

**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 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 not apply to the Tribe, it is the Tribe’s 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including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985, are hereby repealed.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 This Law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.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.

(b) “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.

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

43 | (d) ~~“(d) “Cost of Living Adjustments” means wage or salary modifications which allow~~  
44 | ~~Employees to sustain a certain level of living, including basic expenses such as housing,~~  
45 | ~~food, taxes and healthcare.~~

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

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

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

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

69 | (i) “HRD” means the Oneida Human Resources Department.

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

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

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

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

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

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

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

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

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

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

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

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

104 ~~(r)~~(r) “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) Provide all Employees a copy of all employment Rules and all Tribal laws and  
148 policies specifically pertaining to Employment matters, and shall further notify  
149 Employees of how such Rules, laws and policies may be electronically accessed.

150 ~~(bc)~~ Review and approve employment related Standard Operating Procedures for all  
151 Entities ~~and divisions throughout the Tribe.~~

152 ~~(ed)~~ Issue guidance opinions regarding the application of this Law, Rules promulgated  
153 pursuant to this Law, and Standard Operating Procedures created to implement this Law  
154 and the Rules promulgated hereunder.

155 ~~(de)~~ Keep a record of all employment related decisions made by the Employee  
156 Supervisors, Reviewing Supervisors and the Oneida Judiciary.

157 ~~(ef)~~ Collect and maintain data on human resource related information including, but not  
158 limited to, information on hiring, appointments, firing, transfers, Employee development,  
159 grievances, policy issues and insurances.

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

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

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

172 300.4-3. *Tribal Entities.* Individual Entities shall comply with this Law and the Rules  
173 promulgated under Section 300.4-1(a) and, if necessary, shall develop internal rules and  
174 Standard Operating Procedures for the implementation of said Rules. If the development of  
175 internal rules and Standard Operating Procedures is deemed necessary, either by HRD or the  
176 individual Tribal Entity, said rules and Standard Operating Procedures must be reviewed and  
177 approved by HRD prior to becoming effective.

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

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183 **300.5. Hiring**

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

187 300.5-2. *Equal Employment Opportunities.* The Tribe and HRD shall afford all applicants and  
188 Employees Equal Employment Opportunities; however, the Tribe shall follow the preferences  
189 outlined 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.

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

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

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

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

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

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

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

222 300.5-6. *Conflicts.* An applicant is ineligible for positions for which he or she has a conflict of  
223 interest, as defined by the Conflict of Interest Policy, and/or if he or she would be directly  
224 supervised by an Immediate Family Member.

225 300.5-7. *Right to Work.* No person may be required to do any of the following in order to  
226 become or remain an Employee of the Tribe:

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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.

- 227 (a) resign or refrain from being a member of a labor organization;  
228 (b) become or remain a member of a labor organization; or  
229 (c) pay dues or other charges to a labor organization.  
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### 231 **300.6. Compensation and Benefits**

232 300.6-1. *Compensation Plan.* HRD shall develop and institute an Employee Compensation Plan  
233 to assure equitable salary and wage levels and shall consider data from the Bureau of Labor  
234 Statistics for average earnings in the Green Bay area; the said plan must be approved by the  
235 Oneida Business Committee and must receive the said approval before becoming effective.

236 (a) Wage and salary adjustments and benefits available to Employees are dependent  
237 upon available funding allocations, provided that, the Compensation Plan must require  
238 HRD to make reasonable efforts to regularly implement Cost of Living Adjustments  
239 based on the United States Department of Labor – Bureau of Labor Statistics’ Consumer  
240 Price Index for the Midwest Region.

241 300.6-2. *Designation of Employees.* The Tribe shall use the standards created under the Fair  
242 Labor Standards Act to designate its Employees as either nonexempt or exempt and to set  
243 minimum wage and maximum hour restrictions for employees receiving an hourly wage.

244 300.6-3. *Insurance and Retirement.* The Tribe may provide insurances and/or a retirement plan  
245 as a benefit to full-time Employees. Emergency or temporary At-Will Employees are not eligible  
246 for these benefits.

247 300.6-4. *Time Off.* The Tribe shall afford Employees paid time off to the extent that paid time  
248 off is accumulated based on continuous service to the Tribe. HRD shall establish rates of accrual  
249 and the process for requesting paid time off in the Rules it is charged with developing under  
250 Section 300.4-1(a).

251 300.6-5. *Leaves.* Employees of the Tribe may be allowed leave under circumstances provided in  
252 the Rules developed under Section 300.4-1(a) and any other applicable Tribal laws and policies.  
253 If applicable to an Employee’s basis for leave, the Tribe may offer an Employee on leave the  
254 opportunity to return to work and conduct temporary, transitional work within the Employee’s  
255 functional capacity and/or rehabilitative needs.  
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### 257 **300.7. General**

258 300.7-1. *Employee Development.* The Tribe encourages the advancement and transfer of  
259 Employees in order to make the best possible use of human resources. Employees who wish to  
260 advance in the organization may work with the Human Resources Department to develop a  
261 personal development plan.

262 300.7-2. *Employee Records.* The Tribe collects information from Employees to make human  
263 resource decisions and HRD shall store these Employee records in a manner that maintains the  
264 records’ private and confidential nature. Information contained in Employee records may only  
265 be released in the following situations:

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

271 300.7-3. *Safety and Fitness-for-Duty.* In order to create a safe and healthy work environment  
272 for Employees and to keep the number of job-related illnesses and/or injuries to a minimum, the  
273 Tribe shall maintain safety standards for the Tribe as an employer, in accordance with the Tribe’s

274 applicable laws and policies, and shall also maintain standards requiring Employees to perform  
275 their job duties in a safe, secure, productive and effective manner.

276 ~~300.7-4. *Worker's Compensation.* The Tribe shall comply with the Worker's Compensation  
277 Law in determining eligibility for compensation and medical benefits for any Employee  
278 sustaining injuries in the course of their employment with the Tribe.~~

279 300.7-54. *Unemployment Insurance.* The Tribe shall comply with the State of Wisconsin's  
280 unemployment insurance program; Employees of the Tribe may be eligible for unemployment  
281 benefits in accordance with the provisions of the laws of the State of Wisconsin.

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### 283 **300.8. Employee Responsibilities**

284 300.8-1. *Harassment and Discrimination Prohibited.* All Employees are expressly prohibited  
285 from committing Sexual Harassment of another individual or engaging in any conduct that  
286 harasses or discriminates against another based on sex, race, religion, national origin, pregnancy,  
287 age, marital status, sexual orientation, or disability, provided that Employees must comply with  
288 the Oneida Preferences identified in Section 300.5-3 and such compliance is not a violation of  
289 this provision.

290 300.8-2. *Child Abuse and Neglect Reporting.* All Employees shall protect the health and welfare  
291 of the children with whom they come into contact during the course of their Employment. In  
292 addition to those professional Employees who have a duty to report child abuse or neglect, all  
293 Employees who have children in their charge as an Employee of the Tribe have a responsibility  
294 to report actual or suspected child abuse or neglect. All Employees must comply with the  
295 Oneida Policy on Reporting Child Abuse and 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 ~~may not retaliate against~~ shall protect any Employee  
301 who reports an Employee's, Political Appointee's and/or Tribal official's violation(s) of Tribal  
302 laws, policies or rules and shall protect any Employees who report such violations from  
303 retaliatory actions from other Employees.

304 (a) HRD shall develop Rules and procedures designed to protect Employees reporting  
305 others' violations of Tribal laws, policies or rules from any and all forms of retaliation.

306 ~~300.8-5. *Reporting of Violations.* No Employee may retaliate against or permit retaliation  
307 against an Employee who reports an Employee's, Political Appointee's and/or Tribal official's  
308 violation(s) of the Tribe's laws, policies or rules.~~

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### 310 **300.9. Layoffs and Furloughs**

311 300.9-1. Employees may be laid off and/or furloughed to the extent necessary for the Tribe to  
312 operate effectively and efficiently in varying economic conditions pursuant to the Tribe's laws,  
313 policies and rules.

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

319 300.9-32. Layoffs and furloughs may not be used for disciplinary reasons and may not under  
320 any circumstances be considered adverse employment actions.

321 300.9-43. The Tribe's decision to layoff and/or furlough an Employee is not subject to appeal.

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**300.10. Employee Discipline and Grievances**

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

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

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

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

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

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

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

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

**300.11. Violations**

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

End.