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

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including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985, are hereby repealed.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 This Law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.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 entitled Establish Tuberculosis Control Program;

(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;

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

(g) BC Resolution 04-05-95-A regarding a paid break for donating blood at a blood drive coordinated by the Tribe;

(h) BC Resolution 05-12-93-J regarding HRD's role in the interpretation, implementation and enforcement of the Personnel, Policies and Procedures; and

(i) The Clean Air Policy adopted by a Business Committee motion on 05-52-94 and subsequently amended pursuant to BC-02-24-10-I and BC-05-28-14-A.

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

300.3. Definitions

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

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

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

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

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

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

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

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

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

(i) "HRD" means the Oneida Human Resources Department.

(j) "Immediate Family Member" means an individual's husband, wife, mother, father, son, daughter, step son, step daughter, brother, sister, step brother, step sister,

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

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

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

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

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

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

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

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

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

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

(q) "Tribal" or "Tribe" means the Oneida Tribal of Indians of Wisconsin.

(r) "Tribal Member" means an individual who is an enrolled member of the Oneida Tribe of Indians of Wisconsin.

300.4. Human Resources Department

300.4-1. General Responsibilities. The HRD shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

300.5. Hiring

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

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

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

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

(1) Persons who are Tribal Members.

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

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

(4) All other non-Indian persons.

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

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

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

300.5-4. Education. Employees under the age of fifty (50) who do not have a high school 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.

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

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

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

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

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

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

300.6. Compensation and Benefits

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

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

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

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

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

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

300.7. General

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

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

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

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

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 or allege that a supervisor's actions amount to an Adverse Employment Action may contest the 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 or allege that a supervisor's actions amount to an Adverse Employment Action may contest the action to the Administrative Hearing Court. This is the final level of review unless it is alleged that the Adverse Employment Action

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

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

(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.

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

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.