

NOTICE OF
PUBLIC MEETING

TO BE HELD
THURSDAY, MAY 5 at 12:15 p.m.
IN THE
OBC CONFERENCE ROOM
(2nd FLOOR—NORBERT HILL CENTER)

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

TOPIC: BACK PAY AMENDMENTS

This is a proposal (to amend an existing Tribal Law) which would:

- ◆ Clarify that Back Pay is a law and adjust the format accordingly;
- ◆ Clarify the definition of back pay is to “make the employee whole”. [see 306.3-1(b)];
- ◆ Clarify that reinstatement of insurance benefits includes long-term disability, short-term disability, dental, vision and life insurance. [see 306.4-1(g)(1)];
- ◆ Include OBC or GTC directives for increase in pay into the back pay amount awarded. [see 306.4-1(e)]; and
- ◆ Require a reinstated employee to work with Oneida Contract Health to determine if services were rendered and if insurance can retroactively recoup funds to Oneida Contract Health. [see 306.4-1(g)(1)(B)].

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office.

PUBLIC COMMENT PERIOD
OPEN UNTIL MAY 12, 2016

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary’s Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

Legislative Reference Office
PO Box 365 Oneida, WI 54155
LOC@oneidation.org
Phone: (920) 869-4376 or (800) 236-2214
Fax: (920) 869-4040



<i>Analysis by the Legislative Reference Office</i>					
Title	Back Pay				
Requester	OBC Officers	Drafter	Douglass McIntyre	Analyst	Maureen Perkins
Reason for Request	The OBC Officers were considering a settlement proposal and two issues were discovered that the OBC Officers felt needed to be addressed in the law, 1) if the employee is being reinstated for health care benefits as if they were never terminated, the employee should be mandated to reimburse the Nation for any CHS claims they may have made during the time they were off work and 2) Article 4-1 (g) (1) [now 306.4-1] needs clarification.				
Purpose	The purpose of this law is to set forth the standards used in calculating back pay for employees of the Nation in accordance with the Nation's law [see 306.1].				
Authorized/Affected Entities	This law applies to any of the Nation's employees that receive back pay, Oneida Law Office, and internal departments [see 306.5-2].				
Related Legislation	The Nation's laws, rules and policies related to employment [see 306.4-1 (a) (1), 306.4-1 (e) (2)], Investigative Leave Policy.				
Enforcement/Due Process	An employee not receiving back pay in accordance with this law may seek enforcement by the Judiciary [see 306.5-4].				

Overview

The intent of the Back Pay law is to authorize monetary damages in the form of back pay to an employee wrongfully suspended or terminated to make that employee whole again; to put the employee back into the same financial position they would have been in had the suspension or termination never occurred. Current amendments include providing reinstated insurance information to Oneida Contract Health department if services were rendered during the back pay period and clarification of insurance benefits.

- Employees are responsible for providing Oneida Contract Health with reinstated insurance information if services were rendered during the back pay period.
- Detail regarding insurance benefits was clarified.

Proposed Amendments

- The definition of back pay was changed to align with the current practice in calculating back pay awards [see 306.3-1(b)].
- The definition for punitive damages was added. "Punitive damages" means monetary compensation awarded to an injured party that goes beyond that which is necessary to compensate the individual for losses and that is intended to punish the other party [see 306.3-1(j)]. Punitive damages are not allowed under the current or proposed amendments of the Back Pay law [see 306.4-2(a)].
- Merit Increases from the OBC and GTC were added to the merit increase system/standard used by the employee's supervisor during the back pay period [see

Chapter 306
Back Pay Policy

Article I-306.1. Purpose and Policy
Article II-306.2. Adoption, Amendment, Appeal
Article III-306.3. Definitions

Article IV-306.4. Back Pay Calculation
Article V-306.5. Back Pay Process

Article I-306.1. Purpose and Policy

306.1-1. The purpose of this Policy law is to set forth standards used in the calculation of back pay for all employees of the Tribe Nation in accordance with Tribal the Nation's law.

306.1-2. It is the policy of the Tribe Nation to have consistent and standard procedures for the management of employee back pay.

Article II-306.2. Adoption, Amendment, Appeal

306.2-1. This Policy law was adopted by the Oneida Business Committee by resolution BC-5-24-06-PP and amended by resolutions BC-06-23-10-F ~~and~~, BC-08-13-14-C ~~and~~ BC-

306.2-2. This Policy law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

306.2-3. Should a provision of this Policy law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Policy law which are considered to have legal force without the invalid portions.

306.2-4. In the event of a conflict between a provision of this Policy law and a provision of another policy law, the provisions of this Policy law shall control.

306.2-5. This Policy law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin Nation.

Article III-306.3. Definitions

306.3-1. This section shall govern the definitions of words and phrases used within this Policy law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Advocate" ~~shall mean~~ means a non-attorney person as provided by law and other person who is admitted to practice law and is presented to the court as the representative or advisor to a party.

(b) "Back pay" ~~shall mean~~ means money damages owed to the Employee for a salary or wage ~~that would have been earned in the time taken to litigate to make the employee whole as determined by the employment dispute, minus amounts that are deducted from salary or income earned from a third party employer or limited by other law of the Tribe.~~ formulas set forth within this law.

(c) "Consequential Damages" ~~shall mean~~ means damages that are not a direct and immediately result of an act, but a consequence of the initial act, including but not limited to penalties on early withdrawal of retirement account.

(d) "Consultant" ~~shall mean~~ means a professional who is contracted externally whose expertise is provided on a temporary basis for a fee.

~~(e) "Court" shall mean the trial court of the Tribe's judicial system.~~

~~(f)~~ (e) - "Earnings" ~~shall include~~ includes vacation/personal time, shift differential, holiday

41 pay, merit increases, bonuses and incentives, employment benefits and income received
42 during the back pay period.

43 ~~(g)~~(f) “Employee” ~~shall mean~~means any individual who is employed by the TribeNation
44 and is subject to the direction and control of the TribeNation with respect to the material
45 details of the work performed, or who has the status of an employee under the usual
46 common law rules applicable to determining the employer-employee relationship.
47 “Employee” includes, but is not limited to; an individual employed by any program or
48 enterprise of the TribeNation, but does not include elected or appointed officials or
49 individuals employed by a Tribally Chartered Corporation. For purposes of this
50 Policylaw, individuals employed under an employment contract as a limited term
51 employee are employees of the TribeNation, not consultants.

52 ~~(h)~~(g) “Involuntarily separated” ~~shall mean~~means an employee removed from
53 employment through whatever means, other than a layoff, by the employer. This shall
54 include, but is not limited to, investigative leave, suspension or termination.

55 ~~(i) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.~~

56 (h) "Judiciary" means the judicial system that was established by Oneida General Tribal
57 Council resolution GTC-01-07-13-B to administer the judicial authorities and
58 responsibilities of the Nation.

59 (i) “Nation” means the Oneida Nation.

60 (j) “Punitive Damages” means monetary compensation awarded to an injured party that
61 goes beyond that which is necessary to compensate the individual for losses and that is
62 intended to punish the other party.

63
64 **Article IV 306.4. Back Pay Calculation**

65 306.4-1. Back Pay Limitations. Back pay shall only include the items identified in this Article
66 Section as they relate to the employee. Back pay shall include and be subject to the following:

67 (a) *Vacation/Personal Time Accrual.* Employees shall receive prorated credit for
68 vacation/ personal time which would have accrued during the back pay period.

69 (1) Reinstated employees shall be credited for vacation/ personal time. If the
70 crediting of vacation/personal time would result in the employee exceeding the
71 accrual cap ~~of two hundred eighty (280) hours~~ pursuant to the Tribe’s personnel
72 Nation’s laws, rules and policies and procedures, then any amount over that cap
73 shall be provided as a cash payout. Non-reinstated employees shall be paid out
74 vacation/personal time in lieu of crediting personal/vacation time.

75 (b) *Shift Differential.* Shift differential shall be included in the back pay amount to the
76 extent it is a part of the employee’s regularly scheduled hours.

77 (c) *Tips.* If the employee received pooled tips at the time of involuntary separation, tips
78 shall be included in the total back pay amount at the same tip rate that other employees in
79 the same position and on the same shift received on the same dates.

80 (1) If the employee received individual tips at the time of involuntary separation,
81 the employee shall be ineligible for tips during the back pay period.

82 (d) *Holiday Pay.* Holiday pay shall be included in the back pay amount to the extent the
83 employee would have received such pay if the employee had not been involuntarily
84 separated.

85 (e) *Merit Increases.* The hourly rate used to calculate back pay shall be increased

86 according to the merit increase system/standard used by the employee's supervisor during
87 the back pay period and will include any increases from Oneida Business Committee or
88 General Tribal Council directives.

89 (1) The effective date of the employee's merit increase shall be the same as the
90 effective date for other employees in the same department. Retroactive increases
91 shall be calculated back to the retroactive date used for other employees in the
92 same department.

93 (2) The most recent performance review issued to the employee prior to being
94 involuntarily separated shall be used to determine the level of merit increase.
95 However, if the employee appealed the performance review to the Human
96 Resource Department Manager prior to involuntary separation, a method under
97 the ~~Tribe's personnel~~ Nation's laws, rules and policies ~~and procedures~~ shall be
98 used to determine the merit increase.

99 (f) *Bonuses and Incentives.* All bonus and incentive payments for which the employee
100 would have been eligible during the back pay period shall be included in the total back
101 pay amount, except for non-monetary gifts distributed by the ~~Tribe~~ Nation to all
102 employees (e.g. ~~W~~ inter ~~G~~ ift-gift certificates) or other non-monetary benefits, such as
103 clothing allowance.

104 (g) *Employment Benefits.* Employee benefits shall be subject to the provisions in this
105 section.

106 (1) *Insurance Benefits. Coverage by the Nation for H* ~~health~~ ~~I~~ nsurance ~~Premiums.~~
107 , dental insurance, vision insurance, life insurance, long-term disability and short-
108 term disability coverage shall continue during an involuntary separation, except in
109 the event of a termination where the coverage will discontinue. The ~~Tribe~~ Nation
110 shall deduct ~~health insurance~~ the employee's share of premiums paid from ~~the~~ any
111 back pay award.

112 (A) ~~Health insurance coverage by the Tribe shall continue during the~~
113 ~~involuntary separation, excluding terminations.~~ If the employee's
114 circumstances have changed during the back pay period and such
115 circumstances affect the employee's ~~health~~ insurance needs, the employee
116 shall notify the ~~Tribe~~ Nation of such changes at the time of reinstatement.

117 (B) An employee who is reinstated shall sign a waiver from Contract Health
118 authorizing a review of the back pay period to determine if Contract Health
119 services were rendered. If Contract Health determines services were
120 rendered during the back pay period, an Employee shall timely submit
121 insurance information to Contract Health in order for Contract Health to
122 retroactively bill the insurance provider to recoup funds for those services
123 rendered during the back pay period.

124 (2) *Flexible Benefit Plan Contributions.* If a terminated employee was
125 contributing to the ~~Tribe's~~ Nation's flexible benefit plan at the time of termination,
126 the status of the employee's flex benefit plan shall be subject to the provisions of
127 the Internal Revenue Code.

128 (3) *Retirement Benefit Contributions.* In the event the employee was participating
129 in the ~~Tribe's~~ Nation's retirement plan at the time of involuntary separation, the
130 employee shall be responsible for contacting the retirement plan administrator and

131 reactivating contributions.

132 (A) The employee may choose whether to have the employee's contribution
133 to the retirement plan that would have been made during the back pay
134 period deducted from the total back pay amount and deposited into the
135 employee's retirement account.

136 (B) If the employee was eligible for employer matching contributions at the
137 time of involuntary separation and the employee chooses to make a
138 contribution through back pay, the TribeNation shall contribute the
139 employer match into the employee's retirement account.

140 (C) If the employee was not participating in the Tribe'sNation's retirement
141 plan or chooses not to make contributions through the back pay process,
142 then the TribeNation shall not make employer match contributions into the
143 employee's retirement account ~~or otherwise make payments to the~~
144 ~~employee in lieu of employer match contributions.~~

145 (h) *Income Received During the Back Pay Period.*

146 (1) Unemployment Benefits. Depending upon the unemployment compensation
147 financing option elected by the Nation, either:

148 (A) Any unemployment compensation paid by the TribeNation to the State
149 of Wisconsin for an involuntarily separated employee shall be deducted
150 from the employee's back pay award; ~~or~~

151 (B) The employee is directly responsible for the reimbursement to the State
152 of Wisconsin. The Nation shall send a copy of the completed and signed
153 settlement agreement to the appropriate state department. The State then
154 may determine the amount, if any, of unemployment compensation benefits
155 received during the back pay period should be repaid.

156 (2) *Income Received Through Employment.* Except as provided in Section 4-
157 1(h)(2)(B), income earned by an employee during the back pay period shall be
158 deducted from the total back pay amount.

159 (A) The employee shall provide information to verify the amount of or lack
160 of earned income and sign an affidavit attesting to the amount of or lack of
161 earned income.

162 (B) If the employee worked an additional job prior to being involuntarily
163 separated and continued working in the same capacity, the income earned
164 from that employment shall not be deducted from the total back pay amount
165 to the extent that the income is consistent with pre-involuntary separation
166 earnings. Where the employee worked the additional job, the employee
167 shall provide information from the employer to verify the income earned
168 before and during the back pay period.

169 306.4-2. Payments Not Allowed. The TribeNation shall not include the following in any back
170 pay amount:

171 (a) Punitive damages;

172 (b) Consequential damages;

173 (c) Attorney's or advocate's fees; ~~;~~

174 (d) Time when the employee would not have been eligible to work; ~~;~~

175 (e) Monies normally paid for additional duties while working where an alternate

176 employee assumed that function while the employee was involuntarily separated, unless
177 the additional duties are a part of such involuntarily separated employee's regular
178 schedule.

179 | 306.4-3. *Back Pay Period.* Calculation of back pay begins on the day the employee is
180 involuntarily separated and ends on the day the employee is reinstated.

181 (a) If the employee is reinstated but refuses to return to work, the back pay period ends on
182 the date reinstatement would have taken effect, but was refused by the employee.

183 (b) Back pay shall be calculated by taking the employee's earnings during the fifty-two
184 (52) week period immediately preceding the date of the involuntary separation and divide
185 that amount by the number of weeks worked.

186 (1) If the employment prior to the involuntary separation was less than fifty-two
187 (52) weeks, the average weekly wage shall be calculated by taking the employee's
188 earnings and divide that amount by the number of weeks worked.

189 (2) If the involuntary separation period involves a fractional week, the indemnity
190 shall be paid for each day of such week at the rate of one-sixth (1/6) of the weekly
191 indemnity.

192

193 | ~~Article V~~ 306.5. **Back Pay Process**

194 306.5-1. The Oneida Law Office shall develop necessary forms and procedures for the purpose
195 of implementing this ~~Policy~~ law.

196 306.5-2. ~~The Internal departments shall cooperate as necessary with the~~ Oneida Law Office ~~shall~~
197 ~~work with the employee's supervisor, the Human Resource Department and the~~
198 ~~employee/advocate~~ in providing information needed to assemble ~~information~~ and prepare the
199 back pay agreement. =

200 | 306.5-3. A reasonable effort shall be made to complete the back pay agreement within thirty
201 (30) calendar days, starting the day after the party to the grievance action provides to the Oneida

202 | Law Office a judgment ordering back pay or the results of an investigation or test showing the
203 employee is cleared of any wrongdoing.

204 | 306.5-34. An employee not receiving back pay in accordance with the back pay agreement may
205 seek enforcement by ~~appealing to the court~~ Judiciary.

206

207 *End.*

208 Adopted - BC-5-24-06-PP

209 Amended - BC-06-23-10-F

210 Amended - BC-08-13-14-C

Chapter 306
Back Pay

306.1. Purpose and Policy
306.2. Adoption, Amendment, Appeal
306.3. Definitions

306.4. Back Pay Calculation
306.5. Back Pay Process

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306.1. Purpose and Policy

306.1-1. The purpose of this law is to set forth standards used in the calculation of back pay for all employees of the Nation in accordance with the Nation’s law.

306.1-2. It is the policy of the Nation to have consistent and standard procedures for the management of employee back pay.

306.2. Adoption, Amendment, Appeal

306.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-24-06-PP and amended by resolutions BC-06-23-10-F, BC-08-13-14-C and BC_____.

306.2-2. This law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

306.2-3. 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.

306.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

306.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

306.3. Definitions

306.3-1. 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) “Advocate” means a non-attorney person as provided by law and other person who is admitted to practice law and is presented to the court as the representative or advisor to a party.

(b) “Back pay” means money damages owed to the Employee for a salary or wage to make the employee whole as determined by the formulas set forth within this law.

(c) “Consequential Damages” means damages that are not a direct and immediately result of an act, but a consequence of the initial act, including but not limited to penalties on early withdrawal of retirement account.

(d) “Consultant” means a professional who is contracted externally whose expertise is provided on a temporary basis for a fee.

(e) “Earnings” includes vacation/personal time, shift differential, holiday pay, merit increases, bonuses and incentives, employment benefits and income received during the back pay period.

(f) “Employee” means any individual who is employed by the Nation and is subject to the direction and control of the Nation 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

41 is not limited to; an individual employed by any program or enterprise of the Nation, but
42 does not include elected or appointed officials or individuals employed by a Tribally
43 Chartered Corporation. For purposes of this law, individuals employed under an
44 employment contract as a limited term employee are employees of the Nation, not
45 consultants.

46 (g) "Involuntarily separated" means an employee removed from employment through
47 whatever means, other than a layoff, by the employer. This shall include, but is not
48 limited to, investigative leave, suspension or termination.

49 (h) "Judiciary" means the judicial system that was established by Oneida General Tribal
50 Council resolution GTC-01-07-13-B to administer the judicial authorities and
51 responsibilities of the Nation.

52 (i) "Nation" means the Oneida Nation.

53 (j) "Punitive Damages" means monetary compensation awarded to an injured party that
54 goes beyond that which is necessary to compensate the individual for losses and that is
55 intended to punish the other party.

56 57 **306.4. Back Pay Calculation**

58 306.4-1. *Back Pay Limitations.* Back pay shall only include the items identified in this Section
59 as they relate to the employee. Back pay shall include and be subject to the following:

60 (a) *Vacation/Personal Time Accrual.* Employees shall receive prorated credit for
61 vacation/ personal time which would have accrued during the back pay period.

62 (1) Reinstated employees shall be credited for vacation/ personal time. If the
63 crediting of vacation/personal time would result in the employee exceeding the
64 accrual cap pursuant to the Nation's laws, rules and policies, then any amount
65 over that cap shall be provided as a cash payout. Non-reinstated employees shall
66 be paid out vacation/personal time in lieu of crediting personal/vacation time.

67 (b) *Shift Differential.* Shift differential shall be included in the back pay amount to the
68 extent it is a part of the employee's regularly scheduled hours.

69 (c) *Tips.* If the employee received pooled tips at the time of involuntary separation, tips
70 shall be included in the total back pay amount at the same tip rate that other employees in
71 the same position and on the same shift received on the same dates.

72 (1) If the employee received individual tips at the time of involuntary separation,
73 the employee shall be ineligible for tips during the back pay period.

74 (d) *Holiday Pay.* Holiday pay shall be included in the back pay amount to the extent the
75 employee would have received such pay if the employee had not been involuntarily
76 separated.

77 (e) *Merit Increases.* The hourly rate used to calculate back pay shall be increased
78 according to the merit increase system/standard used by the employee's supervisor during
79 the back pay period and will include any increases from Oneida Business Committee or
80 General Tribal Council directives.

81 (1) The effective date of the employee's merit increase shall be the same as the
82 effective date for other employees in the same department. Retroactive increases
83 shall be calculated back to the retroactive date used for other employees in the
84 same department.

85 (2) The most recent performance review issued to the employee prior to being

86 involuntarily separated shall be used to determine the level of merit increase.
87 However, if the employee appealed the performance review to the Human
88 Resource Department Manager prior to involuntary separation, a method under
89 the Nation's laws, rules and policies shall be used to determine the merit increase.

90 (f) *Bonuses and Incentives.* All bonus and incentive payments for which the employee
91 would have been eligible during the back pay period shall be included in the total back
92 pay amount, except for non-monetary gifts distributed by the Nation to all employees
93 (e.g. winter gift) or other non-monetary benefits, such as clothing allowance.

94 (g) *Employment Benefits.* Employee benefits shall be subject to the provisions in this
95 section.

96 (1) *Insurance Benefits.* Coverage by the Nation for health insurance, dental
97 insurance, vision insurance, life insurance, long-term disability and short-term
98 disability coverage shall continue during an involuntary separation, except in the
99 event of a termination where the coverage will discontinue. The Nation shall
100 deduct the employee's share of premiums paid from any back pay award.

101 (A) If the employee's circumstances have changed during the back pay
102 period and such circumstances affect the employee's insurance needs, the
103 employee shall notify the Nation of such changes at the time of
104 reinstatement.

105 (B) An employee who is reinstated shall sign a waiver from Contract Health
106 authorizing a review of the back pay period to determine if Contract Health
107 services were rendered. If Contract Health determines services were
108 rendered during the back pay period, an Employee shall timely submit
109 insurance information to Contract Health in order for Contract Health to
110 retroactively bill the insurance provider to recoup funds for those services
111 rendered during the back pay period.

112 (2) *Flexible Benefit Plan Contributions.* If a terminated employee was
113 contributing to the Nation's flexible benefit plan at the time of termination, the
114 status of the employee's flex benefit plan shall be subject to the provisions of the
115 Internal Revenue Code.

116 (3) *Retirement Benefit Contributions.* In the event the employee was participating
117 in the Nation's retirement plan at the time of involuntary separation, the employee
118 shall be responsible for contacting the retirement plan administrator and
119 reactivating contributions.

120 (A) The employee may choose whether to have the employee's contribution
121 to the retirement plan that would have been made during the back pay
122 period deducted from the total back pay amount and deposited into the
123 employee's retirement account.

124 (B) If the employee was eligible for employer matching contributions at the
125 time of involuntary separation and the employee chooses to make a
126 contribution through back pay, the Nation shall contribute the employer
127 match into the employee's retirement account.

128 (C) If the employee was not participating in the Nation's retirement plan or
129 chooses not to make contributions through the back pay process, then the
130 Nation shall not make employer match contributions into the employee's

131 retirement account.

132 (h) *Income Received During the Back Pay Period.*

133 (1) *Unemployment Benefits.* Depending upon the unemployment compensation
134 financing option elected by the Nation, either:

135 (A) Any unemployment compensation paid by the Nation to the State of
136 Wisconsin for an involuntarily separated employee shall be deducted from
137 the employee's back pay award; or

138 (B) The employee is directly responsible for the reimbursement to the State
139 of Wisconsin. The Nation shall send a copy of the completed and signed
140 settlement agreement to the appropriate state department. The State then
141 may determine the amount, if any, of unemployment compensation benefits
142 received during the back pay period should be repaid.

143 (2) *Income Received Through Employment.* Except as provided in Section 4-
144 1(h)(2)(B), income earned by an employee during the back pay period shall be
145 deducted from the total back pay amount.

146 (A) The employee shall provide information to verify the amount of or lack
147 of earned income and sign an affidavit attesting to the amount of or lack of
148 earned income.

149 (B) If the employee worked an additional job prior to being involuntarily
150 separated and continued working in the same capacity, the income earned
151 from that employment shall not be deducted from the total back pay amount
152 to the extent that the income is consistent with pre-involuntary separation
153 earnings. Where the employee worked the additional job, the employee
154 shall provide information from the employer to verify the income earned
155 before and during the back pay period.

156 306.4-2. *Payments Not Allowed.* The Nation shall not include the following in any back pay
157 amount:

158 (a) Punitive damages;

159 (b) Consequential damages;

160 (c) Attorney's or advocate's fees;

161 (d) Time when the employee would not have been eligible to work;

162 (e) Monies normally paid for additional duties while working where an alternate
163 employee assumed that function while the employee was involuntarily separated, unless
164 the additional duties are a part of such involuntarily separated employee's regular
165 schedule.

166 306.4-3. *Back Pay Period.* Calculation of back pay begins on the day the employee is
167 involuntarily separated and ends on the day the employee is reinstated.

168 (a) If the employee is reinstated but refuses to return to work, the back pay period ends on
169 the date reinstatement would have taken effect, but was refused by the employee.

170 (b) Back pay shall be calculated by taking the employee's earnings during the fifty-two
171 (52) week period immediately preceding the date of the involuntary separation and divide
172 that amount by the number of weeks worked.

173 (1) If the employment prior to the involuntary separation was less than fifty-two
174 (52) weeks, the average weekly wage shall be calculated by taking the employee's
175 earnings and divide that amount by the number of weeks worked.

176 (2) If the involuntary separation period involves a fractional week, the indemnity
177 shall be paid for each day of such week at the rate of one-sixth (1/6) of the weekly
178 indemnity.
179

180 **306.5. Back Pay Process**

181 306.5-1. The Oneida Law Office shall develop necessary forms and procedures for the purpose
182 of implementing this law.

183 306.5-2. Internal departments shall cooperate as necessary with the Oneida Law Office in
184 providing information needed to assemble and prepare the back pay agreement.

185 306.5-3. A reasonable effort shall be made to complete the back pay agreement within thirty
186 (30) calendar days, starting the day after the party to the grievance action provides to the Oneida
187 Law Office a judgment ordering back pay or the results of an investigation or test showing the
188 employee is cleared of any wrongdoing.

189 306.5-4. An employee not receiving back pay in accordance with the back pay agreement may
190 seek enforcement by the Judiciary.

191
192 *End.*

193 Adopted - BC-5-24-06-PP

194 Amended - BC-06-23-10-F

195 Amended - BC-08-13-14-C