

CHAPTER 300
EMPLOYMENT LAW

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

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 disciplinary Corrective Action and an Employee’s available appeal of said 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including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985, are hereby repealed.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 This Law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.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 infractions and/or performance related issues. Such initiatives may include, but are not limited to, verbal warnings, written warnings, suspension and termination.

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

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

53 (e) “HRD” means the Oneida Human Resources Department.

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

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

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

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

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

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

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

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

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

84 (l) “Standard Operating Procedure” means an internal procedure that is created to govern
85 how a division or department operates and performs its designated functions; a standard
86 operating procedure does not affect parties outside of the division or department to which
87 the procedure belongs.

88 (m) “Tribal” or “Tribe” means the Oneida Tribal of Indians of Wisconsin.

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

91
92 **300.4. Human Resources Department**

93 300.4-1. *General Responsibilities.* The HRD shall:

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

106 (1) Unless the Oneida Business Committee repeals the Rules approved by
107 HRD, they will remain in effect while HRD and the Oneida Business Committee
108 jointly work to amend the Rules approved by HRD.

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

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

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

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

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

128 (3) If revised Rules are not approved or adopted by either HRD or the Oneida
129 Business Committee respectively within six (6) months from the date the
130 amendments are initiated by the Oneida Business Committee, the Rules originally
131 approved by HRD will remain in effect.

132 (b) Review and approve employment related Standard Operating Procedures for all
133 departments and divisions throughout the Tribe.

134 (c) Issue guidance opinions regarding the application of this Law, Rules promulgated
135 pursuant to this Law, and Standard Operating Procedures created to implement this Law

136 and the Rules promulgated hereunder.

137 (d) Keep a record of all employment related decisions made by the Employee
138 Supervisors, Reviewing Supervisors and the Oneida Judiciary.

139 (e) Collect and maintain data on human resource related information including, but not
140 limited to, information on hiring, appointments, firing, transfers, Employee development,
141 grievances, policy issues and insurances.

142 (1) HRD shall provide quarterly reports to the Oneida Business Committee in
143 accordance with the schedule provided by the Tribal Secretary's office.

144 (2) The Oneida Business Committee may not have direct access to Employee
145 information and/or personnel files, especially information relating to individual
146 compensation or Corrective Actions; provided that, the Tribal Chairperson may
147 have access to information on those personnel who directly report to him or her
148 and each Oneida Business Committee member may have access to information on
149 his or her Political Appointee(s).

150 300.4-2. *Administrative.* The HRD Department Manager, or his or her designee, is responsible
151 for all of HRD's administrative duties, which include, but are not limited to sign-offs,
152 assessments, planning, budgeting, goal setting, continuous improvement and other day-to-day
153 management decisions relating to HRD.

154 300.4-3. *Tribal Departments, Divisions, and Non-Divisions.* Individual Tribal
155 departments, divisions, and non-divisions shall comply with this Law and the Rules
156 promulgated under Section 300.4-1(a) and, if necessary, shall develop Standard
157 Operating Procedures for the implementation of said Rules. If the development of
158 Standard Operating Procedures is deemed necessary, either by HRD or the individual
159 Tribal department, division or non-division, said Standard Operating Procedure must be
160 reviewed and approved by HRD prior to becoming effective.

161 300.4-4. *Memorandum of Understanding.* The Oneida Business Committee and HRD shall
162 negotiate and enter into a memorandum of understanding which governs the relationship
163 between the two parties by establishing the responsibilities and expectations of each party with
164 regard to the management of HRD.

165 **300.5. Hiring**

167 300.5-1. *Hiring Philosophy.* The Tribe shall recruit, hire, retain and develop individuals who
168 are culturally respectful, professionally competent and civically responsible. HRD must uphold
169 the Tribe's sovereignty, laws and policies in its hiring and employment practices.

170 300.5-2. *Equal Employment Opportunities.* The Tribe may not discriminate against an
171 Employee or applicant based on an individual's sex, race, religion, national origin, pregnancy,
172 age, marital status, sexual orientation, or disability; however, the Tribe shall follow the
173 preferences outlined in Section 300.5-3 and such preferences may not be considered a violation
174 of this Law.

175 300.5-3. *Oneida Preference.* As a sovereign and a unique cultural group, the Tribe finds it
176 highly desirable that Employees possess knowledge of the Oneida culture, which can only be
177 attained by having membership in the Tribe or by being a descendant of the Tribe. Further, the
178 Tribe recognizes the unique shared general culture of members of all tribes and finds it desirable
179 that an Employee share in the Tribe's general cultural understanding by being a member of any
180 federal recognized tribe as a secondary preference to membership in this Tribe.

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

183 (1) Persons who are Tribal Members.

184 (2) Persons who are eligible to be Tribal Members in accordance with the
185 Membership Ordinance, but are not Tribal Members because they are enrolled in
186 a federally recognized tribe other than this Tribe.

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

188 (4) All other non-Indian persons.

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

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

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

199 300.5-4. *Education.* Employees under the age of fifty (50) who do not have a high school
200 diploma or its equivalent at the time of hire, shall obtain a high school diploma, a high school
201 equivalency diploma or a general equivalency diploma within one (1) year of being hired.
202 Employees that do not meet this deadline and have not been granted an extension from HRD
203 may be laid off until the employee provides documentation to HRD that he or she is in
204 compliance with this Section.

205 300.5-5. *Workplace Safety* The Tribe is committed to protecting the safety, health and well-
206 being of all Employees and other individuals in the workplace. Alcohol and drug use pose a
207 significant health and safety threat not only to the user but also to customers and other
208 Employees. HRD shall establish a drug and alcohol policy that applies to all applicants for
209 employment, whether external or internal, and all Employees.

210 300.5-6. *Conflicts.* An applicant is ineligible for positions for which he or she has a conflict of
211 interest, as defined by the Conflict of Interest Policy, and/or if he or she would be directly
212 supervised by an Immediate Family Member.

213 300.5-7. *Right to Work.* No person may be required to do any of the following in order to
214 become or remain an Employee of the Tribe:

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

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

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

218 **300.6. Compensation and Benefits**

219 300.6-1. *Compensation Plan.* HRD shall develop and institute an Employee Compensation Plan
220 to assure equitable salary and wage levels; the said plan must be approved by the Oneida
221 Business Committee and must receive the said approval before becoming effective. Wage
222 adjustments and benefits available to Employees are dependent upon available funding
223 allocations.
224

225 300.6-2. *Designation of Employees.* The Tribe shall use the standards created under the Fair
226 Labor Standards Act to designate its Employees as either nonexempt or exempt and to set
227 minimum wage and maximum hour restrictions.

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.

228 300.6-3. *Insurance and Retirement.* The Tribe may provide insurances and/or a retirement plan
229 as a benefit to full-time Employees. Emergency or temporary Employees are not eligible for
230 these benefits.

231 300.6-4. *Time Off.* The Tribe shall afford Employees paid time off to the extent that paid time
232 off is accumulated based on continuous service to the Tribe. HRD shall establish rates of accrual
233 and the process for requesting paid time off in the Rules it is charged with developing under
234 Section 300.4-1(a).

235 300.6-5. *Leaves.* Employees of the Tribe may be allowed leave under circumstances provided in
236 the Rules developed under Section 300.4-1(a) and any other applicable Tribal laws and policies.
237 If applicable to an Employee's basis for leave, the Tribe may offer an Employee on leave the
238 opportunity to return to work and conduct temporary, transitional work within the Employee's
239 functional capacity and/or rehabilitative needs.

240

241 **300.7. General**

242 300.7-1. *Employee Development.* The Tribe encourages the advancement and transfer of
243 Employees in order to make the best possible use of human resources. Employees who wish to
244 advance in the organization may work with the Human Resources Department to develop a
245 personal development plan.

246 300.7-2. *Employee Records.* The Tribe collects information from Employees to make human
247 resource decisions and HRD shall store these Employee records in a manner that maintains the
248 records' private and confidential nature. Information contained in Employee records may only
249 be released in the following situations:

- 250 (a) A current or past Employee may have access to his or her own Employee record.
251 (b) If required by law, the Tribe shall release the information required to be released to
252 the party the law designates as entitled to receive said information.
253 (c) A third party may access an Employee's record if the Employee provides written
254 consent to release his or her record to a designated third party.

255 300.7-3. *Safety and Fitness-for-Duty.* In order to create a safe and healthy work environment
256 for Employees and to keep the number of job-related illnesses and/or injuries to a minimum, the
257 Tribe shall maintain safety standards for the Tribe as an employer, in accordance with the Tribe's
258 applicable laws and policies, and shall also maintain standards requiring Employees to perform
259 their job duties in a safe, secure, productive and effective manner.

260 300.7-4. *Worker's Compensation.* The Tribe shall comply with the Worker's Compensation
261 Law in determining eligibility for compensation and medical benefits for any Employee
262 sustaining injuries in the course of their employment with the Tribe.

263 300.7-5. *Unemployment Insurance.* The Tribe shall comply with the State of Wisconsin's
264 unemployment insurance program; Employees of the Tribe may be eligible for unemployment
265 benefits in accordance with the provisions of the laws of the State of Wisconsin.

266

267 **300.8. Employee Responsibilities**

268 300.8-1. *Harassment and Discrimination Prohibited.* All Employees are expressly prohibited
269 from committing Sexual Harassment of another individual or engaging in any conduct that
270 harasses or discriminates against another based on sex, race, religion, national origin, pregnancy,
271 age, marital status, sexual orientation, or disability, provided that Employees must comply with
272 the Oneida Preferences identified in Section 300.5-3 and such compliance is not a violation of
273 this provision.

274 300.8-2. *Child Abuse and Neglect Reporting.* All Employees shall protect the health and
275 welfare of the children with whom they come into contact during the course of their

276 Employment. In addition to those professional Employees who have a duty to report child abuse
277 or neglect, all Employees who have children in their charge as an Employee of the Tribe have a
278 responsibility to report actual or suspected child abuse or neglect.

279 300.8-3. *Anonymous Information.* Employees who receive anonymous information of any type
280 shall maintain the confidentiality of the said information and forward a summary of the
281 information to the Chief of the Oneida Police Department expressly noting that the information
282 was provided anonymously.

283 300.8-4. *Employee Protection.* The Tribe shall protect any Employee who reports an
284 Employee's, Political Appointee's and/or Tribal official's violation(s) of Tribal laws, policies or
285 rules from retaliatory action.

286 300.8-5. *Reporting of Violations.* No Employee may retaliate against or permit retaliation
287 against an Employee who reports an Employee's, Political Appointee's and/or Tribal official's
288 violation(s) of the Tribe's laws, policies or rules.
289

290 **300.9. Layoffs**

291 300.9-1. Employees may be laid off to the extent necessary for the Tribe to operate effectively
292 and efficiently in varying economic conditions.

293 300.9-2. Employees placed on a layoff and recalled within twenty-six (26) weeks of the layoff
294 date are considered to have maintained continuous service to the Tribe, but may not accumulate
295 benefits during the layoff period. Employees placed on layoff and not recalled within twenty-six
296 (26) weeks of the layoff date are terminated, effective upon the last day of the twenty-sixth (26th)
297 week of the layoff date.

298 300.9-3. Layoffs may not be used for disciplinary reasons.

299 300.9-4. The Tribe's decision to layoff an Employee is not subject to appeal.
300

301 **300.10. Employee Discipline and Grievances**

302 300.10-1. Pursuant to Section 300.4-1(a), HRD shall develop, implement and enforce
303 progressive Corrective Action Rules and Standard Operating Procedures for use by Employee
304 Supervisors to correct unacceptable work performance and/or behavior.

305 300.10-2. Employees who disagree with a Corrective Action may contest the Corrective Action
306 using the Rules and procedures, which HRD shall develop pursuant to Section 300.4-1(a), and
307 based on the following available levels of review:

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

313 (1) Direct Reports to the Oneida Business Committee do not have Reviewing
314 Supervisors, so the first level of review is not available to Direct Reports.
315 Accordingly, unless a Direct Report asserts that a Corrective Action taken by the
316 Oneida Business Committee deprived him or her of an Equal Employment
317 Opportunity, the said action is final. Any claim by a Direct Report asserting that
318 a Corrective Action deprived him or her of an Equal Employment Opportunity
319 remains subject to the second level of review provided under sub-Section (b)
320 below.

321 (A) For the purposes of this sub-Section, Direct Report means any
322 Employee whom answers directly to the Oneida Business Committee.

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.
338

339 **300.11. Violations**

340 300.11-1. Unless expressly stated otherwise in this Law, claims of alleged violations of this Law
341 may be filed with the Oneida Judiciary.

342
343 End.
344
