

**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.  
12

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 This Law may be amended or repealed by the Oneida General Tribal Council pursuant  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.  
41

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, divisions, 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 and any of the these relations attained  
87 through legal adoption.

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

89 (l) “Nation” means the Oneida Nation.

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

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

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

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

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

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

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

115  
116 **300.4. Human Resources Department**

117 300.4-1. *General Responsibilities.* The HRD shall:

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

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

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

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

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

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

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

134 (2) The Oneida Business Committee may not have direct access to employee  
135 information and/or personnel files, especially information relating to individual

136 compensation or corrective actions; provided that, Oneida Business Committee  
137 members that are also employee supervisors may access the employee records of  
138 any of his or her direct employees pursuant to Section 300.4-1(f)(3)(B).

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

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

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

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

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

157 300.4-2. HRD shall uphold the Nation's sovereignty, laws and policies in its hiring and  
158 employment practices.

159 300.4-3. *Memorandum of Understanding.* The Oneida Business Committee and HRD shall  
160 negotiate and enter into a memorandum of understanding which governs the relationship  
161 between the two parties by establishing the responsibilities and expectations of each party with  
162 regard to the management of HRD.

### 163 164 **300.5. Hiring**

165 300.5-1. *Equal Employment Opportunities.* The Nation and HRD shall afford all applicants and  
166 employees equal employment opportunities; however, the Nation shall follow the preferences  
167 outlined in Section 300.5-3 and such preferences may not be considered a violation of this Law.

168 300.5-2. *Oneida and Indian Preference.* The Nation shall apply Oneida and Indian Preference  
169 to all hiring practices.

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

172 (1) Persons who are tribal members.

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

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

177 (4) All other non-Indian persons.

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

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

183 (d) Oneida-Only Positions. To the extent possible, all top administrative and political

184 appointee positions must be held by tribal members.<sup>1</sup> If a position requires specific skills  
185 and/or licensing by the state or federal government and there are no available tribal  
186 members who possess the necessary skills or licensing to assume the vacancy, only then  
187 may a non-tribal member be selected to fill the vacancy.

188 300.5-3. *Education.* Employees shall have or obtain a high school diploma, a high school  
189 equivalency diploma or a general equivalency diploma within one (1) year of being hired.  
190 Exceptions and/or extensions to this requirement may be included in the rules developed by  
191 HRD pursuant to Section 300.4-1(a).

192 300.5-4. *Workplace Safety.* The Nation shall develop rules and procedures as necessary to  
193 protect the safety, health and well-being of all employees and other individuals in the workplace.

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

199 300.5-5. *Conflicts.* An applicant is ineligible for positions for which he or she has a conflict of  
200 interest, as defined by the Conflict of Interest Policy, and/or if he or she would be directly  
201 supervised by an immediate family member.

202 300.5-6. *Right to Work.* No person may be required to do any of the following in order to  
203 become or remain an employee of the Nation:

204 (a) resign or refrain from being a member of a labor organization;

205 (b) become or remain a member of a labor organization; or

206 (c) pay dues or other charges to a labor organization.

207

### 208 **300.6. Compensation and Benefits**

209 300.6-1. *Compensation Plan.* HRD shall develop and institute an Employee Compensation  
210 Plan to assure equitable salary and wage levels and shall consider data from the Bureau of Labor  
211 Statistics for average earnings in the Green Bay area; the said plan must be approved by the  
212 Oneida Business Committee prior to becoming effective.

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

218 300.6-2. *Designation of Employees.* The Nation shall use the standards created under the Fair  
219 Labor Standards Act to designate its employees as either nonexempt or exempt and to set  
220 minimum wage and maximum hour restrictions for employees receiving an hourly wage.

221 300.6-3. *Insurance and Retirement.* The Nation may provide insurances and/or a retirement  
222 plan as a benefit to full-time employees. Emergency and temporary Employees are not eligible  
223 for these benefits.

224 300.6-4. *Time Off.* The Nation shall afford employees accumulated paid time off based on  
225 continuous service to the Nation. HRD shall establish rates of accrual and the process for  
226 requesting paid time off in the Rules created pursuant to Section 300.4-1(a).

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<sup>1</sup> January 8, 1990 GTC: Debbie Powless moved that the General Manager's and all top administrative positions be held by enrolled tribal members, motion seconded. ... Main motion carried.

227 300.6-5. *Leaves.* Employees of the Nation may be allowed leave as provided in the Rules  
228 created pursuant to Section 300.4-1(a) and any other applicable laws and policies of the Nation.  
229

230 **300.7. General**

231 300.7-1. *Employee Development.* The Nation encourages the advancement and transfer of  
232 Employees in order to make the best possible use of human resources. Employees who wish to  
233 advance in the organization may work with the HRD to develop a career ladders plan.

234 300.7-2. *Entities.* Individual entities shall comply with this Law and the rules promulgated  
235 under Section 300.4-1(a) and, if necessary, shall develop internal rules and standard operating  
236 procedures for the implementation of this Law and its associated rules.

237 300.7-3. *Safety and Fitness-for-Duty.* In order to create a safe and healthy work environment  
238 for employees and to keep the number of job-related illnesses and/or injuries to a minimum, the  
239 Nation shall maintain safety standards in accordance with the Nation’s applicable laws and  
240 policies. The Nation shall also maintain standards requiring employees to perform their job  
241 duties in a safe, secure, productive and effective manner.

242 300.7-4. *Unemployment Insurance.* The Nation shall comply with the State of Wisconsin’s  
243 unemployment insurance program; the Nation’s employees may be eligible for unemployment  
244 benefits in accordance with the provisions of the laws of the State of Wisconsin.  
245

246 **300.8. Employee Responsibilities**

247 300.8-1. *Harassment and Ensuring Equal Employment Opportunities.* All employees are  
248 expressly prohibited from committing sexual harassment of another individual or engaging in  
249 any conduct that deprives another of an equal employment opportunity.

250 300.8-2. *Anonymous Information.* Employees who receive anonymous information of any type  
251 shall maintain the confidentiality of the said information and forward a summary of the  
252 information to the Chief of the Oneida Police Department expressly noting that the information  
253 was provided anonymously.

254 300.8-3. *Employee Protection.* The Nation may not retaliate against any employee who reports  
255 an employee’s, political appointee’s and/or any official of the Nation’s violation(s) of laws,  
256 policies or rules of the Nation and shall protect any employees who report such violations from  
257 retaliatory actions.

258 (a) HRD shall develop rules designed to protect employees reporting others’ violations of  
259 the Nation’s laws, policies or rules from any and all forms of retaliation.  
260

261 **300.9. Layoffs and Furloughs**

262 300.9-1. Employees may be laid off and/or furloughed to the extent necessary for the Nation to  
263 operate effectively and efficiently in varying economic conditions pursuant to the Nation’s laws,  
264 policies and rules.

265 300.9-2. Layoffs and furloughs may not be used for disciplinary reasons and may not under any  
266 circumstances be considered adverse employment actions.

267 300.9-3. The Nation’s decision to layoff and/or furlough an employee is not subject to appeal.  
268

269 **300.10. Employee Discipline and Grievances**

270 300.10-1. Corrective action rules may be used by employee supervisors to correct employees’  
271 unacceptable work performance and/or behavior.

272 300.10-2. Employees, excluding at-will employees, who disagree with a corrective action or  
273 allege that a supervisor’s actions amount to an adverse employment action may contest the action  
274 using the rules developed by HRD, and based on the following available levels of review:

275 (a) *First Level of Review.* Any employee, excluding at-will employees, contesting the  
276 validity of a suspension or termination or allege that a supervisor’s actions amount to an  
277 adverse employment action may contest the action to the Administrative Hearing Court.

278 (b) *Second Level of Review.* Any party, excluding at-will employees, that is dissatisfied  
279 with the Administrative Hearing Court’s decision, may appeal the Administrative  
280 Hearing Court’s decision to the Oneida Judiciary’s Appellate Court.

281 (c) *Compensatory Damages.* Should the Oneida Judiciary determine that there was an  
282 intentional deprivation of an equal employment opportunity, the Oneida Judiciary may  
283 award compensatory damages, including, but not limited to, attorney’s or advocate’s fees  
284 and court costs, as against the individual(s) found to have engaged in the intentional  
285 deprivation of an equal employment opportunity. Said compensatory damages may not  
286 be awarded against the Nation.

287 300.10-3. The Administrative Hearing Court and the Oneida Judiciary may waive any and all  
288 court fees on behalf of employees seeking to appeal a corrective action or an action alleged to be  
289 an adverse employment action.

290

291 **300.11. Applicability to Elected Officials**

292 300.11-1. The provisions of Sections 300.6 - 300.8 apply to the Nation’s elected officials that  
293 work full-time (30 hours or more per week) and receive salaries for their service.

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295 **300.12. Violations**

296 300.12-1. Unless expressly stated otherwise in this Law, claims of alleged violations of this Law  
297 may be filed with the Oneida Judiciary.

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299 End.

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