

Title 2. Employment – Chapter 208 INVESTIGATIVE LEAVE POLICY

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208.1 Purpose and Policy

208.1-1 The purpose of this Policy is to address investigative leave for employees undergoing work-related investigations.

208.1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to maintain confidentiality and avoid undue influence when conducting an investigation into an employee's alleged wrong doings.

208.2 Adoption, Amendment, Repeal

208.2-1. This policy was adopted by the Oneida Business Committee by resolution BC-04-07-99-A, and amended by resolution BC-08-13-14-D and BC-06-24-15-A.

208.2-2. This policy may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

208.2-3. 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.

208.2-4. In the event of a conflict between a provision of this policy and a provision of another policy, the provisions of this policy shall control.

208.2-5. This policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

208.3 Definitions

208.3-1. This section shall govern the definitions of words and phrases used within this Policy. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Employee" shall mean any individual who is employed by the Tribe and is subject to the direction and control of the Tribe with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. "Employee" includes, but is not limited to; an individual employed by any program or enterprise of the Tribe, but does not include elected or appointed officials or political appointees.

(b) "Investigative leave" shall mean a temporary absence from regular job duties for the purpose of conducting an investigation to determine whether conduct or alleged conduct by an employee should result in disciplinary action and/or termination of employment.

(c) "Tribal" or "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.

208.4 Scope

208.4-1. An employee shall be placed on investigative leave when one (1) of the following occurs:

(a) A situation requires an investigation be conducted and the employee's presence may influence the outcome.

(b) An employee allegedly commits an act which would preclude the employee from meeting employment eligibility including required Licenses, the Tribal Fidelity Bond, or Background Investigation requirements.

208.4-2. This policy shall not be used as a form of discipline.

208.5 Authorization

208.5-1. This leave, or an extension of this leave, shall only be used when an employee's supervisor receives prior approval from the Human Resources Department Manager or his or her designee and:

(a) their Division Director; or

(b) if there is no Division Director, the person at the highest level of the chain of command.

208.5-2. If the Human Resources Department Manager or his or her designee and the Division Director or his or her equivalent do not agree with placing the employee on investigative leave, then the final decision shall rest with the Human Resources Department Manager or his or her designee.

208.5-3. The prior approval requested in 208.5-1 shall be granted or denied within forty-eight (48) hours of receiving the request.

208.5-4. During the investigative leave, the employee's supervisor shall authorize an alternative work assignment if all the following occur:

(a) The alleged action does not preclude the employee from working elsewhere in the organization;

(b) An alternative work assignment is available; and

(c) The employee meets the minimum job requirements of the alternative work assignment.

208.5-5. If an employee is placed in an alternative work assignment under section 208.5-4, the alternative work assignment shall be considered a part of the investigative leave and the employee shall continue to receive their same rate of pay.

208.6 Employee Notice

208.6-1. When the employee is placed on investigative leave, the employee shall immediately receive a written notice from the employee's supervisor; the notice shall contain the following:

(a) The specific allegation(s) being investigated;

(b) The employee shall be on unpaid status, unless he or she is placed in an alternative work assignment;

(c) The alternative work assignment, if appropriate;

(d) The expected length of the investigation;

(e) Whether or not the investigation is being forwarded to an outside agency;

(f) The telephone number and name of person to contact in case of questions;

(g) The procedures to return to work upon completion of the investigation; and

(h) That the employee still remains as an employee with the Tribe.

208.6-2. If the employee's investigative leave is extended past the original fifteen (15) calendar days pursuant to section 208.8-1, the supervisor shall immediately notice the employee in writing of this extension and the reason for the extension.

208.7 Investigator(s) and Reports

208.7-1. The employee's supervisor and/or area manager shall be responsible for completing the investigation. If the employee being investigated reports directly to the Oneida Business Committee, the Tribal Equal Employment Opportunity Officer shall conduct the investigation.

208.7-2. If the allegations against the employee include criminal actions, or actions that may affect licensing, the supervisor shall conclude the employment related investigation without waiting for the results of a criminal or licensing investigation.

208.7-3. The person(s) conducting an investigation shall prepare a written report that shall include the findings of the investigation, and if someone other than the employee's supervisor conducts the investigation, a copy of the written report shall be provided to the employee's supervisor. If someone other than the employee's supervisor conducts the investigation, within forty-eight (48) hours of receiving the written report, the supervisor shall complete the investigation by determining and documenting any corrective actions needed.

208.7-4. The employee's supervisor shall prepare a memorandum based on the written report which shall be provided to the employee and shall inform the employee of the following:

- (a) corrective actions needed based on the written report, if any; and
- (b) when to return to work, if applicable and/or what disciplinary action will be taken against the employee based on the report; and
- (c) a redacted copy of the written report will be made available to the employee only in the event the employee appeals any disciplinary action.

208.8 Duration

208.8-1. An investigative leave shall be no longer than fifteen (15) calendar days, with the ability to extend one (1) time for an additional fifteen (15) calendar days with a valid explanation of the reason for the extension. The extension shall be determined by the same individuals who placed the employee on investigative leave in section 208.5-1. However, if the investigation is forwarded to an outside agency, these timelines shall not apply.

208.8-2. Investigative leave shall end upon any of the following occurrences:

- (a) the expiration of the fifteen (15) calendar day time limit, if applicable;
- (b) the expiration of the fifteen (15) calendar day extension if granted;
- (c) termination of the employee's employment based on the investigation;
- (d) the employee's return to work based on the written report submitted to the employee after an investigation is completed; or
- (e) the employee chooses to resign or retire.

208.9 Employee Responsibilities

208.9-1. An employee placed on investigative leave shall:

- (a) Not report to work or the worksite without prior supervisory approval;
- (b) Abide by all Tribal laws and policies; and
- (c) Fully cooperate with the investigation as requested by those conducting the investigation.

208.10 Pay and Benefits

208.10-1. Paid leave shall not be authorized.

208.10-2. An employee placed on investigative leave shall not receive any wages or benefits unless placed in an alternative work assignment. If the employee refuses the alternative work

assignment and is returned to work, the employee shall not receive any back pay or benefits.

208.10-3. If an alternative work assignment is not available, the employee may use his or her accrued vacation and/or personal time while on investigative leave.

208.10-4. An employee shall receive back pay and benefits for the time the employee was on investigative leave pursuant to the Back Pay Policy if all of the following occur:

- (a) The employee was not offered an alternative work assignment when placed on investigative leave; and
- (b) The employee is returned to his or her position; and
- (c) The employee is not disciplined based on the investigation.

208.11 Enforcement

208.11-1. Any employee found violating this Policy shall be subject to discipline in accordance with the Tribe's personnel policies and procedures.

208.12 Appeal

208.12-1. An employee may appeal any disciplinary action arising out of an investigation in accordance with the Tribe's personnel policies and procedures.

208.13 Confidentiality

208.13-1. Information related to an investigation is confidential and may only be released in accordance with relevant laws and personnel policies and procedures.

208.13-2. All investigation materials shall be maintained in the employee's personnel file with the Human Resources Department.

End.

OBC Approved 4-07-99-A

Amended- 08-13-14-D

Amended – BC-06-24-15-A