

**Oneida Tribe of Indians of Wisconsin
Legislative Reference Office**

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Memorandum

TO: Legislative Operating Committee
FROM: Lynn A. Franzmeier, Staff Attorney
DATE: February 24, 2015
RE: Furlough Policy: Public Meeting Comment Review

On February 5, 2015, a public meeting was held regarding adoption of the Furlough Policy (Policy). The Policy would enable the Tribe to implement furloughs to correct an operating budget deficit by granting the Oneida Business Committee the ability to authorize a furlough period through resolution; requiring General Manager-level positions to develop furlough plans for their areas; and prohibiting furloughs from being used for disciplinary reasons.

This memorandum is submitted as a review of the oral and written comments received during the public meeting process. The public meeting draft with comments, as well as the comments received, have been attached for your review.

Please note, microphones were not used during the public meeting, so most of the oral comments do not have a name attached and were created based on a compilation of the notes taken at the meeting

Comment 1. Comment on defining political appointees and political officials.

Larae Gower: Line 7: Define political appointees – give examples. Line 9: Define political officials – give examples.

Response

The comment is referring to the following, which was contained in the analysis:

This policy applies to all employees of the Tribe, defined to specifically include employees of Tribal programs and enterprises, political appointees and individuals under an employment contract as a limited term employee. Specifically excluded from the definition (so not subject to furlough) are elected and appointed officials, consultants, and employees of Tribally- chartered corporations. [1-2 and 3-1(a)]

This is a policy call as to whether these terms need to be defined.

Comment 2. Comment on time lines for notice requirements to management.

Larae Gower: Line 27: How much notice does the Oneida Business Committee have to give to management that a furlough is coming? This only determines the amount of time the supervisor has to give notice to the employees.

Response

The comment is referring to the following, which was contained in the analysis:

Supervisors must give employees at least five business days' notice before implementing a furlough for that employee's position. [4-3] This appears to mean the employee must be notified at least five 5 business days before the first day of his/her furloughed time off.

Section 4-1 authorizes the Oneida Business Committee (OBC), through resolution, to direct the General Manager-level positions to implement a furlough. The Policy also requires the resolution to direct the beginning and ending dates of the furlough. The Policy does not put a time frame on how much notice the General Manager-level positions must have before implementing the furlough. This is a policy call whether a time line should be added.

Comment 3. Comment on limiting the length and number of furloughs.

Larae Gower: Line 30: Furlough should not extend more than 3 months and cannot occur more than twice per calendar year.

Response

The comment is referring to the following, which was contained in the analysis: "The OBC resolution must include furlough start and end dates. [4-1]"

The Policy leaves it up to the OBC to determine how long a furlough will last and does not limit the number of furloughs that can occur. This is a policy call.

Comment 4. Comment on travel during furlough.

Larae Gower: Line 33: All travel should be cease if a furlough is necessary, for all employees, political appointees, political officials and Oneida Business Committee members unless preapproved and deemed as absolutely necessary. Substitute technology such as

Response

The comment is referring to the following, which was contained in the analysis: "Employees cannot travel on behalf of the Tribe while on furlough. [4-4]"

The LOC may want to consider whether suspending all travel is necessary or even a prudent thing to do. A furlough period could last over several months, so the LOC may want to consider issues that arose during the continuing resolution period when travel was suspended. This includes how this could affect travel that is grant funded, what travel would be "absolutely necessary" and who determines when travel is necessary.

Comment 5. Comment on unemployment compensation.

Larae Gower: Line 49-50: The Oneida Tribe of Indians of Wisconsin will not contest employees filing for Unemployment Compensation with the State of Wisconsin.

Response

The comment is referring to the following, which was contained in the analysis: "The Expired Policy specifically stated that the Tribe shall not deny a request for unemployment compensation due to furloughs, [5-6] but the proposed Policy does not."

The Policy is silent as to how unemployment compensation is paid when a claim is filed. The intent is that the Tribe will continue to treat all unemployment compensation claims, whether brought on by furlough or other circumstances, the same.

Comment 6 & 19. Comments on payroll deductions.

Larae Gower: Line 52: Employees should work with Central Accounting Payroll and Human Resources regarding their payroll deductions.

Unknown (oral comment): Comment regarding: Line 52 (4-6) says the supervisor will help with payroll deductions but as a supervisor I don't know much about payroll deductions. Wouldn't it be better if they worked with someone who does?

Brandon Stevens: Yeah, cause there's a lot of different deductions that employees have, in and outside of the organization.

(inaudible – microphones were not used.)

Brandon Stevens: Okay, any necessary entities to determine which payroll deductions will continue during the furlough.

(inaudible – microphones were not used.)

Brandon Stevens: Okay, we can look at that. It looks like it's addressed in the next line, but we'll look at that to see if that really needs to be in there. Just 'employee work with whomever.'

Response

The first comment is referring to the following, which was contained in the analysis:

Instead of requiring all miscellaneous payroll deductions to stop during a furlough, the new Policy requires employees to work with their supervisor and any necessary entities to determine which payroll deductions will continue during the furlough - any discontinued payroll deductions are the employee's responsibility. [4-6]

The oral comment is referring to section 4-6. *Payroll Deductions*, which states: "An employee on furlough shall work with his or her supervisor, the Accounting Department and any other necessary departments and agencies to determine which previously authorized optional payroll deductions will continue to be deducted during the furlough period."

The Policy uses the term "necessary entities" in order to notice the employee that a furlough may affect his or her decision to have certain payroll deductions. This may require the employee to work with his or her supervisor, or other Tribal entities including Central Accounting Payroll and Human Resources, that are involved with payroll deductions. This is a policy call if the LOC wants to add specific Tribal entities to, remove the supervisor from this section and/or clarify the intent of the section.

Comment 7. Comment on overtime during a furlough.

Larae Gower: Line 61: Overtime is always a necessary consideration when dealing with external customers. The no overtime requirement conflicts with lines 35-36 that states "Furloughs must be scheduled in a way that allows the departments to continue to provide a basic level of service." It would be more reasonable to require monitoring and justification of overtime.

Response

The comment is referring to the following, which was contained in the analysis: “Employees are ineligible for overtime during any pay period where another employee from the same department/agency is furloughed [4-8(a)]”

The LOC may want to consider including a more flexible statement under this section, similar to how overtime was treated during the continuing resolution, including a monitoring and justification process as suggested by the comment.

Comment 8. Comment on medical insurance being affected by furlough.

Larae Gower: Line 71-82: The Furlough Policy should not be approved until the issues of employee medical insurance are satisfactorily resolved. In addition, there is no reference made to ensure compliance with the Affordable Care Act. That Act may need to be reviewed and considered.

Response

The comment is referring to the following, which was contained in the analysis:

While furloughed, employees continue to receive benefits as if they were on an unpaid leave of absence. [4-7] The Leave of Absence Tribal Work Standard identifies different types of unpaid leaves of absence - generally speaking, medical insurance coverage for maternity, paternity and military leave continues for a limited amount of the leave, but a furlough would not count as any of those. For a “personal” or “educational” unpaid leave of absence, insurance is cancelled on the employee’s last working day, and reinstated on the day the employee returns to work. So if this provision is enforced, it could mean that an employee would not have medical insurance coverage on full days of furlough. At a minimum, the Work Standard may need revision to address furloughs, and it may be beneficial to require training for all persons involved in creating furlough plans, so that they can understand how employees stand to be affected by the way they structure furloughs.

During the creation of the Policy, Employee Insurance was consulted regarding how a furlough would affect employee benefits. According to Employee Insurance, a short furlough will be treated the same as if an employee took a day off without pay. The employee’s insurance should not be affected and the employer and employee would pay the premiums the same as they would during any regular week. The intent of the Policy is that under the individual furlough plans which are implemented by General Manager Level positions, each area has the flexibility to determine how they will implement furloughs, taking into consideration that a longer furlough may have an impact on employee benefits. Section 4-7 states: “Employees shall not use or accrue personal or vacation time when on furlough. Employees shall continue to receive other benefits during a furlough in the same manner as an employee on an unpaid leave of absence receives benefits.” A furlough is not intended to affect benefits and if a long furlough is anticipated, the Layoff Policy should be utilized to implement a layoff, as opposed to a furlough.

Comment 9. Comment on developing procedures for a furlough.

Larae Gower: Line 79-82: Furlough Procedures should be developed prior to the implementation of the furlough Policy to assist in avoiding passing a policy whose demands cannot be met. Mandatory training should be provided to all employees involved in developing and implementing Furlough Procedures.

Response

The comment is referring to the following, which was contained in the analysis:

At a minimum, the Work Standard may need revision to address furloughs, and it may be beneficial to require training for all persons involved in creating furlough plans, so that they can understand how employees stand to be affected by the way they structure furloughs.

HRD Training staff prepared procedures when the emergency Furlough Policy was in effect. See comment 25 below. These procedures could be used to assist General Manager-level positions in creating and implementing furlough plans.

Comment 12. Employees subject to the Policy.

Wendy Alvarez: Can regular contracted employees be placed on a Furlough (i.e GGM, Doctors, teachers)?

Response

1-2. *Policy.* This Policy shall apply to all employees of the Tribe.

The Policy defines “Employee” as “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 and political appointees, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this Law, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants.”

Regular contracted employees like doctors, teachers and managers can be placed on a furlough.

Comments 13 & 14. Comments on what triggers a furlough.

Rae Skenandore (oral comment): comments were with regards to: What’s the criteria to be used to implement the policy? Who decides that? Nothing in here gives us reasons why they would implement this. When does a situation call for a furlough. What financial reduction in Revenue will justify furloughs? 10%, 20% etc?]

Brandon Stevens: Okay, yeah, the Finance would recommend and then the BC would approve, and so that sounds like something that maybe the Finance, or -probably the Treasurer’s Office would recommend maybe providing, those steps you’re wanting to take, you know, if it’s all travel, is done first; all discretionary funds, or expenditures go away first. Those types of things are what you’re looking for, correct? A list of.. ‘this is what we do first, this is what we do last’ type thing – at least a general feel of how that goes, a schedule of how we...

Rae Skenandore (oral comment): My comment is more about what financial conditions trigger a furlough.

Brandon Stevens: Okay, gotcha.

(inaudible – microphones were not used.)

Brandon Stevens: Okay, yeah, that's an excellent suggestion, that's more of a communication with the Treasurer's office and how we carry that out. So that's basically the process and we're going to take this one a little slow. There's other laws and policies we just give your comments, push it through if there's no comments, but clearly there's an interest in the furlough policy, and that's understandable. So we'll take it slow and try to communicate as much as we can to the organization, managers and employees about this policy, welcome any comments within that time.

Response

Section 4-1 of the Policy states: *Furlough Resolution*. If the OBC has identified the necessity for a furlough, a directive by resolution shall be given to the appropriate General Manager Level positions. The Policy states that furloughs can be implemented "to remedy an operating budget deficit" and "[t]o utilize a furlough, a decrease or lapse of revenue or funding and/or any other budget situation warranting an unpaid leave shall be identified." [See 1-1 & 1-2] The Policy is silent as to what specific conditions would need to occur in order for the OBC to direct a furlough. The LOC may want to consider adding reasons, or leave it open so the OBC has the flexibility to use the conditions they are given to justify the resolution directing a furlough.

Comments 15 - 18. Comment on length of notice given before a furlough is implemented.

Wendy Alvarez: Supervisors must give employees at least five business days' notice...(too short, 30 is more reasonable especially if benefits will be affected). Maybe a staggered notice (one day furlough = one week notice, two day furlough – two week notice)

Unknown (oral comment): The comment was with regards to section 4-3 which says the supervisor must notify the employee at least 5 business days prior to being placed on furlough. The commenter doesn't feel this isn't enough time. The employee has to figure out the payroll deduction, apply for assistance, etc. Plus what happens if the furlough occurs during December and Christmas time. The employee needs more than 5 business days to figure stuff out. Most companies have a 30 day outlook prior to placing an employee on furlough. Suggest a 30 day notice, not a 5 business day notice.

Brandon Stevens: Trying to think how mine would go. If I were to get furloughed. I know the bank would do it immediately; it's just depending ... the separate agencies you are talking about, correct? Okay. Well, I don't know... it'd seem like, I guess the answer only is, is we can look at that and see if we can look at, maybe we can look at some of those possible situations that would arise and maybe we could look at extending that period a little longer or see how we could fix that, if indeed it is an issue. Five days does seem like a quick turnaround for an employee. I would say, for an employee. Yeah. We'll come back to that answer, we'll try to answer that for you, for everyone.

Unknown (oral comment): The comment was that a 30 day notice would be better. This is not a friendly policy.

Brandon Stevens: Yeah I know I would love a thirty day notice, I guess the way we budget... we're a week-to-week. We're living by week-to-week. A drop comes in I think on Sunday, and we're almost paying right out from that. And like you said, December and January are our worst times of the year, as far as revenue. So we're getting there where we actually have those funds there. We do have the line of credit, those are the things we look at, instead of having the cash outlay from the drop in gaming; we always look at utilizing the line of credit in case of those. Like I said this is a last ditch thing we would ever do, we have a lot of options before this.

Unknown (oral comment): "one thing to take into consideration that we could incorporate in the policy is a timetable whether it be a one day furlough, three day furlough, week furlough, two week furlough ... because depending on how long we need to take off..." [From LRO notes: Include a timetable that specifies if a furlough lasts a couple of hours, 1 day, 1 week, 2 weeks etc and maybe have different notice requirements for the different lengths of furloughs. An employee may need a longer notice for furloughs that last a couple weeks but if a furlough lasts a few hours then the 5 business day notice is sufficient. If we include a time table, that would be helpful.

Brandon Stevens: Okay, that makes sense, because Finance will tell us... they'll give us a number on what we're short and how long we expect to be in that mode. So that definitely makes sense on how we could look towards to give more of an expectation of a timeline for our employees to plan. So we'll definitely take a look at that, level of... you know, if it's \$2 million we're down, \$3 million, four, five, ten, or so on and so forth, we can look at how long we plan to utilize a furlough policy or other options instead

Response

The comments are referring to section 4-3, which states: "*Notice.* A supervisor shall give an employee notice at least five (5) business days prior to a furlough being implemented for his or her position." The individual Furlough Plans can set out the actual amount of notice given to employees based on the length of the furlough; however, a furlough as short as one day will require a five day notice. However, the LOC could also include a more concrete time frame in the Policy based on the length of the furlough implemented.

Comment 20. Designation of Critical Positions

Wendy Alvarez: 5-1 Request that the General Manager level designate critical positions for their areas within their plan to be exempt to ensure business needs are met for customers and services, especially for revenue generating entities, health and safety.

Response

Section 5-1. states: *Furlough Plans.* The General Manager Level positions shall develop furlough plans for their respective departments and agencies.

Under the Layoff Policy, critical positions are defined and a manager can identify critical positions that are not subject to the Indian Preference in the development of a layoff SOP. Under the Layoff Policy, Oneida member employees are retained over all other employees, when all other things are equal, except in the case of a critical employee, who has a degree, license or certification and skills that cannot be reassigned to another employee.

The LOC should consider the purpose of the Furlough Policy and whether it is necessary to identify critical positions when the intent of a furlough is a temporary, short-term leave of absence that will be used to alleviate budget concerns. However, this is a policy call for the LOC.

Comment 21. Comment regarding the creation of the Furlough Plan.

Pat Pelky (oral comment): Pat was questioning whether it is possible for the employee be a part of the GM level furlough plan. He expressed the desire to work with the employees and see if a plan can be developed with employee input. These plans could allow an employee to volunteer or be put on a rotating furlough. Are we looking for consistency in these plans? Afraid that there will be different types of furlough plans across the organization.

Brandon Stevens: OK. Yeah, we'll look at that five days; to be honest; the general intent of this furlough policy is one of those times we're not making payroll. And so those immediate expenses, I guess that's why the shortened timeline is there. They came close maybe twice over the last six years, that we came close to not making payroll. And those are the types of situations that we're really talking about, where there's a finite time period of a furlough, to alleviate the budget deficit. It's like the worst case scenario. And the worst case scenario is also making our employees pay for it. We'll definitely look at that five day notice, and probably talk with the Treasurer's office, Finance, to see if there's consideration of extending that time out.

Response

Section 5-1 states: The General Manager-level positions shall develop furlough plans for their respective departments and agencies. There are no limitations on how these plans are developed, including allowing employee input and/or having a rotating furlough schedule and/or allowing volunteers to be furloughed over others. The Policy purposely gives each area the ability to develop their own furlough plan so they can create something that works for their area. The plans do not have to be consistent across the organization.

Comment 22.

Wendy Alvarez: Emergency Temporary and Limited Term employees may be hired to replace furlough employees? The policy should state if they can or cannot hire in place of furloughed employees. This will need to be clear.

Response

The LOC may want to consider clarifying the length of furloughs and how they will be used in the Policy. It seems that there may be a misunderstanding as to how long a furlough would last and the difference between a furlough and a layoff. Discussions held during the drafting of the Policy indicate that there shouldn't be a need or the time to hire other employees in place of a furloughed employee as a furlough is a temporary status to respond to a budget situation where there wouldn't be additional funds available to hire emergency temporary or limited term employees.

Comment 23.

Wendy Alvarez: Should there be a list of areas that would be furloughed first or last based on the Nations priorities? Example 1st Non-profit making entities 2nd services that may be absorbed by other areas (or reorganized).

Response

This is a policy call for the LOC. Discussions during the drafting stages of the Policy indicated that the furlough would apply Tribal-wide so that all areas/employees would be affected similarly and no one area/employee would bear the entire impact of the furlough. For example, all areas could be required to furlough every employee for one day, staggered over a three month period.

Comment 24.

Wendy Alvarez: Furlough can mean one day off per week and still = a full time employee without loss of most benefits. This is not clear in the policy . As long as an employee works 30 hours per week they are full time.

Response

When implementing a furlough, the furlough plan could be created to have a minimal impact on an employee's status and benefits. The Policy was written to allow for flexibility in the furlough plans that are created. The LOC may want to consider additional provisions in the Policy to clarify the intent of a furlough.

Comment 25.

Barb Kolitsch: Below are some ideas that the HRD Training staff developed during the emergency Furlough policy. As you can see, the first thing we suggested was non-furlough options, second was voluntary furloughs and then finally we had involuntary furloughs (which was not included in this document because the current draft criteria was changed.)

Non-Furlough Options – Policy suggestion: add non-furlough options to the policy, similar to layoffs, eliminate emergency temp employees first, ask for volunteers, etc. So my suggestion would be that when the areas develop their plan, they identify first non-furlough options, then volunteer, and finally involuntary furloughs.

- 1.1 General Manager Level positions will identify essential positions within their area, not subject to non-furlough options. NOTE: If you require this in the policy, then employees may be less apt to accuse a manager of hand-selecting employees based on performance or using furlough as a discipline.
 - 1.1.1 All non-essential positions may be subject non-furlough options.
- 1.2 General Manager positions or delegates may choose from any of the following (or combination of) to meet the payroll goal:

Voluntary choices:

 - 1.2.1 Time off without pay/reduced work schedule (available to regular status and temporary employees) Some people would like to work less hours: parents of young children, employees who would like to reduce hours due to health or other life priorities, etc.
 - 1.2.2 Layoff(s)
 - 1.2.3 Leave of absence(s) Maybe an employee has been contemplating time off

- to start a business, or optional surgery, etc.
- 1.2.4 Attrition (not filling open positions)
- 1. Involuntary choices:
 - 1.2.5 Ending temporary employee contracts (emergency temp, limited term, etc.)
 - 1.2.6 Time off without pay/reduced work schedule (available to regular status and temporary employees)
 - 1.2.7 Elimination of paid parental time (can still use vacation/personal, time off without pay, or adjust the work schedule/flex time) for educationally sanctioned school functions. The Gaming Division already requires employees to use flex, personal, vacation or time without pay for Parental Time. Other Divisions could do the same when the financial situation requires adjustment.

Furlough Options

- 1.3 Furlough options shall be considered if the payroll goal has not been met by implementing non-furlough options.
- 1.4 General Manager Level positions will identify essential positions within their area, not subject to furlough.
 - 1.4.1 All non-essential positions may be subject furlough options.
- 1.5 General Manager positions or delegates may choose from any of the following (or combination of) to meet the payroll goal:
 - 1.5.1 Voluntary furlough(s)
 - 1.5.1.1 Full-schedule furlough (full work week)
 - 1.5.1.2 Less than full-schedule furlough (less than full work week)
 - 1.5.2 Involuntary furlough(s)
 - 1.5.2.1 Full-schedule furlough (full work week)
 - 1.5.2.2 Less than full-schedule furlough (less than full work week)

2.0 PROCEDURES

First - Selection criteria for voluntary furlough and non-furlough options

- 2.1 Determine what voluntary option(s) you will offer to non-essential positions based on business needs.
- 2.2 Offer voluntary option(s) to employees in non-essential positions.
 - 2.2.1 Give employees Options Matrix so they can understand the implications of their decision.
- 2.3 Determine which employee(s) in the identified non-essential positions will be allowed to take a voluntary option(s).
- 2.4 Submit payroll reduction plan to the Finance Office for approval prior to implementing the option(s) if payroll goal is met. If not, go to second options below.
- 2.5 Notify employee(s) of the approval of their voluntary option(s) choice(s).

If not enough employees volunteer to meet the payroll goal, use involuntary non-furlough options.

Response

The LOC may want to consider incorporating some of the above suggestions into the Policy in order to clarify the intent of the Policy, as these suggestions seem to capture the discussions that were held during the creation of the Policy.

Comment 26. Comment on whether a furloughed employee can work for another employer.

Unknown (oral comment): When an employee is on furlough, are they allowed to work at other jobs outside of the Tribe.

Brandon Stevens: I don't think; yeah, I don't think we have any control over that, so I would say... yeah? There's nothing in here that would prohibit, so I would... I'm just thinking of situations that may arise out of it...

Response

The Tribe has no control over how an employee spends his or her time while on furlough, an employee that is furloughed can work at another job(s) outside of the Tribe.

Comment 27. Overview of oral public meeting comments received.

Brandon Stevens: Okay, so the few things that I got is the five day... looking at the five day window of notice to the employees, whether or not that's fair or feasible for an employee to do the deductions and so on and so forth; and the management plan – it's a little tight, as well as the 5 day plan, to carry out, to do bigger plans, to extend the furlough out maybe longer, have people volunteer... we'll look at that, but generally what we're trying to say we want the management to take the initiative to develop those plans on how they're going to alleviate their budget, so along the lines of what you're saying, that's what we really want. And moving to as long a notice as we possibly could, you know, a 30 day notice was kind of the guideline there. And maybe a policy statement basically saying that this is utilized as one of the last options, for comfort, and then a timetable, for scheduling at certain levels so that employees would know how long they may be expected to be on furlough so they can better plan, and then the levels of budget reduction methods we've been using, kind of a general rule.

Response

This comment provided an overview of the comments received at the public meeting, there are no recommended changes based on this comment.

Conclusion

There were multiple comments provided on the Policy, both at the public meeting and in writing which the LOC should consider and incorporate as they see fit. From the comments received, it seems there is confusion surrounding how a furlough should be used and the impacts that a furlough would have on the organization. Also, the Policy should be clarified as to the differences between a furlough and a layoff.