

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 purpose of this Law to provide a fair, consistent and efficient structure to govern all employment matters. 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including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985, are hereby repealed.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 This Law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.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.

- 40 (c) “Corrective Action” means any initiative taken by an Employee Supervisor with the
41 goal of remedying Employee’s undesirable behaviors such as law, policy and rule
42 infractions and/or performance related issues. Such initiatives may include, but are not
43 limited to, verbal warnings, written warnings, suspension and termination.
- 44 (d) “Cost of Living Adjustments” means wage or salary modifications which allow
45 Employees to sustain a certain level of living, including basic expenses such as housing,
46 food, taxes and healthcare.
- 47 (e) “Employee” means any individual who is employed by the Tribe and is subject to the
48 direction and control of the Tribe with respect to the material details of the work
49 performed, or who has the status of an Employee under the usual common law rules
50 applicable to determining the employer-Employee relationship. “Employee” includes,
51 but is not limited to, any individual employed by any Entity, but does not include elected
52 or appointed officials, At-Will Employees or individuals employed by a Tribally
53 chartered corporation. For purposes of this Law, individuals employed under an
54 employment contract as a limited term Employee are Employees of the Tribe, not
55 consultants. Throughout this law all references to Employee include both Employees and
56 At-Will Employees, unless the term At-Will Employee is used, in which case only At-
57 Will Employees are intended.
- 58 (f) “Employee Supervisor” means the party responsible for directly overseeing the
59 Employee and who is responsible for taking Corrective Action should an Employee fail
60 to abide by Tribe’s laws and policies and any applicable rules or who may fail to fulfill
61 his or her job requirements.
- 62 (g) “Entity” means any division of the Tribe having Employees and may include, but is
63 not limited to, departments, areas, programs, enterprises, board, committees,
64 commissions and the like
- 65 (h) “Equal Employment Opportunity” or “EEO” means the Tribe’s consideration for
66 hiring selection and position retention that is free from discrimination against any person
67 on the basis of race (although Oneida and Indian Preference are allowable and are not
68 considered a deprivation of an EEO), color, religion, sex (including pregnancy), national
69 origin, age, disability or genetic information.
- 70 (i) “HRD” means the Oneida Human Resources Department.
- 71 (j) “Immediate Family Member” means an individual’s husband, wife, mother, father,
72 son, daughter, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew,
73 mother-in-law, father-in-law, brother-in-law, sister-in-law, first or second cousin, step-
74 parent, or someone who is recognized by the Oneida General Tribal Council and/or its
75 delegate as a member of the individual’s extended family.
- 76 (k) “Involuntarily Separated” means an Employee is removed from employment through
77 whatever means by the employer. This may include, but is not limited to, investigative
78 leave, suspension or termination.
- 79 (l) “Political Appointee” means an individual appointed as an executive assistant by an
80 individual Oneida Business Committee member or as an assistant by a board, committee
81 or commission.
- 82 (m) “Reviewing Supervisor” means the party responsible for overseeing the Employee
83 Supervisor and who may hear an appeal of a Corrective Action taken by an Employee
84 Supervisor.
- 85 (n) “Rule” means any exercise of authority delegated to HRD and by HRD pursuant to
86 this Law in the form of a rule, regulation, policy or any other tool designed to exercise
87 HRD’s delegated authority in order to implement, interpret and/or enforce this Law. A

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

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

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

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

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

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

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

105 (r) “Tribal Member” means an individual who is an enrolled member of the Oneida
106 Tribe of Indians of Wisconsin.

107 108 **300.4. Human Resources Department**

109 300.4-1. *General Responsibilities.* The HRD shall:

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

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

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

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

133 (2) Should the Oneida Business Committee pursue amendments to the Rules
134 approved by the HRD, the amendments must be completed through one (1) of the
135 following actions within six (6) months from the date the amendments are

136 initiated by the Oneida Business Committee:

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

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

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

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

151 (c) Review and approve employment related Standard Operating Procedures for all
152 Entities.

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

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

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

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

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

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

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

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

183

184 **300.5. Hiring**

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

188 300.5-2. *Equal Employment Opportunities.* The Tribe and HRD shall afford all applicants and
189 Employees Equal Employment Opportunities; however, the Tribe shall follow the preferences
190 outlined in Section 300.5-3 and such preferences may not be considered a violation of this Law.

191 300.5-3. *Oneida and Indian Preference.* As a sovereign and a unique cultural group, the Tribe’s
192 employment policy is to provide a preference to Tribal Members first and members of other
193 federally recognized tribes secondly.

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

196 (1) Persons who are Tribal Members.

197 (2) Persons who ~~are eligible to be Tribal Members in accordance with~~meet the
198 blood quantum requirements contained in the Membership Ordinance, but are not
199 currently Tribal Members.

200 (3) Persons who are documented first generation descendants of a Tribal Member.

201 (4) Persons enrolled in any federally recognized tribe other than this Tribe.

202 (5) All other non-Indian persons.

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

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

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

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

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

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

227 300.5-7. *Right to Work.* No person may be required to do any of the following in order to

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 become or remain an Employee of the Tribe:

- 229 (a) resign or refrain from being a member of a labor organization;
230 (b) become or remain a member of a labor organization; or
231 (c) pay dues or other charges to a labor organization.

232

233 **300.6. Compensation and Benefits**

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

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

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

246 300.6-3. *Insurance and Retirement.* The Tribe may provide insurances and/or a retirement plan
247 as a benefit to full-time Employees. At-Will Employees are not eligible for 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. *Unemployment Insurance.* The Tribe shall comply with the State of Wisconsin's
278 unemployment insurance program; Employees of the Tribe may be eligible for unemployment
279 benefits in accordance with the provisions of the laws of the State of Wisconsin.

280

281 **300.8. Employee Responsibilities**

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

288 300.8-2. *Child Abuse and Neglect Reporting.* All Employees shall protect the health and welfare
289 of the children with whom they come into contact during the course of their Employment. In
290 addition to those professional Employees who have a duty to report child abuse or neglect, all
291 Employees who have children in their charge as an Employee of the Tribe have a responsibility
292 to report actual or suspected child abuse or neglect. All Employees must comply with the
293 Oneida Policy on Reporting Child Abuse and Neglect.

294 300.8-3. *Anonymous Information.* Employees who receive anonymous information of any type
295 shall maintain the confidentiality of the said information and forward a summary of the
296 information to the Chief of the Oneida Police Department expressly noting that the information
297 was provided anonymously.

298 300.8-4. *Employee Protection.* The Tribe may not retaliate against any Employee who reports an
299 Employee's, Political Appointee's and/or Tribal official's violation(s) of Tribal laws, policies or
300 rules and shall protect any Employees who report such violations from retaliatory actions from
301 other Employees.

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

304 **300.9. Layoffs and Furloughs**

305 300.9-1. Employees may be laid off and/or furloughed to the extent necessary for the Tribe to
306 operate effectively and efficiently in varying economic conditions pursuant to the Tribe's laws,
307 policies and rules.

308 300.9-2. Layoffs and furloughs may not be used for disciplinary reasons and may not under any
309 circumstances be considered adverse employment actions.

310 300.9-3. The Tribe's decision to layoff and/or furlough an Employee is not subject to appeal.

311

312 **300.10. Employee Discipline and Grievances**

313 300.10-1. Pursuant to Section 300.4-1(a), HRD shall develop, implement and enforce
314 progressive Corrective Action Rules and procedures for use by Employee Supervisors to correct
315 unacceptable work performance and/or behavior.

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

319 (a) *First Level of Review.* Any Employee, excluding At-Will Employees, contesting the
320 validity of a Corrective Action may appeal the Corrective Action to his or her Reviewing
321 Supervisor. Unless the Employee asserts that the contested Corrective Action amounts to

322 a deprivation of an Equal Employment Opportunity based on the Tribe’s policy under
323 Section 300-5.2, the decision of the Reviewing Supervisor is final.

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

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

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

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

347 **300.11. Violations**

348 300.11-1. Unless expressly stated otherwise in this Law, claims of alleged violations of this Law
349 may be filed with the Oneida Judiciary.

350
351 End.
352
