

CHAPTER 300
EMPLOYMENT LAW

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1
2 **300.1. Purpose and Policy**

3 300.1-1. It is the purpose of this Law to provide a fair, consistent and efficient structure to
4 govern all employment matters.

5 300.1-2. It is the policy of the Tribe to provide Tribal Entities latitude to create human resource
6 practices to fit their individual industry standards through policy guided by this Law, while
7 protecting Employees from undue political pressure. In addition, while the provisions of certain
8 federal laws, specifically Title VII, do not apply to the Tribe, it is the Tribe’s policy to afford
9 applicants and Employees Equal Employment Opportunities.

10
11 **300.2. Adoption, Amendment, Repeal**

12 300.2-1. This Law was adopted by the Oneida General Tribal Council by resolution
13 _____ and is effective six (6) months from the date of adoption.

14 300.2-2. The Oneida Tribal Management System and amendments to the Tribal Management
15 System, including the Personnel Policies and Procedures adopted by the Oneida Business
16 Committee on May 7, 1985, are hereby repealed.

17 300.2-3. This Law may be amended or repealed by the Oneida General Tribal Council pursuant
18 to the procedures set out in the Legislative Procedures Act.

19 300.2-4. Should a provision of this Law or the application thereof to any person or circumstances
20 be held as invalid, such invalidity does not affect other provisions of this Law which are
21 considered to have legal force without the invalid portions.

22 300.2-5. In the event of a conflict between a provision of this Law and a provision of another
23 Law, the provisions of this Law control.

24 300.2-6. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians
25 of Wisconsin.

26
27 **300.3 Definitions**

28 300.3-1. This section governs the definitions of words and phrases used within this Law. All
29 words not defined herein are to be used in their ordinary and everyday sense.

30 (a) “At-Will Employee” means Political Appointees, employees of the Tribe that are not
31 hired through the standard hiring procedures, including, but not limited to, part-time,
32 seasonal, and volunteer workers, and Employees that have not yet completed their
33 probationary period pursuant to the Rules developed by HRD.

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

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

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

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

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

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

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

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

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

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

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

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

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

82 (n) “Rule” means any exercise of authority delegated to HRD and by HRD pursuant to
83 this Law in the form of a rule, regulation, policy or any other tool designed to exercise
84 HRD’s delegated authority in order to implement, interpret and/or enforce this Law. A
85 Rule does not include any statements, interpretations, decisions, rules, regulations,
86 policies, procedures or other matters concerning internal management of a department or

87 division, or, which do not affect the private rights or interests of individuals outside of the
88 said department or division.

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

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

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

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

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

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

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

104 105 **300.4. Human Resources Department**

106 300.4-1. *General Responsibilities.* The HRD shall:

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

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

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

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

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

134 (A) if HRD and the Oneida Business Committee reach an agreement as to the

135 content of the amendments, the HRD must approve the revised Rules that
136 have been discussed with and agreed upon by the Oneida Business
137 Committee; or

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

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

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

148 (c) Review and approve employment related Standard Operating Procedures for all
149 Entities.

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

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

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

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

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

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

170 300.4-3. *Tribal Entities.* Individual 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 Entity, said rules and Standard Operating Procedures must be reviewed and
175 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.

180

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; however, the Tribe shall follow the preferences
187 outlined in Section 300.5-3 and such preferences may not be considered a violation of this Law.

188 300.5-3. *Oneida and Indian Preference.* As a sovereign and a unique cultural group, the Tribe’s
189 employment policy is to provide a preference to Tribal Members first and members of other
190 federally recognized tribes secondly.

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

193 (1) Persons who are Tribal Members.

194 (2) Persons who meet the blood quantum requirements contained in the
195 Membership Ordinance, but are not currently Tribal Members, ~~and~~ and

196 ~~(3) P~~ (3) persons who are documented first generation descendants of a Tribal
197 Member.

198 ~~(4)~~ (4) Persons enrolled in any federally recognized tribe other than this Tribe.

199 ~~(5)~~ (5) All other non-Indian persons.

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

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

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

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

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

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

224 300.5-7. *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.

225 become or remain an Employee of the Tribe:

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

229

230 **300.6. Compensation and Benefits**

231 300.6-1. *Compensation Plan.* HRD shall develop and institute an Employee Compensation Plan
232 to assure equitable salary and wage levels and shall consider data from the Bureau of Labor
233 Statistics for average earnings in the Green Bay area; the said plan must be approved by the
234 Oneida Business Committee and must receive the said approval before becoming effective.

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

240 300.6-2. *Designation of Employees.* The Tribe shall use the standards created under the Fair
241 Labor Standards Act to designate its Employees as either nonexempt or exempt and to set
242 minimum wage and maximum hour restrictions for employees receiving an hourly wage.

243 300.6-3. *Insurance and Retirement.* The Tribe may provide insurances and/or a retirement plan
244 as a benefit to full-time Employees. Emergency ~~or~~ and temporary Employees are not eligible for
245 these benefits.

246 300.6-4. *Time Off.* The Tribe shall afford Employees paid time off to the extent that paid time
247 off is accumulated based on continuous service to the Tribe. HRD shall establish rates of accrual
248 and the process for requesting paid time off in the Rules it is charged with developing under
249 Section 300.4-1(a).

250 300.6-5. *Leaves.* Employees of the Tribe may be allowed leave under circumstances provided in
251 the Rules developed under Section 300.4-1(a) and any other applicable Tribal laws and policies.
252 If applicable to an Employee’s basis for leave, the Tribe may offer an Employee on leave the
253 opportunity to return to work and conduct temporary, transitional work within the Employee’s
254 functional capacity and/or rehabilitative needs.

255

256 **300.7. General**

257 300.7-1. *Employee Development.* The Tribe encourages the advancement and transfer of
258 Employees in order to make the best possible use of human resources. Employees who wish to
259 advance in the organization may work with the Human Resources Department to develop a
260 personal development plan.

261 300.7-2. *Employee Records.* The Tribe collects information from Employees to make human
262 resource decisions and HRD shall store these Employee records in a manner that maintains the
263 records’ private and confidential nature. Information contained in Employee records may only
264 be released in the following situations:

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

270 300.7-3. *Safety and Fitness-for-Duty.* In order to create a safe and healthy work environment
271 for Employees and to keep the number of job-related illnesses and/or injuries to a minimum, the
272 Tribe shall maintain safety standards for the Tribe as an employer, in accordance with the Tribe’s

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

275 300.7-4. *Unemployment Insurance.* The Tribe shall comply with the State of Wisconsin’s
276 unemployment insurance program; Employees of the Tribe may be eligible for unemployment
277 benefits in accordance with the provisions of the laws of the State of Wisconsin.

278

279 **300.8. Employee Responsibilities**

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

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

292 300.8-3. *Anonymous Information.* Employees who receive anonymous information of any type
293 shall maintain the confidentiality of the said information and forward a summary of the
294 information to the Chief of the Oneida Police Department expressly noting that the information
295 was provided anonymously.

296 300.8-4. *Employee Protection.* The Tribe may not retaliate against any Employee who reports an
297 Employee’s, Political Appointee’s and/or Tribal official’s violation(s) of Tribal laws, policies or
298 rules and shall protect any Employees who report such violations from retaliatory actions from
299 other Employees.

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

302

303 **300.9. Layoffs and Furloughs**

304 300.9-1. Employees may be laid off and/or furloughed to the extent necessary for the Tribe to
305 operate effectively and efficiently in varying economic conditions pursuant to the Tribe’s laws,
306 policies and rules.

307 300.9-2. Layoffs and furloughs may not be used for disciplinary reasons and may not under any
308 circumstances be considered adverse employment actions.

309 300.9-3. The Tribe’s decision to layoff and/or furlough an Employee is not subject to appeal.

310

311 **300.10. Employee Discipline and Grievances**

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

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

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

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

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

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

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

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

346
347 **300.11. Applicability to Elected Officials**

348 **300.11-1. The provisions of Sections 300.6-8 apply to Elected Officials of the Tribe that work**
349 **full time and receive salaries for their service.**

350
351 **300.112. Violations**

352 **300.121-1.** Unless expressly stated otherwise in this Law, claims of alleged violations of this
353 Law may be filed with the Oneida Judiciary.

354
355 End.
356
