

**CHAPTER 300
EMPLOYMENT LAW**

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300.1. Purpose and Policy

300.1-1. It is the purpose of this Law to define the Tribe’s employee and employer responsibilities. This Law shall define the minimum standards regarding hiring, compensation and benefits, employee safety, protecting employer assets and progressive disciplinary action.

300.1-2. It is the policy of the Tribe to provide Tribal departments, divisions, and non-divisions latitude to create Human Resource practices to fit their individual industry standards through complimenting policy guided by this Law, while protecting employees from undue political pressure. In addition, while the provisions of certain federal laws may not specifically apply to the Tribe, the Tribe has determined that, unless otherwise specifically stated, the standards created under those federal laws will serve as a guide for the Tribe.

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 This Law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.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 shall 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 shall control. Provided that, 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System, including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985, are repealed.

300.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

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) “Back pay” shall mean money damages owed to an 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.

(b) “Employee” shall mean any individual who is employed by the Tribe and is subject to the direction and control of the Tribe with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. “Employee” includes, but is not limited to, an individual employed by any program or enterprise of the Tribe and political appointees, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this Law, individuals

41 employed under an employment contract as a limited term employee are employees of
42 the Tribe, not consultants.

43 (c) “Immediate family member” means an individual’s husband, wife, mother, father,
44 son, daughter, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew,
45 mother-in-law, father-in-law, brother-in-law, sister-in-law, first or second cousin, step-
46 parent, or someone who is recognized by the Oneida General Tribal Council and/or its
47 delegate as a member of the individual’s extended family.

48 (d) “Involuntarily separated” means an employee is removed from employment through
49 whatever means by the employer. This may include but is not limited to, investigative
50 leave, suspension or termination.

51 (e) “Political appointee” means an individual appointed as an executive assistant by an
52 individual Oneida Business Committee member or as an assistant by a board, committee
53 or commission.

54 (f) “Sexual harassment” means unwelcome sexual advances, requests for sexual favors
55 and other verbal or physical conduct of a sexual nature where:

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

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

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

63 (g) “Standard Operating Procedure” means an internal procedure that is created to govern
64 how a division or department operates and performs its designated functions.

65 (h) “Tribal” or “Tribe” means the Oneida Tribal of Indians of Wisconsin.

66 (i) “Tribal member” means an individual who is an enrolled member of the Oneida Tribe
67 of Indians of Wisconsin.

68 69 **300.4. Human Resources Department**

70 300.4-1. *General Responsibilities.* There shall be a Human Resources Department which shall
71 be responsible for:

72 (a) Developing rules necessary to carry out the intent of this Law and submitting them to
73 the Oneida Business Committee for approval.

74 (b) Reviewing and approving Standard Operating Procedures throughout the Tribe.

75 (c) Issuing opinions for guidance regarding the application of this Law; policies and
76 procedures promulgated to implement this Law; and Standard Operating Procedures.

77 (d) Keeping a record of all employment related decisions made by the judicial and
78 hearing bodies that are authorized by law to hear employee grievances.

79 (e) Collecting and maintaining data on human resource related information including,
80 but not limited to, information on hiring, appointments, firing, transfers, employee
81 development, grievances, policy issues and insurances.

82 (1) The Human Resources Department shall provide quarterly reports to the
83 Oneida Business Committee in accordance with the established reporting
84 requirements and schedule sent out by the Tribal Secretary’s office.

85 (2) The Oneida Business Committee shall not have direct access to employee
86 information and/or personnel files, especially information relating to individual
87 compensation or disciplines; provided that, the Tribal Chairperson shall have
88 access to information on those personnel who directly report to him or her and

89 each Oneida Business Committee member shall have access to information on his
90 or her political appointee(s).

91 300.4-2. *Administrative.* The sole administrative duties, including but not limited to sign-off,
92 assessment, planning, budgeting, goal setting, continuous improvement and other day to day
93 management decisions relating to the Human Resources Department shall be the responsibility of
94 the Human Resources Department Manager, or designee.

95 300.4-3. *Authorities.*

96 (a) The Legislative Operating Committee shall:

97 (1) develop Tribal legislation relating to human resources;

98 (2) not have, create the appearance of, or attempt to create or have undue
99 influence in day to day personnel related decisions.

100 (b) The Human Resources Department shall interpret, notify employees of and enforce
101 the Tribe's employment rules.

102 (c) Individual Tribal departments, divisions, and non-divisions shall implement and
103 comply with the Tribe's employment rules.

104 300.4-4. *Memorandum of Understanding.* The Oneida Business Committee and Human
105 Resources Department shall enter into a memorandum of understanding which shall govern the
106 relationship between the two entities and the responsibilities and expectations of each entity with
107 regard to the management of the Human Resources Department.

108

109 **300.5. Hiring**

110 300.5-1. *Hiring Philosophy.* The Tribe shall recruit, hire, retain and develop individuals who
111 are culturally respectful, professionally competent and civically responsible. Upholding the
112 Tribe's sovereignty and adhering to Tribal law are the Tribe's priorities in its hiring and
113 employment practices.

114 (a) Federal policy since 1834 accords hiring preference to Indians. Additional legislation
115 such as the Civil Rights Act of 1964 and the Education Amendments of 1972 specifically
116 provide for preferential hiring of Indians by Indian tribes. The purposes of this
117 preference are to:

118 (1) give Indians a greater participation in self-government;

119 (2) further the Government's trust obligation; and

120 (3) increase the positive effect of having Indians administer matters that affect
121 Indian tribal life.

122 (b) As an employer, the Tribe seeks to employ individuals who possess the skills,
123 abilities and background to meet the employment needs of the Tribe.

124 (c) As a sovereign Indian Tribe and a unique cultural group, the Tribe has determined
125 that a highly desirable employment characteristic is knowledge of Oneida culture that can
126 be attained only by membership in the Tribe or by being a descendant of the Tribe.
127 Further, the Tribe recognizes the unique, shared culture of Native American Indians and
128 has determined that a desirable employment characteristic is status as a member of an
129 American Indian tribe. At a minimum, the Tribe has determined that some knowledge of
130 Indian culture is a desirable employment characteristic.

131 300.5-2. The Tribe shall not discriminate against an employee or applicant based on an
132 individual's sex, race, religion, national origin, pregnancy, age, marital status, sexual orientation,
133 or disability; however, the Tribe shall follow the preferences outlined in 300.5-3 without
134 violating this Law.

135 300.5-3. *Preferred Hiring.*

136 (a) Unless otherwise prohibited by law or grant funding requirements, the Tribe shall
137 apply the following priorities of Oneida preference in staffing decisions:

138 (1) Tribal member.

139 (2) First generation Oneida descendant or individual with at least one-quarter
140 (1/4) Oneida blood quantum who is enrolled in a federally recognized tribe other
141 than the Oneida Tribe.

142 (3) Other Indians enrolled in a federally recognized tribe.

143 (4) Other (non-Indian).

144 (b) If a law or grant funding requirements prohibit the application of Oneida Preference
145 in accordance with 300.5-3(a)(1), employees shall be selected in accordance with the
146 Indian Preference requirements of said law or grant.

147 (c) Application of preference shall only apply when an applicant meets all the minimum
148 requirements for the position applied for.

149 (d) *Oneida-Only Positions.* All top administrative and political appointee positions shall
150 be held by Tribal members.¹ However, if a position requires specific skills and/or
151 licensing by the state or federal government and there are not any available Tribal
152 members who possess the necessary skills or licensing to perform the position, a non-
153 Tribal member may be selected to fill the position.

154 300.5-4. *Education.* Employees under the age of fifty (50) who do not have a High School
155 Diploma or its equivalent at the time of hire shall obtain a High School Diploma, a High School
156 Equivalency Diploma or a General Equivalency Diploma within one (1) year of being hired.
157 Employees that do not meet this deadline and have not been granted an extension from the
158 Human Resources Department Manager shall be laid off until the employee provides
159 documentation to the Human Resources Department Manager that he or she is in compliance
160 with this section.

161 300.5-5. *Workplace Safety* The Tribe is committed to protecting the safety, health and well-
162 being of all employees, and other individuals in the workplace. Alcohol and drug use pose a
163 significant health and safety threat not only to the user but to customers and other employees.
164 The Tribe shall establish policy that applies to all applicants for employment, whether external or
165 internal, and all employees regarding prohibited drugs and/or alcohol.

166 300.5-6. *Conflicts.* No person shall be eligible for a position if he or she has a conflict of
167 interest, as defined by the Conflict of Interest Policy, or if he or she would be directly supervised
168 by an immediate family member.

169 300.5-7. *Right to Work.* No person shall be required to do any of the following in order to
170 become or remain as an employee of the Tribe:

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

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

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

174 175 **300.6. Compensation and Benefits**

176 300.6-1. *Compensation Plan* The Human Resources Department shall develop and institute an
177 employee compensation plan, approved by the Oneida Business Committee, to assure equitable
178 salary and wage levels. Wage adjustments and benefits available to employees are dependent
179 upon available funding allocations.

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.

180 300.6-2. *Designation of Employees.* The Tribe shall use the standards created under the Fair
181 Labor Standards Act to designate its employees as either nonexempt or exempt and to set
182 minimum wage and maximum hour restrictions.

183 300.6-3. *Insurance and Retirement.* The Tribe may provide insurances and/or a retirement plan
184 as a benefit to full-time employees. Emergency or temporary employees may not be eligible for
185 these benefits.

186 300.6-4. *Time Off.* Tribal employees shall be allowed paid time off to the extent that paid time
187 off is accumulated, as determined by continuous service for the Tribe.

188 300.6-5. *Leaves.* Employees of the Tribe shall be allowed leave under circumstances according
189 to applicable Tribal rules. The Tribe may also offer an employee on leave the opportunity to
190 return to work and conduct temporary, transitional work within the employee's functional
191 capacity and/or rehabilitative needs.

192

193 **300.7. General**

194 300.7-1. *Employee Development.* The Tribe encourages the advancement and transfer of
195 employees in order to make the best possible use of human resources. Employees who wish to
196 advance in the organization may work with the Human Resources Department to develop a
197 personal development plan.

198 300.7-2. *Employee Records.* The Tribe collects information from employees to make personnel
199 decisions and stores them within the Human Resources Department. All information contained
200 in these files is private and confidential and shall only be released in the following situations:

201 (a) Current and past employees shall have access to their own employment files.

202 (b) The Tribe shall release applicable information to outside parties when obligated to do
203 so by law.

204 (c) Other outside parties may have access to an employee's file with the employee's
205 authorization.

206 300.7-3. *Safety and Fitness-for-Duty.* The Tribe shall maintain safety standards, in accordance
207 with applicable Tribal law, to create a safe and healthy work environment for employees and to
208 keep the number of job-related illnesses or injuries to a minimum. In addition, the Tribe shall
209 also maintain standards that require employees to perform their essential job duties in a safe,
210 secure, productive and effective manner.

211 300.7-4. *Worker's Compensation.* Employees shall be eligible for compensation and medical
212 benefits for compensable injuries suffered in the employment of the Tribe in accordance with
213 applicable Tribal law.

214 300.7-5. *Unemployment Insurance.* The Tribe adheres to the State of Wisconsin's
215 unemployment insurance program and employees of the Tribe may be eligible for unemployment
216 benefits in accordance with the provisions of the laws of the State of Wisconsin.

217

218 **300.8. Employee Responsibilities**

219 300.8-1. *Harassment and Discrimination Prohibited.* Employees are prohibited from sexually
220 harassing another individual or engaging in any conduct that harasses or discriminates against
221 another based on sex, race, religion, national origin, pregnancy, age, marital status, sexual
222 orientation, or disability.

223 300.8-2. *Child Abuse and Neglect Reporting.* All Tribal employees shall protect the health and
224 welfare of the children with whom they come into contact during the course of their
225 employment. In addition to those professional employees who have a duty to report child abuse
226 or neglect, all employees who have children in their charge as an employee of the Tribe have a
227 responsibility to report actual or suspected child abuse or neglect.

228 300.8-3. *Anonymous Information.* Employees who receive anonymous information shall
229 confidentially forward a summary of the information to the Chief of the Oneida Police
230 Department.

231 300.8-3. *Employee Protection.* Employees who disclose actions against the Tribe to prevent or
232 eliminate waste, fraud and/or abuse of authority, Tribal assets and/or Tribal financial resources in
233 the manner outlined in the Tribe's employee rules, shall be protected from retaliation for their
234 disclosure.

235 300.8-4. *Reporting of Violations.* No employee may retaliate against or permit retaliation
236 against an employee who reports violations of this Law or Tribal policy.
237

238 **300.9. Layoffs**

239 300.9-1. Employees may be laid off to enable the Tribe to operate effectively and efficiently in
240 varying economic conditions.

241 300.9-2. Employees who are placed on a layoff and recalled within twenty-six (26) weeks of the
242 layoff date shall have continuous service, but shall not accumulate benefits during the layoff
243 period. Employees who are not recalled within twenty-six (26) weeks of the layoff date shall
244 have their employment terminated.

245 300.9-3. Layoffs shall not be used for disciplinary reasons and are not appealable.
246

247 **300.10. Employee Discipline and Grievances**

248 300.10-1. The Human Resources Department shall develop and enforce disciplinary procedures
249 for use by supervisors to correct unacceptable work performance or behavior.

250 300.10-2. Employees who disagree with a disciplinary action may contest the action within the
251 procedures established by the Human Resources Department.

252 300.10-3. *Back Pay.* Employees who are involuntarily separated from employment may be
253 eligible for back pay. The Tribe shall not include the following in any back pay amount:

- 254 (a) Punitive damages;
 - 255 (b) Consequential damages (e.g. Penalties on early withdrawal of 401(k) account);
 - 256 (c) Attorney's fees.
- 257

258 **300.11. Violations**

259 300.11-1. Complaints of an alleged violation of this Law may be filed with the Tribe's judicial
260 system. The Tribe's judicial system, upon finding that this Law was violated, shall be authorized
261 to:

- 262 (a) impose compensatory damages, including attorney's fees and court costs, in cases of
263 intentional discrimination; and/or
 - 264 (b) award back pay to the individual.
- 265

266 End.
267
