

**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 defines the minimum standards regarding hiring, compensation and benefits, Employee safety, protecting employer assets, progressive ~~corrective~~ disciplinary ~~action~~Corrective Action and an Employee’s available appeal of said ~~corrective disciplinary action~~Corrective Actions.

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 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. 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including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985, are hereby repealed.

300.2-3. This Law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

300.2-4. 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.

300.2-5. In the event of a conflict between a provision of this Law and a provision of another Law, the provisions of this Law control.

300.2-6. 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 governs the definitions of words and phrases used within this Law. All words not defined herein are to be used in their ordinary and everyday sense.

(a) “Back Pay” means 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) “Corrective Action” means any initiative taken by an Employee Supervisor with the goal of remedying Employee’s undesirable behaviors such as law, policy and rule

39 | infractions and/or performance related issues. Such initiatives may include, but are not
40 | limited to, verbal warnings, written warnings, suspension and termination.

41 | ~~(b)~~(c) “Employee” means any individual who is employed by the Tribe and is subject to
42 | the direction and control of the Tribe with respect to the material details of the work
43 | performed, or who has the status of an Employee under the usual common law rules
44 | applicable to determining the employer-Employee relationship. “Employee” includes,
45 | but is not limited to, an individual employed by any program or enterprise of the Tribe
46 | and Political Appointees, but does not include elected or appointed officials, or
47 | individuals employed by a Tribally ~~Chartered Corporation~~chartered corporation. For
48 | purposes of this Law, individuals employed under an employment contract as a limited
49 | term Employee are Employees of the Tribe, not consultants.

50 | ~~(e)~~(d) “Employee Supervisor” means the party responsible for directly overseeing the
51 | Employee and who is responsible for taking Corrective Action should an Employee fail
52 | to abide by Tribe’s laws and policies; and any applicable rules or who may fail to fulfill
53 | his or her job requirements.

54 | ~~(d)~~(e) “HRD” means the Oneida Human Resources Department.

55 | ~~(e)~~(f) “Immediate Family Member” means an individual’s husband, wife, mother,
56 | father, son, daughter, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew,
57 | mother-in-law, father-in-law, brother-in-law, sister-in-law, first or second cousin, step-
58 | parent, or someone who is recognized by the Oneida General Tribal Council and/or its
59 | delegate as a member of the individual’s extended family.

60 | ~~(f)~~(g) “Involuntarily Separated” means an Employee is removed from employment
61 | through whatever means by the employer. This may include, but is not limited to,
62 | investigative leave, suspension or termination.

63 | ~~(g)~~(h) “Political Appointee” means an individual appointed as an executive assistant by
64 | an individual Oneida Business Committee member or as an assistant by a board,
65 | committee or commission.

66 | ~~(h)~~(i) “Reviewing Supervisor” means the party responsible for overseeing the Employee
67 | Supervisor and who may hear an appeal of a Corrective Action taken by an Employee
68 | Supervisor.

69 | ~~(i)~~(j) “Rule” means any exercise of authority delegated to HRD and by HRD pursuant
70 | to this Law in the form of a rule, regulation, policy or any other tool designed to exercise
71 | HRD’s delegated authority in order to implement, interpret and/or enforce this Law. A
72 | Rule does not include any statements, interpretations, decisions, rules, regulations,
73 | policies, procedures or other matters concerning internal management of a department or
74 | division, or, which do not affect the private rights or interests of individuals outside of the
75 | said department or division.

76 | ~~(j)~~(k) “Sexual Harassment” means unwelcome sexual advances, requests for sexual
77 | favors and other verbal or physical conduct of a sexual nature where:

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

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

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

85 | ~~(k)~~(l) “Standard Operating Procedure” means an internal procedure that is created to
86 | govern how a division or department operates and performs its designated functions; a

87 standard operating procedure does not affect parties outside of the division or department
88 to which the procedure belongs.

89 ~~(l)~~(m) “Tribal” or “Tribe” means the Oneida Tribal of Indians of Wisconsin.

90 ~~(m)~~(n) “Tribal Member” means an individual who is an enrolled member of the Oneida
91 Tribe of Indians of Wisconsin.

93 **300.4. Human Resources Department**

94 300.4-1. *General Responsibilities.* The HRD shall:

95 (a) Develop , amend, implement, interpret and enforce Rules necessary to carry out the
96 intent of this Law, the authority for which is hereby delegated to HRD by the Oneida
97 Legislative Operating Committee. The Legislative Operating Committee retains
98 authority to develop and amend Tribal legislation and policy relating to human resources,
99 however, shall avoid having, creating the appearance of having, or attempting to create or
100 have undue influence in day-to-day human resources decisions. The Rules developed by
101 HRD pursuant to this Section: are effective upon HRD final approval. HRD shall
102 provide notice of approval of said Rules to the Oneida Business Committee at the next
103 available regularly scheduled Oneida Business Committee meeting following approval.
104 If the Oneida Business Committee has any concerns and/or requested revisions upon
105 review of the Rules, HRD shall work with the Oneida Business Committee to address
106 such concerns and/or requested revisions.

107 ~~(1) Must be approved by the Oneida Business Committee;~~

108 ~~(2) Become effective upon _____;~~

109 ~~(1) _____ (3) Must be noticed to Employees on the Tribe’s intranet. Unless the~~
110 ~~Oneida Business Committee repeals the Rules approved by HRD, they will~~
111 ~~remain in effect while HRD and the Oneida Business Committee jointly work to~~
112 ~~amend the Rules approved by HRD.~~

113 (A) Should the Oneida Business Committee repeal the Rules approved by
114 HRD, the Rules that were in effect immediately previous to those repealed
115 will be automatically reinstated and effective immediately upon the repeal of
116 the Rules approved by HRD.

117 (B) If HRD does not receive written notice from the Oneida Business
118 Committee of intent to repeal or amend the Rules within thirty (30) days of
119 the date the Oneida Business Committee is provided notice of the Rules
120 approved by HRD, they will remain in effect as approved by HRD.

121 (2) Should the Oneida Business Committee pursue amendments to the Rules
122 approved by the HRD, the amendments must be completed through one (1) of the
123 following actions within six (6) months from the date the amendments are
124 initiated by the Oneida Business Committee:

125 (A) if HRD and the Oneida Business Committee reach an agreement as to the
126 content of the amendments, the HRD must approve the revised Rules that
127 have been discussed with and agreed upon by the Oneida Business
128 Committee; or

129 (B) if HRD and the Oneida Business Committee do not reach an agreement as
130 to the content of the amendments, the Oneida Business Committee may adopt
131 revised Rules that incorporate the amendments it deems necessary.

132 (3) If revised Rules are not approved or adopted by either HRD or the Oneida
133 Business Committee respectively within six (6) months from the date the
134 amendments are initiated by the Oneida Business Committee, the Rules originally

135 | approved by HRD will remain in effect.

136 | (b) Review and approve employment related Standard Operating Procedures for all
137 | departments and divisions throughout the Tribe.

138 | (c) Issue guidance opinions regarding the application of this Law, Rules promulgated
139 | pursuant to this Law, and Standard Operating Procedures created to implement this Law
140 | and the Rules promulgated hereunder.

141 | (d) Keep a record of all employment related decisions made by the ~~managers, area~~
142 | ~~managers~~Employee Supervisors, Reviewing Supervisors and the Oneida Judiciary.

143 | (e) Collect and maintain data on human resource related information including, but not
144 | limited to, information on hiring, appointments, firing, transfers, ~~employee~~Employee
145 | development, grievances, policy issues and insurances.

146 | (1) HRD shall provide quarterly reports to the Oneida Business Committee in
147 | accordance with the ~~established reporting requirements and~~ schedule ~~sent~~
148 | ~~out~~provided by the Tribal Secretary's office.

149 | (2) The Oneida Business Committee may not have direct access to
150 | ~~employee~~Employee information and/or personnel files, especially information
151 | relating to individual compensation or ~~disciplines~~Corrective Actions; provided
152 | that, the Tribal Chairperson may have access to information on those personnel
153 | who directly report to him or her and each Oneida Business Committee member
154 | may have access to information on his or her ~~political appointee~~Political
155 | Appointee(s).

156 | 300.4-2. *Administrative.* The HRD Department Manager, or his or her designee, is responsible
157 | for all of HRD's administrative duties, which include, but are not limited to sign-offs,
158 | assessments, planning, budgeting, goal setting, continuous improvement and other day-to-day
159 | management decisions relating to HRD.

160 | 300.4-3. *Tribal Departments, Divisions, and Non-Divisions.* Individual Tribal
161 | departments, divisions, and non-divisions shall comply with this Law and the Rules
162 | promulgated under Section 300.4-1(a) and, if necessary, shall develop Standard
163 | Operating Procedures for the implementation of said Rules. If the development of
164 | Standard Operating Procedures is deemed necessary, either by HRD or the individual
165 | Tribal department, division or non-division, said Standard Operating Procedure must be
166 | reviewed and approved by HRD prior to becoming effective.

167 | 300.4-4. *Memorandum of Understanding.* The Oneida Business Committee and HRD shall
168 | negotiate and enter into a memorandum of understanding which governs the relationship
169 | between the two parties by establishing the responsibilities and expectations of each party with
170 | regard to the management of HRD.

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172 | **300.5. Hiring**

173 | 300.5-1. *Hiring Philosophy.* The Tribe shall recruit, hire, retain and develop individuals who
174 | are culturally respectful, professionally competent and civically responsible. HRD must uphold
175 | the Tribe's sovereignty, laws and policies in its hiring and employment practices.

176 | 300.5-2. *Equal Employment Opportunities.* The Tribe may not discriminate against an
177 | Employee or applicant based on an individual's sex, race, religion, national origin, pregnancy,
178 | age, marital status, sexual orientation, or disability; however, the Tribe shall follow the
179 | preferences outlined in Section 300.5-3 and such preferences may not be considered a violation
180 | of this Law.

181 | 300.5-3. *Oneida Preference.* As a sovereign and a unique cultural group, the Tribe finds it
182 | highly desirable that Employees possess knowledge of the Oneida culture, which can only be

183 attained by having membership in the Tribe or by being a descendant of the Tribe. Further, the
184 Tribe recognizes the unique shared general culture of members of all tribes and finds it desirable
185 that an Employee share in the Tribe’s general cultural understanding by being a member of any
186 federal recognized tribe as a secondary preference to membership in this Tribe.

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

- 189 (1) ~~Persons who are Tribal member~~ Members.
- 190 (2) ~~First generation Oneida descendant and/or individual~~ Persons who are eligible
191 to be Tribal Members in accordance with ~~at least one quarter (1/4) Oneida blood~~
192 ~~quantum who is~~ the Membership Ordinance, but are not Tribal Members because
193 they are enrolled in a federally recognized tribe other than ~~the Oneida~~ this Tribe.
- 194 (3) ~~Individual~~ Persons enrolled in any federally recognized tribe other than this
195 Tribe.
- 196 (4) ~~Other (All other non-Indian)-~~ persons.

197 (b) If a law or grant funding requirements prohibit the application of Oneida Preference
198 in accordance with 300.5-3(a), the Tribe shall make staffing decisions in accordance with
199 the Indian Preference requirements of the said law or grant.

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

202 (d) *Oneida-Only Positions.* To the extent possible, all top administrative and political
203 appointee positions must be held by Tribal ~~members~~ Members.¹ If a position requires
204 specific skills and/or licensing by the state or federal government and there are not any
205 available Tribal ~~members~~ Members who possess the necessary skills or licensing to
206 assume the position, only then may a non-Tribal ~~member~~ Member be selected to fill the
207 position.

208 300.5-4. *Education.* Employees under the age of fifty (50) who do not have a high school
209 diploma or its equivalent at the time of hire, shall obtain a high school diploma, a high school
210 equivalency diploma or a general equivalency diploma within one (1) year of being hired.
211 Employees that do not meet this deadline and have not been granted an extension from HRD
212 may be laid off until the employee provides documentation to HRD that he or she is in
213 compliance with this Section.

214 300.5-5. *Workplace Safety* The Tribe is committed to protecting the safety, health and well-
215 being of all Employees and other individuals in the workplace. Alcohol and drug use pose a
216 significant health and safety threat not only to the user but also to customers and other
217 Employees. HRD shall establish a drug and alcohol policy that applies to all applicants for
218 employment, whether external or internal, and all Employees.

219 300.5-6. *Conflicts.* An applicant is ineligible for positions for which he or she has a conflict of
220 interest, as defined by the Conflict of Interest Policy, and/or if he or she would be directly
221 supervised by an Immediate Family Member.

222 300.5-7. *Right to Work.* No person may be required to do any of the following in order to
223 become or remain an Employee of the Tribe:

- 224 (a) resign or refrain from being a member of a labor organization;
- 225 (b) become or remain a member of a labor organization; or
- 226 (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.

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300.6. Compensation and Benefits

300.6-1. *Compensation Plan.* HRD shall develop and institute an Employee Compensation Plan to assure equitable salary and wage levels; the said plan must be approved by the Oneida Business Committee and must receive the said approval before becoming effective. Wage adjustments and benefits available to Employees are dependent upon available funding allocations.

300.6-2. *Designation of Employees.* The Tribe 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.

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

300.6-4. *Time Off.* The Tribe shall afford Employees paid time off to the extent that paid time off is accumulated based on continuous service to the Tribe. HRD shall establish rates of accrual and the process for requesting paid time off in the Rules it is charged with developing under Section 300.4-1(a).

300.6-5. *Leaves.* Employees of the Tribe may be allowed leave under circumstances ~~according to~~ provided in the Rules developed under Section 300.4-1(a) and any other applicable Tribal laws and policies. If applicable to an Employee’s basis for leave, the Tribe may offer an Employee on leave the opportunity to return to work and conduct temporary, transitional work within the Employee’s functional capacity and/or rehabilitative needs.

300.7. General

300.7-1. *Employee Development.* The Tribe 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 Human Resources Department to develop a personal development plan.

300.7-2. *Employee Records.* The Tribe collects information from Employees to make human resource decisions and ~~HRB~~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 Employee record.
- (b) If required by law, the Tribe shall release the information required to be released to the party the law designates as entitled to receive said information.
- (c) 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.

300.7-3. *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 Tribe shall maintain safety standards for the Tribe as an employer, in accordance with the Tribe’s applicable laws and policies, and shall also maintain standards requiring Employees to perform their job duties in a safe, secure, productive and effective manner.

300.7-4. *Worker’s Compensation.* The Tribe shall comply with the Worker’s Compensation Law in determining eligibility for compensation and medical benefits for any Employee sustaining injuries in the course of their employment with the Tribe.

300.7-5. *Unemployment Insurance.* The Tribe shall comply with the State of Wisconsin’s unemployment insurance program; Employees of the Tribe may be eligible for unemployment benefits in accordance with the provisions of the laws of the State of Wisconsin.

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276 **300.8. Employee Responsibilities**

277 300.8-1. *Harassment and Discrimination Prohibited.* All Employees are expressly prohibited
278 from committing Sexual Harassment of another individual or engaging in any conduct that
279 harasses or discriminates against another based on sex, race, religion, national origin, pregnancy,
280 age, marital status, sexual orientation, or disability, provided that Employees must comply with
281 the Oneida Preferences identified in Section 300.5-3 and such compliance is not a violation of
282 this provision.

283 300.8-2. *Child Abuse and Neglect Reporting.* All Employees shall protect the health and
284 welfare of the children with whom they come into contact during the course of their
285 Employment. In addition to those professional Employees who have a duty to report child abuse
286 or neglect, all Employees who have children in their charge as an Employee of the Tribe have a
287 responsibility to report actual or suspected child abuse or neglect.

288 300.8-3. *Anonymous Information.* Employees who receive anonymous information of any type
289 shall maintain the confidentiality of the said information and forward a summary of the
290 information to the Chief of the Oneida Police Department expressly noting that the information
291 was provided anonymously.

292 300.8-4. *Employee Protection.* The Tribe shall protect any Employee who reports an
293 Employee's, Political Appointee's and/or Tribal official's violation(s) of Tribal laws, policies or
294 rules from retaliatory action.

295 300.8-5. *Reporting of Violations.* No Employee may retaliate against or permit retaliation
296 against an Employee who reports an Employee's, Political Appointee's and/or Tribal official's
297 violation(s) of the Tribe's laws, policies or rules.
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299 **300.9. Layoffs**

300 300.9-1. Employees may be laid off to the extent necessary for the Tribe to operate effectively
301 and efficiently in varying economic conditions.

302 300.9-2. Employees placed on a layoff and recalled within twenty-six (26) weeks of the layoff
303 date are considered to have maintained continuous service to the Tribe, but may not accumulate
304 benefits during the layoff period. Employees placed on layoff and not recalled within twenty-six
305 (26) weeks of the layoff date are terminated, effective upon the last day of the twenty-sixth (26th)
306 week of the layoff date.

307 300.9-3. Layoffs may not be used for disciplinary reasons.

308 300.9-4. The Tribe's decision to layoff an Employee is not subject to appeal.
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310 **300.10. Employee Discipline and Grievances**

311 300.10-1. Pursuant to Section 300.4-1(a), HRD shall develop, implement and enforce
312 progressive ~~disciplinary~~Corrective Action Rules and Standard Operating Procedures for use by
313 ~~supervisors~~Employee Supervisors to correct unacceptable work performance and/or behavior
314 pursuant to Section 300.4-1(a).

315 300.10-2. Employees who disagree with a ~~disciplinary action~~Corrective Action may contest the
316 ~~action~~Corrective Action using the Rules and procedures, which HRD shall develop pursuant to
317 Section 300.4-1(a), and based on the following available levels of review:

318 (a) *First Level of Review.* Any Employee contesting the validity of a Corrective Action
319 may appeal the Corrective Action to his or her Reviewing Supervisor. Unless the
320 Employee asserts that the contested Corrective Action amounts to a deprivation of an
321 Equal Employment Opportunity based on the Tribe's policy under Section 300-5.2, the
322 decision of the Reviewing Supervisor is final.

323 (b) *Second Level of Review.* An Employee that is unhappy with the Reviewing
324 Supervisor’s decision regarding a contested Corrective Action, and, is able to
325 demonstrate that the contested Corrective Action amounts to a deprivation of an Equal
326 Employment Opportunity based on the Tribe’s policy under Section 300-5.2, may appeal
327 the Reviewing Supervisor’s decision to the Oneida Judiciary.

328 (1) Should the Oneida Judiciary determine that there was an intentional
329 deprivation of an Equal Employment Opportunity based on the Tribe’s policy
330 under Section 300.5-2, the Oneida Judiciary may award compensatory damages,
331 including, but not limited to, attorney’s or advocate’s fees and court costs, as
332 against the individual(s) found to have engaged in the intentional deprivation of
333 an Equal Employment Opportunity. Said compensatory damages may not be
334 awarded against the Tribe.

335 300.10-3. *Back Pay.* Employees who are Involuntarily Separated from employment may be
336 eligible for Back Pay. In considering whether Back Pay is appropriate in a given circumstance,
337 the Tribe shall comply with the Back Pay Policy ~~and, further, may not include the following in~~
338 ~~any Back Pay amount:~~

- 339 ~~(a) Punitive damages;~~
- 340 ~~(b) Consequential damages (e.g. Penalties on early withdrawal of 401(k) account);~~
- 341 ~~(c) Attorney’s fees.~~

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343 **300.11. Violations**

344 300.11-1. Unless expressly stated otherwise in this Law, claims of alleged violations of this Law
345 may be filed with the Oneida Judiciary.

346
347 End.
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