Oneida Nation

Legislative Reference Office
P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214
http://oneida-nsn.gov/LOC

Committee Members
Brandon Stevens, Chairperson
Tehassi Hill, Vice Chairperson
Fawn Billie, Councilmember
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center
May 18, 2016 9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be approved
1. May 4, 2016 LOC Meeting Minutes

III. Current Business
1. Back Pay Amendments
2. Marriage Law Amendments
3. Employment Law
4. Mortgage and Foreclosure Law

IV. New Submissions

V. Additions

VI. Administrative Updates
1. Quarterly Report

VII. Executive Session

VIII. Recess/Adjourn

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LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Business Committee Conference Room-2nd Floor Norbert Hill Center
May 4, 2016 9:00 a.m.

Present: Tehassi Hill, Fawn Billie, Jennifer Webster, David P. Jordan
Excused: Brandon Stevens
Others Present: Taniquelle Thurner, Krystal John, Maureen Perkins, Bonnie Pigman, Cheryl Skolaski, Nancy Barton, Cathy Metoxen, Ed Delgado, Dianne McLester-Heim, Leyne Orosco, Danelle Wilson, Mike Debraska *(via videoconference from SEOTS)*

I. Call to Order and Approval of the Agenda

Tehassi Hill called the May 4, 2016 Legislative Operating Committee meeting to order at 9:03 a.m.

Motion by David P. Jordan to adopt the agenda with the addition of the Business Committee Meetings law to the Additions section; seconded by Fawn Billie. Motion carried unanimously.

II. Minutes to be approved

1. **April 20, 2016 LOC Meeting Minutes**
   Motion by Fawn Billie to approve the April 20, 2016 LOC meeting minutes; seconded by David P. Jordan. Motion carried with David P. Jordan and Jennifer Webster abstaining.

III. Current Business

1. **Petition: Debraska – Health Board** *(3:43-19:12)*
   Motion by Jennifer Webster to accept the statement of effect for Petition: Debraska – Health Board and forward to the Oneida Business Committee; seconded by Fawn Billie. Motion carried unanimously.

2. **Cemetery Law Amendments** *(19:13-43:38)*
   Motion by Fawn Billie to defer the Cemetery Law Amendments to the sponsor's

office and bring back when ready; seconded by David P. Jordan. Motion carried unanimously.

3. **Garnishment Amendments** *(43:39-45:20)*
   Motion by Jennifer Webster to approve the Garnishment Amendments public meeting packet and forward for a Public Meeting to be held on June 3, 2016; seconded by Fawn Billie. Motion carried unanimously.

4. **Employment Law** *(45:21-47:10)*
   Motion by Jennifer Webster to accept the Employment law public meeting comments and defer the consideration of the comments to a work meeting to be held on Thursday, May 12, 2016 in the Business Committee Conference Room from 10:30 a.m. - 1:30 p.m.; seconded by David P. Jordan. Motion carried unanimously.

5. **Eviction and Termination** *(47:11-48:35)*
   Motion by David P. Jordan to accept the draft of the Eviction and Termination law and defer to the Legislative Reference Office for a legislative analysis; seconded by Jennifer Webster. Motion carried unanimously.

6. **Leasing Law** *(48:36-50:32)*
   Motion by Jennifer Webster to accept the Leasing law public meeting packet with the updated draft and legislative analysis based on the latest comments received from the BIA and reaffirm the public meeting scheduled for the Leasing law on May 19, 2016 at 12:15 p.m.; seconded by Fawn Billie. Motion carried unanimously.

IV. New Submissions

1. **Rules of Administrative Procedure** *(50:33-52:03)*
   Motion by Fawn Billie add the Rules of Administrative Procedure to the Active Files List; seconded by Jennifer Webster. Motion carried unanimously.

   Note: Brandon Stevens will be the sponsor of the Rules of Administrative Procedure.

V. Additions

1. **Business Committee Meeting Law** *(52:04-1:10:20)*
   Motion by Fawn Billie to make the Business Committee Meeting law a priority item on the Active Files List and to direct the sponsor to schedule a strategy meeting to discuss possible solutions to mitigate tension and improve the communication process at Business Committee meetings; seconded by Jennifer Webster. Motion carried unanimously.

VI. Administrative Updates

VII. Executive Session

VIII. Recess/Adjourn

Motion by Fawn Billie to adjourn the May 4, 2016 Legislative Operating Committee meeting at 10:13 a.m.; seconded by Jennifer Webster. Motion carried unanimously.

Legislative Operating Committee
May 18, 2016

Back Pay Amendments

Submission Date: 6/11/15

X Public Meeting: 5/5/2016
□ Emergency Enacted:
Expires:

LOC Sponsor: David P. Jordan

Summary: *This request was submitted to clarify two conflicting provisions related to whether health insurance coverage continues during involuntary separation/terminations, and to require reinstated employees to reimburse CHS dollars used if an employee claims medical treatment from CHS prior to reinstatement.*

6/17/15 LOC: Motion by David P. Jordan to add the Back Pay Policy Amendments to the active files list with himself as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

8/19/15 LOC: Motion by Jennifer Webster to accept the memorandum regarding the status of the Back Pay Policy Amendments as FYI; seconded by Fawn Billie. Motion carried unanimously.

10/21/15 LOC: Motion by David P. Jordan to make the noted changes clarifying employment benefits and defer the Back Pay Policy Amendments for a legislative analysis and fiscal impact statement; seconded by Fawn Billie. Motion carried unanimously.

3/22/16 LOC: Motion by David P. Jordan to accept the legislative analysis of the Back Pay Law and prepare for a public meeting of May 5th, 2016; seconded by Tehassi Hill. Motion carried unanimously.
For the record: Brandon Stevens stated the LOC is changing back to using "shall" instead of "must" and the Back Pay Policy will be re-titled as the Back Pay Law based on the LOC direction of changing all policies into laws.

4/6/16 LOC: Motion by David P. Jordan to prepare the Back Pay Law Amendments for a public meeting scheduled May 5th, 2016; seconded by Jennifer Webster. Motion carried unanimously.

Next Steps:

- Review the Back Pay Amendments public meeting comments and direct any changes.

Oneida Nation
Legislative Reference Office

Krystal L. John, Staff Attorney
Douglass A. McIntyre, Staff Attorney
Taniquelle J. Thurner, Legislative Analyst
Maureen Perkins, Legislative Analyst

P.O. Box 365
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https://oneida-nsn.gov/Laws

Memorandum

TO: Legislative Operating Committee
FROM: Douglass A. McIntyre, Staff Attorney
DATE: May 18, 2016
RE: Back Pay Amendments: Public Meeting Comment Review

On May 5, 2016, a public meeting was held regarding a proposal to amend an existing law: the Back Pay. These amendments 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)].

This memorandum is submitted as a review of the comments received during the public comment process including at the public meeting and those comments received before the comment period ended on May 12, 2016. The public meeting draft with comments, as well as the transcripts and written comments received, have been attached for your review.

Comments 1& 2. Definition.
Comment 1. Rena Metoxen (written):
One of the proposed amendments to the policy is to "**Clarify the definition of back pay to make the employee whole'**." If that was the true intent of the amendment, our office would wholeheartedly agree. To "**make whole**" is to **make payment or award sufficient to put the party who was harmed back into the position he/she would have been without the fault of another**."

The proposed Back Pay Policy, 306.3 Definitions, (b) reads: "Back pay" means money damages owed to the Employee for a salary or wage to make the employee whole **as determined by the formula set forth within the law**." (emphasis added).

Therein, lies the problem and the contradiction. **The employee cannot be made whole if we use the formula described in the policy**.

Comment 2. Rena Metoxen (written):
That is why the policy is contradictory. It claims that it's making the employee whole **as determined by the calculations contained in the policy**. Either we are making the employee whole by giving him back pay that he would have earned if he had not been suspended, or we are calculating back pay according to the formula in the policy. Either/or. We can't do both. That is why the policy is contradictory. It uses both scenarios in the same sentence when it reads that "back pay is money damages owed to the employee for a salary or wage to make the employee whole as **determined by formulas set forth within this policy**."

Response.
In the table below are the current definition of back pay and the proposed revision.

Current Law	**Proposed Amendments**
(b) "Back pay" shall mean money damages owed to the Employee for a salary or wage that would have been earned in the time taken to litigate 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.	(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.

This revision was requested to remove the formula from the current definition since the formulas used to calculate back pay are found elsewhere in the body of the law, these formulas are different and the formula is not needed in the definition. The definition of back pay reads "to make the employee whole *as determined by the formulas set forth within this law*." There is no contradiction here as the amount that is needed to make the employee whole is determined by the formulas found within the law. However, to avoid confusion, the LOC may want to consider revising the language to remove "make whole" from the law. A potential revision could be:

> (b) "Back pay" ~~shall~~ means money damages owed to the ~~E~~employee for a salary or wage ~~that would have been earned in the time taken to litigate 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~~ to compensate the employee as determined by the formulas set forth within this law.

Comment 3. General - Section 306.4-3(b)(2)
Rena Metoxen (written):
If back pay is truly intended to make the employee whole, it should be calculated according to the individual employee's regularly scheduled days and wages and the employee should be paid accordingly.

Response

This comment reflects the general basis of the comments pertaining to this section. There are no recommended changes based on this comment. Potential changes to the section are discussed later in this memorandum.

Comment 4. Application - Section 306.4-3(b)(2)
Rena Metoxen (written):
Please refer to Back Pay Policy 306.4-3 Back Pay Period (52) (2)" lf the involuntary separation period involves a fractional week, the indemnity shall be paid for each day of such week at the rate of one-sixth (1/6) of the weekly indemnity." In other words, according to this formula, if an employee is suspended for less than 7 days, this is the formula used to calculate their back pay.

Response
The commenter is correct that section 306.4-3(b)(2) would be used where an employee were to be suspended for less than a seven (7) day period. It would also be used where an employee is suspended for a longer period of time involving a fractional week. There are no recommended changes from this comment. Potential changes to the section are discussed later in this memorandum.

Comment 5. Parallels to Worker's Compensation Law - Section 306.4-3(b)(2)
Rena Metoxen (written):
Please refer to the Oneida Worker's Compensation Law, 13.6-6 (b) *"Employee's Average Daily Wage. If the disability period involves a fractional week, the indemnity shall be paid for each day of such week at the rate of one-sixth of the weekly indemnity."*

Does that sound familiar? It is the exact same computation that's been incorporated into the Back Pay Policy. Worker's Comp is designed to only pay a portion of the worker's average wage. It is not intended to make the employee whole. Back pay and Worker's Comp are two separate and distinct entities. It is unfair and unreasonable to use the same formula to calculate both.

Response.
The commenter is correct that the language used that section 13.6-6(b) of Worker's Compensation parallels the language used in the section 306.4-3(b)(2) of Back Pay. This language was added in the 2014 amendments to Back Pay based on input from the Finance Department. The reasoning behind this amendment was to create a consistent ratio for all employees and payment types given wide range of these found in the Tribe. There are no recommended changes from this comment. Potential changes to the section are discussed later in this memorandum.

Comment 6. Blue Book - Section 306.4-3(b)(2)
Rena Metoxen (written):
Also, the Tribe's Employee Manual, Section V.D. 6, 3.c, describes an Area Manager's options when issuing a decision regarding an employee appeal, which includes "Overturn the disciplinary action. If a suspension or termination is overturned, the employee (petitioner) shall

be reinstated with **full back pay**." (emphasis added) The Manual does not allow for a formula for fractional weeks at the rate of 1/6 of the weekly indemnity.

Employee Manual also describes a work day as follows:

> Work Day:
> 3.2 The regular Tribal workday is from 8:00 am to 4:30 pm with an hour for lunch.
> 3.2.1 The exception to these hours occurs only if the program/enterprise hours must vary for the purposes of providing service (such as Retail and Gaming Division's hours beyond 4:30pm). Shifts will be developed as needed and the shift hours will then become the regular

In many cases, for many reasons, program/enterprise hours and schedules vary and those shift hours become the employees regularly scheduled work days. It is unfair and unreasonable to calculate every Tribal employee's back pay that includes a fractional week, according to the Worker's Compensation formula contained in our current Back Pay policy and again in the proposed policy.

Response
Back pay appears in the Nation's Personnel Policies and Procedures twice.

(V)(D)(5) reads:	(V)(D)(6)(a)(3) reads:
f. Should a disciplinary action result in the suspension or termination of an employee, the following guidelines shall apply: 1) The supervisor shall consult with the HRD Manager to mutually determine the length of the suspension. a) Suspensions will be limited to a maximum of three (3) weeks. b) Suspension/terminations that are overturned in the appeal process shall result in the employee receiving back pay for the days he/she was suspended/terminated.	3) The Area Manager will do one of the following: a) Uphold the disciplinary action; or b) Modify the disciplinary action; or c) Overturn the disciplinary action. If a suspension or termination is overturned, the employee (petitioner) shall be reinstated with full back pay.

Given the complexity of the issue as the Nation has a range of employee and payment types (including salaried/hourly employees, employees with varying shift days and hours, tips/non-tipped, etc.) the Back Pay Policy was created to provide a consistent and standard procedure for the management of employee back pay. There are no recommended changes based on this comment. Potential changes to the section are discussed later in this memorandum.

Comments 7 & 8. Fractional Formula - Section 306.4-3(b)(2)
Comment 7. Patricia Campbell (written): The only thing I disagree with the Back Pay Policy is:

> 306.4-3. Back Pay Period. (b) 2. If the involuntary separation period involves a fractional week, the indemnity shall be paid for each day of such week at the rate of one-sixth (1/6) of the weekly indemnity.

Most employees do not work 6 days a week. In order to truly 'make an employee whole', I believe you need to:

> 1. Actually pay them the amount of hours they missed multiplied by their hourly rate at the time of the incident, or
> 2. Use the average weekly rate and divide that rate by the number of days the employee actually works (hardly no one works 6 days a week) or

In Gaming some employees work 4-ten hour days, some work 5-eight hour days, some work a 30 hour week, or less.

> So, for example: an employee's average weekly rate is $500.00 and you divide that by 1/6, as the Back Pay Policy now does, the employee would get $83.33 per day. If the employee is eligible for 2 days of back pay the employee gets $166.66. But, if the employee missed 2-ten hour days, that would be ½ (20 of 40 hours) of their work week, and they would still only get 2/6 of their pay for the week, when they deserve $250.00 to 'be made whole'.

I believe the policy as its worded now hurts most Gaming employees, and does not make them whole.

Comment 8. Rena Metoxen (written): It has been my experience, as a tribal employee advocate for over 20 years; that the majority of suspension are issued to front line employees for 7 days or less. Therefore, this formula would be applicable to the majority of Tribal employee suspensions. It doesn't matter if the employee's regularly scheduled hours are five, 8-hours days per week or four, 10 hour days per work. Their weekly work hours are divided by 6, as if they work 6 days per week, and they are paid accordingly. That is what this policy mistakenly describes as "making an employee whole."

Here's an example of an overturned suspension where the employee is made whole:

- Employee receives a one day suspension.
- That suspension is appealed and overturned
- Employee earns $10 per hour
- Employee is scheduled to work four 10-hour days per week.
- Employee earns $100 per day or $400 per week.
- Employee receives $100 in back pay for 1 day of back pay.

According to the formula used in both the existing policy and the proposed policy, it doesn't matter if the employee works two 20-hour days per week or five 8-hours days per week; the fractional work week hours are divided by 6 days and that's the back pay.

Using the example above, here is how the same employee receives back pay according to the existing policy AND the proposed policy:

- Employee receives a one day suspension.
- That suspension is appealed and overturned.
- Employee earns $10 per hour
- Employee is scheduled to work four 10-hour days per week.
- Employee earns $100 per day or $400 per week.
- The employee's fractional work week of 4-day/40 hour is divided by 6.
- Employee receives $66 and some change.

How is that making the employee whole?

Response.
The commenters request a new formula for section 306.4-3(b)(2). The language in this section is in the current law and there were no proposed changes in the public meeting draft. As stated above, this language parallels a similar provision in the Worker's Compensation Law. The language was changed as part of the 2014 amendments to create a consistent ratio for all employees and payment types.

Both the current 2014 version and prior 2010 version of the law are in the table below for reference:

2010 version of Back Pay	**2014 version of Back Pay**
4-1. Back Pay Period. Calculation of back pay begins on the day the employee is suspended or terminated and ends on the day the employee returns to work, due to either the end of the suspension period or reinstatement.	4-3. *Back Pay Period*. Calculation of back pay begins on the day the employee is involuntarily separated and ends on the day the employee is reinstated.
(a) If the employee is offered reinstatement but refuses to return to work, the back pay period ends on the date the offer of reinstatement was made.	(a) If the employee is reinstated but refuses to return to work, the back pay period ends on the date reinstatement would have taken effect, but was refused by the employee.
(b) The employee shall be paid according to the schedule or the average number of hours worked immediately prior to suspension or termination. For instance, if the employee observed a reduced-hour schedule at the time of termination, back pay shall be calculated according to the same schedule.	(b) Back pay shall be calculated by taking the employee's earnings during the fifty-two (52) week period immediately preceding the date of the involuntary separation and divide that amount by the number of weeks worked. (1) If the employment prior to the involuntary separation was less than fifty-two (52) weeks,

	the average weekly wage shall be calculated by taking the employee's earnings and divide that amount by the number of weeks worked. (2) If the involuntary separation period involves a fractional week, the indemnity shall be paid for each day of such week at the rate of one-sixth (1/6) of the weekly indemnity.

The commenters each provide examples to support their notion that employees that are owed back pay involving a fractional week are not being fairly compensated. The examples involve simple cases where an employee is suspended for one day which causes the employee to miss a scheduled shift. However, the fractional back pay formula would be used for all back pays involving a fractional week including ones where the employee has no hours scheduled. One of the commenters provides suggested changes:

1. Actually pay them the amount of hours they missed multiplied by their hourly rate at the time of the incident, or
2. Use the average weekly rate and divide that rate by the number of days the employee actually works (hardly no one works 6 days a week) or

There are some potential issues with these suggested changes. The first suggested change could only be applied to employees that already had a set schedule. The second suggested change could face issues where employees work varying scheduled days. Other potential options would be a formula containing the average weekly hours

Any change to the formula would be a policy decision for the LOC. It is recommended that the LOC direct the LRO to create several potential options and to bring back to the LOC.

Conclusion

There were no comments provided at the public meeting and multiple comments provided in writing which the LOC should consider and incorporate as appropriate. It is recommended that these comments be reviewed at a LOC meeting. An invitation was provided to the interested parties to review the comments and provide direction to any changes necessary based on the comments.

Public Meeting Draft (Draft 6 redline to current)
2016 05 05

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.[12]

[1] **Rena Metoxen** (written): One of the proposed amendments to the policy is to "**Clarify the definition of back pay to make the employee whole'**." If that was the true intent of the amendment, our office would wholeheartedly agree. To "**make whole**" is to **make payment or award sufficient to put the party who was harmed back into the position he/she would have been without the fault of another**."
The proposed Back Pay Policy, 306.3 Definitions, (b) reads: "Back pay" means money damages owed to the Employee for a salary or wage to make the employee whole **as determined by the formula set forth within the**

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

~~(g)~~(f) "Employee" ~~shall mean~~means any individual who is employed by the ~~Tribe~~Nation and is subject to the direction and control of the ~~Tribe~~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 is not limited to; an individual employed by any program or enterprise of the ~~Tribe~~Nation, but does not include elected or appointed officials or individuals employed by a Tribally Chartered Corporation. For purposes of this ~~Policy~~law, individuals employed under an employment contract as a limited term employee are employees of the ~~Tribe~~Nation, not consultants.

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

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

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

(i) "Nation" means the Oneida Nation.

(j) "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.

~~Article IV~~306.4. Back Pay Calculation

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

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

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law." (emphasis added).
Therein, lies the problem and the contradiction. The employee cannot be made whole if we use the formula described in the policy.

[2] **Rena Metoxen** (written): That is why the policy is contradictory. It claims that it's making the employee whole **as determined by the calculations contained in the policy**. Either we are making the employee whole by giving him back pay that he would have earned if he had not been suspended, or we are calculating back pay according to the formula in the policy. Either/or. We can't do both. That is why the policy is contradictory. It uses both scenarios in the same sentence when it reads that "back pay is money damages owed to the employee for a salary or wage to make the employee whole as **determined by formulas set forth within this policy**."

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

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

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

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

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

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

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

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

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

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

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

(A) ~~Health insurance coverage by the Tribe shall continue during the involuntary separation, excluding terminations.~~ If the employee's

circumstances have changed during the back pay period and such circumstances affect the employee's ~~health~~ insurance needs, the employee shall notify the ~~Tribe~~Nation of such changes at the time of reinstatement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Punitive damages;

(b) Consequential damages;

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

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

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

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

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

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

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

(2) If the involuntary separation period involves a fractional week, the indemnity shall be paid for each day of such week at the rate of one-sixth (1/6) of the weekly indemnity.[3][4][5][6][7][8]

---

[3] **Rena Metoxen** (written): If back pay is truly intended to make the employee whole, it should be calculated according to the individual employee's regularly scheduled days and wages and the employee should be paid accordingly.

[4] **Rena Metoxen** (written): Please refer to Back Pay Policy 306.4-3 Back Pay Period (52) (2)" lf the involuntary separation period involves a fractional week, the indemnity shall be paid for each day of such week at the rate of one-sixth (1/6) of the weekly indemnity." In other words, according to this formula, if an employee is suspended for less than 7 days, this is the formula used to calculate their back pay.

[5] **Rena Metoxen** (written): **Please refer to the Oneida Worker's Compensation Law, 13.6-6 (b)** *"Employee's Average Daily Wage. If the disability period involves a fractional week, the indemnity shall be paid for each day of such week at the rate of one-sixth of the weekly indemnity."*
Does that sound familiar? It is the exact same computation that's been incorporated into the
Back Pay Policy. Worker's Comp is designed to only pay a portion of the worker's average wage. It is not intended

to make the employee whole. Back pay and Worker's Comp are two separate and distinct entities. It is unfair and unreasonable to use the same formula to calculate both.

[6] **Patricia Campbell** (written): The only thing I disagree with the Back Pay Policy is:

> 306.4-3. Back Pay Period. (b) 2. If the involuntary separation period involves a fractional week, the indemnity shall be paid for each day of such week at the rate of one-sixth (1/6) of the weekly indemnity.

Most employees do not work 6 days a week. In order to truly 'make an employee whole', I believe you need to:

> 1. Actually pay them the amount of hours they missed multiplied by their hourly rate at the time of the incident, or
> 2. Use the average weekly rate and divide that rate by the number of days the employee actually works (hardly no one works 6 days a week) or

In Gaming some employees work 4-ten hour days, some work 5-eight hour days, some work a 30 hour week, or less.

> So, for example: an employee's average weekly rate is $500.00 and you divide that by 1/6, as the Back Pay Policy now does, the employee would get $83.33 per day. If the employee is eligible for 2 days of back pay the employee gets $166.66. But, if the employee missed 2-ten hour days, that would be ½ (20 of 40 hours) of their work week, and they would still only get 2/6 of their pay for the week, when they deserve $250.00 to 'be made whole'.

I believe the policy as its worded now hurts most Gaming employees, and does not make them whole.

[7] **Rena Metoxen (written):** Also, the Tribe's Employee Manual, Section V.D. 6, 3.c, describes an Area Manager's options when issuing a decision regarding an employee appeal, which includes "Overturn the disciplinary action. If a suspension or termination is overturned, the employee (petitioner) shall be reinstated with **full back pay**." (emphasis added) The Manual does not allow for a formula for fractional weeks at the rate of 1/6 of the weekly indemnity.

Employee Manual also describes a work day as follows:

> Work Day:
> 3.2 The regular Tribal workday is from 8:00 am to 4:30 pm with an hour for lunch.
> 3.2.1 The exception to these hours occurs only if the program/enterprise hours must vary for the purposes of providing service (such as Retail and Gaming Division's hours beyond 4:30pm). Shifts will be developed as needed and the shift hours will then become the regular

In many cases, for many reasons, program/enterprise hours and schedules vary and those shift hours become the employees regularly scheduled work days. It is unfair and unreasonable to calculate every Tribal employee's back pay that includes a fractional week, according to the Worker's Compensation formula contained in our current Back Pay policy and again in the proposed policy.

[8] **Rena Metoxen (written):** It has been my experience, as a tribal employee advocate for over 20 years; that the majority of suspension are issued to front line employees for 7 days or less. Therefore, this formula would be applicable to the majority of Tribal employee suspensions. It doesn't matter if the employee's regularly scheduled hours are five, 8-hours days per week or four, 10 hour days per work. Their weekly work hours are divided by 6, as if they work 6 days per week, and they are paid accordingly. That is what this policy mistakenly describes as "making an employee whole."

Here's an example of an overturned suspension where the employee is made whole:

- Employee receives a one day suspension.
- That suspension is appealed and overturned
- Employee earns $10 per hour
- Employee is scheduled to work four 10-hour days per week.
- Employee earns $100 per day or $400 per week.
- Employee receives $100 in back pay for 1 day of back pay.

According to the formula used in both the existing policy and the proposed policy, it doesn't matter if the employee works two 20-hour days per week or five 8-hours days per week; the fractional work week hours are divided by 6 days and that's the back pay.

Using the example above, here is how the same employee receives back pay according to the existing policy AND the proposed policy:

- Employee receives a one day suspension.
- That suspension is appealed and overturned.

~~Article V~~306.5. Back Pay Process

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

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

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

306.5-~~3~~4. An employee not receiving back pay in accordance with the back pay agreement may seek enforcement by ~~appealing to~~ the ~~court~~Judiciary.

End.

Adopted - BC-5-24-06-PP
Amended - BC-06-23-10-F
Amended - BC-08-13-14-C

- Employee earns $10 per hour
- Employee is scheduled to work four 10-hour days per week.
- Employee earns $100 per day or $400 per week.
- The employee's fractional work week of 4-day/40 hour is divided by 6.
- Employee receives $66 and some change.

How is that making the employee whole?

Oneida Tribe of Indians of Wisconsin

Legislative Reference Office
P.O. Box 365
Oneida, WI 54155
(920) 869-4375
(800) 236-2214

Committee Members
Brandon Stevens, Chairperson
Tehassi Hill, Vice Chairperson
Fawn Billie, Councilmember
Jennifer Webster, Councilmember
David P. Jordan, Councilmember

LEGISLATIVE OPERATING COMMITTEE

Public Meeting on the Back Pay Amendments
Business Committee Conference Room-2nd Floor
Norbert Hill Center
May 5, 2016 12:15 p.m.

PRESENT: Tehassi Hill, Jennifer Webster, David P. Jordan, Fawn Billie, Rae Skenandore, Danelle Wilson, Maureen Perkin, Douglass McIntyre and Krystal John.

Back Pay Amendments

Tehassi Hill: Okay, I am going to call this public meeting to order at 12:15 p.m. to be held today in the Business Committee Conference Room, it was noticed. The topic today is the Back Pay Amendments. This is a proposal that would clarify that would (1) clarify that Back Pay is a law and adjust the format accordingly; (2) clarify that the definition of back pay is to "make the employee whole"; (3) clarify that the reinstatement of insurance benefits includes long-term disability, short-term disability, dental, vision and life insurance; (4) include OBC or GTC directives for increase in pay into the back pay amount awarded; and (5) require a reinstated employee to work with the Oneida Contract Health to determine if services were rendered and if insurance can retroactively recoup funds from Oneida Contract Health. To obtain copies of the Public Meeting documents for this proposal or to learn about the LOC public meeting process, please visit the website. Public comment period open until May 12, 2016. During the public comment period, all interested parties may submit written comments and/or transcript of the testimony spoken/comments made during the public meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office on the second floor of the Norbert Hill Center or by U.S. mail to the address noticed. There is no one present currently that is going to give comments so we will give it until twenty after for people to arrive a little bit. Also for attendance for LOC members, we have David Jordan and Jennifer Webster. Add Fawn Billie to the attendance for today's public meeting.

Fawn Billie: Thank-you.

Tehassi Hill: Alright we gave an extra five minutes for people to arrive and make it known that they wish to make comments and now seeing that there's nobody at this time to make comments we are going to go ahead and close this meeting at 12:20 p.m. so I would like to thank everybody and staff for their participation. Thank-you.

Douglass A. McIntyre

From: Patricia E. Campbell
Sent: Monday, April 11, 2016 3:23 PM
To: LOC
Cc: Larae A. Gower; Larry B. Smith
Subject: Comments regarding Back Pay Policy

I will try to attend the Public Meeting regarding Back pay, however, I want to send my comment in case I'm unable to make it on May 5, 2016.

The only thing I disagree with the Back Pay Policy is:

306.4-3. Back Pay Period. (b) 2. If the involuntary separation period involves a fractional week, the indemnity shall be paid for each day of such week at the rate of one-sixth (1/6) of the weekly indemnity.

Most employees do not work 6 days a week. In order to truly 'make an employee whole', I believe you need to:

1. Actually pay them the amount of hours they missed multiplied by their hourly rate at the time of the incident, or
2. Use the average weekly rate and divide that rate by the number of days the employee actually works (hardly no one works 6 days a week) or

In Gaming some employees work 4-ten hour days, some work 5- eight hour days, some work a 30 hour week, or less.

So, for example: an employee's average weekly rate is $500.00 and you divide that by 1/6, as the Back Pay Policy now does, the employee would get $83.33 per day. If the employee is eligible for 2 days of back pay the employee gets $166.66. But, if the employee missed 2-ten hour days, that would be ½ (20 of 40 hours) of their work week, and they would still only get 2/6 of their pay for the week, when they deserve $250.00 to 'be made whole'.

I believe the policy as its worded now hurts most Gaming employees, and does **not** make them whole.

Thank you,

Pat Campbell
Gaming Employee Relations Representative
Gaming Employee Services Building
pcampbel@oneidanation.org
(920) 429-3065

EMPLOYEE ADVOCACY DEPARTMENT
SKENANDOAH COMPLEX
909 Packerland Drive
Green Bay, WI 54303
920-496-5318 920-496-7940 (fax)

Legislative Reference Office
PO Box 365
Oneida, WI, 54155
LOC@oneidanation.org

May 4, 2016

RE: Comments regarding proposed Back Pay Amendments

Greetings,

I would like to address some of the proposed changes to the Back Pay Policy as well as sections of the existing policy. The policy, as contained in the existing Back Pay Policy and its proposed draft, are unfair and contradictory.

One of the proposed amendments to the policy is to **"Clarify the definition of back pay to make the employee whole'."** If that was the true intent of the amendment, our office would wholeheartedly agree. To **"make whole"** is to **make payment or award sufficient to put the party who was harmed back into the position he/she would have been without the fault of another."**

The proposed Back Pay Policy, 306.3 Definitions, (b) reads: "Back pay" means money damages owed to the Employee for a salary or wage to make the employee whole **as determined by the formula set forth within the law." (emphasis added)**

Therein, lies the problem and the contradiction. **The employee cannot be made whole if we use the formula described in the policy.**

Please refer to Back Pay Policy 306.4-3 Back Pay Period (52) (2)" *If the involuntary separation period involves a fractional week, the indemnity shall be paid for each day of such week at the rate of one-sixth (1/6) of the weekly indemnity."* In other words, according to this formula, if an employee is suspended for less than 7 days, this is the formula used to calculate their back pay.

It has been my experience, as a tribal employee advocate for over 20 years; that the majority of suspensions are issued to front line employees for 7 days or less. Therefore, this formula would

be applicable to the majority of Tribal employee suspensions. It doesn't matter if the employee's regularly scheduled hours are five, 8-hours days per week or four, 10 hour days per work. Their weekly work hours are divided by 6, as if they work 6 days per week, and they are paid accordingly. That is what this policy mistakenly describes as "making an employee whole."

Here's an example of an overturned suspension where the employee is made whole:

- Employee receives a one day suspension.
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- Employee earns $10 per hour
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According to the formula used in both the existing policy and the proposed policy, it doesn't matter if the employee works two 20-hour days per week or 5 8--hours days per week; the fractional work week hours are divided by 6 days and that's the back pay.

Using the example above, here is how the same employee receives back pay according to the existing policy AND the proposed policy:

- Employee receives a one day suspension.
- That suspension is appealed and overturned.
- Employee earns $10 per hour
- Employee is scheduled to work four 10-hour days per week.
- Employee earns $100 per day or $400 per week.
- The employee's fractional work week of 4-day/40 hour is divided by 6.
- Employee receives $66 and some change.

How is that making the employee whole? That is why the policy is contradictory. It claims that it's making the employee whole **as determined by the calculations contained in the policy.** Either we are making the employee whole by giving him back pay that he would have earned if he had not been suspended, or we are calculating back pay according to the formula in the policy. Either/or. We can't do both. That is why the policy is contradictory. It uses both scenarios in the same sentence when it reads that "back pay is money damages owed to the employee for a salary or wage to make the employee whole **as determined by formulas set forth within this policy."**

Please refer to the Oneida Worker's Compensation Law, 13.6-6 (b) "*Employee's Average* Daily *Wage. If the disability period involves a fractional week, the indemnity shall be paid for each day of such week at the rate of one-sixth of the weekly indemnity.*"

Does that sound familiar? It is the exact same computation that's been incorporated into the Back Pay Policy. Worker's Comp is designed to only pay a portion of the worker's average wage. It is not intended to make the employee whole. Back pay and Worker's Comp are two separate and distinct entities. It is unfair and unreasonable to use the same formula to calculate both.

Also, the Tribe's Employee Manual, Section V.D. 6, 3.c, describes an Area Manager's options when issuing a decision regarding an employee appeal, which includes "Overturn the disciplinary action. If a suspension or termination is overturned, the employee (petitioner) shall be reinstated with **full back pay." (emphasis added)** The Manual does not allow for a formula for fractional weeks at the rate of 1/6 of the weekly indemnity.

Employee Manual also describes a work day as follows:

Work Day:

3.2 The regular Tribal workday is from 8:00 am to 4:30 pm with an hour for lunch.

3.2.1 The exception to these hours occurs only if the program/enterprise hours must vary for the purposes of providing service (such as Retail and Gaming Division's hours beyond 4:30 pm). Shifts will be developed as needed and the shift hours will then become the regular work day for the assigned employees for the program or enterprise.

In many cases, for many reasons, program/enterprise hours and schedules vary and those shift hours become the employees regularly scheduled work days. It is unfair and unreasonable to calculate every Tribal employee's back pay that includes a fractional week, according to the Worker's Compensation formula contained in our current Back Pay policy and again in the proposed policy.

If back pay is truly intended to make the employee whole, it should be calculated according to the individual employee's regularly scheduled days and wages and the employee should be paid accordingly..

Sincerely,

Rena Metoxen, Senior Paralegal

CC: file

Legislative Operating Committee
May 18, 2016

Marriage Law Amendments

Submission Date: November 4, 2015

X Public Meeting: 3/18/16
□ Emergency Enacted:

LOC Sponsor: Fawn Billie

Summary: *This item is a proposal to amend the Marriage Law to provide for a way to waive the standard waiting period between applying for a license and solemnizing the marriage, provide for an administrative fee for amendments to an application after it has been submitted and to provide for a process to adopt a fee schedule.*

11/04/15 LOC: Motion by Jennifer Webster to add the Marriage Law Amendments to the Active Files List; seconded by Tehassi Hill. Motion carried unanimously.

1/6/16 LOC: Motion by Fawn Billie to accept the legislative analysis for the Marriage Law amendments, defer the amendments to the Finance Department for a fiscal impact statement and direct the Legislative Reference Office to prepare the amendments for a public meeting to be held on February 18, 2016; seconded by Jennifer Webster. Motion carried unanimously.

1/20/16 LOC: Motion by David P. Jordan to accept the Marriage Law Amendments public meeting packet and to forward to a public meeting to be held on February 18, 2016; seconded by Fawn Billie. Motion carried unanimously.

2/17/16 LOC: Motion by Fawn Billie to approve the public meeting packet for the Marriage Law Amendments and to forward to a public meeting date of March 17, 2016; seconded by Jennifer Webster. Motion carried unanimously.

3/18/16: Public meeting held.

4/6/16 LOC: Motion by Jennifer Webster to defer the review of the Marriage Law Amendments - public comments to a work meeting to be scheduled; seconded by David P. Jordan. Motion carried unanimously.

4/11/16: Work meeting held. Attendees include: Fawn Billie, Jennifer Webster, Tehassi Hill, David P. Jordan and Doug McIntyre.

4/20/16 LOC: Motion by Tehassi Hill to forward the Marriage Law Amendments to the Legislative Reference Office for an updated legislative analysis; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Review the adoption packet for the Marriage Law Amendments and forward to the Oneida Business Committee for consideration.

Oneida Nation

Legislative Reference Office
P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214
http://oneida-nsn.gov/LOC

Committee Members
Brandon Stevens, Chairperson
Tehassi Hill, Vice Chairperson
Fawn Billie, Councilmember
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

Memorandum

To: Oneida Business Committee
From: Brandon Stevens, LOC Chairperson
Date: May 25, 2016
Re: Marriage Law Amendments

Please find the following attached backup documentation for your consideration of the Marriage Law Amendments:

1. Resolution: Marriage Law Amendments
2. Statement of Effect: Marriage Law Amendments
3. Fiscal Impact Statement
4. Marriage Law Amendments (redline)
5. Marriage Law Amendments (clean)

Overview

The attached Resolution will adopt amendments to the Marriage Law. Amendments to the law were requested by the Licensing Department. These amendments:

- allow the Licensing Department to set a fee schedule pursuant to rulemaking authority;
- clarify the language concerning the timeframe for when a marriage ceremony must take place;
- allow a waiver process for the marriage ceremony to take place between the 1st and 5th day of issuing the marriage license for an additional fee;
- remove an exception that allowed marriage ceremonies solemnized outside the reservation boundaries, or Brown or Outagamie County, or outside the required time lines listed on the marriage license to be considered valid despite the immaterial irregularities; and
- remove the penalties and fines for violations from the law and provide this responsibility to the Licensing Department pursuant to rulemaking authority.

Requested Action

Approve the Resolution: Marriage Law Amendments

BC Resolution _____
Marriage Law Amendments

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Nation Constitution by the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee originally adopted the Marriage Law on April 28, 2010 and amended the law on April 28, 2010 and May 27, 2015; and

WHEREAS, these amendments allow the Licensing Department to set the fee schedule pursuant to the Administrative Rulemaking law as long as those fees are consistent with this law; and

WHEREAS, these amendments clarify the language concerning the timeframe for when a marriage ceremony must take place; and

WHEREAS, these amendments allow a waiver process for the marriage ceremony to take place between the 1st and 5th day of issuing the marriage license for an additional fee; and

WHEREAS, these amendments remove an exception that allowed marriage ceremonies solemnized outside the reservation boundaries, or Brown or Outagamie County, or outside the required time lines listed on the marriage license to be considered valid despite the immaterial irregularities; and

WHEREAS, these amendments remove the penalties and fines for violations from the law and provide this responsibility to the Licensing Department pursuant to rulemaking authority; and

WHEREAS, a public meeting on these amendments was held on March 17, 2016, in accordance with the Legislative Procedures Act.

NOW THEREFORE BE IT RESOLVED, that the attached amendments to the Marriage Law are hereby adopted effective immediately.

Oneida Nation
Legislative Reference Office

Legislative Reference Office
P.O. Box 365
Oneida, WI 54155
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David P. Jordan, Councilmember
Jennifer Webster, Councilmember

Statement of Effect
Marriage Law Amendments

Summary

This Resolution amends the Marriage Law to provide rulemaking authority to the Licensing Department to be able to set a fee schedule for acquiring a marriage license and penalties for violating the law. Additionally, changes were made to make the law consistent with the results of the secretarial election.

By Douglass A. McIntyre, Staff Attorney, Legislative Reference Office

Analysis from Legislative Reference Office

This Resolution adopts amendments to the Marriage Law (Law), which was originally adopted by the Oneida Business Committee on April 28, 2010. The Law was amended on April 28, 2010, June 12, 2013 and May 27, 2015. These amendments:

- allow the Licensing Department to set the fee schedule per rulemaking authority *[see 71.5-1];*
- clarify the language concerning when a marriage ceremony must take place *[see 71.5-4]*;
- allow a waiver process for the marriage ceremony to take place between the 1st and 5th day of issuing the marriage license for an additional fee *[see 71.5-4]*;
- remove an exception that allowed marriage ceremonies solemnized outside the reservation boundaries, or Brown or Outagamie County, or outside the required time lines listed on the marriage license to be considered valid despite the immaterial irregularities *[see 71.6-3(e)];* and
- remove the previously listed penalties and fines for violations of the law and provide this responsibility to the Department per rulemaking authority.

Additionally, all references to the Oneida Tribe of Indians of Wisconsin have been changed to Oneida Nation in line with the secretarial election results.

A public meeting was held on March 17, 2016 in accordance with the Legislative Procedures Act.

Conclusion

There are no legal bars to adopting the Resolution.

2016 05 18
Analysis 2 to Draft 4

Chapter 71
Marriage
Yenyáktʌ?
What one does to get married

Analysis by the Legislative Reference Office					
Title	Marriage (law)				
Requester	Tonya Webster	**Drafter**	Douglass McIntyre	**Analyst**	Maureen Perkins
Reason for Request/ Purpose	The licensing department has had issues with implementation of the law and has provided suggested amendments. Authorize a waiver process for the waiting period *[see 71.5-4]*. Provide an administrative fee for changes requested after an application is submitted. Establish a fee schedule *[see 71.5-1]*.				
Authorized/ Affected Entities	Family Court, Licensing Department, anyone that wishes to marry under this law				
Related Legislation	Administrative Rulemaking, Family Court Rules				
Enforcement & Due Process	Any person issued a fine under this law can appeal to the Family Court *[see 71.7-3]*. Any person who knowingly violates this law will be subject to a fine; the licensing department is responsible for enforcing fines issued *[see 71.7-2]*.				

Overview

This law regulates the rights and responsibilities with respect to marriage.

Proposed Amendments

The following are proposed amendments to the law:

- Applicants will be required to pay all fees at the time the license is issued. The Licensing Department may set the fee schedule per rulemaking authority *[see 71.5-1]*.
- Language has been added to clarify that a marriage ceremony must take place between the 6th and 30th day of receiving the marriage license *[see 71.5-4]*.
- A waiver process has been created to allow for the marriage ceremony to take place between the 1st and 5th day of issuing the marriage license for an additional fee *[see 71.5-4]*.
- Marriage ceremonies solemnized outside the reservation boundaries, or Brown or Outagamie County, or outside the required time lines listed on the marriage license were removed from the list of immaterial irregularities *[see 71.6-3(e)]*.
- Details of the penalties section have been removed *[see 71.7]*. The department will move forward with establishing fines through administrative rulemaking authority.

Considerations

- The request to provide an administrative fee for amendments to a submitted application has been addressed indirectly under the fee section of the law *[see 71.5-1]*. The fee section is broad and allows for the Licensing Department to adopt a fee schedule. This can include an administrative fee for amendments to submitted applications at the Business Committees' discretion.

Miscellaneous

A public meeting was held March 17, 2016 and public comments submitted during the public meeting and ensuing public comment period have been considered in the preparation of this draft. Oneida Tribe of Indians of Wisconsin has been changed to Oneida Nation to reflect approved constitutional amendments. Revisions were made to this law to comply with drafting style. Revisions were also made to improve the flow and sequence of the law without changing the intended content. Please refer to the fiscal impact statement for any financial impacts.

Chapter 71
Marriage

Yeny@~~kta>~~kt<>

What one does to get married

71.1. Purpose and Policy
71.2. Adoption, Amendment, Conflicts
71.3. Definitions
71.4. Marriages, Generally
71.5. Marriage Document and Marriage Ceremony
71.6. Marriages Conducted to Avoid the Law and Immaterial Irregularities
71.7. Penalties

71.1. Purpose and Policy

71.1-1. *Purpose.* It is the purpose of this law to exercise the sovereign right of the Oneida ~~Tribe~~Nation to regulate the rights and responsibilities relating to marriage.

71.1-2. *Policy.* Marriage is a foundation of tribal society that stabilizes families which the ~~Tribe~~Nation acknowledges by recognizing the legal relationship of a union between two (2) adults.

71.2. Adoption, Amendment, Conflicts

71.2-1. This law was adopted by the Oneida Business Committee by resolution BC-04-28-10-F and amended by resolutions BC-06-12-13-E~~ and~~, BC-05-27-15-A~~.~~ and BC-_____.

71.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

71.2-3. 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.

71.2-4. 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. ~~Provided that, nothing in this Law is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.~~

71.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

71.2-6. *Rules.* If rules addressing a certain area of this law have not been enacted in accordance with ~~Tribal law~~the Nation's laws and the Court is faced with a question, the Court may, in its discretion, refer to other Indian tribal law or state law for guidance, to the extent that such law is not inconsistent with ~~this or any other Tribal law~~Oneida laws.

71.3. Definitions

71.3-1. 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) "Competent" means a person has attained the age of eighteen (18) years old and is able to make a legally binding commitment.

(b) "Court" means ~~the judicial system of the Tribe~~Family Court, which is ~~assigned to handle all family law matters~~a branch of the judicial arm of the Nation.

(~~b~~c) "Court of competent jurisdiction" means a court that has the power and authority to dissolve a marriage.

(~~c~~d) "Department" means the licensing department of the ~~Tribe~~Nation that is responsible for administering and issuing licenses in accordance with the laws of the Nation.

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

(~~d~~f) "Marriage" means the civil contract to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of spouses.

(~~e~~g) "Marriage document" means that document issued by the Department which includes the marriage license as well as information concerning the marriage ceremony, the signatures of the witnesses and officiating person(s), and proof of filing.

(~~f~~h) "Marriage license" means that portion of the marriage document designated as such, which is the authorization for the marriage to take place.

(~~g~~i) "Nation" means the Oneida Nation.

(j) "Officiating person" means the person or persons who perform the marriage ceremony.

(~~h~~k) "Reservation" means all the land within the exterior boundaries of the reservation of the Oneida ~~Tribe of Indians of Wisconsin~~Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

~~(i) "Tribe" or "Tribal" means the Oneida Tribe of Indians of Wisconsin.~~

(l) "Rule" means a set of requirements, including citation fees and penalty schedules, enacted in accordance with the Administrative Rulemaking law.

71.4. Marriages, Generally

71.4-1. *Who May Marry.* A marriage may be contracted under this law between two (2) adults who:

(a) have a marriage document issued by the Department;

(b) have attained the age of eighteen (18), except as provided in section 71.4-3; and

(c) meet all other provisions under this law.

71.4-2. *Who May Not Marry.* Persons may not enter into marriage if they:

(a) are currently legally married to another person; or,

(b) have been legally divorced for less than six (6) months with a judgment of divorce from a court of competent jurisdiction; or,

(c) are not legally competent; or,

(d) are closer in relationship than second cousins, except first cousins may marry if both parties are fifty-five (55) years old or older.

71.4-3. *Minors.* Individuals under the age of sixteen (16) shall not marry. Individuals who meet the above requirements, except for section 71.4-1(b) and are over the age of sixteen (16) but under the age of eighteen (18) may marry if they present:

(a) written consent by his or her parent or guardian, signed and notarized before the person issuing the marriage license; or

(b) proof that they have been legally emancipated.

71.5. Marriage Document and Marriage Ceremony

71.5-1. *Fees.* Applicants are responsible for paying all fees at the time the application is filed. The Department shall promulgate rules that establish a fee schedule for a marriage license as long as those fees are consistent with this law.

71.5-2. *Marriage Document.* The Department shall issue a marriage document to the applicants within five (5) business days after the application is filed if, in addition to the other requirements in this law, the following conditions are met at the time a marriage license is applied for:

(a) Either (1) or (2) applies to the applicants:

(1) each applicant:

(A) is a Tribal member; or

(B) resides on the reservation and is a member of an Indian tribe, band or

community which is recognized by a state or the federal government.

(2) one of the applicants meets the requirements of ~~(~~section 71.5-2(a)(1)(A) or (B) and the other applicant consents to the ~~Tribe's~~Nation's jurisdiction to issue the license. The completion of an application for a marriage license represents a person's consent to the ~~Tribe's~~Nation's jurisdiction to grant the license.

(b) Both applicants appear in person at the Department to complete the marriage license application.

(c) The applicants provide any information necessary to complete the application, which may include: social security numbers, birth certificates, proof of residence, proof of tribal membership, documentation of a judgment of divorce, annulment, or death certificates from most recent marriages, parents' full names, mothers' maiden names, date and place of marriage ceremony, and the name, address, and phone number of the officiating person(s).

(d) The applicants swear under oath that the information provided is true and accurate and sign the application in the presence of a notary public.

(e) The applicants pay ~~the~~ any required ~~fee~~fees.

71.5-~~2~~3. *Objections.* Any relative of the applicants, Department official, or applicant that objects to an upcoming marriage may file a petition and sworn affidavit with the Court objecting to the marriage.

(a) The petition shall state grounds for the belief that a marriage license should not be issued to the applicants or a marriage license that has already been issued should be revoked.

(b) The Court shall approve the petition only if the marriage, if conducted, would violate this law.

(c) If the petition is approved by the Court, the applicants shall show cause why the license should be issued or why the license should not be revoked.

71.5-~~3~~4. *Marriage Ceremony.*

(a) The ~~applicants shall marry not less than~~marriage shall occur between six (6) days after the license is issued and ~~not more than~~ thirty (30) days after the license is issued. The applicant may apply for a waiver of the initial five (5) day waiting period for an additional fee. The marriage license shall contain notification of these time limits.

(b) If neither applicant resides on the reservation, the marriage ceremony shall be held on the reservation. If one (1) or both of the applicants reside on the reservation, the marriage ceremony shall be held within the State of Wisconsin. The applicants shall be notified of this requirement when applying for a marriage license.

(c) The ceremony shall be solemnized by an officiating person(s) with two (2) competent adult witnesses present.

(d) The parties shall vow by mutual declarations, before the officiating person(s) and witnesses, that they take each other in lawful matrimony.

(e) The parties, the officiating person(s), and the witnesses shall, at the conclusion of the ceremony, sign and date the marriage document.

(f) The officiating person(s) or one of the parties shall ~~deliver~~return the original completed marriage document to the Department within three (3) business days after the ceremony. The Department shall ~~deliver~~return the original marriage document to the Wisconsin Vital Statistics Department within ten (10) business days after it is filed. The Department shall retain a file stamped copy and provide a file stamped copy to the married couple.

(g) The Department shall keep a ~~marriage license docket and shall enter therein a~~

complete record of the marriage applications and issuance of marriage licenses which shall be available for public inspection during regular business hours.

71.5-~~4~~5. *Officiating Persons.* The following persons are authorized as officiating persons under this law:

(a) a traditional tribal practitioner or spiritual or religious leader ~~who is commonly recognized as such by the Oneida community or other Indian community~~ and has registered with the Court; or

(b) a Judge from the ~~Court~~any branch of the Judiciary or a tribal, federal, or state judge or commissioner authorized to solemnize marriages under tribal, federal or state law; or

(c) the Tribal Chairperson or a person designated by the Tribal Chairperson at the request of the persons being married; or

(d) any ordained clergyperson of any religious denomination, society, or sect; or

(e) any person licensed by a religious body or appointed by a high-ranking clergy member, if the religious denomination, society, or sect allows the person to solemnize marriages; or

(f) the parties themselves, by mutual declarations that they take each other as spouses, in accordance with the customs, rules, and regulations of any religious denomination, society, or sect to which either of the parties belongs~~.~~; or

(g) a former or retired Judge or Appeals Commissioner that served the Nation.

71.6. Marriages Conducted to Avoid the Law and Immaterial Irregularities

71.6-1. If a person is prohibited from marrying another under this law and goes to another jurisdiction and there contracts a marriage that is prohibited under this law, such marriage shall not be recognized by the ~~Tribe~~Nation.

71.6-2. No marriage shall be contracted under this law by a party residing and intending to continue to reside in another jurisdiction, if such marriage would be void if contracted in such other jurisdiction. Every marriage celebrated in violation of this provision shall be void.

71.6-3. *Immaterial Irregularities.* A marriage shall be recognized as valid if the marriage is consummated with the full belief on the part of the persons so married that they have been lawfully joined in marriage, and:

(a) the officiating person(s) did not have the authority to solemnize the marriage; or

(b) the marriage license was issued by a department or person who did not have jurisdiction to issue the license; or

(c) the marriage license or application for the marriage license had an informality or irregularity; or

(d) either or both of the witnesses to the marriage were incompetent.~~; or~~

~~(e) the marriage ceremony was solemnized outside of the Reservation boundaries, or Brown or Outagamie County, when applicable, or outside of the required time lines listed on the marriage license.~~

71.7. Penalties

71.7-1. ~~A person~~The Department shall promulgate rules that establish a fine schedule for persons who ~~knowingly violates~~violate this law ~~may be penalized as follows:~~.

~~(a) Any person who swears to a false statement to obtain a marriage license or to help another obtain a marriage license shall be fined no less than five hundred dollars ($500.00).~~

~~(b) Any person who is not an officiating person who solemnizes a marriage ceremony shall be fined no less than one hundred dollars ($100.00).~~

~~(c) The parties to a marriage and/or the officiating person(s) of a marriage conducted without a valid marriage license or without the presence of two (2) competent adult witnesses shall be fined no less than one hundred dollars ($100.00).~~

~~(d) Any person who goes to another jurisdiction to avoid this Law and contracts a marriage prohibited under this Law shall be fined no less than five hundred dollars ($500.00).~~

~~(e) Any person who violates any other provision of this Law shall be fined no less than one hundred dollars ($100.00).~~

71.7-2. The Department shall be the responsible entity for the enforcement of this section.

71.7-3. All fines issued shall be paid to the Department within thirty (30) days of the issuance of the fine. Any person issued a fine under this law may contest the fine by filing an appeal with the Court prior to the deadline to pay the fine. The filing of an appeal shall stay the requirement to pay the fine. The notice of penalty issued shall inform the person penalized of the process to file his or her appeal.

End.

Adopted-BC-04-28-10-F
Amended-BC-06-12-13-E
Amended-BC-05-27-15-A

Chapter 71
Marriage

Yeny@kt<>

What one does to get married

71.1. Purpose and Policy
71.2. Adoption, Amendment, Conflicts
71.3. Definitions
71.4. Marriages, Generally
71.5. Marriage Document and Marriage Ceremony
71.6. Marriages Conducted to Avoid the Law and Immaterial Irregularities
71.7. Penalties

71.1. Purpose and Policy

71.1-1. *Purpose.* It is the purpose of this law to exercise the sovereign right of the Oneida Nation to regulate the rights and responsibilities relating to marriage.

71.1-2. *Policy.* Marriage is a foundation of tribal society that stabilizes families which the Nation acknowledges by recognizing the legal relationship of a union between two (2) adults.

71.2. Adoption, Amendment, Conflicts

71.2-1. This law was adopted by the Oneida Business Committee by resolution BC-04-28-10-F and amended by resolutions BC-06-12-13-E, BC-05-27-15-A and BC-_____.

71.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

71.2-3. 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.

71.2-4. 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.

71.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

71.2-6. *Rules.* If rules addressing a certain area of this law have not been enacted in accordance with the Nation's laws and the Court is faced with a question, the Court may, in its discretion, refer to other Indian tribal law or state law for guidance, to the extent that such law is not inconsistent with Oneida laws.

71.3. Definitions

71.3-1. 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) "Competent" means a person has attained the age of eighteen (18) years old and is able to make a legally binding commitment.

(b) "Court" means Family Court, which is a branch of the judicial arm of the Nation.

(c) "Court of competent jurisdiction" means a court that has the power and authority to dissolve a marriage.

(d) "Department" means the licensing department of the Nation that is responsible for administering and issuing licenses in accordance with the laws of the Nation.

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

(f) "Marriage" means the civil contract to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of spouses.

(g) "Marriage document" means that document issued by the Department which includes the marriage license as well as information concerning the marriage ceremony, the

signatures of the witnesses and officiating person(s), and proof of filing.

(h) "Marriage license" means that portion of the marriage document designated as such, which is the authorization for the marriage to take place.

(i) "Nation" means the Oneida Nation.

(j) "Officiating person" means the person or persons who perform the marriage ceremony.

(k) "Reservation" means all the land within the exterior boundaries of the reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(l) "Rule" means a set of requirements, including citation fees and penalty schedules, enacted in accordance with the Administrative Rulemaking law.

71.4. Marriages, Generally

71.4-1. *Who May Marry.* A marriage may be contracted under this law between two (2) adults who:

(a) have a marriage document issued by the Department;

(b) have attained the age of eighteen (18), except as provided in section 71.4-3; and

(c) meet all other provisions under this law.

71.4-2. *Who May Not Marry.* Persons may not enter into marriage if they:

(a) are currently legally married to another person; or,

(b) have been legally divorced for less than six (6) months with a judgment of divorce from a court of competent jurisdiction; or,

(c) are not legally competent; or,

(d) are closer in relationship than second cousins, except first cousins may marry if both parties are fifty-five (55) years old or older.

71.4-3. *Minors.* Individuals under the age of sixteen (16) shall not marry. Individuals who meet the above requirements, except for section 71.4-1(b) and are over the age of sixteen (16) but under the age of eighteen (18) may marry if they present:

(a) written consent by his or her parent or guardian, signed and notarized before the person issuing the marriage license; or

(b) proof that they have been legally emancipated.

71.5. Marriage Document and Marriage Ceremony

71.5-1. *Fees.* Applicants are responsible for paying all fees at the time the application is filed. The Department shall promulgate rules that establish a fee schedule for a marriage license as long as those fees are consistent with this law.

71.5-2. *Marriage Document.* The Department shall issue a marriage document to the applicants within five (5) business days after the application is filed if, in addition to the other requirements in this law, the following conditions are met at the time a marriage license is applied for:

(a) Either (1) or (2) applies to the applicants:

(1) each applicant:

(A) is a Tribal member; or

(B) resides on the reservation and is a member of an Indian tribe, band or community which is recognized by a state or the federal government.

(2) one of the applicants meets the requirements of section 71.5-2(a)(1)(A) or (B) and the other applicant consents to the Nation's jurisdiction to issue the license. The completion of an application for a marriage license represents a person's consent to the Nation's jurisdiction to grant the license.

(b) Both applicants appear in person at the Department to complete the marriage license application.

(c) The applicants provide any information necessary to complete the application, which may include: social security numbers, birth certificates, proof of residence, proof of tribal membership, documentation of a judgment of divorce, annulment, or death certificates from most recent marriages, parents' full names, mothers' maiden names, date and place of marriage ceremony, and the name, address, and phone number of the officiating person(s).

(d) The applicants swear under oath that the information provided is true and accurate and sign the application in the presence of a notary public.

(e) The applicants pay any required fees.

71.5-3. *Objections.* Any relative of the applicants, Department official, or applicant that objects to an upcoming marriage may file a petition and sworn affidavit with the Court objecting to the marriage.

(a) The petition shall state grounds for the belief that a marriage license should not be issued to the applicants or a marriage license that has already been issued should be revoked.

(b) The Court shall approve the petition only if the marriage, if conducted, would violate this law.

(c) If the petition is approved by the Court, the applicants shall show cause why the license should be issued or why the license should not be revoked.

71.5-4. *Marriage Ceremony.*

(a) The marriage shall occur between six (6) days after the license is issued and thirty (30) days after the license is issued. The applicant may apply for a waiver of the initial five (5) day waiting period for an additional fee. The marriage license shall contain notification of these time limits.

(b) If neither applicant resides on the reservation, the marriage ceremony shall be held on the reservation. If one (1) or both of the applicants reside on the reservation, the marriage ceremony shall be held within the State of Wisconsin. The applicants shall be notified of this requirement when applying for a marriage license.

(c) The ceremony shall be solemnized by an officiating person(s) with two (2) competent adult witnesses present.

(d) The parties shall vow by mutual declarations, before the officiating person(s) and witnesses, that they take each other in lawful matrimony.

(e) The parties, the officiating person(s), and the witnesses shall, at the conclusion of the ceremony, sign and date the marriage document.

(f) The officiating person(s) or one of the parties shall return the original completed marriage document to the Department within three (3) business days after the ceremony. The Department shall return the original marriage document to the Wisconsin Vital Statistics Department within ten (10) business days after it is filed. The Department shall retain a file stamped copy and provide a file stamped copy to the married couple.

(g) The Department shall keep a complete record of the marriage applications and issuance of marriage licenses which shall be available for public inspection during regular business hours.

71.5-5. *Officiating Persons.* The following persons are authorized as officiating persons under this law:

(a) a traditional tribal practitioner or spiritual or religious leader and has registered with the Court; or

(b) a Judge from the any branch of the Judiciary or a tribal, federal, or state judge or commissioner authorized to solemnize marriages under tribal, federal or state law; or

(c) the Tribal Chairperson or a person designated by the Tribal Chairperson at the request of the persons being married; or

(d) any ordained clergyperson of any religious denomination, society, or sect; or

(e) any person licensed by a religious body or appointed by a high-ranking clergy member, if the religious denomination, society, or sect allows the person to solemnize marriages; or

(f) the parties themselves, by mutual declarations that they take each other as spouses, in accordance with the customs, rules, and regulations of any religious denomination, society, or sect to which either of the parties belongs; or

(g) a former or retired Judge or Appeals Commissioner that served the Nation.

71.6. Marriages Conducted to Avoid the Law and Immaterial Irregularities

71.6-1. If a person is prohibited from marrying another under this law and goes to another jurisdiction and there contracts a marriage that is prohibited under this law, such marriage shall not be recognized by the Nation.

71.6-2. No marriage shall be contracted under this law by a party residing and intending to continue to reside in another jurisdiction, if such marriage would be void if contracted in such other jurisdiction. Every marriage celebrated in violation of this provision shall be void.

71.6-3. *Immaterial Irregularities.* A marriage shall be recognized as valid if the marriage is consummated with the full belief on the part of the persons so married that they have been lawfully joined in marriage, and:

(a) the officiating person(s) did not have the authority to solemnize the marriage; or

(b) the marriage license was issued by a department or person who did not have jurisdiction to issue the license; or

(c) the marriage license or application for the marriage license had an informality or irregularity; or

(d) either or both of the witnesses to the marriage were incompetent.

71.7. Penalties

71.7-1. The Department shall promulgate rules that establish a fine schedule for persons who violate this law.

71.7-2. The Department shall be the responsible entity for the enforcement of this section.

71.7-3. All fines issued shall be paid to the Department within thirty (30) days of the issuance of the fine. Any person issued a fine under this law may contest the fine by filing an appeal with the Court prior to the deadline to pay the fine. The filing of an appeal shall stay the requirement to pay the fine. The notice of penalty issued shall inform the person penalized of the process to file his or her appeal.

End.

Adopted-BC-04-28-10-F
Amended-BC-06-12-13-E
Amended-BC-05-27-15-A

Legislative Operating Committee
May 18, 2016

Employment Law

Submission Date: 9/17/14

☐ Public Meeting:
☐ Emergency Enacted:
Expires:

LOC Sponsor: Brandon Stevens

Summary: *This item was carried over into the current term by the LOC. The original proposal is for the development of an employment law to replace the current Personnel Policies and Procedures (Previously titled "Personnel Policies and Procedures-Revisions).*

9/17/14 LOC: Motion by Jennifer Webster to add the Employment Law to the Active Files List, with Brandon Stevens as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

10/8/14 OBC: Motion by Lisa Summers to accept the Legislative Operating Committee update with the following answers: 4) With regard to the Personnel Commission legislation, the Business Committee agrees that the Employment Law should continue forward and shall include consideration regarding how the Personnel Commission and/or their processes are incorporated into the Employment Law legislation; seconded by Trish King. Motion carried unanimously.

5/6/15 LOC: Motion by Jennifer Webster to defer the Employment Law to a Legislative Operating Committee work meeting; seconded by Fawn Billie. Motion carried unanimously.

6/15/15: Work meeting held. Attendees include Brandon Stevens, David Jordan, Matthew Denny, Gina Buenrostro, Don White, Yvonne Jordan, Lynn Franzmeier, Candice Skenandore, Douglass McIntyre, Krystal John.

10/5/15 LOC: Work meeting held. Attendees include Brandon Stevens, David Jordan, Jennifer Webster, Danelle Wilson, Rhiannon Metoxen, Nick Reynolds, Krystal John, and Candice Skenandore.

10/8/15 OBC: Work meeting held. Attendees include Brandon Stevens, David Jordan, Jennifer Webster, Melinda Danforth, Trish King, Tehassi Hill, Jessica Wallenfang, Mitzi Kopetsky, Nathan King, Apache Danforth, Rhiannon Metoxen, Danelle Wilson, Leyne Orosco, and Krystal John.

11/18/15: Gaming Supervisory Advisor Panel held. Attendees include Brandon Stevens, Krystal John, Frank Cornelius, Robert Sundquist, Louise Cornelius, Lisa Duff, Georgianna Mielke, Donna Smith, Luke Schwab, Donald Solecki, Gabrielle Metoxen, Michelle Schneider, Martin Prevost and Laura Laitinen-Warren.

11/19/15: Gaming Management Advisory Panel held. Attendees include Brandon Stevens, Krystal John, Frank Cornelius, Andrew Doxtator, Cherice Santiago, Fawn Teller, Julie Clark, Larae Gower, Shelly Stevens, Jacqueline Smith, Jay Rasmussen, Laura Laitinen-Warren, Michelle Schneider, Travis Cottrell, Louise Cornelius, Jessalyn Marvath, Brenda Mendolla-Buckley, Lucy Neville, David Emerson, Gabrielle Metoxen and Lambert Metoxen.

11/30/15:	Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Wendy Alvarez, Lucy Neville, Matt Denny, Marianne Close and Krystal John.
12/3/15:	Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez and Krystal John.
12/22/15:	Work meeting held. Attendees include Geraldine Danforth, Wendy Alvarez, Lucy Neville, Matt Denny, Marianne Close and Krystal John.
1/6/16:	Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez and Krystal John.
1/8/16:	Work meeting held. Attendees include Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez and Krystal John.
2/1/16:	Work meeting held. Attendees include Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez and Krystal John.
2/8/16:	Work meeting held. Attendees include Brandon Stevens, Rhiannon Metoxen Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez, Krystal John and Maureen Perkins.
2/15/16:	Work meeting held. Attendees include Lorena Metoxen, Larry Smith, Donna Smith, Larae Gower, Matt Denny, Geraldine Danforth and Krystal John.
2/17/16:	Employment Law information meeting for managers and supervisors held at Skenandoah.
2/18/16:	Employment Law information meeting for managers and supervisors held at Skenandoah.
2/22/16:	Employment Law information meeting for employees held at Skenandoah.
2/25/16:	Employment Law information meeting for employees held at Skenandoah.
2/26/16:	Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Matt Denny, Lucy Neville, Maureen Perkins and Krystal John.
2/29/16:	Employment Law information meeting for managers and supervisors held at Norbert Hill Center.
3/1/16:	Employment Law information meeting for managers and supervisors at Main Casino.
3/3/16:	Employment Law information meeting for managers and supervisors held at Norbert Hill Center.
3/4/16:	Employment Law information meeting for employees held at Norbert Hill Center.
3/7/16:	Employment Law information meeting for employees held at Norbert Hill Center.
3/10/16:	Employment Law information meeting for managers and supervisors held at Little Bear Development Center.
3/14/16:	Employment Law information meeting for employees held at Little Bear Development Center.
3/16/16:	Employment Law information meeting employees at Mohawk Room (Radisson). Morning Session
3/16/16:	Employment Law information meeting employees at Mohawk Room (Radisson). Afternoon Session
3/17/16:	Employment Law information meeting for managers and supervisors held at Social Services (OLC).
3/18/16:	Employment Law information meeting for managers and supervisors held at Social Services (OLC).
3/21/16:	Employment Law information meeting employees held at Social Services (OLC). Morning Session
3/21/16:	Employment Law information meeting employees held at Social Services (OLC). Afternoon Session
3/23/16:	Employment Law information meeting for Gaming Panels at Employee Services Morning Session
3/23/16:	Employment Law information meeting for Gaming Panels at Employee Services Afternoon Session

3/25/16:	Employment Law information meeting for managers and supervisors held at Oneida Health Center.
3/28/16:	Employment Law information meeting for managers and supervisors held at Oneida Health Center.
3/29/16:	Employment Law information meeting for employees held at Oneida Health Center.
3/30/16:	Employment Law information meeting for employees held at Oneida Health Center.
3/31/16:	Employment Law Public Meeting held.
4/7/16:	Work meeting held. Attendees include Lucy Neville, Marianne Close, Wendy Alvarez, and Krystal John.
4/29/16:	Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Lucy Neville, Marianne Close, Maureen Perkins and Krystal John.
5/4/16 LOC:	Motion by Jennifer Webster to accept the Employment law public meeting comments and defer the consideration of the comments to a work meeting to be held on Thursday, May 12, 2016 in the Business Committee Conference Room from 10:30 a.m. - 1:30 p.m.; seconded by David P. Jordan. Motion carried unanimously.
5/13/16:	Work meeting held. Attendees include Geraldine Danforth, Matt Denny, Wendy Alvarez and Krystal John.

- **Next Steps:** Accept the updated draft of the Employment Law based on the LOC's review of the public meeting comments and defer to the LRO for an updated legislative analysis.

CHAPTER 300
EMPLOYMENT LAW

300.1. Purpose and Policy
300.2. Adoption, Amendment, Repeal
300.3. Definitions
300.4. Applicability
300.5. Human Resources Department
300.6. Hiring
300.7. Compensation and Benefits
300.8. General
300.9. Employee Responsibilities
300.10. Layoffs and Furloughs
300.11. Employee Discipline and Appeals
300.12. Violations

300.1. Purpose and Policy

300.1-1. It is the purpose of this ~~Law~~law to provide a fair, consistent and efficient structure to govern all employment matters and to provide employment preference to Oneida Tribal members and members of other federally recognized tribes.

300.1-2. It is the Nation's policy to provide entities latitude to create human resource practices to fit their individual industry standards, while creating a strong and healthy work environment. In addition, although certain federal and state laws, specifically Title VII, do not apply to the Nation, the Nation's employment policy is to afford applicants and employees equal employment opportunities while recognizing the Nation's Oneida and Indian employment preference. The Nation's hiring philosophy is to recruit, hire, retain and develop individuals who are culturally respectful, professionally competent and familiar with the Oneida community.

300.2. Adoption, Amendment, Repeal

300.2-1. This ~~Law~~law was adopted by the Oneida General Tribal Council by resolution _____ and is effective six (6) months from the date of adoption.

300.2-2. This ~~Law~~ law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

300.2-3. Should a provision of this ~~Law~~ law or the application thereof to any person or circumstances be held as invalid, such invalidity does not affect other provisions of this ~~Law~~ law which are considered to have legal force without the invalid portions.

300.2-4. In the event of a conflict between a provision of this ~~Law~~ law and a provision of another ~~Law~~law, the provisions of this ~~Law~~ law control, provided that this ~~Law~~ law repeals the following:

(a) The Oneida Tribal Management System and amendments to the Tribal Management System, including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985 and any and all amendments made thereto;

(b) BC Resolution BC-05-11-11-A entitled Establish Tuberculosis Control Program;

(c) The Employee Protection Policy adopted by emergency pursuant to BC-4-20-95-B, permanently adopted pursuant to BC-12-6-95-B and subsequently amended pursuant to BC-1-20-99-B and BC-6-30-04-J;

(d) The GED Policy approved by the Oneida Business Committee on October 21, 1992;

(e) BC Resolution BC-07-22-09-B entitled Oneida Nation Veterans Affairs Committee, Paid Time Off for Selected Color Guard Members Who Are Employees;

(f) The Parent ~~Leave~~ Policy Leave adopted pursuant to BC-03-02-94-A;

(g) BC Resolution 04-05-95-A regarding a paid break for donating blood at a blood drive coordinated by the Nation;

(h) BC Resolution 05-12-93-J regarding HRD's role in the interpretation, implementation and enforcement of the Personnel, Policies and Procedures; and

(i) GTC Resolution 05-23-11-A entitled Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring.

300.2-6. This ~~Law~~ law is adopted under authority of the Constitution of the Oneida Nation.

300.3. Definitions

300.3-1. This section shall ~~governs~~ govern the definitions of words and phrases used within this ~~Law~~law. All words not defined herein ~~are to~~shall be used in their ordinary and everyday sense.

(a) "Adverse Employment Action" means a supervisor's failure to comply with the employment rules that results in a significant change in an employee's employment status that is more disruptive than a mere inconvenience or an alteration of job responsibilities and may include a deprivation of an equal employment opportunity.

(b) "At-Will Employee" means an employee working for the Nation on a short term basis that is not hired through the standard hiring procedures, including, but not limited to, political appointees, part-time, seasonal, and volunteer workers, and new Employees that have not yet completed their probationary period pursuant to the Rules developed by HRD.

(c) "Corrective Action" means any initiative taken by an employee supervisor with the goal of correcting an employee's prohibited behavior as identified in the rules created by HRD.

(d) "Cost of Living Adjustments" means wage or salary modifications which allow employees to sustain a certain level of living, including basic expenses such as housing, food, taxes and healthcare.

(e) "Employee" means any individual who is hired by the Nation through the normal hiring process, works full-time (30 or more hours per week) or part-time (less than 30 hours per week) and is subject to the Nation's direction and control with respect to the material details of the work performed. "Employee" includes, but is not limited to, individuals employed by any entity and individuals employed through an employment contract as a limited term employee, but does not include elected or appointed officials, at-will employees or individuals employed by a tribally chartered corporation. Throughout this ~~Law~~ law all references to employee include both employees and at-will employees, unless the term at-will employee is used, in which case only at-will employees are intended.

(f) "Employee Supervisor" means the party responsible for directly overseeing the employee and who is responsible for taking corrective actions when employees fail to meet their responsibilities.

(g) "Entity" means any of the Nation's divisions having employees and may include, but is not limited to, divisions, departments, areas, programs, enterprises, board, committees, commissions and the like.

(h) "Equal Employment Opportunity" or "EEO" means the Nation's consideration for hiring selection and position retention and compensation and benefit distribution that is free from discrimination against any person on the basis of race color, religion, sex (including pregnancy), national origin, age, disability, economic status or genetic information. Oneida and Indian Preference are allowable and are not considered a deprivation of an EEO,

(i) "HRD" means the Oneida Human Resources Department.

(j) "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.

(k) "Involuntarily Separated" means an employee is removed from employment.

(l) "Nation" means the Oneida Nation.

(m)"Political Appointee" means an individual appointed as an executive assistant by an individual Oneida Business Committee member or as an assistant by a board, committee or commission.

(n) "Reviewing Supervisor" means the party responsible for overseeing the employee supervisor and who may hear an appeal of a corrective action taken by an employee supervisor.

(o) "~~Rule~~Handbook" means ~~any exercise of authority delegated to HRD in order to implement, interpret and/or enforce this Law. A "rule" does not include any statements, interpretations, decisions, rules, regulations, policies, standard operating procedures or other matters concerning internal management of an entity, or, which do not affect the private rights or interests of individuals outside of the said entity~~the Oneida Employee Handbook, which contains the set of requirements enacted by HRD in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(p) "Sexual Harassment" means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature where:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

(2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

(q) "Standard Operating Procedure" means an internal procedure that is created to govern how an Entity operates and performs its designated functions; a standard operating procedure does not affect parties outside of the entity to which the procedure belongs.

(r) "Tribal Member" means an individual who is an enrolled member of the Oneida Nation.

300.4. Applicability

300.4-1. *Applicability to Elected Officials.* The provisions of Sections 300.6 - 300.8 apply to the Nation's elected officials that work full-time (30 hours or more per week) and receive salaries for their service, provided that, because other laws govern discipline of the elected officials, the Removal law for example, elected officials may not be subjected to corrective action pursuant to this law or handbook.

300.4-2. *Oneida Nation School Board.* To the extent that the provisions of this law and handbook conflict with the provisions of the memorandum of agreement between the Oneida Business Committee and the Oneida Nation School Board and any rules promulgated pursuant to authority delegated under said agreement, the memorandum and corresponding rules govern.

300.4-3. *Oneida Police Commission.* To the extent that any provisions of this law and handbook conflict with the provisions of the Law Enforcement Ordinance and the Oneida Police Commission's rulemaking authority as delegated under that law, the Law Enforcement Ordinance and corresponding rules govern.

300.5. Human Resources Department

300.~~4~~5-1. *General Responsibilities.* The HRD shall:

(a) Develop and amend the ~~rules~~ Handbook as necessary to carry out the intent of this ~~Law~~ law~~pursuant to the Administrative Rulemaking Law~~.

(b) Implement, interpret and enforce this ~~Law~~ law and the associated ~~rules~~handbook.

(c) Provide all employees with a copy of ~~all employment rules~~this law and the handbook ~~and all of the Nation's laws and policies specifically pertaining to employment matters,~~ and shall further notify employees of how such ~~rules~~materials and all other employment related ~~,~~ laws and policies may be electronically accessed.

(d) Review and approve all entities' employment related standard operating procedures to ensure compliance with this ~~Law~~ law and the ~~rules~~ handbook~~developed pursuant to this Law~~.

(e) Keep a record of all employment related decisions made by the employee supervisors, reviewing supervisors and the Oneida Judiciary.

(f) Collect and maintain data on human resource related information including, but not limited to, information on hiring, appointments, terminations, separations, transfers, employee development, grievances, policy issues and insurances.

(1) HRD shall provide quarterly reports to the Oneida Business Committee, or its designee, in accordance with the schedule provided by the Nation's Secretary's office.

(2) The Oneida Business Committee may not have direct access to employee information and/or personnel files, especially information relating to individual compensation or corrective actions; provided that, Oneida Business Committee members that are also employee supervisors may access the employee records of any of his or her direct employees pursuant to ~~Section~~ 300.~~4~~5-1(f)(3)(B).

(3) HRD shall store these employee records in a manner that maintains the records' private and confidential nature. Information contained in employee records may only be released in the following situations:

(A) A current or past employee may have access to his or her own employment record; an employee supervisor may have access to his or her current employees' records; a hiring supervisor may have access to the last twelve months of a current or former employee's work history; and HRD managers may have access to any employee's employment record.

(B) If required by law, the Nation shall release the information required to be released to the party the law designates as entitled to receive said information.

(C) Should an Employee be alleged to have committed an illegal act in the course of his or her employment with the Nation against the Nation, its customers or its employees, the said employee's record may be released to law enforcement agencies.

(D) A third party may access an employee's record if the employee provides written consent to release his or her record to a designated third party.

300.~~4~~5-2. HRD shall uphold the Nation's sovereignty, laws and policies in its hiring and employment practices.

300.~~4~~5-3. ~~*Memorandum of Understanding*~~*HRD Oversight by the Oneida Business Committee*. ~~The Oneida Business Committee and HRD shall negotiate and enter into a memorandum of~~

~~understanding which governs the relationship between the two parties by establishing the responsibilities and expectations of each party with regard to the management of HRD~~HRD shall report to the Oneida Business Committee, or its designee, as directed by the Oneida Business Committee.

300.~~5~~6. Hiring

300.~~5~~6-1. *Equal Employment Opportunities.* The Nation and HRD shall afford all applicants and employees equal employment opportunities; however, the Nation shall follow the preferences outlined in ~~Section~~ 300.~~5~~6-~~3~~ 2 and such preferences may not be considered a violation of this ~~Law~~law.

300.~~5~~6-2. *Oneida and Indian Preference.* The Nation shall apply Oneida and Indian Preference to all hiring practices.

(a) Unless otherwise prohibited by law or grant funding requirements, the Nation shall apply the following order of Oneida and Indian Preference in staffing decisions:

(1) Persons who are tribal members.

(2) Persons who meet the blood quantum requirements contained in the Membership Ordinance, but are not currently tribal members, and/or persons who are documented first generation descendants of a tribal member.

(3) Persons enrolled in any federally recognized tribe other than this Nation.

(4) All other non-Indian persons.

(b) If a law or grant funding requirement prohibits the application of Oneida and Indian Preference in accordance with ~~Section~~ 300.~~5~~6-~~3~~2(a), the Nation shall make staffing decisions in accordance with the Indian Preference requirements of the said law or grant.

(c) Oneida and Indian Preference applies only when an applicant meets all the minimum requirements of the position applied for.

(d) Oneida-Only Positions. To the extent possible, all top administrative and political appointee positions must be held by tribal members.[1] If a position requires specific skills and/or licensing by the state or federal government and ~~there are~~ no ~~available t~~Tribal members apply who are qualified and eligible and possess the necessary skills or licensing to assume the vacancy, only then may a non-tribal member be selected to fill the vacancy. In the event that a non-Tribal member is hired for a position originally designated as Oneida-only based on this provision, HRD shall hire the employee under contract so that the Nation may consider whether a Tribal member may be available to assume the position upon the expiration of the contract term.

300.~~5~~6-3. *Education.* Employees shall have or obtain a high school diploma, a high school equivalency diploma or a general equivalency diploma within one (1) year of being hired. Exceptions and/or extensions to this requirement may be included in the ~~rules~~ handbook developed by HRD pursuant to ~~Section~~ 300.~~4~~5-1(a).

300.~~5~~6-4. *Workplace Safety.* The ~~Nation shall develop rules~~handbook shall contain requirements and procedures as necessary to protect the safety, health and well-being of all employees and other individuals in the workplace.

(a) The Employee Health Nursing Department shall establish, maintain, implement, evaluate and periodically update a Tuberculosis Control Program, which applies to all employees as well as the Nation's elected and appointed officials. The Employee Health

[1] January 8, 1990 GTC: Debbie Powless moved that the General Manager's and all top administrative positions be held by enrolled tribal members, motion seconded. … Main motion carried.

Nursing Department shall make the approved program available to all persons to which it applies.

300.~~5~~6-5. *Conflicts.* An applicant is ineligible for positions for which he or she has a conflict of interest, as defined by the Conflict of Interest Policy, and/or if he or she would be directly supervised by an immediate family member.

300.~~5~~6-6. *Right to Work.* No person may be required to do any of the following in order to become or remain an employee of the Nation:

(a) resign or refrain from being a member of a labor organization;
(b) become or remain a member of a labor organization; or
(c) pay dues or other charges to a labor organization.

300.~~6~~7. Compensation and Benefits

300.~~6~~7-1. *Compensation Plan.* HRD shall develop and institute an Employee Compensation Plan to assure equitable salary and wage levels and shall consider data from the Bureau of Labor Statistics for average earnings in the Green Bay area; the said plan must be approved by the Oneida Business Committee prior to becoming effective.

(a) Wage and salary adjustments and benefits available to employees are dependent upon available funding allocations, provided that, the compensation plan must require HRD to make reasonable efforts to regularly implement cost of living adjustments based on the United States Department of Labor – Bureau of Labor Statistics' Consumer Price Index for the Midwest Region.

300.~~6~~7-2. *Designation of Employees.* The Nation shall use the standards created under the Fair Labor Standards Act to designate its employees as either nonexempt or exempt and to set minimum wage and maximum hour restrictions for employees receiving an hourly wage.

300.~~6~~7-3. *Insurance and Retirement.* ~~The Nation may provide insurances and/or a retirement plan as a benefit to full-time employees. Emergency and temporary Employees are not eligible for these benefits.~~Any modification to the insurance and employment benefits offered by the Nation requires approval by Oneida Business Committee resolution.

300.~~6~~7-4. *Time Off.* The Nation shall afford employees accumulated paid time off based on continuous service to the Nation. HRD shall establish rates of accrual and the process for requesting paid time off in the ~~Rules~~ handbook created pursuant to ~~Section~~ 300.~~4~~5-1(a).

300.~~6~~7-5. *Leaves.* Employees of the Nation may be allowed leave as provided in the ~~Rules~~ handbook created pursuant to ~~Section~~ 300.~~4~~5-1(a) and any other applicable laws and policies of the Nation.

300.~~7~~8. General

300.~~7~~8-1. *Employee Development.* The Nation encourages the advancement and transfer of Employees in order to make the best possible use of human resources. Employees who wish to advance in the organization may work with the HRD to develop a career ladders plan.

300.~~7~~8-2. *Entities.* Individual entities shall comply with this ~~Law~~ law and the ~~rules~~ handbook promulgated under ~~Section~~ 300.~~4~~5-1(a) and, if necessary, shall develop internal rules and standard operating procedures for the implementation of this ~~Law~~ law and its associated ~~rules~~handbook.

300.~~7~~8-3. *Safety and Fitness-for-Duty.* In order to create a safe and healthy work environment for employees and to keep the number of job-related illnesses and/or injuries to a minimum, the Nation shall maintain safety standards in accordance with the Nation's applicable laws and policies. The Nation shall also maintain standards requiring employees to perform their job duties in a safe, secure, productive and effective manner.

300.~~7~~8-4. *Unemployment Insurance.* The Nation shall comply with the State of Wisconsin's unemployment insurance program; the Nation's employees may be eligible for unemployment benefits in accordance with the provisions of the laws of the State of Wisconsin.

300.~~8~~9. Employee Responsibilities

300.~~8~~9-1. *Harassment and Ensuring Equal Employment Opportunities.* All employees are expressly prohibited from committing sexual harassment of another individual or engaging in any conduct that deprives another of an equal employment opportunity.

300.~~8~~9-2. *Anonymous Information.* Employees who receive anonymous information of any type shall maintain the confidentiality of the said information and forward a summary of the information to the Chief of the Oneida Police Department expressly noting that the information was provided anonymously.

300.~~8~~9-3. *Employee Protection.* The Nation may not retaliate against any employee who reports an employee's, political appointee's and/or any official of the Nation's violation(s) of laws, policies or rules of the Nation and shall protect any employees who report such violations from retaliatory actions.

(a) HRD shall ~~develop rules~~include procedures in the handbook designed to protect employees reporting others' violations of the Nation's laws, policies or rules from any and all forms of retaliation.

300.~~9~~10. Layoffs and Furloughs

300.~~9~~10-1. Employees may be laid off and/or furloughed to the extent necessary for the Nation to operate effectively and efficiently in varying ~~economic~~ conditions pursuant to the Nation's laws, policies and rules.

300.~~9~~10-2. Layoffs and furloughs may not be used for disciplinary reasons and may not under any circumstances be considered adverse employment actions.

300.~~9~~10-3. The Nation's decision to layoff and/or furlough an employee is not subject to appeal.

300.~~10~~11. Employee Discipline and ~~Grievances~~Appeals

300.~~10~~11-1. ~~Corrective action rules may be used by e~~Employee supervisors shall use the corrective action procedures in the handbook to ~~correct~~ address employees' unacceptable work performance and/or behavior.

300.~~10~~11-2. Employees, excluding at-will employees, who disagree with a corrective action or allege that a supervisor's actions amount to an adverse employment action may contest the action using the ~~rules developed by HRD~~handbook, and based on the following available levels of review:

(a) *Internal Review by the Nation – Reconsideration by the Reviewing Supervisor.* An employee may request reconsideration of any corrective action or other action which may amount to an adverse employment action taken by his or her employee supervisor to his or her reviewing supervisor. The reviewing supervisor may affirm, modify or overturn the decision of the employee supervisor.

(b) *First Level of ~~Review~~Appeal*. Any employee, excluding at-will employees, alleging a wrongful ~~contesting the validity of a~~ suspension or termination or ~~allege~~ that a supervisor's actions amount to an adverse employment action may contest the action to the ~~Administrative Hearing~~Trial Court using the Rules of Administrative Procedure so long as the employee has requested reconsideration from his or her reviewing supervisor according to 300.11-2(a).

(1) An employee supervisor may not initiate a first level appeal in the event that the reviewing supervisor overturns the employee supervisor's action.

(2) In considering an appeal of a corrective action, the Trial Court may consider previous corrective actions upon which the suspension or termination was based, provided that, the employee must demonstrate that he or she requested a reviewing supervisor's reconsideration of such prior corrective actions in accordance with Article 13-1. When reviewing prior corrective actions, the Trial Court shall only consider whether the corrective action was justified based on the employee's behavior; procedural compliance may not be considered.

(~~b~~c) *Second Level of ~~Review~~Appeal*. Any party, excluding at-will employees, that is dissatisfied with the ~~Administrative Hearing~~Trial Court's decision, may appeal the ~~Administrative Hearing~~Trial Court's decision to the Oneida Judiciary's Appellate Court.

300.11-3. ~~(c)~~ *Compensatory Damages*. Should the Oneida Judiciary determine that there was an intentional deprivation of an equal employment opportunity, the Oneida Judiciary may award compensatory damages, including, but not limited to, attorney's or advocate's fees and court costs, as against the individual(s) found to have engaged in the intentional deprivation of an equal employment opportunity. Said compensatory damages may not be awarded against the Nation.

300.~~10~~11-~~3~~4. The ~~Administrative Hearing Court and the~~ Oneida Judiciary ~~may~~ shall waive any and all court fees on behalf of employees seeking to appeal a corrective action or an action alleged to be an adverse employment action.

~~**300.11. Applicability to Elected Officials**~~

~~300.11-1.The provisions of Sections 300.6 - 300.8 apply to the Nation's elected officials that work full-time (30 hours or more per week) and receive salaries for their service.~~

300.12. Violations

300.12-1. Unless expressly stated otherwise in this ~~Law~~law, claims of alleged violations of this ~~Law~~law may be filed with the Oneida Judiciary.

End.

CHAPTER 300
EMPLOYMENT LAW

300.1. Purpose and Policy
300.2. Adoption, Amendment, Repeal
300.3. Definitions
300.4. Applicability
300.5. Human Resources Department
300.6. Hiring
300.7. Compensation and Benefits
300.8. General
300.9. Employee Responsibilities
300.10. Layoffs and Furloughs
300.11. Employee Discipline and Appeals
300.12. Violations

300.1. Purpose and Policy

300.1-1. It is the purpose of this law to provide a fair, consistent and efficient structure to govern all employment matters and to provide employment preference to Oneida Tribal members and members of other federally recognized tribes.

300.1-2. It is the Nation's policy to provide entities latitude to create human resource practices to fit their individual industry standards, while creating a strong and healthy work environment. In addition, although certain federal and state laws, specifically Title VII, do not apply to the Nation, the Nation's employment policy is to afford applicants and employees equal employment opportunities while recognizing the Nation's Oneida and Indian employment preference. The Nation's hiring philosophy is to recruit, hire, retain and develop individuals who are culturally respectful, professionally competent and familiar with the Oneida community.

300.2. Adoption, Amendment, Repeal

300.2-1. This law was adopted by the Oneida General Tribal Council by resolution _____ and is effective six (6) months from the date of adoption.

300.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

300.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity does not affect other provisions of this law which are considered to have legal force without the invalid portions.

300.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law control, provided that this law repeals the following:

(a) The Oneida Tribal Management System and amendments to the Tribal Management System, including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985 and any and all amendments made thereto;

(b) BC Resolution BC-05-11-11-A entitled Establish Tuberculosis Control Program;

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(i) GTC Resolution 05-23-11-A entitled Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring.

300.2-6. This law is adopted under authority of the Constitution of the Oneida Nation.

300.3. Definitions

300.3-1. 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) "Adverse Employment Action" means a supervisor's failure to comply with the employment rules that results in a significant change in an employee's employment status that is more disruptive than a mere inconvenience or an alteration of job responsibilities and may include a deprivation of an equal employment opportunity.

(b) "At-Will Employee" means an employee working for the Nation on a short term basis that is not hired through the standard hiring procedures, including, but not limited to, political appointees, part-time, seasonal, and volunteer workers, and new Employees that have not yet completed their probationary period pursuant to the Rules developed by HRD.

(c) "Corrective Action" means any initiative taken by an employee supervisor with the goal of correcting an employee's prohibited behavior as identified in the rules created by HRD.

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law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained through legal adoption.

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(o) "Handbook" means the Oneida Employee Handbook, which contains the set of requirements enacted by HRD in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(p) "Sexual Harassment" means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature where:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

(2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

(q) "Standard Operating Procedure" means an internal procedure that is created to govern how an Entity operates and performs its designated functions; a standard operating procedure does not affect parties outside of the entity to which the procedure belongs.

(r) "Tribal Member" means an individual who is an enrolled member of the Oneida Nation.

300.4. Applicability

300.4-1. *Applicability to Elected Officials.* The provisions of Sections 300.6 - 300.8 apply to the Nation's elected officials that work full-time (30 hours or more per week) and receive salaries for their service, provided that, because other laws govern discipline of the elected officials, the Removal law for example, elected officials may not be subjected to corrective action pursuant to this law or handbook.

300.4-2. *Oneida Nation School Board.* To the extent that the provisions of this law and handbook conflict with the provisions of the memorandum of agreement between the Oneida Business Committee and the Oneida Nation School Board and any rules promulgated pursuant to authority delegated under said agreement, the memorandum and corresponding rules govern.

300.4-3. *Oneida Police Commission.* To the extent that any provisions of this law and handbook conflict with the provisions of the Law Enforcement Ordinance and the Oneida Police Commission's rulemaking authority as delegated under that law, the Law Enforcement Ordinance and corresponding rules govern.

300.5. Human Resources Department

300.5-1. *General Responsibilities.* The HRD shall:

(a) Develop and amend the Handbook as necessary to carry out the intent of this law.

(b) Implement, interpret and enforce this law and the associated handbook.

(c) Provide all employees with a copy of this law and the handbook and shall further notify employees of how such materials and all other employment related laws and policies may be electronically accessed.

(d) Review and approve all entities' employment related standard operating procedures to ensure compliance with this law and the handbook.

(e) Keep a record of all employment related decisions made by the employee supervisors, reviewing supervisors and the Oneida Judiciary.

(f) Collect and maintain data on human resource related information including, but not limited to, information on hiring, appointments, terminations, separations, transfers, employee development, grievances, policy issues and insurances.

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(2) The Oneida Business Committee may not have direct access to employee information and/or personnel files, especially information relating to individual compensation or corrective actions; provided that, Oneida Business Committee members that are also employee supervisors may access the employee records of any of his or her direct employees pursuant to 300.5-1(f)(3)(B).

(3) HRD shall store these employee records in a manner that maintains the records' private and confidential nature. Information contained in employee records may only be released in the following situations:

(A) A current or past employee may have access to his or her own employment record; an employee supervisor may have access to his or her current employees' records; a hiring supervisor may have access to the last twelve months of a current or former employee's work history; and HRD managers may have access to any employee's employment record.

(B) If required by law, the Nation shall release the information required to be released to the party the law designates as entitled to receive said information.

(C) Should an Employee be alleged to have committed an illegal act in the course of his or her employment with the Nation against the Nation, its customers or its employees, the said employee's record may be released to law enforcement agencies.

(D) A third party may access an employee's record if the employee provides written consent to release his or her record to a designated third party.

300.5-2. HRD shall uphold the Nation's sovereignty, laws and policies in its hiring and employment practices.

300.5-3. *HRD Oversight by the Oneida Business Committee.* HRD shall report to the Oneida Business Committee, or its designee, as directed by the Oneida Business Committee.

300.6. Hiring

300.6-1. *Equal Employment Opportunities.* The Nation and HRD shall afford all applicants and employees equal employment opportunities; however, the Nation shall follow the preferences outlined in 300.6-2 and such preferences may not be considered a violation of this law.

300.6-2. *Oneida and Indian Preference.* The Nation shall apply Oneida and Indian Preference to all hiring practices.

(a) Unless otherwise prohibited by law or grant funding requirements, the Nation shall apply the following order of Oneida and Indian Preference in staffing decisions:

(1) Persons who are tribal members.

(2) Persons who meet the blood quantum requirements contained in the Membership Ordinance, but are not currently tribal members, and/or persons who are documented first generation descendants of a tribal member.

(3) Persons enrolled in any federally recognized tribe other than this Nation.

(4) All other non-Indian persons.

(b) If a law or grant funding requirement prohibits the application of Oneida and Indian Preference in accordance with 300.6-2(a), the Nation shall make staffing decisions in accordance with the Indian Preference requirements of the said law or grant.

(c) Oneida and Indian Preference applies only when an applicant meets all the minimum requirements of the position applied for.

(d) Oneida-Only Positions. To the extent possible, all top administrative and political appointee positions must be held by tribal members.[1] If a position requires specific skills and/or licensing by the state or federal government and no Tribal members apply who are qualified and eligible and possess the necessary skills or licensing to assume the vacancy, only then may a non-tribal member be selected to fill the vacancy. In the event that a non-Tribal member is hired for a position originally designated as Oneida-only based on this provision, HRD shall hire the employee under contract so that the Nation may consider whether a Tribal member may be available to assume the position upon the expiration of the contract term.

300.6-3. *Education.* Employees shall have or obtain a high school diploma, a high school equivalency diploma or a general equivalency diploma within one (1) year of being hired. Exceptions and/or extensions to this requirement may be included in the handbook developed by HRD pursuant to 300.5-1(a).

300.6-4. *Workplace Safety.* The handbook shall contain requirements and procedures as necessary to protect the safety, health and well-being of all employees and other individuals in the workplace.

(a) The Employee Health Nursing Department shall establish, maintain, implement, evaluate and periodically update a Tuberculosis Control Program, which applies to all employees as well as the Nation's elected and appointed officials. The Employee Health Nursing Department shall make the approved program available to all persons to which it applies.

300.6-5. *Conflicts.* An applicant is ineligible for positions for which he or she has a conflict of interest, as defined by the Conflict of Interest Policy, and/or if he or she would be directly supervised by an immediate family member.

300.6-6. *Right to Work.* No person may be required to do any of the following in order to become or remain an employee of the Nation:

(a) resign or refrain from being a member of a labor organization;

(b) become or remain a member of a labor organization; or

(c) pay dues or other charges to a labor organization.

[1] January 8, 1990 GTC: Debbie Powless moved that the General Manager's and all top administrative positions be held by enrolled tribal members, motion seconded. … Main motion carried.

300.7. Compensation and Benefits

300.7-1. *Compensation Plan.* HRD shall develop and institute an Employee Compensation Plan to assure equitable salary and wage levels and shall consider data from the Bureau of Labor Statistics for average earnings in the Green Bay area; the said plan must be approved by the Oneida Business Committee prior to becoming effective.

(a) Wage and salary adjustments and benefits available to employees are dependent upon available funding allocations, provided that, the compensation plan must require HRD to make reasonable efforts to regularly implement cost of living adjustments based on the United States Department of Labor – Bureau of Labor Statistics' Consumer Price Index for the Midwest Region.

300.7-2. *Designation of Employees.* The Nation shall use the standards created under the Fair Labor Standards Act to designate its employees as either nonexempt or exempt and to set minimum wage and maximum hour restrictions for employees receiving an hourly wage.

300.7-3. *Insurance and Retirement.* Any modification to the insurance and employment benefits offered by the Nation requires approval by Oneida Business Committee resolution.

300.7-4. *Time Off.* The Nation shall afford employees accumulated paid time off based on continuous service to the Nation. HRD shall establish rates of accrual and the process for requesting paid time off in the handbook created pursuant to 300.5-1(a).

300.7-5. *Leaves.* Employees of the Nation may be allowed leave as provided in the handbook created pursuant to 300.5-1(a) and any other applicable laws and policies of the Nation.

300.8. General

300.8-1. *Employee Development.* The Nation encourages the advancement and transfer of Employees in order to make the best possible use of human resources. Employees who wish to advance in the organization may work with the HRD to develop a career ladders plan.

300.8-2. *Entities.* Individual entities shall comply with this law and the handbook promulgated under 300.5-1(a) and, if necessary, shall develop internal rules and standard operating procedures for the implementation of this law and its associated handbook.

300.8-3. *Safety and Fitness-for-Duty.* In order to create a safe and healthy work environment for employees and to keep the number of job-related illnesses and/or injuries to a minimum, the Nation shall maintain safety standards in accordance with the Nation's applicable laws and policies. The Nation shall also maintain standards requiring employees to perform their job duties in a safe, secure, productive and effective manner.

300.8-4. *Unemployment Insurance.* The Nation shall comply with the State of Wisconsin's unemployment insurance program; the Nation's employees may be eligible for unemployment benefits in accordance with the provisions of the laws of the State of Wisconsin.

300.9. Employee Responsibilities

300.9-1. *Harassment and Ensuring Equal Employment Opportunities.* All employees are expressly prohibited from committing sexual harassment of another individual or engaging in any conduct that deprives another of an equal employment opportunity.

300.9-2. *Anonymous Information.* Employees who receive anonymous information of any type shall maintain the confidentiality of the said information and forward a summary of the information to the Chief of the Oneida Police Department expressly noting that the information was provided anonymously.

300.9-3. *Employee Protection.* The Nation may not retaliate against any employee who reports an employee's, political appointee's and/or any official of the Nation's violation(s) of laws, policies or rules of the Nation and shall protect any employees who report such violations from

retaliatory actions.

(a) HRD shall include procedures in the handbook designed to protect employees reporting others' violations of the Nation's laws, policies or rules from any and all forms of retaliation.

300.10. Layoffs and Furloughs

300.10-1. Employees may be laid off and/or furloughed to the extent necessary for the Nation to operate effectively and efficiently in varying conditions pursuant to the Nation's laws, policies and rules.

300.10-2. Layoffs and furloughs may not be used for disciplinary reasons and may not under any circumstances be considered adverse employment actions.

300.10-3. The Nation's decision to layoff and/or furlough an employee is not subject to appeal.

300.11. Employee Discipline and Appeals

300.11-1. Employee supervisors shall use the corrective action procedures in the handbook to address employees' unacceptable work performance and/or behavior.

300.11-2. Employees, excluding at-will employees, who disagree with a corrective action or allege that a supervisor's actions amount to an adverse employment action may contest the action using the handbook, and based on the following available levels of review:

(a) *Internal Review by the Nation – Reconsideration by the Reviewing Supervisor.* An employee may request reconsideration of any corrective action or other action which may amount to an adverse employment action taken by his or her employee supervisor to his or her reviewing supervisor. The reviewing supervisor may affirm, modify or overturn the decision of the employee supervisor.

(b) *First Level of Appeal.* Any employee, excluding at-will employees, alleging a wrongful suspension or termination or that a supervisor's actions amount to an adverse employment action may contest the action to the Trial Court using the Rules of Administrative Procedure so long as the employee has requested reconsideration from his or her reviewing supervisor according to 300.11-2(a).

(1) An employee supervisor may not initiate a first level appeal in the event that the reviewing supervisor overturns the employee supervisor's action.

(2) In considering an appeal of a corrective action, the Trial Court may consider previous corrective actions upon which the suspension or termination was based, provided that, the employee must demonstrate that he or she requested a reviewing supervisor's reconsideration of such prior corrective actions in accordance with Article 13-1. When reviewing prior corrective actions, the Trial Court shall only consider whether the corrective action was justified based on the employee's behavior; procedural compliance may not be considered.

(c) *Second Level of Appeal.* Any party, excluding at-will employees, that is dissatisfied with the Trial Court's decision, may appeal the Trial Court's decision to the Oneida Judiciary's Appellate Court.

300.11-3. *Compensatory Damages.* Should the Oneida Judiciary determine that there was an intentional deprivation of an equal employment opportunity, the Oneida Judiciary may award compensatory damages, including, but not limited to, attorney's or advocate's fees and court costs, as against the individual(s) found to have engaged in the intentional deprivation of an equal employment opportunity. Said compensatory damages may not be awarded against the Nation.

300.11-4. The Oneida Judiciary shall waive any and all court fees on behalf of employees seeking to appeal a corrective action or an action alleged to be an adverse employment action.

300.12. Violations

300.12-1. Unless expressly stated otherwise in this law, claims of alleged violations of this law may be filed with the Oneida Judiciary.

End.

Legislative Operating Committee
May 18, 2016

Mortgage and Foreclosure Law

Submission Date: October 7, 2015

☐ Public Meeting:
☐ Emergency Enacted:

LOC Sponsor: David P. Jordan

Summary: *Is a new law that will explain how the Tribe deals with mortgages and foreclosures. This law is being developed because the Land Commission's hearing responsibilities are transferring the Judiciary.*

10/7/15 LOC: Motion by David P. Jordan to add the Real Property Law Amendments, Probate Law, Mortgage Law, Landlord-Tenant Law and Land Commission Bylaws Amendments to the Active Files List with himself as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

12/16/15 LOC: Motion by David P. Jordan to accept the memorandum update as FYI and to defer the Mortgage Law back to the sponsor and to bring back when ready; seconded by Fawn Billie. Motion carried unanimously.

2/3/16 LOC: Motion by David P. Jordan to the forward the Mortgage and Foreclosure Law to the Legislative Reference Office for a legislative analysis and to the Finance Department for a fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.

Next Steps:

- Accept the legislative analysis for the Mortgage and Foreclosure law and direct the LRO to prepare the Mortgage and Foreclosure law for a public meeting to be held on June 16, 2016.

2016 05 18
Analysis 1 to Draft 3

Chapter 64
Mortgage and Foreclosure
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that of their houses – their issues

Analysis by the Legislative Reference Office					
Title	Mortgage and Foreclosure (law)				
Requester	Land Commission	**Drafter**	Krystal L. John	**Analyst**	Maureen Perkins
Reason for Request	This is a new law that will explain the process used by the Nation to deal with mortgages and foreclosures. This law is being developed at the Land Commission's request to transfer the commission's hearing responsibilities to the Judiciary.				
Purpose	Set the standards and requirements for participation in the Nation's mortgage programs and to prescribe the foreclosure process required to be used in the event of a default of a mortgage.				
Authorized/ Affected Entities	Land Commission, Oneida Judiciary, Division of Land Management, Oneida Police Department, Oneida Nation Register of Deeds, Oneida Land Title and Trust Department, Oneida Accounting Department, and Oneida Nation members who wish to participate in mortgage programs offered by the Nation				
Related Legislation	Judiciary law, Rules of Civil Procedure, Rules of Appellate Procedure, Leasing Law, Administrative Rulemaking, Real Property Law				
Enforcement/ Due Process	Decisions of the Division of Land Management regarding the issuance of mortgages are final. Foreclosures can be appealed to the Judiciary.				

Overview

This is a new law that details the current process used by the Nation to offer mortgage programs to the Nation's membership and to foreclose on a property purchased through the Nation's mortgage programs. The law contains the minimum framework and requirements related to the mortgage programs and the required foreclosure process for all mortgages issued by the Nation. The Division of Land Management and the Land Commission have been delegated rulemaking authority under this law to develop rules according to the Administrative Rulemaking law which may contain more detailed requirements for each of the various types of mortgages offered by the Nation.

At least one Tribal member must be on the application to qualify for a mortgage issued by the Nation. If married, both spouses must apply for the mortgage jointly. Once a mortgage is issued, if the Tribal member dies, the non-tribal member can remain in the mortgage and the regular default process is applied in the case of a default of a non-tribal member mortgage. In the case of divorce, the ownership of the house will be determined through the divorce proceedings; this law does not prevent non-tribal spouses from remaining in the house absent the Tribal member.

The mortgage default process is detailed within the law. Default notices are mailed to mortgagors for each 30 calendar days of default. The Division of Land Management, at their discretion, may enter into an agreement to cure default for mortgagors who demonstrate the ability to pay the defaulted amount within one year. Once two notices of default have been issued, the Division of Land Management will determine, based on a standard operating procedure, if it is in the best interest of the Nation to pursue a foreclosure. The minimum foreclosure process is detailed and includes the Judiciary as the decision making authority to

issue a judgment of foreclosure, rather than the Land Commission under the current process. Once the Division of Land Management decides to pursue a foreclosure, a summons and complaint is filed with the Judiciary and must include a demand judgment for any deficiency that remains due to the Nation. If the parties come to an agreement to cure default or the mortgagor satisfies the mortgage prior to a judgment to foreclose is issued by the Judiciary, the Judiciary will dismiss the foreclosure.

When a judgment of foreclosure is issued by the Judiciary, a notice to vacate is issued to the mortgagor. This is contrary to state law which allows mortgagors in foreclosure to remain in the premises until the redemption period expires and the premises is sold. However, the practice as detailed in the law is in the best interest of the Nation because it allows the Nation to secure and refurbish the premises during the redemption period so that it is ready for the next buyer and prevent any waste of the property. Additionally, when a judgment of foreclosure is issued, it means that the mortgagor is already in default and will most likely not make the mortgage payments during the redemption period. The mortgagor has a redemption period of six months if they had occupied the premises upon foreclosure, or 5 weeks if they had abandoned the premises, to pay the full amount of the mortgage and any related costs. If this occurs, the Judiciary will vacate the order to foreclose. The Nation cannot resell the premises until the redemption period has expired. Appeals of a judgment of foreclosure may be filed with the Judiciary.

- The law contains the minimum framework for the Nation's mortgage programs and foreclosure process.
- The Division of Land Management and the Land Commission have joint delegated rulemaking authority under this law to develop rules that may contain more detailed requirements.
- At least one Tribal member must be included on a mortgage application.
- There is nothing in the law that prevents non-tribal member spouses from remaining in the mortgaged property in the event of death or divorce of the Tribal member.
- Mortgagors in default have an opportunity to enter into an agreement to cure default prior to default at the discretion of the Division of Land Management.
- Once a judgment to foreclose has been issued by the Judiciary, the mortgagor will receive an order to vacate.
- The mortgagor has a 6 month redemption period if the home was occupied prior to the judgment to foreclose, or 5 weeks if the home was abandoned prior to the judgment to foreclose. The mortgagor may redeem the mortgage by paying the full amount of the mortgage and any related fees. If this occurs, the Judiciary will vacate the order to foreclose.
- The hearing body authority regarding foreclosure judgments has transferred from the Land Commission to the Judiciary.

Consideration

- The decision to issue an agreement to cure default is at the discretion of the Division of Land Management. The LOC may consider requiring the Division of Land Management to create an SOP or a rule detailing the requirements mortgagors must meet to qualify for an agreement to cure a defaulted mortgage.

Miscellaneous

A public meeting has not yet been held. Please refer to the fiscal impact statement for any financial impacts.

Chapter 64
Mortgage and Foreclosure
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that of their houses – their issues

64.1. Purpose and Policy.
64.2. Adoption, Amendment, Repeal.
64.3. Definitions.
64.4. Mortgage Programs.
64.5. Default.
64.6. Agreement to Cure Default.
64.7. Foreclosure.
64.8. Appeal Rights.

64.1. Purpose and Policy.

64.1-1. *Purpose.* It is the purpose of this law to set the standards and requirements for participation in the mortgage programs and to prescribe the foreclosure process required to be used in the event of a default of a mortgage.

64.1-2. *Policy.* It is the policy of this law to administer mortgage programs aimed at maintaining and improving the standard of living for Tribal members, while protecting the Nation's assets and expanding the Tribal land base.

64.2. Adoption, Amendment, Repeal.

64.2-1. This law is adopted by the Oneida Business Committee by Resolution _____.

64.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

64.2-3. 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.

64.2-4. 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.

64.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

64.3. Definitions.

64.3-1. 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) "Abandoned" means the relinquishment of possession or control of a mortgaged premises whether or not the mortgagor or the mortgagor's assigns have relinquished equity and title to the mortgaged interest.

(b) "Agreement to Cure Default" means a signed contract between a customer of a mortgage program and the Division of Land Management on behalf of the Nation whereby the parties agree upon a temporary payment schedule to allow the mortgagor to cure a default.

(c) "Appraisal" means the valuation of real property by the estimate of an authorized person.

(d) "Business Day" means Monday through Friday from 8:00 a.m. - 4:30 p.m., excluding holidays recognized by the Nation.

(e) "Default" means a failure to comply with the payment terms of a mortgage.

(f) "Foreclosure" means a legal proceeding initiated by the Nation to terminate a mortgagor's interest in real property, by taking possession of the real property as a partial or complete satisfaction of a default.

(g) "Home Inspection" means an examination of a property's condition.

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

(i) "Mortgage" means a lien, held by the Nation, on a real property interest that is given as security for the payment of a debt and/or the performance of a duty, including the refinancing of an original conveyance, that will become void upon the payment and/or performance according to the stipulated terms.

(j) "Mortgagor" means the borrower in a mortgage.

(k) "Nation" means the Oneida Nation.

(l) "Notice of Default" means a formal and dated notice of default.

(m) "Personal Property" means any property that does not fit the definition of real property and is generally movable.

(n) "Real Property" means land and anything growing on, attached to, or erected on the land, excluding anything that may be severed without injury to the land.

(o) "Redemption Period" means the timeframe during which a defaulting mortgagor may recover a mortgaged interest that is the subject of a judgment of foreclosure by paying the outstanding debt owed.

(p) "Refinance" means an exchange of an old debt for a new debt, as by renegotiating a different interest rate, term of the debt, or by repaying the existing loan with money acquired from a new loan.

(q) "Reservation" means all the property within the exterior boundaries of the reservation of the Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(r) "Rule" means a set of requirements, including citation fees and penalty schedules, enacted by the Division of Land Management in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(s) "Title" means legal evidence of a person's ownership rights in real property.

(t) "Title Report" means the written analysis of the status of title to real property, including a property description, names of titleholders and how the title is held, tax rate, encumbrances and any real property taxes due.

(u) "Tribal Land" means any land held in fee or trust status by the Nation within the reservation.

(v) "Tribal Member" means an enrolled member of the Nation.

64.4. Mortgage Programs.

64.4-1. *Available Mortgage Purposes.* Consistent with available funds, the Division of Land Management shall provide mortgage programs for the following purposes and shall establish rules naming said programs and providing the specific requirements for each program:

(a) Financing the purchase or down payment of existing homes and lands;

(b) Construction of new homes;

(c) Repairs and improvements to existing homes;

(d) Refinancing existing mortgages.

64.4-2. *Mortgage Eligibility Requirements.* In order to be eligible for a mortgage, applicants shall meet the following conditions:

(a) Be at least eighteen (18) years of age at the time of the application;

(b) Be a Tribal member(s);

(1) If the application is for joint applicants, at least one (1) applicant shall be a Tribal member.

(2) For married joint applicants, both spouses shall be named applicants on the application and joint mortgagors.

(c) Not have a discharged bankruptcy within two (2) years from the date of the application;

(d) Not be involved in a bankruptcy proceeding that has not yet been discharged at the time of the application; and

(e) Not have had a mortgage foreclosed upon within the seven (7) years from the date of the application.

64.4-3. *Mortgage Selection.* The Land Commission and the Division of Land Management shall jointly develop rules governing the selection of applicants for the issuance of a mortgage. At a minimum, the Land Commission and the Division of Land Management shall ensure that the mortgage selection rules require that the mortgagor:

(a) Have an acceptable credit rating as defined in the rules;

(b) Have an acceptable debt to income ratio as defined in the rules;

(c) Have all delinquent debts owed to the Nation paid in full prior to signing the mortgage document;

(d) Have no more than the allowable amount of accumulated judgments, collections and/or profit and loss write-offs based on the rules, and, if any debts are being paid through a debt collector, the monthly payment must be listed as a monthly debt on the application;

(1) In the rules, the Land Commission and the Division of Land Management shall provide the allowable timeframe, in relation to the date of selection, for applicants to bring any judgments, collections and/or profit and loss write-offs within the allowable amount.

(2) Applicants failing to bring said debts within the allowable amount based on the timeframe provided become ineligible for the mortgage.

64.4-4. *Mortgage Requirements.* The Land Commission and the Division of Land Management shall jointly develop rules governing the requirements of mortgages entered into by the Division of Land Management. At a minimum, the Land Commission and the Division of Land Management shall ensure that the mortgage requirement rules:

(a) Require the mortgage document to identify the source of the ownership interest in the real property as attributable either to a deed or a residential lease entered into pursuant to the Leasing law;

(b) Require the real property that is the subject of the mortgage be insured under a homeowner's insurance policy paid for by the mortgagor and include enforcement provisions in the event of noncompliance herewith;

(c) Require that the mortgage be the first or second secured interest on the real property;

(d) Require proof of clear title, as defined by the rules, prior to entering into a mortgage;

(e) Establish which administrative fees, if any, that may be assessed in the mortgage;

(f) Require that the mortgage be for real property located within the reservation;
(g) Require the mortgage include interest at a rate provided in the rules.

64.4-5. *Non-Tribal Member Spouses.* The following applies when one of the mortgagors is a non-Tribal member:

(a) *Death of the Tribal Member Spouse*. So long as the mortgage is not defaulted upon, the death of the Tribal member spouse does not affect a mortgage. If the non-Tribal member spouse defaults on the mortgage, the mortgage is subject to the regular foreclosure proceedings as outlined in this law.

(b) *Refinancing due to Death or Divorce.* In the event that a mortgagor seeks refinancing due to the death or divorce of a spouse, the mortgagor shall comply with the refinancing rules established pursuant to Section 64.4-1(d).

64.5. Default.

64.5-1. *Notice of Default.* The mortgage officer shall send a notice of default to mortgagors by first class mail for each month for which the mortgagor defaults on the subject mortgage, provided that the mortgage officer shall send the notices of default a minimum of thirty (30) calendar days apart and ensure that the notice contains the following information:

(a) The notice number;
(b) The dates of the default;
(c) The amount of the default;
(d) The requirement to cure the default, including important dates affecting the mortgagor's rights;
(e) The mortgagor's available options to cure a default; and
(f) The actions that may be taken by the Nation if the default is not timely cured.

64.6. Agreement to Cure Default.

64.6-1. *Entering into an Agreement to Cure Default*. The Division of Land Management may, in its full discretion, work with mortgagors able to pay a mortgage default over time to enter into an agreement to cure default over a reasonable time not to exceed one (1) year.

(a) A mortgagor may enter into one (1) agreement to cure default per twelve (12) month period. A mortgagor may request more than one (1) agreement to cure the default in a twelve (12) month period if the mortgagor is able to demonstrate the additional agreement is necessary due to extenuating circumstances faced by the mortgagor, provided that, the director of the Division of Land Management shall approve any such agreements before said agreement may become effective.

(b) The Division of Land Management may not permit mortgagors to increase payroll deduction payments to cure a default without first entering into an agreement to cure default.

(c) In the event a mortgagor violates the terms of an agreement to cure default, the Division of Land Management shall enforce the remedies afforded the Nation in the agreement to cure default and may not amend the terms of an unsatisfied agreement to cure default without the approval of the director of the Division of Land Management.

64.6-2. *Elements of an Agreement to Cure Default.* All agreements to cure default entered into by the Division of Land Management are required to contain the following elements:

(a) The effective date of the agreement;
(b) The parties to the agreement;

(c) The amount of payments under the mortgage and any agreements to cure default previously entered into;

(d) A statement that the mortgage and, if applicable, any previous agreement to cure default are in default;

(e) The amount of the increased payments under the agreement;

(f) The terms of the agreement, including the remedies available to the Nation in the event that the mortgagor violates the terms of the agreement; and

(g) Notice that a failure to follow the terms of the agreement may result in the immediate filing of a foreclosure.

64.7. Foreclosure.

64.7-1. *Decision to Foreclose.* Any mortgage that is in default for two (2) consecutive months may be subject to foreclosure, provided that the Nation has complied with the notice of default requirement in section 64.5-1.

(a) After the two (2) notices of default have been sent, the Division of Land Management shall determine whether initiating foreclosure proceedings would be in the best interest of the Nation, provided that the Division of Land Management shall abide by the foreclosure determination standard operating procedure approved by both the director of the Division of Land Management and the Land Commission.

(1) Should the Division of Land Management determine that initiating a foreclosure is in the best interest of the Nation, the Division of Land Management shall submit a complaint to the Judiciary in compliance with the Nation's laws and the Judiciary's requirements. The complaint may not be submitted until after thirty (30) calendar days from the date of the second notice of default.

(2) The Division of Land Management shall include in all complaints a demand judgement for any deficiency that may remain due to the Nation after the Nation's reclamation of title against every party who is personally liable for the debt secured by the mortgage that is the subject of the foreclosure.

64.7-2. *Mortgage Satisfaction or Agreement to Cure Default Prior to Judgment of Foreclosure.* If the mortgagor satisfies the mortgage that is the subject of a foreclosure complaint or the parties reach an agreement to cure default prior to the Judiciary's entering of a judgment of foreclosure, the Judiciary shall dismiss the foreclosure complaint.

(a) *Mortgage Satisfaction.* A mortgagor named in a foreclosure complaint may satisfy the subject mortgage at any time prior to the Judiciary's entering of a judgment of foreclosure. Under such circumstances, the mortgagor shall submit to the Judiciary proof of payment in full of the mortgage principal, any interest owed and any court costs incurred by the Nation. Upon receipt of verified proof of satisfaction, the Judiciary shall dismiss the foreclosure complaint based on satisfaction of the mortgage.

(b) *Agreement to Cure Default.* Should the Nation and the mortgagor reach an agreement to cure default in accordance with section 64.6 after foreclosure proceedings have been initiated, which may include provisions requiring the mortgagor to reimburse the Nation for any court costs incurred, the mortgagor shall submit to the Judiciary a copy of the executed agreement to cure default. Upon receipt of an executed agreement to cure default, the Judiciary shall dismiss the foreclosure complaint without prejudice based on the agreement to cure default.

64.7-3. *Judgment of Foreclosure.* If the Judiciary finds in favor of the Nation, it shall issue a judgement of foreclosure. At a minimum, the Judiciary shall include the following in each judgment of foreclosure:

(a) A description of the mortgaged premises;

(b) The amount of the mortgage debt due;

(c) The mortgagor's redemption period;

(d) An order to vacate the mortgaged premises within thirty (30) calendar days of the judgment;

(e) An order transferring title of the mortgaged premises to the Nation as partial or full payment of the amount of mortgage debt then due;

(f) So long as the Nation's complaint reserves the right to demand a judgment of deficiency for costs that may remain due after the transfer of title to the Nation pursuant to foreclosure, an order recognizing the Nation's reserved right, which may include sums advanced by the Nation for insurance, necessary repairs, inspection costs, appraisal fees and other costs; and

(g) An order that within seven (7) months of receipt of a judgment of foreclosure, the Nation submit either a motion demanding a judgment of deficiency or a motion to enforce the judgment of foreclosure, each of which are required to include a final accounting and a confirmation of appraisal.

64.7-4. *Redemption Period.* The Judiciary shall afford all mortgagors subject to a judgment of foreclosure a redemption period. To redeem a real property interest, the mortgagor shall pay the full amount of the mortgage debt due and any costs incurred by the Nation for insurance, necessary repairs, inspection costs, appraisal fees and other costs.

(a) *Occupied Premises.* The required redemption period for occupied premises is six (6) months. Absent an affirmative finding of abandonment, the Judiciary shall presume that premises are occupied premises.

(b) *Abandoned Premises.* The required redemption period for abandoned premises is, at a minimum, five (5) weeks. A redemption period based on abandoned premises requires an affirmative finding of abandonment by the Judiciary based on evidence submitted by the Division of Land Management on behalf of the Nation.

(1) In determining whether the mortgaged premises have been abandoned, the Judiciary shall consider the totality of the circumstances, including the following:

(A) Boarded, closed or damaged windows or doors to the premises;

(B) Missing, unhinged or continuously unlocked doors to the premises;

(C) Terminated utility accounts for the premises;

(D) Accumulation of trash or debris on the premises;

(E) At least two (2) reports to law enforcement officials of trespassing, vandalism, or other illegal acts being committed on the premises when the mortgagor is not present; and

(F) Conditions that make the premises unsafe or unsanitary or that make the premises in imminent danger of becoming unsafe or unsanitary.

(2) The Division of Land Management may include testimony from a representative of the city, town, village or county where the mortgaged premises is located as part of its evidence of abandonment.

(c) *Redeemed Premises*. Should the mortgagor successfully redeem the mortgaged interest that is the subject of a judgment of foreclosure, the Nation shall issue the

mortgagor a certificate of redemption. Upon receipt of a certificate of redemption, the mortgagor shall file a motion to vacate the judgment of foreclosure with the Judiciary. Upon receipt from the Judiciary, the mortgagor shall duly record the order to vacate the judgment of foreclosure with the Oneida Nation Register of Deeds.

64.7-5. *Mortgage Holder's Responsibilities upon Receipt of a Judgment of Foreclosure.* Upon receipt of a judgment of foreclosure, the Division of Land Management, on behalf of the Nation as the mortgage holder, shall:

(a) Secure and take possession of the real property once the timeframe in the order to vacate has expired.

(1) The Division of Land Management shall provide the mortgagor notice of when the property's locks are scheduled to be changed, which, at a minimum, includes the following:

(A) The property address;

(B) The date and time the locks are scheduled to be changed;

(C) Notice to mortgagor that an Oneida Police Officer will be present while the locks are being changed;

(D) Information on how the disposition of personal property will be managed based on section 64.7-5(a)(3);

(E) The contact information for Division of Land Management staff whom the mortgagor may contact in regards to the property; and

(F) A copy of the judgment of foreclosure.

(2) The Division of Land Management shall contact the Oneida Police Department to request that an Oneida police officer be on the scene while the locks are being changed.

(3) In the event the mortgagor has left personal property in the home, he or she may retrieve said personal property by contacting the Division of Land Management staff listed on the work order. The Division of Land Management shall hold personal property for a minimum of five (5) business days.

(A) The Division of Land Management shall keep a written log of the date and the work time the Nation's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the property after the expiration of the timeframe provided in the order to vacate.

(B) The Division of Land Management and the Land Commission shall jointly create rules further governing the disposition of personal property.

(b) Order a title report from the Land Title and Trust Department with specific instructions to contact the Accounting Department to verify whether the mortgagor owes any outstanding debts to the Nation and based on the title report shall:

(1) Seek payment of outstanding water bills and/or other liens or charges appearing on the tax rolls from the mortgagor. In the event of a failure to pay, the Nation shall make payment and include such costs in the Nation's final accounting required by the judgment of foreclosure and as explained in section 64.7-5(e);

(2) Request proof of payment of any judgments noted on the title report which can be attached to the real property;

(3) Request proof of satisfaction of any mortgage liens issued by an outside financial institution other than the Nation, provided that, said mortgage liens may

not be satisfied by the Nation until the redemption period has either expired or been terminated by the Judiciary.

(c) Order an appraisal of the real property to be completed;

(d) Order a home inspection, including a well and septic inspection, of the real property to be completed and based on the findings of the home inspection shall coordinate which repairs will be completed.

(1) In order for repair costs to be included in a judgment of deficiency 64.7-3(f), the Nation shall include the following in its demand for the said judgment:

(A) A record of all receipts for materials and invoices for services related to the said repairs;

(B) A record of all hours expended by the Nation's staff related to the said repairs; and

(C) Photographic evidence demonstrating the condition of the real property both before and after the repairs were made.

(2) If, based on the home inspection, the Division of Land Management determines it to be in the best interest of the Nation to raze a foreclosed upon property, it may do so in accordance with the rules which the Division of Land Management and the Land Commission shall jointly develop. Any costs related to the razing of a property may be included in the Nation's demand for a judgment of deficiency.

(e) Wrap up the foreclosure by filing with the Judiciary either a motion demanding a judgment of deficiency or a motion for enforcement of the judgment of foreclosure.

(1) *Demand for a Judgment of Deficiency.* The Nation shall file a demand for a judgment of deficiency if the total of the amount of the mortgage debt due in the judgment of foreclosure and the sums advanced by the Nation for insurance, necessary repairs, inspection costs, appraisal fees and other costs exceeds the value of the real property based on the appraisal. A demand for a judgment of deficiency is required to include a confirmation of appraisal and an accounting of all sums advanced by the Nation.

(2) *Motion for Enforcement of the Judgment of Foreclosure*. The Nation shall file a motion for enforcement of the judgment of foreclosure if the total of the amount of the mortgage debt due in the judgment of foreclosure and the sums advanced by the Nation for insurance, necessary repairs, inspection costs, appraisal fees and other costs are less than or equal to the value of the real property based on the appraisal. If the total of the amount of the mortgage debt due in the judgment of foreclosure and the sums advanced by the Nation for insurance, necessary repairs, inspection costs, appraisal fees and other costs are less than the value of the real property based on the appraisal, the Division of Land Management shall include in the motion to enforce a copy of the signed apron issued to the mortgagor providing the refunded amount.

64.7-6. *Resale Following Foreclosure.* The Division of Land Management may begin advertising a foreclosed upon property for re-sale immediately following its receipt of an order to enforce the judgment of foreclosure, provided that it may not complete a sale of said property until the mortgagor's appeal rights have expired.

64.8. Appeal Rights.

64.8-1. *Decisions of the Division of Land Management are Final*. All decisions made by the Division of Land Management in regards to the mortgage programs provided under this law are final decisions and are not subject to appeal.

64.8-2. *Appeal of a Foreclosure.* A mortgagor whose real property has been foreclosed upon may appeal a determination made by the Judiciary in accordance with the Judiciary law and the Rules of Appellate Procedure.

Adopted BC-

Oneida Nation

Legislative Operating Committee
P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214
http://oneida-nsn.gov/LOC

Committee Members
Brandon Stevens, Chairperson
Tehassi Hill, Vice Chairperson
Fawn Billie, Councilmember
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

Quarterly Report
Legislative Operating Committee
January - March 2016

1. Purpose and Mission

The purpose and mission of the Legislative Operating Committee (LOC) is to enhance the policymaking capability of the Oneida Business Committee (OBC) and the General Tribal Council (GTC) by drafting laws and policies and reviewing past and current laws, policies and regulations of the Oneida Tribe.

A legislative analysis is completed for proposed laws, policies, regulations, bylaws and amendments. Public meetings are facilitated by the LOC in accordance with the Legislative Procedures Act. A resolution and statement of effect are prepared for all legislation that is presented for final adoption which is submitted to the OBC and/or GTC for approval.

2. Members

The LOC is comprised of the five council members of the OBC: Brandon Stevens (Chair), Tehassi Hill (Vice-Chair), Jennifer Webster, Fawn Billie, and David P. Jordan.

3. Contact Information

The LOC office is located on the second floor in the Norbert Hill Center. For more information, please contact the Legislative Reference Office (LRO) at (920) 869-4376 or e-mail LOC@oneidanation.org.

4. Meetings

The LOC holds regular meetings on the first and third Wednesday of every month. The meetings begin at 9:00 a.m., and are held in the Norbert Hill Center - Second Floor, Business Committee Conference Room.

5. Prioritization

The LOC continuously reviews the proposals on our Active Files List (AFL). Priorities are identified based on GTC Directive, OBC Directive and by LOC agreement/consensus.

6. Summary

During this reporting period (January - March 2016), the LOC:

- Added two legislative items to the AFL and completed processing four legislative items; bringing the total number of legislative items on the AFL to 54 (as of April 1, 2016).

- Added one administrative item (a GTC petition) to the AFL and forwarded a statement of effect for one GTC petition to the OBC; bringing the total number of legislative analyses/statements of effect prepared for GTC petitions this term to 16.
- Held six public meetings.

Legislative Items Added to the Active Files List

Of the two legislative items added to the AFL during the reporting period, one is a proposal for a new law and the other is a proposal that would amend the bylaws for a Tribal entity:

- **New Law: Eviction Law.** This is a new Law that would create a streamlined eviction process which provides the rights and responsibilities of all parties involved and applies to leases held pursuant to the Leasing Law and the Landlord-Tenant Law. *Added to the Active Files List on January 6, 2016.*
- **Amendments: Trust Enrollment Committee Bylaws.** A Tribal member requested changes to the entity's bylaws in order to remove particular language. The Trust/Enrollment Committee also wishes to update the entity's bylaws. *Added to the Active Files List on January 6, 2016.*

Legislative Items Completed

Four legislative items were completed during this reporting period and removed from the AFL:

- On February 24, 2016, the OBC adopted the new **Administrative Rulemaking** law.
- On February 24, 2016, the OBC approved amendments to the **Administrative Procedures Act**.
- On January 13, 2016, the OBC approved amendments to the **Public Use of Tribal Land** law.
- The OBC approved amendments for the **Audit Committee bylaws** on January 27, 2016.

Emergency Actions

During the January – March 2016 reporting period, there were no laws or policies in effect on an emergency basis.

Added/Processed Administrative Items

GTC Petitions. During this quarter, one new GTC petition was deferred to the LOC for legislative analysis, and the OBC accepted a statement of effect for a separate item:

- The LOC added **Petition: Debraska – Health Care Board** to the Active Files List on March 22, 2016.
- On March 9, 2016, the OBC accepted the analysis the LOC had prepared for **Petition: Food Pantry**.

Public Meetings

The LOC held six public meetings during the reporting period:

- 3/31/16 – Employment Law (new law)
- 3/17/16 – Marriage Law Amendments
- 2/18/16 – Garnishment Law Amendments
- 1/7/16 – Comprehensive Policy Governing Boards, Committees & Commissions amendments
- 1/7/16 – Administrative Procedures Act amendments
- 1/7/16 – Administrative Rulemaking (new law)

Person responsible for this report and contact information: Brandon Stevens, Legislative Operating Committee Chair. Phone: (920) 869-4378.

May 2016

May 2016

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

June 2016

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

	Monday	Tuesday	Wednesday	Thursday	Friday
May 2 - 6	**May 2**	**3**	**4**	**5**	**6**
			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar	12:15pm 2:00pm Back Pay (Law) Amendments (BC_Conf_Room) - Douglass A. McIntyre	
May 9 - 13	**9**	**10**	**11**	**12**	**13**
			BC Meeting (BCCR)	10:30am 1:30pm FW: Employment Law PM Comment Consideration (BCCR) - Krystal John	
May 16 - 20	**16**	**17**	**18**	**19**	**20**
			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar	12:15pm 2:15pm Public Meeting - Fitness for Duty (Law), Per Capita Law Amendments; and Leasing Law Amendments (BC_Conf_Room) - Douglass A. McIntyre	
May 23 - 27	**23**	**24**	**25**	**26**	**27**
			BC Meeting (BCCR)	9:00am 12:00pm FW: Meeting with ICW RE: Childrens Code (Social Services - Room TBD) - Rhiannon R. Metoxen	Holiday-Oneida Code Ta
May 30 - Jun 3	**30**	**31**	**Jun 1**	**2**	**3**
	Memorial Day				

June 2016

June 2016

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

July 2016

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

	Monday	Tuesday	Wednesday	Thursday	Friday
May 30 - Jun 3	**May 30**	**31**	**Jun 1**	**2**	**3**
			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar		12:15pm 2:15pm FW: Garnishment Public Meeting - June 3, 2016 (BCCR) - Krystal John
Jun 6 - 10	**6**	**7**	**8**	**9**	**10**
			BC Meeting (BCCR)		
Jun 13 - 17	**13**	**14**	**15**	**16**	**17**
			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar		
Jun 20 - 24	**20**	**21**	**22**	**23**	**24**
			BC Meeting (BCCR)		
Jun 27 - Jul 1	**27**	**28**	**29**	**30**	**Jul 1**