



*Notice of*

# Public Meeting

*to be held*

**February 5, 2015 at 12:15 p.m.**

**OBC Conference Room - 2nd Floor, Norbert Hill Center**



## *Topic: Furlough Policy*

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would adopt a Furlough Policy to 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.
- ◆ Require General Manager-level positions to develop furlough plans for their areas.
- ◆ Prohibit furloughs from being used for disciplinary reasons.

**All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.**

### **Public Comment Period—Open until February 12, 2015**

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings) or contact the Legislative Reference Office (LRO), which is located on the second floor of the Norbert Hill Center, Oneida WI.

Mail: **Legislative Reference Office**  
**PO Box 365**  
**Oneida, WI 54155**

Phone: **(920) 869-4376 or (800) 236-2214**  
E-Mail: **LOC@oneidanation.org**  
Fax: **(920) 869-4040**

## Furlough Policy

Article I. Purpose and Policy  
 Article II. Adoption, Amendment, Repeal  
 Article III. Definitions  
 Article IV. Furlough

Article V. Furlough Plans  
 Article VI. Supervisor Responsibilities  
 Article VII. Appeal

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	The Furlough Policy ("The Policy")				
<b>Requester</b>	Oneida Business Committee (OBC)	<b>Drafter</b>	Lynn Franzmeier	<b>Analyst</b>	Tani Thurner
<b>Reason for Request</b>	On October 15, 2013, the OBC adopted a Furlough Policy on an emergency basis, which was extended for six months on April 9, 2014; expiring on October 9, 2014. The item had remained on last term's Active Files List as the LOC processed the policy for permanent adoption but did not complete it by the end of the term. This term, the LOC initially determined not to proceed with this item, and notified the OBC of this decision; however the OBC then directed that the LOC continue processing the Policy for permanent adoption.				
<b>Purpose</b>	This Policy sets out a process for the Tribe to furlough employees (temporarily reducing or stopping their work hours) as a cost-saving measure.				
<b>Authorized/ Affected Entities</b>	General Manager Level Positions, Supervisors, HRD and the OBC all have roles in the process; all employees could be affected.				
<b>Due Process</b>	The Policy expressly states that employees have no right to appeal a furlough decision under any Tribal law, policy or the personnel grievance process.				
<b>Related Legislation</b>	There is already a Tribal Layoff Policy which is very similar, enabling the Tribe to lay off employees as part of a cost-saving effort. The Personnel Policies and Procedures (Blue Book) address leaves of absence - this Policy addresses benefits by treating a furlough as a leave of absence.				
<b>Policy Mechanism</b>	Resolution adopted by OBC; Furlough Plans adopted by each division and kept on file with HRD.				
<b>Enforcement</b>	None, but the Blue Book would govern any violations by Tribal employees.				

### Overview

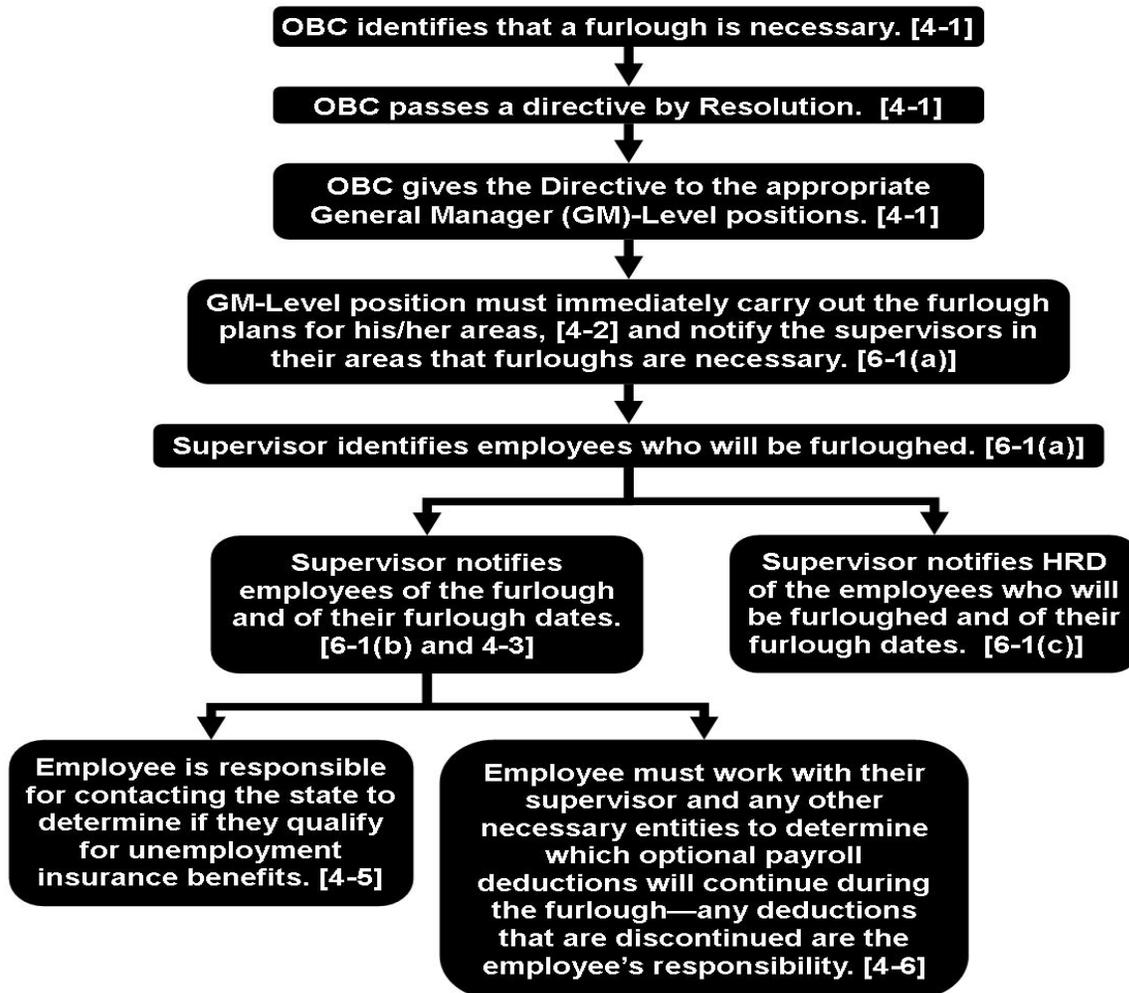
This is a new Policy that enables the Tribe to implement furloughs as a tool to fix an operating budget deficit. A furlough is a temporary unpaid leave from work for a specified period of time. In order to furlough employees, a decrease/lapse of revenue/funding or other budget situation warranting an unpaid leave must be identified. [1-1, 1-2 and 3-1(b)]

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)]

Employees must be furloughed on days that the employee is normally scheduled to work, or on "holidays recognized by the Tribe", regardless of whether the employee is normally scheduled to work or not. [4-2(b)] While on furlough, employees cannot perform any work, including responding to work-related e-mail or voicemail. [4-2(a)] Employees may not use personal or vacation time while on furlough [4-7] and are not eligible for back pay when they return to work [4-10].

Employees have no right to appeal a furlough under Tribal law, policy, or the personnel grievance process. [7-1]

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**The Furlough Process**

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**Changes from the previous version of the Furlough Policy**

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This proposed Furlough Policy is substantially similar to the policy that was emergency-adopted last term (hereinafter called the “Expired Policy”); but there are a few changes:

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*New Provisions*

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The following provisions are added to this Policy but were not in the Expired Policy:

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- Furloughs shall not be used for disciplinary reasons. [4-9]
- 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.
- The OBC resolution must include furlough start and end dates. [4-1]
- Once the OBC adopts a resolution directing a furlough, all GM-Level positions must immediately carry out the furlough plans for their departments/agencies. [4-2]
- Employees cannot travel on behalf of the Tribe while on furlough. [4-4]
- GM-Level Positions must develop furlough plans, setting forth how their respective

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35 departments and agencies intend to implement a furlough. Furloughs must be scheduled  
36 in a way that allows the departments to continue to provide a basic level of service. These  
37 plans must be kept on file with HRD. A furlough plan must include:

- 38 ○ An explanation of how employees will be selected.
- 39 ○ A tentative schedule for a furlough.
- 40 ○ The estimated number of employees affected.
- 41 ○ A summary of how the furlough will relieve budget shortfalls. [4-2(a), 5-1 to 5-3]
- 42 ● While furloughed, employees do not accrue vacation or personal time, but otherwise  
43 continue to receive benefits as if they were on an unpaid leave of absence. [4-7] The  
44 following chart demonstrates how a furlough could affect personal/vacation (P/V) time  
45 accrual:

Years of Service	P/V days normally accrued each year	P/V that would not accrue for each furlough day	P/V lost if furloughed 1 day/week for 6 months
0-3	18	.554 hours	14.399 hours
4-7	23	.708 hours	18.408 hours
8-14	30	.923 hours	23.998 hours
15+	37	1.138 hours	29.588 hours

*Expanded or Changed Provisions*

46 The following changes were made to provisions found in the Expired Policy:

- 47 ● The Expired Policy specifically stated that the Tribe shall not deny a request for  
48 unemployment compensation due to furloughs, [5-6] but the proposed Policy does not.
- 49 ● Instead of requiring all miscellaneous payroll deductions to stop during a furlough, the  
50 new Policy requires employees to work with their supervisor and any necessary entities  
51 to determine which payroll deductions will continue during the furlough - any  
52 discontinued payroll deductions are the employee's responsibility. [4-6]
- 53 ● Unlike the Expired Policy, this proposal does not require that Indian Preference be used,  
54 if available, to determine which employees would be furloughed. [4-2]
- 55 ● Instead of stating that furloughed employees "shall not be separated from the Tribe", the  
56 proposal states that a furlough shall not constitute a break in continuous service. [4-4]
- 57 ● The Expired Policy stated that no overtime and/or additional duty pay can be approved as  
58 a result of a furlough. The proposed Policy instead provides that:  
59 ○ Employees are ineligible for overtime during any pay period where another  
60 employee from the same department/agency is furloughed [4-8(a)]  
61 ○ Employees cannot receive additional duty pay for performing duties for  
62 furloughed employees from the same department/agency. [4-8(b)]

**Miscellaneous**

63 A Public Meeting has not been held.

**Considerations**

64 **The following are issues the LOC may want to consider:**

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

- 83 • The Layoff Policy is very similar to this Policy, but there are a few provisions in the  
84 Layoff Policy that are not included in this Policy, and which should be noted:
  - 85 ○ The Layoff Policy permits managers to identify critical positions that are exempt  
86 from Indian Preference (which is used as a criteria to determine who is laid off) –  
87 critical positions are “those requiring a Professional or Technical License,  
88 Certification, and/or Degree and which require skills which cannot be reassigned  
89 to another employee” – this Policy does not allow for any exceptions for any sort  
90 of critical position that would be exempt from furloughs. This is a policy call.
  - 91 ○ The Layoff Policy requires strategic layoff plans (similar to the plans created  
92 under this Policy) to be developed with the HRD Manager, and approved by the  
93 OBC before they are implemented. This Policy only requires the GM level  
94 positions to develop furlough plans, which must be kept on file with HRD, with  
95 no requirement for OBC approval or HRD involvement. This is a policy call.
  - 96 ○ The Layoff Policy requires individual business units to develop Layoff SOPs “to  
97 meet their unique needs” provided that such SOPs must be at least as restrictive as  
98 Blue Book requirements. This Policy does not mention SOPs for individual  
99 business units. This is a policy call.
  - 100 ○ This Policy prohibits overtime and additional duty pay for employees from the  
101 same department/agency while another employee of that department/agency is  
102 furloughed. By comparison, the Layoff Policy prohibits departments with laid-off  
103 employees from hiring ET or LTE employees to replace them. This Policy is  
104 silent about hiring/using ET or LTE employees during a furlough – it states that  
105 temporary employees must be furloughed first, but does not address what happens  
106 after employees are furloughed.
  - 107 ○ Like this Policy, the Layoff Policy applies to all employees. However, the Layoff  
108 Policy also states that employees whose salary is funded through external  
109 programs are subject to their respective program guidelines. This Policy does not  
110 address employees whose salary is funded through outside grants/funding; or  
111 whether/how they might be affected differently during a furlough. This is a policy  
112 call.
- 113 • 7-1 provides that employees do not have the right to appeal a furlough decision under any  
114 Tribal law/policy or the personnel grievance process. However, 4-9 says furloughs shall  
115 not be used for disciplinary reasons. As written, it may be difficult to enforce 4-9,  
116 because an employee could not appeal a furlough decision that the employee feels was

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- 117 used for disciplinary reasons.
- 118 • The definition of employee includes “political appointees” however that term is not
- 119 defined. If this is intended to only refer to OBC assistants, it may help to clarify this,
- 120 otherwise to identify what qualifies as a political appointee.
- 121 • This Policy states that temporary employees will be furloughed first. The term
- 122 “temporary employee” is not defined in any Tribal law or policy. The Blue Book defines
- 123 “Limited Term Employee<sup>1</sup>” and “Emergency Temp<sup>2</sup>” but it is not clear here which is
- 124 intended by “temporary employee.”
- 125 ○ By comparison – the Layoff Policy provides that Emergency Temporary
- 126 employees (which it defines to include employees contracted for 90 days or less,
- 127 interns, seasonal, and substitute relief workers) will be laid off first, then Limited
- 128 Term Employees, then regular employees.
- 129 • 4-2 requires all GM-Level positions to “immediately carry out the furlough plans” for
- 130 their departments/agencies, but the Policy does not state exactly what they are
- 131 responsible for doing. 6-1 says that “upon notification from the appropriate [GM-Level]
- 132 position that furloughs are necessary, a supervisor shall” identify those employees to be
- 133 furloughed, notify them, and notify HRD. As such, it appears that the supervisors are the
- 134 ones actually carrying out the furlough plans, so it may be more accurate to revise this
- 135 provision to either state that the GM-Level positions will notify the supervisor, or to state
- 136 that the Supervisors will immediately carry out the furlough plans.
- 137 • Under 4-8, employees are only ineligible for overtime during the same pay period that
- 138 another employee from their area is furloughed; and for additional duty pay while an
- 139 employee is furloughed. This would not prevent the furloughed employee from receiving
- 140 overtime before or after the furlough period, and would not prevent other employees from
- 141 receiving overtime or additional duty pay for doing the furloughed employee’s work
- 142 before or after the furlough. This is a policy call.
- 143 • It is not known if or how a full-time employee’s status would be affected if the employee
- 144 is furloughed for enough time to drop the employee down below the minimum required
- 145 hours needed to maintain full-time employee status. For example, under new insurance
- 146 plan changes, part-time and half-time employees working an average of 30+ hours a
- 147 week in a “designated six-month timeframe” in 2015 will be eligible for medical, dental
- 148 and vision insurance the following year. It is not clear what would happen if full-time
- 149 employees are furloughed to the point where they drop below that 30+ hours a week. It
- 150 may be beneficial to receive an analysis from HRD addressing how furlough affects full-
- 151 time status and whether any benefits or eligibilities could or would be impacted in such a
- 152 situation.
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1 PPP Addendum: “Limited Term: An employee who will be utilized for long term assignments over ninety (90) days, but no longer than two (2) years. A performance contract may be utilized in this position. A performance contract is used to establish specific goals and objectives that the employer wants accomplished in a specific time frame. The contract can be canceled according to the contract terms.”

2 PPP Addendum: “Emergency Temp: An employee who will be utilized for short term assignments; and the length of employment will not exceed (90) days.”

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**Furlough Policy**

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**Article I. Purpose and Policy**

1-1. *Purpose.* The purpose of this Policy is to enable the Tribe to implement a furlough as a tool to remedy an operating budget deficit.

1-2. *Policy.* This Policy shall apply to all employees of the Tribe. To utilize a furlough, a decrease or lapse of revenue or funding and/or any other budget situation warranting an unpaid leave shall be identified.

**Article II. Adoption, Amendment, Repeal**

2-1. This Policy was adopted by the Oneida Business Committee by resolution BC \_\_\_\_\_.

2-2. This Policy may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

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. 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.

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

**Article III. Definitions**

3-1. This Article shall govern the definitions of words or phrases as 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 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.

(b) "Furlough" shall mean a temporary, unpaid leave from work for a specified period of time.

(c) "General Manager Level position" shall mean the highest level in the chain of command under the Oneida Business Committee and who is responsible for a Tribal Department and/or Division.

(d) "Supervisor" shall mean a person who directly oversees the work and performance of an employee on a daily basis.

(e) "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.

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**Article IV. Furlough**

201 4-1. *Furlough Resolution.* If the Oneida Business Committee has identified the necessity for a  
202 furlough, a directive by resolution shall be given to the appropriate General Manager Level  
203 positions. The resolution shall direct the beginning and ending dates of the furlough.

204 4-2. *Implementation of Furlough Plans.* Upon the passage of a resolution directing that a  
205 furlough be implemented, all General Manager Level positions shall immediately carry out the  
206 furlough plans for his or her respective departments or agencies. An employee shall be  
207 furloughed on days that the employee is normally scheduled to work or on holidays recognized  
208 by the Tribe, whether the employee is normally scheduled to work or not.

209 4-3. *Notice.* A supervisor shall give an employee notice at least five (5) business days prior to a  
210 furlough being implemented for his or her position.

211 4-4. *Continuous Service.* A furlough shall not constitute a break in continuous service.  
212 Employees shall not perform any work for the Tribe while furloughed. This includes responding  
213 to work-related e-mail and voice mail, as well as traveling on behalf of the Tribe.

214 4-5. *Unemployment.* Eligibility for unemployment insurance benefits is determined by the State  
215 of Wisconsin. Furloughed employees shall be responsible for contacting the State of Wisconsin  
216 Department of Workforce Development to determine if they qualify for unemployment insurance  
217 benefits.

218 4-6. *Payroll Deductions.* An employee on furlough shall work with his or her supervisor, the  
219 Accounting Department and any other necessary departments and agencies to determine which  
220 previously authorized optional payroll deductions will continue to be deducted during the  
221 furlough period. Any deductions discontinued during a furlough shall be the responsibility of the  
222 employee.

223 4-7. *Benefits.* Employees shall not use or accrue personal or vacation time when on furlough.  
224 Employees shall continue to receive other benefits during a furlough in the same manner as an  
225 employee on an unpaid leave of absence receives benefits.

226 4-8. *Overtime and Additional Duty Pay.* When a furlough is implemented in a department or  
227 agency, no employee in that department or agency shall be eligible for:

228 (a) overtime during the same pay period that another employee from the same  
229 department or agency is on furlough; or

230 (b) additional duty pay for performing duties for other employees in his or her  
231 department or agency who are on furlough.

232 4-9. *Discipline.* Furloughs shall not be used for disciplinary reasons.

233 4-10. *Back Pay.* Employees on furlough shall not be eligible for back pay awards upon return to  
234 work.

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**Article V. Furlough Plans**

237 5-1. *Furlough Plans.* The General Manager Level positions shall develop furlough plans for  
238 their respective departments and agencies.

239 5-2. The furlough plans shall set forth how each department or agency intends to implement a  
240 furlough. The plan shall include, but not be limited to, the following:

241 (a) an explanation of how employees will be selected;

242 (1) Temporary employees shall be furloughed first, followed by employees who

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243 volunteer to be furloughed. All other employees shall then be eligible to be  
244 furloughed.

245 (b) a tentative schedule for a furlough;

246 (1) Furloughs shall be scheduled in a way that allows the departments to continue  
247 to provide a basic level of service.

248 (c) the estimated number of employees affected; and

249 (d) a summary of how the furlough will relieve budgetary shortfalls.

250 5-3. All furlough plans shall be kept on file with the Human Resources Department.  
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252 **Article VI. Supervisor Responsibilities**

253 6-1. Upon notification from the appropriate General Manager Level position that furloughs are  
254 necessary, a supervisor shall:

255 (a) Identify those employees who will be furloughed.

256 (b) Notify those employees that they will be furloughed and their furlough dates;

257 (c) Notify the Human Resources Department of the chosen employees and their furlough  
258 dates.  
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260 **Article VII. Appeal**

261 7-1. *Right to Appeal.* An employee who has been furloughed does not have the right to appeal  
262 such a decision under any Tribal law, policy or the personnel grievance process.  
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264 *End.*  
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266 Emergency Adoption – BC-10-15-13-A

267 Emergency Adoption Extension BC-04-09-14-D