



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

Oneida Tribe of Indians of Wisconsin

BUSINESS COMMITTEE



UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

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BC RESOLUTION # 8-10-05-A *Emergency Adoption of Back Pay Policy*

- WHEREAS,** the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV of the Oneida Tribal Constitution by the General Tribal Council; and
- WHEREAS,** on July 20, 2005, the Oneida Appeals Commission determined that if an employee wins his or her appeal, is reinstated and owed back pay, any income earned by the employee during the back pay period through other employment should not be deducted from the total back pay amount (See Anton Williams v. Oneida Bingo & Casino, Docket #04-AC-016); and
- WHEREAS,** this ruling overturned years of precedent established by the Appeals Commission, which required the Tribe to calculate back pay as the amount the employee would have earned if he or she had not been terminated minus amounts that the employee did earn or could have earned during the back pay period; and
- WHEREAS,** allowing the Williams case to stand contradicts the well established legal doctrine whereby individuals who bring a claim have a duty to mitigate damages; and
- WHEREAS,** eliminating the requirement that employees have a duty to mitigate damages would require the Tribe to pay tens of thousands of dollars more in back pay because no deductions will be made; and
- WHEREAS,** eliminating the duty to mitigate damages could cost the Tribe an excessive amount of money; and

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WHEREAS, the Administrative Procedure Act authorizes the Oneida Business Committee to enact legislation on an emergency basis, to be in effect for a period of six months, renewable for an additional six months; and

WHEREAS, the Oneida Business Committee finds that adopting a back pay policy which includes the duty to mitigate damages constitutes an emergency situation which requires the immediate passage of the Back Pay Policy; and

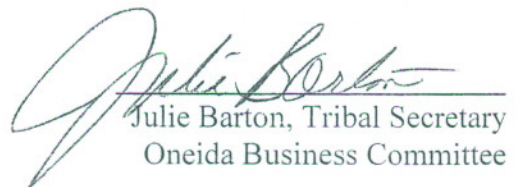
WHEREAS, emergency adoption of the Back Pay Policy is necessary for the preservation of the public health, safety, or general welfare of the reservation population, and that observance of the regular APA adoption requirements for passage of laws would be contrary to public interest.

NOW THEREFORE BE IT RESOLVED, that the attached Back Pay Policy is adopted on an emergency basis.

BE IT FINALLY RESOLVED, that the Back Pay Policy shall be effective immediately and remain in effect for six (6) months unless extended by the Oneida Business Committee for an additional six (6) months.

Certification

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum. 8 members were present at a meeting duly called, noticed and held on the 10th of August, 2005; that the foregoing resolution was duly adopted at such meeting by a vote of 6 members for; 1 members against; and 0 members not voting; and that said resolution has not been rescinded or amended in any way.


Julie Barton, Tribal Secretary
Oneida Business Committee

BACK PAY POLICY

1-1. Purpose and Policy. The purpose of this law is to set forth standards used in the calculation of back pay for all employees of the Oneida Nation in accordance with Oneida law. The Oneida Nation believes it is important to restore employees who are awarded back pay through the grievance process to the financial position they would have been in had the suspension or termination not occurred. The Oneida Nation also believes it is important to responsibly manage the financial resources of the Nation by requiring employees to, among other things, mitigate damages and reimburse insurance premiums if insurance coverage is reinstated to cover the back pay period.

2-1. Adoption, Amendment, Appeal.

2-1. This policy may be adopted by the Oneida Business Committee or the Oneida General Tribal Council.

2-2. This policy may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

2-3. Should a provision of this policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policy which are considered to have legal force without the invalid portions.

2-4. Any policy, regulation, rule, resolution, motion or commission decision, or portion thereof, which directly conflicts with the provisions of this policy is hereby repealed to the extent that it is inconsistent with or is contrary to this policy.

2-5. This policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

3-1. Definitions.

3-1. Back pay is money damages owed to the employee for a salary that would have been earned in the time taken to litigate the employment dispute, minus amounts that are normally deducted from salary or income earned from a third-party employer.

4-1. Back Pay Calculation.

4-1. Back Pay Period. Calculation of back pay begins on the day the employee is suspended or terminated and ends on the day the employee returns to work, due to either the end of the suspension period or reinstatement.

(A) If the employee is offered reinstatement but refuses to return to work, the back pay period ends on the date the offer of reinstatement was made.

(B) The employee will be paid according to the schedule or the average number of hours worked immediately prior to suspension/termination. For instance, if the employee observed a reduced-hour schedule at the time of termination, back pay will be calculated according to the same schedule.

(C) The back pay period does not include time when the employee would not have been

eligible to work, such as during a medical leave of absence that was scheduled prior to suspension/termination.

4-2. Unemployment Benefits. The employee is responsible for reimbursement to the State of Wisconsin with respect to unemployment compensation received, if any, during the back pay period. The Oneida Nation will send a copy of the completed and signed settlement agreement to the Unemployment Insurance Division of the Wisconsin Department of Workforce Development. The Unemployment Insurance Division will then determine whether the employee should repay any unemployment compensation benefits received during the back pay period and will pursue employee for such repayment, if necessary.

4-3. Income Received Through Employment. Income earned by an employee through employment with the Tribe, a wholly-owned Tribal entity, or a third party employer during the back pay period shall be deducted from the total back pay amount.

(A) The employee will be required to provide information to verify the amount of or lack of earned income (e.g. federal income tax return, W-2 statements) and sign an affidavit attesting to the amount of or lack of earned income.

(B) If the employee worked an additional job prior to and at the time of termination/suspension and continued working in the same capacity, for the same number of hours and during the same shift during the back pay period, the income earned from that continued employment will not be deducted from the total back pay amount. The employee will be required to provide information from the employer to verify that no conditions of employment changed during the back pay period.

4-4. Vacation/Personal Time Accrual. Employees will receive prorated credit for vacation/personal time which would have accrued during the back pay period. However, such credit will not be given in the event the suspension or termination results in less than 80 hours away from work, as the accrual of vacation/personal time during such a short time period is de minimis.

(A) Reinstated employees will be given a choice of cash payout or crediting vacation/personal time. Non-reinstated employees will be paid out vacation/personal time in lieu of crediting personal/vacation time.

4-4. Shift Differential. Shift differential will be included in the back pay amount to the extent the employee would have received such pay if the employee had actually worked hours eligible for shift differential.

4-5. Tips. If the employee received pooled tips at the time of suspension/termination, tips shall be included in the total back pay amount at the same tip rate that other employees in the same position and on the same shift received on the same dates.

(A) If the employee received individual tips at the time of suspension/termination, the employee is ineligible for tips during the back pay period.

4-6. Holiday Pay. Holiday pay will be included in the back pay amount to the extent the

employee would have received such pay if the employee had not been suspended/terminated.

4-7. Holiday Worked Pay. Holiday worked pay will be included in the back pay amount to the extent the employee would have received such pay if the employee had actually worked hours eligible for holiday worked pay.

4-8. Merits increases. The hourly rate used to calculate back pay will be increased according to the merit increase system/standard used by the employee's supervisor during the back pay period.

(A) The effective date of the employee's merit increase will be the same as the effective date for other employees in the same department. Retroactive increases will be calculated back to the retroactive date used for other employees in the same department.

(B) The most recent performance review issued to the employee prior to suspension/termination will be used to determine the level of merit increase. However, if the employee appealed the performance review to the HRD Manager prior to suspension/termination under Oneida Personnel Policies and Procedures Section V.B.4.b., another method of determining the merit increase will be used.

4-9. Bonuses and Incentives. All bonus and incentive payments for which the employee would have been eligible during the back pay period will be included in the total back pay amount, except for non-monetary gifts distributed by the Tribe to all employees (e.g. Winter Gift gift certificates) or other non-monetary benefits, such as clothing allowance.

4-10. Employment Benefits.

(A) Health Insurance Premiums. In the case of termination, the employee may choose whether medical, dental, vision or other health insurance related premiums will be deducted from the back pay award.

(1) In the event the employee chooses not to have such premiums deducted, the Oneida Tribe will not be responsible for payment or reimbursement of any medical, dental, or other health related bills during the period of termination.

(2) If the employee's circumstances have changed during the back pay period and such circumstances affect the employee's health insurance needs (e.g. birth or adoption of a child, marriage, divorce), the employee must notify the Tribe of such changes at the time of reinstatement.

(3) In the case of suspension, the Tribe will deduct health insurance premiums. Accordingly, health insurance coverage by the Tribe will continue during the period of suspension.

(B) Flexible Benefit Plan Contributions. If a terminated employee was contributing to the Tribe's flexible benefit plan at the time of termination, the employee must make retroactive contributions to cover the back pay period in order to qualify for reimbursement for any qualifying claims incurred during the back pay period.

(C) Supplemental Insurance. The Tribe does not currently offer a supplemental insurance plan as an employee benefit. If a terminated employee was participating in a supplemental insurance program at the time of termination, the employee is solely responsible for reinstatement of coverage and premium payments during the back pay period.

(D) Retirement Benefit Contributions. In the event the employee was participating in the Oneida Nation's 401(k) plan at the time of suspension/termination, the employee is responsible for contacting the 401(k) plan administrator and reactivating contributions.

(1) The employee may choose whether to have the employee's contribution to the 401(k) plan that would have been made during the back pay period deducted from the total back pay amount and deposited into the employee's 401(k) account.

(2) If the employee was eligible for employer matching contributions at the time of suspension/termination and the employee chooses to make a contribution through back pay, the Oneida Nation will contribute the employer match into the employee's 401(k) account.

(3) If the employee was not participating in the Oneida Nation's 401(k) plan or chooses not to make contributions through the back pay process, then the Oneida Nation will not make employer match contributions into the employee's 401(k) account or otherwise make payments to the employee in lieu of employer match contributions.

4-11. Payments Not Allowed. The Oneida Nation shall not include the following in any back pay amount:

(A) Punitive damages;

(B) Consequential damages (e.g. Penalties on early withdrawal of 401(k) account);

(C) Attorney's fees.

5-1. Back Pay Process.

5-1. All personnel settlement agreements are subject to review by the Oneida Law Office prior to execution or implementation.

5-2. The Oneida Law Office shall work with the employee's supervisor, the Human Resource Department and the employee/advocate to assemble information and prepare the back pay settlement document.

5-3. The Oneida Law Office shall develop additional forms and policies as necessary, consistent with this Policy, for the purpose of implementing this Policy.