

**CHAPTER 300  
EMPLOYMENT LAW**

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**300.1. Purpose and Policy**

300.1-1. 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, while creating a strong and healthy work environment. In addition, although certain federal laws, specifically Title VII, do not apply to the Tribe, the Tribe's employment policy affords 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including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985, are hereby repealed.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 This Law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.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, provided that this Law repeals the following:

(a) 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;

(b) BC Resolution BC-05-11-11-A ~~for Establishing a~~entitled Establish Tuberculosis Control Program; ~~and~~

(c) The Employee Protection Policy adopted by emergency pursuant to BC-4-20-95-B, permanently adopted pursuant to BC-12-6-95-B and subsequently amended pursuant to BC-1-20-99-B and BC-6-30-04-J;

(d) The GED Policy approved by the Oneida Business Committee on October 21, 1992;

(e) BC Resolution BC-07-22-09-B entitled Oneida Nation Veterans Affairs Committee, Paid Time Off for Selected Color Guard Members Who Are Employees; and

(f) The Parent Leave Policy adopted pursuant to BC-03-02-94-A.

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

39 **300.3 Definitions**

40 300.3-1. This section governs the definitions of words and phrases used within this Law. All  
41 words not defined herein are to be used in their ordinary and everyday sense.

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

46 (b) “Corrective Action” means any initiative taken by an Employee Supervisor with the  
47 goal correcting an Employee’s prohibited behavior as identified in the Rules created by  
48 HRD.

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

52 (d) “Employee” means any individual who is hired by the Tribe through the normal  
53 hiring process, works full-time (30 or more hours per week) or part-time (less than 30  
54 hours per week) and is subject to the direction and control of the Tribe with respect to the  
55 material details of the work performed. “Employee” includes, but is not limited to,  
56 individuals employed by any Entity and individuals employed through an employment  
57 contract as a limited term employee, but does not include elected or appointed officials,  
58 At-Will Employees or individuals employed by a Tribally chartered corporation.  
59 Throughout this law all references to Employee include both Employees and At-Will  
60 Employees, unless the term At-Will Employee is used, in which case only At-Will  
61 Employees are intended.

62 (e) “Employee Supervisor” means the party responsible for directly overseeing the  
63 Employee and who is responsible for taking Corrective Actions when Employees fail to  
64 meet their responsibilities.

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

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

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

74 (i) “Immediate Family Member” means an individual’s husband, wife, mother, father,  
75 son, daughter, brother, sister, grandparent, grandchild, mother-in-law, father-in-law,  
76 daughter-in-law, son-in-law, brother-in-law or sister-in-law.

77 (j) “Involuntarily Separated” means an Employee is removed from employment.

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

81 (l) “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 (m) “Rule” means any exercise of authority delegated to HRD and by HRD pursuant to  
85 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 an Entity, or,  
89 which do not affect the private rights or interests of individuals outside of the said Entity.

90 (n) “Sexual Harassment” means unwelcome sexual advances, requests for sexual favors  
91 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 (o) “Standard Operating Procedure” means an internal procedure that is created to govern  
100 how an Entity operates and performs its designated functions; a standard operating  
101 procedure does not affect parties outside of the Entity to which the procedure belongs.

102 (p) “Tribal” or “Tribe” means the Oneida Tribal of Indians of Wisconsin.

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

#### 105 106 **300.4. Human Resources Department**

107 300.4-1. *General Responsibilities.* The HRD shall:

108 (a) Develop, amend, implement, interpret and enforce Rules necessary to carry out the  
109 intent of this Law. The Rules developed by HRD pursuant to this Section are effective  
110 upon HRD final approval. HRD shall provide notice of approval of said Rules to the  
111 Oneida Business Committee at the next available regularly scheduled Oneida Business  
112 Committee meeting following approval. If the Oneida Business Committee has any  
113 concerns and/or requested revisions upon review of the Rules, HRD shall work with the  
114 Oneida Business Committee to address such concerns and/or requested revisions.

115 (1) Unless the Oneida Business Committee repeals the Rules approved by HRD,  
116 the Rules remain in effect while HRD and the Oneida Business Committee jointly  
117 work to amend the Rules approved by HRD.

118 (A) Should the Oneida Business Committee repeal the Rules approved  
119 by HRD, the Rules that were in effect immediately previous to those  
120 repealed are automatically reinstated and effective immediately upon the  
121 repeal of the Rules approved by HRD.

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

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

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

134 (B) if HRD and the Oneida Business Committee do not reach an

135 agreement as to the content of the amendments, the Oneida Business  
136 Committee may adopt revised Rules that incorporate the amendments it  
137 deems necessary.

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

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

145 (c) Review and approve employment related Standard Operating Procedures for all  
146 Entities.

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

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

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

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

157 (2) The Oneida Business Committee may not have direct access to Employee  
158 information and/or personnel files, especially information relating to individual  
159 compensation or Corrective Actions; provided that, Oneida Business Committee  
160 members that are also Employee Supervisors may access the Employee records of  
161 any of his or her direct Employees pursuant to Section 300.4-1(f)(3)(B).

162 (3) HRD shall store these Employee records in a manner that maintains the  
163 records' private and confidential nature. Information contained in Employee  
164 records may only be released in the following situations:

165 (A) A current or past Employee may have access to his or her own  
166 Employee record.

167 (B) An Employee Supervisor may review any of his or her current direct  
168 Employees' records.

169 (C) If required by law, the Tribe shall release the information required to  
170 be released to the party the law designates as entitled to receive said  
171 information.

172 (D) A third party may access an Employee's record if the Employee  
173 provides written consent to release his or her record to a designated third  
174 party.

175 300.4-2. HRD shall uphold the Tribe's sovereignty, laws and policies in its hiring and  
176 employment practices.

177 300.4-3. *Memorandum of Understanding.* The Oneida Business Committee and HRD shall  
178 negotiate and enter into a memorandum of understanding which governs the relationship  
179 between the two parties by establishing the responsibilities and expectations of each party with  
180 regard to the management of HRD.

181

182 **300.5. Hiring**

183 300.5-1. *Hiring Philosophy.* The Tribe shall recruit, hire, retain and develop individuals who  
184 are culturally respectful, professionally competent and civically responsible.

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.* The Tribe shall provide preference to Tribal Members  
189 first and members of other federally recognized tribes secondly.

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

192 (1) Persons who are Tribal Members.

193 (2) Persons who meet the blood quantum requirements contained in the  
194 Membership Ordinance, but are not currently Tribal Members, and/or persons  
195 who are documented first generation descendants of a Tribal Member.

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

197 (4) All other non-Indian persons.

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

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

203 (d) *Oneida-Only Positions.* To the extent possible, all top administrative and political  
204 appointee positions must be held by Tribal Members.<sup>1</sup> If a position requires specific  
205 skills and/or licensing by the state or federal government and there are no available Tribal  
206 Members who possess the necessary skills or licensing to assume the vacancy, only then  
207 may a non-Tribal Member be selected to fill the vacancy.

208 300.5-4. *Education.* Employees under the age of fifty (50) who do not have a high school  
209 diploma or its equivalent at the time of hire, shall obtain a high school diploma, a high school  
210 equivalency diploma or a general equivalency diploma within one (1) year of being hired.  
211 Employees that do not meet this deadline and have not been granted an extension from HRD  
212 may be suspended until the employee provides documentation to HRD that he or she is in  
213 compliance with this Section.

214 300.5-5. *Workplace Safety* The Tribe develop Rules and procedures as necessary to protect the  
215 safety, health and well-being of all Employees and other individuals in the workplace.

216 (a) The Employee Health Nursing Department shall establish, maintain, implement,  
217 evaluate and periodically update a Tuberculosis Control Program, which applies to all  
218 Employees as well as elected and appointed officials of the Tribe. The Employee Health  
219 Nursing Department shall make the approved program available to all persons to which it  
220 applies.

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  
225 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.

- 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 prior to 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 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  
253 **300.7. General**

254 300.7-1. *Employee Development.* The Tribe encourages the advancement and transfer of  
255 Employees in order to make the best possible use of human resources. Employees who wish to  
256 advance in the organization may work with the Human Resources Department to develop a  
257 personal development plan.

258 300.7-2. *Tribal Entities.* Individual Entities shall comply with this Law and the Rules  
259 promulgated under Section 300.4-1(a) and, if necessary, shall develop internal rules and  
260 Standard Operating Procedures for the implementation of said Rules.

261 300.7-3. *Safety and Fitness-for-Duty.* In order to create a safe and healthy work environment  
262 for Employees and to keep the number of job-related illnesses and/or injuries to a minimum, the  
263 Tribe shall maintain safety standards in accordance with the Tribe’s applicable laws and policies.  
264 The Tribe shall also maintain standards requiring Employees to perform their job duties in a safe,  
265 secure, productive and effective manner.

266 300.7-4. *Unemployment Insurance.* The Tribe shall comply with the State of Wisconsin’s  
267 unemployment insurance program; Employees of the Tribe may be eligible for unemployment  
268 benefits in accordance with the provisions of the laws of the State of Wisconsin.

269  
270 **300.8. Employee Responsibilities**

271 300.8-1. *Harassment and Discrimination Prohibited.* All Employees are expressly prohibited  
272 from committing Sexual Harassment of another individual or engaging in any conduct that  
273 harasses or discriminates against another based on sex, race, religion, national origin, pregnancy,

274 age, marital status, sexual orientation, or disability, provided that Employees must comply with  
275 the Oneida Preferences identified in Section 300.5-3 and such compliance is not a violation of  
276 this provision.

277 300.8-2. *Anonymous Information.* Employees who receive anonymous information of any type  
278 shall maintain the confidentiality of the said information and forward a summary of the  
279 information to the Chief of the Oneida Police Department expressly noting that the information  
280 was provided anonymously.

281 300.8-3. *Employee Protection.* The Tribe may not retaliate against any Employee who reports an  
282 Employee's, Political Appointee's and/or Tribal official's violation(s) of Tribal laws, policies or  
283 rules and shall protect any Employees who report such violations from retaliatory actions.

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

286

### 287 **300.9. Layoffs and Furloughs**

288 300.9-1. Employees may be laid off and/or furloughed to the extent necessary for the Tribe to  
289 operate effectively and efficiently in varying economic conditions pursuant to the Tribe's laws,  
290 policies and rules.

291 300.9-2. Layoffs and furloughs may not be used for disciplinary reasons and may not under any  
292 circumstances be considered adverse employment actions.

293 300.9-3. The Tribe's decision to layoff and/or furlough an Employee is not subject to appeal.

294

### 295 **300.10. Employee Discipline and Grievances**

296 300.10-1. Corrective Action Rules and procedures may be used by Employee Supervisors to  
297 correct Employees' unacceptable work performance and/or behavior.

298 300.10-2. Employees, excluding At-Will Employees, who disagree with a Corrective Action  
299 may contest the Corrective Action using the Rules and procedures developed by HRD, and based  
300 on the following available levels of review:

301 (a) *First Level of Review.* Any Employee, excluding At-Will Employees, contesting the  
302 validity of a Suspension or Termination may appeal the said Corrective Action to the  
303 Oneida Administrative Court. Unless the Employee asserts that the contested Suspension  
304 or Termination amounts to a deprivation of an Equal Employment Opportunity, the  
305 decision of the Oneida Administrative Court is final.

306 (b) *Second Level of Review.* An Employee, excluding At-Will Employees, that is  
307 unhappy with the Oneida Administrative Court's decision regarding a contested  
308 Suspension or Termination, and, is able to demonstrate that the contested Corrective  
309 Action amounts to a deprivation of an Equal Employment Opportunity, may appeal the  
310 Oneida Administrative Court's decision to the Oneida Court of Appeals.

311 (c) *Compensatory Damages.* Should the Oneida Judiciary determine that there was an  
312 intentional deprivation of an Equal Employment Opportunity, the Oneida Judiciary may  
313 award compensatory damages, including, but not limited to, attorney's or advocate's fees  
314 and court costs, as against the individual(s) found to have engaged in the intentional  
315 deprivation of an Equal Employment Opportunity. Said compensatory damages may not  
316 be awarded against the Tribe.

317

### 318 **300.11. Applicability to Elected Officials**

319 300.11-1. The provisions of Sections 300.6-8 apply to Elected Officials of the Tribe that work  
320 full-time (30 hours or more per week) and receive salaries for their service.

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322 **300.12. Violations**

323 300.12-1. Unless expressly stated otherwise in this Law, claims of alleged violations of this Law  
324 may be filed with the Oneida Judiciary.

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326 End.

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