

**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 Nation’s policy to provide entities latitude to create human resource practices
6 to fit their individual industry standards, while creating a strong and healthy work environment.
7 In addition, although certain federal and state laws, specifically Title VII, do not apply to the
8 Nation, the Nation’s employment policy is to afford applicants and employees equal employment
9 opportunities while recognizing the Nation’s Oneida and Indian employment preference. The
10 Nation’s hiring philosophy is to recruit, hire, retain and develop individuals who are culturally
11 respectful, professionally competent and familiar with the Oneida community.
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13 **300.2. Adoption, Amendment, Repeal**

14 300.2-1. This Law was adopted by the Oneida General Tribal Council by resolution
15 _____ and is effective six (6) months from the date of adoption.

16 300.2-2. This Law may be amended or repealed by the Oneida General Tribal Council pursuant
17 to the procedures set out in the Legislative Procedures Act.

18 300.2-3. Should a provision of this Law or the application thereof to any person or circumstances
19 be held as invalid, such invalidity does not affect other provisions of this Law which are
20 considered to have legal force without the invalid portions.

21 300.2-4. In the event of a conflict between a provision of this Law and a provision of another
22 Law, the provisions of this Law control, provided that this Law repeals the following:

- 23 (a) The Oneida Tribal Management System and amendments to the Tribal Management
- 24 System, including the Personnel Policies and Procedures adopted by the Oneida Business
- 25 Committee on May 7, 1985;
- 26 (b) BC Resolution BC-05-11-11-A entitled Establish Tuberculosis Control Program;
- 27 (c) The Employee Protection Policy adopted by emergency pursuant to BC-4-20-95-B,
- 28 permanently adopted pursuant to BC-12-6-95-B and subsequently amended pursuant to
- 29 BC-1-20-99-B and BC-6-30-04-J;
- 30 (d) The GED Policy approved by the Oneida Business Committee on October 21, 1992;
- 31 (e) BC Resolution BC-07-22-09-B entitled Oneida Nation Veterans Affairs Committee,
- 32 Paid Time Off for Selected Color Guard Members Who Are Employees;
- 33 (f) The Parent Leave Policy adopted pursuant to BC-03-02-94-A;
- 34 (g) BC Resolution 04-05-95-A regarding a paid break for donating blood at a blood drive
- 35 coordinated by the Nation;
- 36 (h) BC Resolution 05-12-93-J regarding HRD’s role in the interpretation, implementation
- 37 and enforcement of the Personnel, Policies and Procedures; and
- 38 (i) GTC Resolution 05-23-11-A entitled Personnel Policies and Procedures Amendments
- 39 to Strengthen Indian Preference in Hiring.

40 300.2-6. This Law is adopted under authority of the Constitution of the Oneida Nation.
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42 **300.3. Definitions**

43 300.3-1. This section governs the definitions of words and phrases used within this Law. All
44 words not defined herein are to be used in their ordinary and everyday sense.

45 (a) “Adverse Employment Action” means a supervisor’s failure to comply with the
46 employment rules that results in a significant change in an employee’s employment status
47 that is more disruptive than a mere inconvenience or an alteration of job responsibilities
48 and may include a deprivation of an equal employment opportunity.

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

54 (c) “Corrective Action” means any initiative taken by an employee supervisor with the
55 goal of correcting an employee’s prohibited behavior as identified in the rules created by
56 HRD.

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

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

70 (f) “Employee Supervisor” means the party responsible for directly overseeing the
71 employee and who is responsible for taking corrective actions when employees fail to
72 meet their responsibilities.

73 (g) “Entity” means any of the Nation’s divisions having employees and may include, but
74 is not limited to, departments, areas, programs, enterprises, board, committees,
75 commissions and the like.

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

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

83 (j) “Immediate Family Member” means an individual’s husband, wife, mother, father,
84 step mother, step father, son, daughter, step son, step daughter, brother, sister, step
85 brother, step sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-
86 law, son-in-law, brother-in-law or sister-in-law.

87 (k) “Involuntarily Separated” means an employee is removed from employment.

88 | (l) “Nation” means the Oneida Nation.

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

92 | (nn) “Reviewing Supervisor” means the party responsible for overseeing the employee
93 | supervisor and who may hear an appeal of a corrective action taken by an employee
94 | supervisor.

95 | (oo) “Rule” means any exercise of authority delegated to HRD in order to implement,
96 | interpret and/or enforce this Law. A “rule” does not include any statements,
97 | interpretations, decisions, rules, regulations, policies, standard operating procedures or
98 | other matters concerning internal management of an entity, or, which do not affect the
99 | private rights or interests of individuals outside of the said entity.

100 | (pp) “Sexual Harassment” means unwelcome sexual advances, requests for sexual
101 | favors and other verbal or physical conduct of a sexual nature where:

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

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

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

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

113 | ~~(q) “Nation” means the Oneida Nation.~~

114 | (r) “Tribal Member” means an individual who is an enrolled member of the Oneida
115 | Nation.

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117 | **300.4. Human Resources Department**

118 | 300.4-1. *General Responsibilities.* The HRD shall:

119 | (a) Develop and amend the rules necessary to carry out the intent of this Law pursuant to
120 | the Administrative Rulemaking Law.

121 | (b) Implement, interpret and enforce this Law and the associated rules.

122 | (bc) Provide all employees a copy of all employment rules and all of the Nation’s laws
123 | and policies specifically pertaining to employment matters, and shall further notify
124 | employees of how such rules, laws and policies may be electronically accessed.

125 | (ed) Review and approve all entities’ employment related standard operating
126 | procedures to ensure compliance with this Law and the rules developed pursuant to this
127 | Law.

128 | (e) Keep a record of all employment related decisions made by the employee supervisors,
129 | reviewing supervisors and the Oneida Judiciary.

130 | (f) Collect and maintain data on human resource related information including, but not
131 | limited to, information on hiring, appointments, ~~firing~~terminations, separations, transfers,
132 | employee development, grievances, policy issues and insurances.

133 | (1) HRD shall provide quarterly reports to the Oneida Business Committee, or its
134 | designee, in accordance with the schedule provided by the Nation’s Secretary’s
135 | office.

136 (2) The Oneida Business Committee may not have direct access to employee
137 information and/or personnel files, especially information relating to individual
138 compensation or corrective actions; provided that, Oneida Business Committee
139 members that are also employee supervisors may access the employee records of
140 any of his or her direct employees pursuant to Section 300.4-1(f)(3)(B).

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

144 (A) A current or past employee may have access to his or her own
145 employment record; an employee supervisor may have access to his or her
146 current employees' records; a hiring supervisor may have access to the last
147 twelve months of a current or former employee's work history; and HRD
148 managers may have access to any employee's employment record.

149 (B) If required by law, the Nation shall release the information required to
150 be released to the party the law designates as entitled to receive said
151 information.

152 (C) Should an Employee be alleged to have committed an illegal act in the
153 course of his or her employment with the Nation against the Nation, its
154 customers or its employees, the said employee's record may be released to
155 law enforcement agencies.

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

159 300.4-2. HRD shall uphold the Nation's sovereignty, laws and policies in its hiring and
160 employment practices.

161 300.4-3. *Memorandum of Understanding.* The Oneida Business Committee and HRD shall
162 negotiate and enter into a memorandum of understanding which governs the relationship
163 between the two parties by establishing the responsibilities and expectations of each party with
164 regard to the management of HRD.

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166 **300.5. Hiring**

167 ~~300.5-1. *Hiring Philosophy.* The Nation shall recruit, hire, retain and develop individuals who~~
168 ~~are culturally respectful, professionally competent and familiar with the Oneida community.~~

169 300.5-21. *Equal Employment Opportunities.* The Nation and HRD shall afford all applicants and
170 employees equal employment opportunities; however, the Nation shall follow the preferences
171 outlined in Section 300.5-3 and such preferences may not be considered a violation of this Law.

172 300.5-32. *Oneida and Indian Preference.* The Nation shall apply Oneida and Indian Preference
173 to all hiring practices.

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

176 (1) Persons who are tribal members.

177 (2) Persons who meet the blood quantum requirements contained in the
178 Membership Ordinance, but are not currently tribal members, and/or persons who
179 are documented first generation descendants of a tribal member.

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

181 (4) All other non-Indian persons.

182 (b) If a law or grant funding requirement prohibits the application of Oneida and Indian
183 Preference in accordance with Section 300.5-3(a), the Nation shall make staffing

184 decisions in accordance with the Indian Preference requirements of the said law or grant.

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

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

192 | 300.5-~~43~~. *Education*. Employees shall have or obtain a high school diploma, a high school
193 equivalency diploma or a general equivalency diploma within one (1) year of being hired.
194 Exceptions and/or extensions to this requirement may be included in the rules developed by
195 | HRD pursuant to Section 300.4-1(a).

196 | 300.5-~~54~~. *Workplace Safety*. The Nation shall develop rules and procedures as necessary to
197 protect the safety, health and well-being of all employees and other individuals in the workplace.

198 (a) The Employee Health Nursing Department shall establish, maintain, implement,
199 evaluate and periodically update a Tuberculosis Control Program, which applies to all
200 employees as well as the Nation's elected and appointed officials. The Employee Health
201 Nursing Department shall make the approved program available to all persons to which it
202 applies.

203 | 300.5-~~65~~. *Conflicts*. An applicant is ineligible for positions for which he or she has a conflict of
204 interest, as defined by the Conflict of Interest Policy, and/or if he or she would be directly
205 supervised by an immediate family member.

206 | 300.5-~~76~~. *Right to Work*. No person may be required to do any of the following in order to
207 become or remain an employee of the Nation:

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

211 **300.6. Compensation and Benefits**

212 300.6-1. *Compensation Plan*. HRD shall develop and institute an Employee Compensation
213 Plan to assure equitable salary and wage levels and shall consider data from the Bureau of Labor
214 Statistics for average earnings in the Green Bay area; the said plan must be approved by the
215 Oneida Business Committee prior to becoming effective.

216 (a) Wage and salary adjustments and benefits available to employees are dependent upon
217 available funding allocations, provided that, the Compensation Plan must require HRD to
218 make reasonable efforts to regularly implement cost of living adjustments based on the
219 United States Department of Labor – Bureau of Labor Statistics' Consumer Price Index
220 for the Midwest Region.

221 300.6-2. *Designation of Employees*. The Nation shall use the standards created under the Fair
222 Labor Standards Act to designate its employees as either nonexempt or exempt and to set
223 minimum wage and maximum hour restrictions for employees receiving an hourly wage.

224 300.6-3. *Insurance and Retirement*. The Nation may provide insurances and/or a retirement
225 plan as a benefit to full-time employees. Emergency and temporary Employees are not eligible
226 for these benefits.
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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.

228 300.6-4. *Time Off.* The Nation shall afford employees accumulated paid time off based on
229 continuous service to the Nation. HRD shall establish rates of accrual and the process for
230 requesting paid time off in the Rules created pursuant to Section 300.4-1(a).

231 300.6-5. *Leaves.* Employees of the Nation may be allowed leave as provided in the Rules
232 created pursuant to Section 300.4-1(a) and any other applicable laws and policies of the Nation.

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234 **300.7. General**

235 300.7-1. *Employee Development.* The Nation encourages the advancement and transfer of
236 Employees in order to make the best possible use of human resources. Employees who wish to
237 advance in the organization may work with the HRD to develop a career ladders plan.

238 300.7-2. *Entities.* Individual entities shall comply with this Law and the rules promulgated
239 under Section 300.4-1(a) and, if necessary, shall develop internal rules and standard operating
240 procedures for the implementation of this Law and its associated rules.

241 300.7-3. *Safety and Fitness-for-Duty.* In order to create a safe and healthy work environment
242 for employees and to keep the number of job-related illnesses and/or injuries to a minimum, the
243 Nation shall maintain safety standards in accordance with the Nation’s applicable laws and
244 policies. The Nation shall also maintain standards requiring employees to perform their job
245 duties in a safe, secure, productive and effective manner.

246 300.7-4. *Unemployment Insurance.* The Nation shall comply with the State of Wisconsin’s
247 unemployment insurance program; the Nation’s employees may be eligible for unemployment
248 benefits in accordance with the provisions of the laws of the State of Wisconsin.

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250 **300.8. Employee Responsibilities**

251 300.8-1. *Harassment and ~~Discrimination—Prohibited~~Ensuring Equal Employment*
252 *Opportunities.* All employees are expressly prohibited from committing sexual harassment of
253 another individual or engaging in any conduct that ~~harasses or discriminates against another~~
254 ~~based on sex, race, religion, national origin, pregnancy, age, marital status, sexual orientation, or~~
255 ~~disability~~~~deprives another of an equal employment opportunity, provided that employees must~~
256 ~~comply with the Oneida and Indian Preferences identified in 300.5-3 and such compliance is not~~
257 ~~a violation of this provision.~~

258 300.8-2. *Anonymous Information.* Employees who receive anonymous information of any type
259 shall maintain the confidentiality of the said information and forward a summary of the
260 information to the Chief of the Oneida Police Department expressly noting that the information
261 was provided anonymously.

262 300.8-3. *Employee Protection.* The Nation may not retaliate against any employee who reports
263 an employee’s, political appointee’s and/or any official of the Nation’s violation(s) of laws,
264 policies or rules of the Nation and shall protect any employees who report such violations from
265 retaliatory actions.

266 (a) HRD shall develop rules designed to protect employees reporting others’ violations of
267 the Nation’s laws, policies or rules from any and all forms of retaliation.

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269 **300.9. Layoffs and Furloughs**

270 300.9-1. Employees may be laid off and/or furloughed to the extent necessary for the Nation to
271 operate effectively and efficiently in varying economic conditions pursuant to the Nation’s laws,
272 policies and rules.

273 300.9-2. Layoffs and furloughs may not be used for disciplinary reasons and may not under any
274 circumstances be considered adverse employment actions.

275 300.9-3. The Nation’s decision to layoff and/or furlough an employee is not subject to appeal.

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300.10. Employee Discipline and Grievances

300.10-1. Corrective action rules 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 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 Nation.

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~~corrective 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~~Sections 300.6 - ~~300.8~~ apply to the Nation's elected officials 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.
