordinance. Such rules and procedures shall become effective upon approval by formal action of the Tribal Council.
- e. Keep all records necessary for the implementation of this Ordinance.
- f. Make all determinations on Benefits in writing, and provide such written determinations to the Employee in a timely fashion.
- g. Perform all other tasks necessary and proper for the administration of this Ordinance and for providing Benefits under the Ordinance.

Section 6. Eligibility Standards. The Administrator will make the determination on behalf of the Tribe regarding the eligibility of the Applicant upon reviewing the Applicant's application. The following eligibility standards shall govern eligibility determinations:

- a. Eligibility for Incentive Benefit. To be eligible for the Incentive Benefit an

Applicant must be an Employee and must have been employed by the Tribe for a period of 25 years whether or not such employment was consecutive and regardless of the date or dates of Employment. Employees who receive the Incentive Benefit shall not be eligible to receive the Elders Benefit

- b. Eligibility for Elders Benefit. To be eligible for the Elders Benefit an Applicant must be a Tribal Elder and must have been an Employee for a period of at least 2 years whether or not such employment was consecutive and regardless of the date or dates of Employment.
- c. The Applicant must have been either a “Full Time” or “Part Time” Employee as those terms are defined by this Ordinance. An Applicant must be or have been either a “Full Time” or “Part Time” Employee as those terms are defined by this Ordinance, for the 25 year period to qualify for the Incentive Benefit. For purposes of calculating years of employment Full Time Employees shall receive one (1) year of credit for each calendar year of Employment. Part time Employees shall receive half ($\frac{1}{2}$) a year of credit as Employment for each calendar year of Employment. Actual Employment of less than a full calendar year will be calculated by prorating the actual number of hours of employment for the year based on two thousand eighty (2080) hours per year and including those prorated hours in the calculation of the total time the Employee was employed.
- d. Any service as a Tribal Council Member shall be considered employment for purposes of this Ordinance for the duration of the Council Member’s actual term of Office irrespective of whether the Tribal Member served on a full time or stipend basis and provided that any other employment concurrent with Tribal Council service shall not be included as Employment under this Ordinance. Service as a Council Member that was less than one (1) year will be calculated by prorating the actual number of hours of employment for the year based on 2080 hours per year and including those prorated hours in the calculation of the total time the Employee was employed.
- e. Any time spent on unpaid leave shall not be included for calculating years of service. For example, any time on unpaid medical leave shall not be included when calculating years of service.

Section 7. Application Requirements

- a. Employees must submit an application for either the Incentive Benefit or the Elders Benefit to the Benefits Department on a form provided by the Benefits Department. The application shall state whether it is made for an Incentive Benefit or an Elders Benefit. The application shall be filled out completely and signed and dated by the Applicant. Applications will be processed by the Administrator

in the order received. The Administrator may assist the Applicant in preparing the application form. Incomplete, unsigned or undated applications shall not be accepted by the Benefits Department or the Administrator for filing.

- b. Applicants shall pay a \$50.00 application fee upon submission of an application to the Benefits Department. The Benefits Department will not accept, and the Administrator will not consider, any application without the application fee. Such application fees are intended to cover costs associated with the Tribe's responsibilities for administering this Ordinance and shall not be refunded or returned regardless of the final disposition of the application.
- c. An Applicant shall provide evidence that he or she meets the requirements of this Ordinance for the Incentive Benefit or the Elders Benefit. Documents submitted as evidence of eligibility for the Incentive Benefit or the Elders Benefit which do not tend to show that the applicant meets or does not meet the criteria for such Benefit are not relevant and shall not be considered by the Administrator, (although all such documents shall be maintained in the files as submitted). All evidence and documents submitted by the Employee shall be capable of authentication or identification to the satisfaction of the Administrator.

Section 8. Approval Procedure

- a. Review of Application by Administrator. The Administrator shall evaluate the application and any supporting documents filed by the Employee to make an initial determination regarding the sufficiency of the application. The Administrator shall determine whether the Employee is eligible for the Incentive Benefit or Elders Benefit based on the application, its supporting evidence and a review by the Administrator of the employment records of the Employee.
- b. Final Decision. Upon completion of his/her review, the Administrator shall issue a decision letter to the Employee denying or approving the application no later than 30 business days after acceptance of the application by the Benefits Department.
- c. Payment of the Incentive Benefit or Elders Benefit shall be mailed to the Employee by regular mail no later than 30 business days from the date of a Final Decision approving an application for Benefits.

Section 9. Appeals

- a. A final decision of the Administrator made under Section 8 of this Ordinance may be appealed by the applicant or the Tribal Council to the Tribal Court by filing a Notice of Appeal with the Tribal Court and serving such Notice on the

Administrator and any interested party within five (5) days after the filing. Any appeal under this Section shall be filed within thirty (30) days after the Administrator has given the Employee actual written notice of the final decision, or has mailed such written notice to the Employee by United States mail.

- b. The Tribal Court shall make its ruling on any appeal under this Section within one hundred and twenty (120) days after the filing of the Notice of Appeal.
- c. The Tribal Court 's review shall be limited to and based upon the administrative record that was before the Administrator to determine if the decision was arbitrary, capricious, an abuse of discretion or in clear violation of law. No discovery, new evidence or testimony shall be permitted.
- d. The Tribal Court may affirm or reverse the decision of the Administrator, or may modify such decision as the Tribal Court in its sound discretion deems appropriate. The decision of the Administrator shall be affirmed unless it is arbitrary, capricious, an abuse of discretion or in clear violation of law. The Tribal Court shall not award attorneys' fees, costs, or damages of any kind against the Tribe.
- e. The decision of the Tribal Court on an appeal under this Section shall be final and shall not be subject to appeal to the Saginaw Chippewa Tribe Appellate Court or any other court.
- f. The sovereign immunity of the Tribe and the Administrator to suit in the Tribal Court is hereby waived for the limited purpose of appeals of final decisions of the Administrator under this Section and for the limited purpose of enforcing the Tribal Court's decision on such appeals. Lawsuits brought under this Ordinance shall name the Administrator and the Benefits Department in their official capacities as defendants and shall be served upon the Administrator. The rules of civil procedure provided in Title III of the Tribal Code of Laws shall apply to lawsuits brought under this Section except where specific rules are prescribed in this Ordinance. Lawsuits under this Ordinance may not be heard by a jury. The Tribal Council consents to suits seeking judicial review under this Section, in satisfaction of the requirements of Title III, subsection 3.102(c) of the Saginaw Chippewa Tribal Code, and waives the Tribe's common law immunity from suit subject to the limitation that the relief granted in lawsuits seeking judicial review of final Administrator decisions are limited to remedies described in Section 9(d) above.

Section 10. Severability

- a. If any section, provision or portion of this Ordinance is adjudged to be

unconstitutional or invalid by a court of competent jurisdiction, then the remainder of this Ordinance will remain in full force and effect.

Section 11. Fraud

- a. It is unlawful and a violation of this Ordinance for a person to obtain or assist in obtaining benefits to which the person is not entitled. As used in this section, “person” includes but is not limited to an employee, other beneficiary, supervisor or medical provider.
- b. Benefits shall not be granted and may be terminated if obtained by fraud. The Tribe shall have a cause of action in Tribal Court for the termination of any benefits received under this Ordinance by fraudulent means.

Legislative History

Enacted on July 15, 2009 by Resolution 09-103. Section 1b and Section 6 amended October 29, 2009 by Resolution 10-013. Sections 1, 4, 5, 6, 7 and 8 amended November 25, 2009 by Resolution 10-029. Section 9a amended December 2, 2009 by Resolution 10-031. Section 6b and 6c amended March 29, 2010 by Resolution 10-070. Section 1a amended March 9, 2011 by Resolution 11-050.