

Title 2. Employment – Chapter 217

CONFLICT OF INTEREST

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217.1. Purpose and Policy

217.1-1 *Purpose.* The purpose of this law is for the Nation to ensure that all employees, contractors, elected officials, officers, political appointees, appointed and elected members and all others who may have access to information or materials that are confidential or may be used by competitors of the Nation's enterprises or interests be subject to specific limitations to which such information and materials may be used in order to protect the interests of the Nation.

217.1-2. *Policy.* It is the policy of the Nation to assert its proprietary rights to client lists, trade secrets and any other confidential data generated, developed or commissioned for the Nation in the course of an employee's duties and responsibilities and that all employees, and prospective employees, be made aware of their obligation to uphold such rights. The Nation asserts that no persons who work for the Nation or are responsible for safeguarding its interests nor their relatives, associates, partners, or anyone connected with such persons should in any way benefit against or in competition with the Nation's interests without full and complete prior disclosure to the Nation.

217.2. Adoption, Amendment, Repeal

217.2-1. This law was adopted by the Oneida Business Committee by Resolution BC-06-10-98-C and amended by BC-02-08-17-B and BC-06-28-17-D.

217.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

217.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

217.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provision of this law shall control.

217.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

217.3. Definitions

217.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Agent" means a person who is authorized to act for or in place of another, which may include an employee, contractor, elected official, officer, political appointee, and appointed or elected member of the Nation.

(b) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have

that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.

(c) “Contractor” means a person or business providing expertise, services, goods or guidance to the Nation.

(d) “Elected official” means a person elected to the Oneida Business Committee who does not hold an officer position.

(e) “Employee” means anyone employed by the Oneida Nation in one of the following employed capacities: full-time, part-time, emergency temporary, limited term or on a contractual basis.

(f) “Entity” means a department, program or service of the Nation.

(g) “Immediate family member” means an individual’s husband, wife, mother, father, step mother, step father, son, daughter, step son, step daughter, brother, sister, step brother, step sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained through legal adoption.

(h) “Member” means a person who serves on a board, committee, or commission of the Nation. It does not include the Oneida Business Committee or the governing body of a Tribally Chartered Corporation.

(i) “Nation” means the Oneida Nation.

(j) “Officer” means a person elected to the Oneida Business Committee holding the Chairperson, Vice Chairperson, Secretary, or Treasurer position.

(k) “Organizational conflict of interest” means that because of other activities or relationships with other parties, a potential contract or contractor is:

(1) unable to render impartial assistance or advice to the Nation;

(2) cannot perform a contract with the Nation in an objective way; or

(3) has an unfair competitive advantage compared to others.

(l) “Political appointee” means a person who assists an elected member of the Oneida Business Committee in their daily activities and operations.

(m) “Third party agreement” means any agreement with the Pharmacy in which an insurance provider agrees to reimburse the Pharmacy for drugs and supplies sold to subscribers of a valid health plan of that insurance provider.

217.4. General

217.4-1. Scope.

(a) This law shall apply to agents, elected officials, officers, political appointees, employees, contractors, appointed or elected members or any other persons with whom they may be associated in personal, marital, familial, business, financial or other relationships.

(b) Under the protection of this law are the resources of the Nation, its enterprises, programs, business interests, financial information, trade secrets and any other information that could be used against the Nation or those duly authorized to represent its interests.

217.4-2. *Amendment of Documents.* The following documents shall be amended as required in order to implement this law:

- (a) The Nation's laws, rules and policies governing employment.
 - (1) Prospective employees shall disclose whether or not they have any conflicts of interest as defined in this law.
 - (2) Current employees shall disclose existing conflicts of interest, if any.
- (b) Persons or organizations contracting with the Nation shall include a provision in their contract reciting the prohibition against undisclosed conflicts of interest.
- (c) The Oneida Nation Secretary shall inform all elected officials, officers, political appointees, and elected or appointed members of the existence of this law in writing. All elected officials, officers, political appointees, and elected or appointed members shall disclose any conflicts of interest.

217.4-3. *Forms.* Forms shall be prepared upon which disclosures of conflicts which exist may be listed and returned to the Oneida Business Committee for action as indicated in this law. The Oneida Law Office shall be responsible for creating a standard form and any specialized forms required by this law. The Nation's Human Resource Department and the Office of the Oneida Nation Secretary shall be responsible for distributing and maintaining conflict of interest disclosure forms.

- (a) The Nation's Human Resource Department shall collect conflict of interest disclosure forms from all employees on an annual basis. Additionally, an employee shall disclose a conflict of interest as soon as the conflict arises.
- (b) The Office of the Nation's Secretary shall collect conflict of interest disclosure forms from all elected officials, officers, political appointees, and elected and appointed members on an annual basis. Additionally, an elected official, officer, political appointee, or elected or appointed member shall disclose a conflict of interest as soon as the conflict arises.

217.5. Organizational Conflicts of Interest

217.5-1. *Presumed Organizational Conflict of Interest.* It is presumed that there is an organizational conflict of interest any time that a business owned by the Nation or an employee of the Nation seeks to contract with the Nation.

217.5-2. *Maintaining Objectivity and Equal Access to Information.* The Nation shall maintain objectivity in contracting and shall provide all potential and actual contractors with equal access to information. Should an employee of the Nation also be an employee, officer, director, or agent of any business owned by the Nation, the said employee shall be restricted from participating in any part of the contract process, including but not limited to the bidding, selection, award and administration, for that business.

- (a) In the event that an employee has knowledge and experience that is critical to a contract and is restricted from participation based on an organizational conflict of interest, the said employee may only participate if the Nation and the contractor execute a conflict of interest mitigation plan.
- (b) An organizational conflict of interest mitigation plan shall require the conflicted employee's participation be limited to the specific components of the project/contract that require the employee's knowledge and/or experience.

217.5-3. *Biased Ground Rules.* Should the Nation contract with a business it owns to prepare ground rules for a subsequent project/contract, including but not limited to

preparing/writing specifications or work statements, said business may not compete for the subsequent project/contract.

217.5-4. *Employees Contracting with the Nation as Independent Contractors.* In addition to meeting the requirements of the Nation's independent contractor laws, policies and/or rules, employees that seek to contract with the Nation as an independent contractor may not, in any circumstance, whether as a prime contractor or a subcontractor:

- (a) Contract with the Nation within the same scope for which they are employed by the Nation.
- (b) Contract with any entity within the Nation that is within the same divisional budget and/or chain of command for which the employee is employed by the Nation.
- (c) Submit a bid to contract with Nation without receiving and submitting with the bid written notice from the employee's supervisor providing consent and approval to bid and that such bid and/or potential resultant contract will not interfere with the employees current responsibilities to the Nation.
- (d) Contract with the Nation if the employee is employed by any of the following areas:
 - (1) The Oneida Law Office;
 - (2) The Internal Audit Department; and/or
 - (3) The Oneida Finance Department.

217.6. Penalties for Non-Disclosure of a Conflict of Interest

217.6-1. *Employees.* If a supervisor is provided credible evidence that an employee has failed to disclose a conflict of interest, the employee shall be placed on leave pursuant to the Nation's Investigative Leave Policy, except that the duration of the investigation for an alleged conflict of interest shall be concluded within seven (7) days of the employee being placed on leave. A supervisor shall terminate an employee from his or her employment with the Nation when an investigation substantiates that the employee failed to disclose a conflict of interest.

217.6-2. *Elected Officials and Officers.* An elected official or officer who fails to disclose a conflict of interest may be subject to removal pursuant to the Removal Law or penalties pursuant to laws of the Nation regarding penalties.

217.6-3. *Elected or Appointed Members.* A member who fails to disclose a conflict of interest may be subject to penalties pursuant to laws of the Nation regarding penalties, and subject to removal pursuant to the Removal Law for elected members, or have their appointment terminated by the Oneida Business Committee pursuant to the law governing board, committees and commissions for appointed members.

217.6-4. *Political Appointees.* A political appointee that fails to disclose a conflict of interest may be subject to discipline at the discretion of the elected official the political appointee serves.

217.6-5. *Contracts.* An organization or a person who does not disclose conflicts of interest may be subject to termination of their contracts.

217.7. Prohibited Activities Resulting from a Disclosed Conflict of Interest

217.7-1. When an existing conflict of interest is disclosed, no employee, contractor, elected official, political appointee, officer, agent, or appointed or elected member may participate in:

- (a) the selection, award, or administration of a contract, including contracts supported by a Federal award; and/or
- (b) any other prohibited activities identified in any other law, policy or rule of the Nation.

217.7-2. Entities of the Nation shall develop standard operating procedures and/or work

standards outlining further prohibited activities resulting from disclosed conflicts of interest and means by which a party can alleviate or mitigate the conflict of interest.

(a) In the event arrangements are made to alleviate or mitigate the conflict of interest, it may become permissible for a party to participate under section 217.7-1(b) at the discretion of the division director and to the extent permitted by any applicable law, policy or rule. However, in all circumstances, such parties shall remain prohibited from participating under section 217.7-1(a).

217.8. Exemptions

217.8-1. Exemptions to this law are for the purpose of excluding activities of the Nation for which no conflict of interest can exist. These activities generally occur when the Nation is acting as a provider of services for which another will be making payments or reimbursing costs of providing the services. Exemptions shall be specifically identified within this law.

1 217.8-2. *Pharmacy.* This exemption shall be designed to relieve the Pharmacy and insurance
2 providers from the requirements of the Conflict of Interest law while recognizing the unique
3 relationship between the Pharmacy and insurance providers in third party payment agreements
4 where no proprietary information of the Nation is provided to the insurance providers, and there
5 is little or no opportunity for a conflict of interest between the insurance providers and the
6 Nation. This exemption shall be designed to increase the attractiveness of the Pharmacy to
7 subscribers of multiple insurance providers. This exemption shall apply solely to insurance
8 providers seeking to enter into third party payment agreements with the Pharmacy.

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10 *End.*
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13 Adopted - BC-06-10-98-C
14 Emergency Amended - BC-04-12-06-JJ
15 Emergency Amended - BC-09-27-06-E
16 Emergency Amended – BC-08-10-16-M
17 Amended - BC-02-08-17-B
18 Amended – BC-06-28-17-D