

CHAPTER 300
EMPLOYMENT LAW

300.1. Purpose and Policy	300.7. General
300.2. Adoption, Amendment, Repeal	300.8. Employee Responsibilities
300.3. Definitions	300.9. Layoffs
300.4. Human Resources Department	300.10. Employee Discipline and Grievances
300.5. Hiring	300.11. Violations
300.6. Compensation and Benefits	

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, while creating a strong and healthy work
7 environment. In addition, although certain federal laws, specifically Title VII, do not apply to
8 the Tribe, the Tribe's employment policy affords applicants and Employees Equal Employment
9 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16 Committee on May 7, 1985, are hereby repealed.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 This Law may be amended or repealed by the Oneida General Tribal Council pursuant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, provided that this Law repeals the following:

- 24 (a) The Oneida Tribal Management System and amendments to the Tribal Management
25 System, including the Personnel Policies and Procedures adopted by the Oneida Business
26 Committee on May 7, 1985;
- 27 (b) BC Resolution BC-05-11-11-A entitled Establish Tuberculosis Control Program;
- 28 (c) The Employee Protection Policy adopted by emergency pursuant to BC-4-20-95-B,
29 permanently adopted pursuant to BC-12-6-95-B and subsequently amended pursuant to
30 BC-1-20-99-B and BC-6-30-04-J;
- 31 (d) The GED Policy approved by the Oneida Business Committee on October 21, 1992;
- 32 (e) BC Resolution BC-07-22-09-B entitled Oneida Nation Veterans Affairs Committee,
33 Paid Time Off for Selected Color Guard Members Who Are Employees; and
- 34 (f) The Parent Leave Policy adopted pursuant to BC-03-02-94-A.

35 300.2-6. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians
36 of Wisconsin.

38 **300.3. Definitions**

39 300.3-1. This section governs the definitions of words and phrases used within this Law. All
40 words not defined herein are to be used in their ordinary and everyday sense.

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

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

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

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

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

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

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

72 (h) "HRD" means the Oneida Human Resources Department.

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

76 (j) "Involuntarily Separated" means an Employee is removed from employment.

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

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

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

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

89 (n) "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 (o) "Standard Operating Procedure" means an internal procedure that is created to govern
99 how an 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 (p) "Tribal" or "Tribe" means the Oneida Tribal of Indians of Wisconsin.

102 (q) "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 Rules developed by HRD pursuant to this Section are effective
109 upon HRD final approval. HRD shall provide notice of approval of said Rules to the
110 Oneida Business Committee at the next available regularly scheduled Oneida Business
111 Committee meeting following approval. If the Oneida Business Committee has any
112 concerns and/or requested revisions upon review of the Rules, HRD shall work with the
113 Oneida Business Committee to address such concerns and/or requested revisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

164 (A) ~~A~~—A current or past Employee may have access to his or her own
165 Employee record and.

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

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

171 (C) Should an Employee commit an illegal act in the course of his or her
172 employment with the Tribe against the Tribe, its customers or its
173 Employees, the said Employee's record may be released to law
174 enforcement agencies

175 (D) ~~A~~—A third party may access an Employee's record if the Employee
176 provides written consent to release his or her record to a designated third
177 party.

178 300.4-2. HRD shall uphold the Tribe's sovereignty, laws and policies in its hiring and
179 employment practices.

180 300.4-3. *Memorandum of Understanding.* The Oneida Business Committee and HRD shall
181 negotiate and enter into a memorandum of understanding which governs the relationship

182 between the two parties by establishing the responsibilities and expectations of each party with
183 regard to the management of HRD.

184

185 **300.5. Hiring**

186 300.5-1. *Hiring Philosophy.* The Tribe shall recruit, hire, retain and develop individuals who
187 are culturally respectful, professionally competent and civically responsible.

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.* The Tribe shall provide preference to Tribal Members
192 first and members of other 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 and Indian Preference in staffing decisions:

195 (1) Persons who are Tribal Members.

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

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

200 (4) All other non-Indian persons.

201 (b) If a law or grant funding requirement prohibits 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.¹ If a position requires specific
208 skills and/or licensing by the state or federal government and there are no available Tribal
209 Members who possess the necessary skills or licensing to assume the vacancy, only then
210 may a non-Tribal Member be selected to fill the vacancy.

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 suspended 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 develop Rules and procedures as necessary to protect the
218 safety, health and well-being of all Employees and other individuals in the workplace.

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

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.

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
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 prior to 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. Emergency and temporary Employees are not eligible for
248 these benefits.

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

253 300.6-5. *Leaves*. Employees of the Tribe may be allowed leave under circumstances provided in
254 the Rules developed under Section 300.4-1(a) and any other applicable Tribal laws and policies.

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

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

269 300.7-4. *Unemployment Insurance*. The Tribe shall comply with the State of Wisconsin’s
270 unemployment insurance program; Employees of the Tribe may be eligible for unemployment
271 benefits in accordance with the provisions of the laws of the State of Wisconsin.

272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319

300.8. Employee Responsibilities

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

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

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

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

300.9. Layoffs and Furloughs

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

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

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

300.10. Employee Discipline and Grievances

300.10-1. Corrective Action Rules and procedures may be used by Employee Supervisors to correct Employees’ 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 developed by HRD, 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 Suspension or Termination may appeal the said Corrective Action to the Oneida Administrative Court. Unless the Employee asserts that the contested Suspension or Termination amounts to a deprivation of an Equal Employment Opportunity, the decision of the Oneida Administrative Court is final.

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

- (c) *Compensatory Damages.* Should the Oneida Judiciary determine that there was an intentional deprivation of an Equal Employment Opportunity, 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.

320
321
322
323
324
325
326
327
328
329

300.11. Applicability to Elected Officials

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

300.12. Violations

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

End.
