

CHAPTER 300
EMPLOYMENT LAW

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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 is to afford applicants and Employees Equal
9 Employment Opportunities while recognizing the Tribe's Oneida and Indian employment
10 preference.

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16 Committee on May 7, 1985, are hereby repealed.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 This Law may be amended or repealed by the Oneida General Tribal Council pursuant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;
- 34 (f) The Parent Leave Policy adopted pursuant to BC-03-02-94-A;
- 35 (g) BC Resolution 04-05-95-A regarding a paid break for donating blood at a blood drive
36 coordinated by the Tribe;
- 37 (h) BC Resolution 05-12-93-J regarding HRD's role in the interpretation, implementation
38 and enforcement of the Personnel, Policies and Procedures; and

39 (i) The Clean Air Policy adopted by a Business Committee motion on 05-52-94 and
40 subsequently amended pursuant to BC-02-24-10-I and BC-05-28-14-A.
41 300.2-6. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians
42 of Wisconsin.
43

44 **300.3. Definitions**

45 300.3-1. This section governs the definitions of words and phrases used within this Law. All
46 words not defined herein are to be used in their ordinary and everyday sense.

47 (a) “Adverse Employment Action” means a supervisor’s failure to comply with the
48 employment Rules that results in a significant change in an Employee’s employment
49 status that is more disruptive than a mere inconvenience or an alteration of job
50 responsibilities and may include a deprivation of an Equal Employment Opportunity.

51 (b) “At-Will Employee” means an employee working for the Tribe on a short term basis
52 that is not hired through the standard hiring procedures, including, but not limited to,
53 Political Appointees, part-time, seasonal, and volunteer workers, and new Employees that
54 have not yet completed their probationary period pursuant to the Rules developed by
55 HRD.

56 (c) “Corrective Action” means any initiative taken by an Employee Supervisor with the
57 goal correcting an Employee’s prohibited behavior as identified in the Rules created by
58 HRD.

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

62 (e) “Employee” means any individual who is hired by the Tribe through the normal
63 hiring process, works full-time (30 or more hours per week) or part-time (less than 30
64 hours per week) and is subject to the direction and control of the Tribe with respect to the
65 material details of the work performed. “Employee” includes, but is not limited to,
66 individuals employed by any Entity and individuals employed through an employment
67 contract as a limited term employee, but does not include elected or appointed officials,
68 At-Will Employees or individuals employed by a Tribally chartered corporation.
69 Throughout this law all references to Employee include both Employees and At-Will
70 Employees, unless the term At-Will Employee is used, in which case only At-Will
71 Employees are intended.

72 (f) “Employee Supervisor” means the party responsible for directly overseeing the
73 Employee and who is responsible for taking Corrective Actions when Employees fail to
74 meet their responsibilities.

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

78 (h) “Equal Employment Opportunity” or “EEO” means the Tribe’s consideration for
79 hiring selection and position retention and compensation and benefit distribution that is
80 free from discrimination against any person on the basis of race (although Oneida and
81 Indian Preference are allowable and are not considered a deprivation of an EEO), color,
82 religion, sex (including pregnancy), national origin, age, disability, economic status or
83 genetic information.

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

85 (j) “Immediate Family Member” means an individual’s husband, wife, mother, father,
86 son, daughter, step son, step daughter, brother, sister, step brother, step sister,

87 grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law,
88 brother-in-law or sister-in-law.

89 (k) “Involuntarily Separated” means an Employee is removed from employment.

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

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

96 (n) “Rule” means any exercise of authority delegated to HRD and by HRD pursuant to
97 this Law in the form of a rule, regulation, policy or any other tool designed to exercise
98 HRD’s delegated authority in order to implement, interpret and/or enforce this Law. A
99 Rule does not include any statements, interpretations, decisions, rules, regulations,
100 policies, procedures or other matters concerning internal management of an Entity, or,
101 which do not affect the private rights or interests of individuals outside of the said Entity.

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

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

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

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

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

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

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

117 118 **300.4. Human Resources Department**

119 300.4-1. General Responsibilities. The HRD shall:

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

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

130 (A) Should the Oneida Business Committee repeal the Rules approved by
131 HRD, the Rules that were in effect immediately previous to those repealed
132 are automatically reinstated and effective immediately upon the repeal of
133 the Rules approved by HRD.

134 (B) If HRD does not receive written notice from the Oneida Business

135 Committee of intent to repeal or amend the Rules within thirty (30) days
136 of the date the Oneida Business Committee is provided notice of the Rules
137 approved by HRD, they will remain in effect as approved by HRD.

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

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

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

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

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

157 (c) Review and approve employment related Standard Operating Procedures for all
158 Entities.

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

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

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

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

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

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

177 (A) A current or past Employee may have access to his or her own
178 employment record; an Employee Supervisor may have access to his or
179 her current Employees' records; a hiring supervisor may have access to
180 the last twelve months of a current or former Employee's work history;
181 and HRD managers may have access to any Employee's employment
182 record. (B) If required by law, the Tribe shall release the information

183 required to be released to the party the law designates as entitled to receive
184 said information.

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

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

192 300.4-2. HRD shall uphold the Tribe's sovereignty, laws and policies in its hiring and
193 employment practices.

194 300.4-3. Memorandum of Understanding. The Oneida Business Committee and HRD shall
195 negotiate and enter into a memorandum of understanding which governs the relationship
196 between the two parties by establishing the responsibilities and expectations of each party with
197 regard to the management of HRD.

198

199 **300.5. Hiring**

200 300.5-1. Hiring Philosophy. The Tribe shall recruit, hire, retain and develop individuals who
201 are culturally respectful, professionally competent and civically responsible.

202 300.5-2. Equal Employment Opportunities. The Tribe and HRD shall afford all applicants and
203 Employees Equal Employment Opportunities; however, the Tribe shall follow the preferences
204 outlined in Section 300.5-3 and such preferences may not be considered a violation of this Law.

205 300.5-3. Oneida and Indian Preference. The Tribe shall provide preference to Tribal Members
206 first and members of other federally recognized tribes secondly.

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

209 (1) Persons who are Tribal Members.

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

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

214 (4) All other non-Indian persons.

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

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

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

225 300.5-4. Education. Employees under the age of fifty (50) who do not have a high school
226 diploma or its equivalent at the time of hire, shall obtain a high school diploma, a high school

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.

227 equivalency diploma or a general equivalency diploma within one (1) year of being hired.
228 Employees that do not meet this deadline and have not been granted an extension from HRD
229 may be separated from their employment with the Tribe.

230 300.5-5. Workplace Safety. The Tribe develop Rules and procedures as necessary to protect
231 the safety, health and well-being of all Employees and other individuals in the workplace.

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

237 300.5-6. Conflicts. An applicant is ineligible for positions for which he or she has a conflict of
238 interest, as defined by the Conflict of Interest Policy, and/or if he or she would be directly
239 supervised by an Immediate Family Member.

240 300.5-7. Right to Work. No person may be required to do any of the following in order to
241 become or remain an Employee of the Tribe:

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

245

246 **300.6. Compensation and Benefits**

247 300.6-1. Compensation Plan. HRD shall develop and institute an Employee Compensation
248 Plan to assure equitable salary and wage levels and shall consider data from the Bureau of Labor
249 Statistics for average earnings in the Green Bay area; the said plan must be approved by the
250 Oneida Business Committee prior to becoming effective.

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

256 300.6-2. Designation of Employees. The Tribe shall use the standards created under the Fair
257 Labor Standards Act to designate its Employees as either nonexempt or exempt and to set
258 minimum wage and maximum hour restrictions for employees receiving an hourly wage.

259 300.6-3. Insurance and Retirement. The Tribe may provide insurances and/or a retirement plan
260 as a benefit to full-time Employees. Emergency and temporary Employees are not eligible for
261 these benefits.

262 300.6-4. Time Off. The Tribe shall afford Employees paid time off to the extent that paid time
263 off is accumulated based on continuous service to the Tribe. HRD shall establish rates of accrual
264 and the process for requesting paid time off in the Rules it is charged with developing under
265 Section 300.4-1(a).

266 300.6-5. Leaves. Employees of the Tribe may be allowed leave under circumstances provided
267 in the Rules developed under Section 300.4-1(a) and any other applicable Tribal laws and
268 policies.

269

270 **300.7. General**

271 300.7-1. Employee Development. The Tribe encourages the advancement and transfer of
272 Employees in order to make the best possible use of human resources. Employees who wish to
273 advance in the organization may work with the Human Resources Department to develop a
274 personal development plan.

275 300.7-2. Tribal Entities. Individual Entities shall comply with this Law and the Rules
276 promulgated under Section 300.4-1(a) and, if necessary, shall develop internal rules and
277 Standard Operating Procedures for the implementation of said Rules.

278 300.7-3. Safety and Fitness-for-Duty. In order to create a safe and healthy work environment
279 for Employees and to keep the number of job-related illnesses and/or injuries to a minimum, the
280 Tribe shall maintain safety standards in accordance with the Tribe's applicable laws and policies.
281 The Tribe shall also maintain standards requiring Employees to perform their job duties in a safe,
282 secure, productive and effective manner.

283 300.7-4. Unemployment Insurance. The Tribe shall comply with the State of Wisconsin's
284 unemployment insurance program; Employees of the Tribe may be eligible for unemployment
285 benefits in accordance with the provisions of the laws of the State of Wisconsin.

286

287 **300.8. Employee Responsibilities**

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

294 300.8-2. 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.

298 300.8-3. Employee Protection. The Tribe may not retaliate against any Employee who reports
299 an Employee's, Political Appointee's and/or Tribal official's violation(s) of Tribal laws, policies
300 or rules and shall protect any Employees who report such violations from retaliatory actions.

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

303

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. Corrective Action Rules and procedures may be used by Employee Supervisors to
314 correct Employees' unacceptable work performance and/or behavior.

315 300.10-2. Employees, excluding At-Will Employees, who disagree with a Corrective Action or
316 allege that a supervisor's actions amount to an Adverse Employment Action may contest the
317 action using the Rules and procedures developed by HRD, and based on the following available
318 levels of review:

319 (a) First Level of Review. Any Employee, excluding At-Will Employees, contesting the
320 validity of a Suspension or Termination or allege that a supervisor's actions amount to an
321 Adverse Employment Action may contest the action to the Oneida Administrative Court.
322 This is the final level of review unless it is alleged that the Adverse Employment Action

323 and/or Corrective Action also amounted to a deprivation of an Equal Employment
324 Opportunity.

325 (b) Second Level of Review. An Employee, excluding At-Will Employees, that is
326 dissatisfied with the Oneida Administrative Court's decision regarding a supervisor's
327 action that is alleged to amount to a deprivation of an Equal Employment Opportunity,
328 may appeal the Oneida Administrative Court's decision to the Oneida Court of Appeals.

329 (c) Compensatory Damages. Should the Oneida Judiciary determine that there was an
330 intentional deprivation of an Equal Employment Opportunity, the Oneida Judiciary may
331 award compensatory damages, including, but not limited to, attorney's or advocate's fees
332 and court costs, as against the individual(s) found to have engaged in the intentional
333 deprivation of an Equal Employment Opportunity. Said compensatory damages may not
334 be awarded against the Tribe.

335 300.10-3. The Oneida Administrative Court and the Oneida Judiciary shall waive any and all
336 court fees on behalf of Employees seeking to appeal a Correction Action or an action alleged to
337 be a deprivation of an Equal Employment Opportunity.
338

339 **300.11. Applicability to Elected Officials**
340 300.11-1. The provisions of Sections 300.6-8 apply to Elected Officials of the Tribe that work
341 full-time (30 hours or more per week) and receive salaries for their service.
342

343 **300.12. Violations**
344 300.12-1. Unless expressly stated otherwise in this Law, claims of alleged violations of this Law
345 may be filed with the Oneida Judiciary.
346

347 End.
348
