

**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 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~~ Entities 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, specifically Title VII, do ~~may~~ not ~~specifically~~ apply to the Tribe, it is the Tribe’s ~~has determined that, unless otherwise specifically stated, the standards created under those federal laws will serve as a guide for the Tribe~~ policy to afford applicants and Employees Equal Employment Opportunities.

**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including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985, are hereby repealed.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 This Law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.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) “At-Will Employee” means Political Appointees, employees of the Tribe that are not hired through the standard hiring procedures, including, but not limited to, part-time, seasonal, and volunteer workers, and Employees that have not yet completed their probationary period pursuant to the Rules developed by HRD.

38 (b) “Back Pay” means money damages owed to an Employee for a salary or wage that  
39 would have been earned in the time taken to litigate the employment dispute, minus  
40 amounts that are deducted from salary or income earned from a third-party employer.

41 (c) “Corrective Action” means any initiative taken by an Employee Supervisor with the  
42 goal of remedying Employee’s undesirable behaviors such as law, policy and rule  
43 infractions and/or performance related issues. Such initiatives may include, but are not  
44 limited to, verbal warnings, written warnings, suspension and termination.

45 (d) “Employee” means any individual who is employed by the Tribe and is subject to the  
46 direction and control of the Tribe with respect to the material details of the work  
47 performed, or who has the status of an Employee under the usual common law rules  
48 applicable to determining the employer-Employee relationship. “Employee” includes,  
49 but is not limited to, any individual employed by any ~~program or enterprise of the Tribe~~  
50 ~~and Political Appointees~~ Entity, but does not include elected or appointed officials, At-  
51 Will Employees or individuals employed by a Tribally chartered corporation. For  
52 purposes of this Law, individuals employed under an employment contract as a limited  
53 term Employee are Employees of the Tribe, not consultants. Throughout this law all  
54 references to Employee include both Employees and At-Will Employees, unless the term  
55 At-Will Employee is used, in which case only At-Will Employees are intended.

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

60 (f) “Entity” means any division of the Tribe having Employees and may include, but is  
61 not limited to, departments, areas, programs, enterprises, board, committees,  
62 commissions and the like

63 (e)(g) “Equal Employment Opportunity” or “EEO” means the Tribe’s consideration for  
64 hiring selection and position retention that is free from discrimination against any person  
65 on the basis of race (although Oneida and Indian Preference are allowable and are not  
66 considered a deprivation of an EEO), color, religion, sex (including pregnancy), national  
67 origin, age, disability or genetic information.

68 (f)(h) “HRD” means the Oneida Human Resources Department.

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

74 (h)(j) “Involuntarily Separated” means an Employee is removed from employment  
75 through whatever means by the employer. This may include, but is not limited to,  
76 investigative leave, suspension or termination.

77 (i)(k) “Political Appointee” means an individual appointed as an executive assistant by  
78 an individual Oneida Business Committee member or as an assistant by a board,  
79 committee or commission.

80 (j)(l) “Reviewing Supervisor” means the party responsible for overseeing the Employee  
81 Supervisor and who may hear an appeal of a Corrective Action taken by an Employee  
82 Supervisor.

83 (k)(m) “Rule” means any exercise of authority delegated to HRD and by HRD pursuant  
84 to this Law in the form of a rule, regulation, policy or any other tool designed to exercise  
85 HRD’s delegated authority in order to implement, interpret and/or enforce this Law. A

86 Rule does not include any statements, interpretations, decisions, rules, regulations,  
87 policies, procedures or other matters concerning internal management of a department or  
88 division, or, which do not affect the private rights or interests of individuals outside of the  
89 said department or division.

90 ~~(n)~~(n) “Sexual Harassment” means unwelcome sexual advances, requests for sexual  
91 favors and other verbal or physical conduct of a sexual nature where:

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

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

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

99 ~~(m)~~(o) “Standard Operating Procedure” means an internal procedure that is created to  
100 govern how a ~~division or department~~Entity operates and performs its designated  
101 functions; a standard operating procedure does not affect parties outside of the ~~division or~~  
102 ~~department~~Entity to which the procedure belongs.

103 ~~(n)~~(p) “Tribal” or “Tribe” means the Oneida Tribal of Indians of Wisconsin.

104 ~~(o)~~(q) “Tribal Member” means an individual who is an enrolled member of the Oneida  
105 Tribe of Indians of Wisconsin.

#### 107 **300.4. Human Resources Department**

108 300.4-1. *General Responsibilities.* The HRD shall:

109 (a) Develop , amend, implement, interpret and enforce Rules necessary to carry out the  
110 intent of this Law, the authority for which is hereby delegated to HRD by the Oneida  
111 Legislative Operating Committee. The Legislative Operating Committee retains  
112 authority to develop and amend Tribal legislation and policy relating to human resources,  
113 however, shall avoid having, creating the appearance of having, or attempting to create or  
114 have undue influence in day-to-day human resources decisions. The Rules developed by  
115 HRD pursuant to this Section are effective upon HRD final approval. HRD shall provide  
116 notice of approval of said Rules to the Oneida Business Committee at the next available  
117 regularly scheduled Oneida Business Committee meeting following approval. If the  
118 Oneida Business Committee has any concerns and/or requested revisions upon review of  
119 the Rules, HRD shall work with the Oneida Business Committee to address such  
120 concerns and/or requested revisions.

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

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

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

132 (2) Should the Oneida Business Committee pursue amendments to the Rules  
133 approved by the HRD, the amendments must be completed through one (1) of the

134 following actions within six (6) months from the date the amendments are  
 135 initiated by the Oneida Business Committee:

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

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

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

147 (b) Review and approve employment related Standard Operating Procedures for all  
 148 ~~departments~~ Entities and divisions throughout the Tribe.

149 (c) Issue guidance opinions regarding the application of this Law, Rules promulgated  
 150 pursuant to this Law, and Standard Operating Procedures created to implement this Law  
 151 and the Rules promulgated hereunder.

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

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

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

159 (2) The Oneida Business Committee may not have direct access to Employee  
 160 information and/or personnel files, especially information relating to individual  
 161 compensation or Corrective Actions; provided that, the Tribal Chairperson may  
 162 have access to information on those personnel who directly report to him or her  
 163 and each Oneida Business Committee member may have access to information on  
 164 his or her Political Appointee(s).

165 300.4-2. *Administrative.* The HRD Department Manager, or his or her designee, is responsible  
 166 for all of HRD's administrative duties, which include, but are not limited to sign-offs,  
 167 assessments, planning, budgeting, goal setting, continuous improvement and other day-to-day  
 168 management decisions relating to HRD.

169 300.4-3. *Tribal ~~Departments, Divisions, and Non Divisions~~ Entities.* Individual ~~Tribal~~  
 170 ~~departments, divisions, and non divisions~~ Entities shall comply with this Law and the Rules  
 171 promulgated under Section 300.4-1(a) and, if necessary, shall develop internal rules and  
 172 Standard Operating Procedures for the implementation of said Rules. If the development of  
 173 internal rules and Standard Operating Procedures is deemed necessary, either by HRD or the  
 174 individual Tribal ~~department, division or non-division~~ Entity, said rules and Standard Operating  
 175 Procedures s must be reviewed and approved by HRD prior to becoming effective.

176 300.4-4. *Memorandum of Understanding.* The Oneida Business Committee and HRD shall  
 177 negotiate and enter into a memorandum of understanding which governs the relationship  
 178 between the two parties by establishing the responsibilities and expectations of each party with  
 179 regard to the management of HRD.

181 **300.5. Hiring**

182 300.5-1. *Hiring Philosophy.* The Tribe shall recruit, hire, retain and develop individuals who  
183 are culturally respectful, professionally competent and civically responsible. HRD must uphold  
184 the Tribe’s sovereignty, laws and policies in its hiring and employment practices.

185 300.5-2. *Equal Employment Opportunities.* The Tribe and HRD shall afford all applicants and  
186 Employees Equal Employment Opportunities~~may not discriminate against an Employee or~~  
187 ~~applicant based on an individual’s sex, race, religion, national origin, pregnancy, age, marital~~  
188 ~~status, sexual orientation, or disability~~; however, the Tribe shall follow the preferences outlined  
189 in Section 300.5-3 and such preferences may not be considered a violation of this Law.

190 300.5-3. *Oneida and Indian Preference.* As a sovereign and a unique cultural group, the Tribe’s  
191 employment policy is to provide a preference to Tribal Members first and members of other  
192 federally recognized tribes secondly.~~finds it highly desirable that Employees possess knowledge~~  
193 ~~of the Oneida culture, which can only be attained by having membership in the Tribe or by being~~  
194 ~~a descendant of the Tribe. Further, the Tribe recognizes the unique shared general culture of~~  
195 ~~members of all tribes and finds it desirable that an Employee share in the Tribe’s general cultural~~  
196 ~~understanding by being a member of any federal recognized tribe as a secondary preference to~~  
197 ~~membership in this Tribe.~~

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

- 200 (1) Persons who are Tribal Members.  
201 (2) Persons who are eligible to be Tribal Members in accordance with the  
202 Membership Ordinance, but are not currently Tribal Members.  
203 (3) Persons who are documented first generation descendants of a Tribal Member.  
204 ~~(4)~~ Persons enrolled in any federally recognized tribe other than this Tribe.  
205 (5) All other non-Indian persons.

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

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

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

216 300.5-4. *Education.* Employees under the age of fifty (50) who do not have a high school  
217 diploma or its equivalent at the time of hire, shall obtain a high school diploma, a high school  
218 equivalency diploma or a general equivalency diploma within one (1) year of being hired.  
219 Employees that do not meet this deadline and have not been granted an extension from HRD  
220 may be laid off until the employee provides documentation to HRD that he or she is in  
221 compliance with this Section.

222 300.5-5. *Workplace Safety* The Tribe is committed to protecting the safety, health and well-  
223 being of all Employees and other individuals in the workplace. Alcohol and drug use pose a  
224 significant health and safety threat not only to the user but also to customers and other

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<sup>1</sup> 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.

225 Employees. HRD shall establish a drug and alcohol policy that applies to all applicants for  
226 employment, whether external or internal, and all Employees.

227 300.5-6. *Conflicts*. An applicant is ineligible for positions for which he or she has a conflict of  
228 interest, as defined by the Conflict of Interest Policy, and/or if he or she would be directly  
229 supervised by an Immediate Family Member.

230 300.5-7. *Right to Work*. No person may be required to do any of the following in order to  
231 become or remain an Employee of the Tribe:

- 232 (a) resign or refrain from being a member of a labor organization;
  - 233 (b) become or remain a member of a labor organization; or
  - 234 (c) pay dues or other charges to a labor organization.
- 235

### 236 **300.6. Compensation and Benefits**

237 300.6-1. *Compensation Plan*. HRD shall develop and institute an Employee Compensation Plan  
238 to assure equitable salary and wage levels; the said plan must be approved by the Oneida  
239 Business Committee and must receive the said approval before becoming effective. Wage  
240 adjustments and benefits available to Employees are dependent upon available funding  
241 allocations.

242 300.6-2. *Designation of Employees*. The Tribe shall use the standards created under the Fair  
243 Labor Standards Act to designate its Employees as either nonexempt or exempt and to set  
244 minimum wage and maximum hour restrictions for employees receiving an hourly wage.

245 300.6-3. *Insurance and Retirement*. The Tribe may provide insurances and/or a retirement plan  
246 as a benefit to full-time Employees. Emergency or temporary Employees are not eligible for  
247 these benefits.

248 300.6-4. *Time Off*. The Tribe shall afford Employees paid time off to the extent that paid time  
249 off is accumulated based on continuous service to the Tribe. HRD shall establish rates of accrual  
250 and the process for requesting paid time off in the Rules it is charged with developing under  
251 Section 300.4-1(a).

252 300.6-5. *Leaves*. Employees of the Tribe may be allowed leave under circumstances provided in  
253 the Rules developed under Section 300.4-1(a) and any other applicable Tribal laws and policies.  
254 If applicable to an Employee's basis for leave, the Tribe may offer an Employee on leave the  
255 opportunity to return to work and conduct temporary, transitional work within the Employee's  
256 functional capacity and/or rehabilitative needs.

257

### 258 **300.7. General**

259 300.7-1. *Employee Development*. The Tribe encourages the advancement and transfer of  
260 Employees in order to make the best possible use of human resources. Employees who wish to  
261 advance in the organization may work with the Human Resources Department to develop a  
262 personal development plan.

263 300.7-2. *Employee Records*. The Tribe collects information from Employees to make human  
264 resource decisions and HRD shall store these Employee records in a manner that maintains the  
265 records' private and confidential nature. Information contained in Employee records may only  
266 be released in the following situations:

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

272 300.7-3. *Safety and Fitness-for-Duty.* In order to create a safe and healthy work environment  
273 for Employees and to keep the number of job-related illnesses and/or injuries to a minimum, the  
274 Tribe shall maintain safety standards for the Tribe as an employer, in accordance with the Tribe’s  
275 applicable laws and policies, and shall also maintain standards requiring Employees to perform  
276 their job duties in a safe, secure, productive and effective manner.

277 300.7-4. *Worker’s Compensation.* The Tribe shall comply with the Worker’s Compensation  
278 Law in determining eligibility for compensation and medical benefits for any Employee  
279 sustaining injuries in the course of their employment with the Tribe.

280 300.7-5. *Unemployment Insurance.* The Tribe shall comply with the State of Wisconsin’s  
281 unemployment insurance program; Employees of the Tribe may be eligible for unemployment  
282 benefits in accordance with the provisions of the laws of the State of Wisconsin.

283

### 284 **300.8. Employee Responsibilities**

285 300.8-1. *Harassment and Discrimination Prohibited.* All Employees are expressly prohibited  
286 from committing Sexual Harassment of another individual or engaging in any conduct that  
287 harasses or discriminates against another based on sex, race, religion, national origin, pregnancy,  
288 age, marital status, sexual orientation, or disability, provided that Employees must comply with  
289 the Oneida Preferences identified in Section 300.5-3 and such compliance is not a violation of  
290 this provision.

291 300.8-2. *Child Abuse and Neglect Reporting.* All Employees shall protect the health and welfare  
292 of the children with whom they come into contact during the course of their Employment. In  
293 addition to those professional Employees who have a duty to report child abuse or neglect, all  
294 Employees who have children in their charge as an Employee of the Tribe have a responsibility  
295 to report actual or suspected child abuse or neglect.

296 300.8-3. *Anonymous Information.* Employees who receive anonymous information of any type  
297 shall maintain the confidentiality of the said information and forward a summary of the  
298 information to the Chief of the Oneida Police Department expressly noting that the information  
299 was provided anonymously.

300 300.8-4. *Employee Protection.* The Tribe shall protect any Employee who reports an  
301 Employee’s, Political Appointee’s and/or Tribal official’s violation(s) of Tribal laws, policies or  
302 rules from retaliatory action.

303 300.8-5. *Reporting of Violations.* No Employee may retaliate against or permit retaliation  
304 against an Employee who reports an Employee’s, Political Appointee’s and/or Tribal official’s  
305 violation(s) of the Tribe’s laws, policies or rules.

306

### 307 **300.9. Layoffs**

308 300.9-1. Employees may be laid off to the extent necessary for the Tribe to operate effectively  
309 and efficiently in varying economic conditions.

310 300.9-2. Employees placed on a layoff and recalled within twenty-six (26) weeks of the layoff  
311 date are considered to have maintained continuous service to the Tribe, but may not accumulate  
312 benefits during the layoff period. Employees placed on layoff and not recalled within twenty-six  
313 (26) weeks of the layoff date are terminated, effective upon the last day of the twenty-sixth (26<sup>th</sup>)  
314 week of the layoff date.

315 300.9-3. Layoffs may not be used for disciplinary reasons.

316 300.9-4. The Tribe’s decision to layoff an Employee is not subject to appeal.

317

318 **300.10. Employee Discipline and Grievances**

319 300.10-1. Pursuant to Section 300.4-1(a), HRD shall develop, implement and enforce  
320 | progressive Corrective Action Rules and ~~Standard Operating Procedures~~procedures for use by  
321 | Employee Supervisors to correct unacceptable work performance and/or behavior.

322 | 300.10-2. Employees, excluding At-Will Employees, who disagree with a Corrective Action  
323 | may contest the Corrective Action using the Rules and procedures, which HRD shall develop  
324 | pursuant to Section 300.4-1(a), and based on the following available levels of review:

325 | (a) *First Level of Review.* Any Employee, excluding At-Will Employees, contesting the  
326 | validity of a Corrective Action may appeal the Corrective Action to his or her Reviewing  
327 | Supervisor. Unless the Employee asserts that the contested Corrective Action amounts to  
328 | a deprivation of an Equal Employment Opportunity based on the Tribe's policy under  
329 | Section 300-5.2, the decision of the Reviewing Supervisor is final.

330 | (1) Direct Reports to the Oneida Business Committee do not have Reviewing  
331 | Supervisors; the first level of review is not available to Direct Reports.  
332 | Accordingly, unless a Direct Report asserts that a Corrective Action taken by the  
333 | Oneida Business Committee deprived him or her of an Equal Employment  
334 | Opportunity, the said action is final. Any claim by a Direct Report asserting that  
335 | a Corrective Action deprived him or her of an Equal Employment Opportunity  
336 | remains subject to the second level of review provided under sub-Section (b)  
337 | below.

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

340 | (b) *Second Level of Review.* An Employee, excluding At-Will Employees, that is  
341 | unhappy with the Reviewing Supervisor's decision regarding a contested Corrective  
342 | Action, and, is able to demonstrate that the contested Corrective Action amounts to a  
343 | deprivation of an Equal Employment Opportunity based on the Tribe's policy under  
344 | Section 300-5.2, may appeal the Reviewing Supervisor's decision to the Oneida  
345 | Judiciary.

346 | (1) Should the Oneida Judiciary determine that there was an intentional  
347 | deprivation of an Equal Employment Opportunity based on the Tribe's policy  
348 | under Section 300.5-2, the Oneida Judiciary may award compensatory damages,  
349 | including, but not limited to, attorney's or advocate's fees and court costs, as  
350 | against the individual(s) found to have engaged in the intentional deprivation of  
351 | an Equal Employment Opportunity. Said compensatory damages may not be  
352 | awarded against the Tribe.

353 | 300.10-3. *Back Pay.* Employees, excluding At-Will Employees, who are Involuntarily  
354 | Separated from employment may be eligible for Back Pay. In considering whether Back Pay is  
355 | appropriate in a given circumstance, the Tribe shall comply with the Back Pay Policy.  
356

357 **300.11. Violations**

358 300.11-1. Unless expressly stated otherwise in this Law, claims of alleged violations of this Law  
359 | may be filed with the Oneida Judiciary.

360  
361 End.  
362