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 and to provide employment preference to Oneida Tribal members and members of other federally recognized tribes.

300.1-2. It is the Nation's policy to provide 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 and state laws, specifically Title VII, do not apply to the Nation, the Nation's employment policy is to afford applicants and employees equal employment opportunities while recognizing the Nation's Oneida and Indian employment preference. The Nation's hiring philosophy is to recruit, hire, retain and develop individuals who are culturally respectful, professionally competent and familiar with the Oneida community.

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. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

300.2-3. 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.

300.2-4. 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 and any and all amendments made thereto;

(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 Policy Leave 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 Nation;

(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) GTC Resolution 05-23-11-A entitled Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring.

300.2-6. This law is adopted under authority of the Constitution of the Oneida Nation.

300.3. Definitions

300.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall 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 Nation 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 of 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 Nation 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 Nation's direction and control 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 of the Nation's divisions having employees and may include, but is not limited to, divisions, departments, areas, programs, enterprises, board, committees, commissions and the like.

(h) "Equal Employment Opportunity" or "EEO" means the Nation'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 color, religion, sex (including pregnancy), national origin, age, disability, economic status or genetic information. Oneida and Indian Preference are allowable and are not considered a deprivation of an EEO,

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

(j) "Immediate Family Member" means an individual's husband, wife, mother, father, step mother, step 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 and any of the these relations attained through legal adoption.

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

(l) "Nation" means the Oneida Nation.

(m) "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.

(n) "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.

(o) "Handbook" means the Oneida Employee Handbook, which contains the set of requirements enacted by HRD in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(p) "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.

(q) "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.

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

300.4. Applicability

300.4-1. *Applicability to Elected Officials.* The provisions of 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, provided that, because other laws govern discipline of the elected officials, the Removal law for example, elected officials may not be subjected to corrective action pursuant to this law or handbook.

300.4-2. *Oneida Nation School Board.* To the extent that the provisions of this law and handbook conflict with the provisions of the memorandum of agreement between the Oneida Business Committee and the Oneida Nation School Board and any rules promulgated pursuant to authority delegated under said agreement, the memorandum and corresponding rules govern.

300.4-3. *Oneida Police Commission.* To the extent that any provisions of this law and handbook conflict with the provisions of the Law Enforcement Ordinance and the Oneida Police Commission's rulemaking authority as delegated under that law, the Law Enforcement Ordinance and corresponding rules govern.

300.5. Human Resources Department

300.5-1. *General Responsibilities.* The HRD shall:

(a) Develop and amend the Handbook as necessary to carry out the intent of this law.

(b) Implement, interpret and enforce this law and the associated handbook.

(c) Provide all employees with a copy of this law and the handbook and shall further notify employees of how such materials and all other employment related laws and policies may be electronically accessed.

(d) Review and approve all entities' employment related standard operating procedures to ensure compliance with this law and the handbook.

(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, terminations, separations, transfers, employee development, grievances, policy issues and insurances.

(1) HRD shall provide quarterly reports to the Oneida Business Committee, or its designee, in accordance with the schedule provided by the Nation's 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 300.5-1(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 Nation shall release the information required to be released to the party the law designates as entitled to receive said information.

(C) Should an Employee be alleged to have committed an illegal act in the course of his or her employment with the Nation against the Nation, 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.

300.5-2. HRD shall uphold the Nation's sovereignty, laws and policies in its hiring and employment practices.

300.5-3. *HRD Oversight by the Oneida Business Committee.* HRD shall report to the Oneida Business Committee, or its designee, as directed by the Oneida Business Committee.

300.6. Hiring

300.6-1. *Equal Employment Opportunities.* The Nation and HRD shall afford all applicants and employees equal employment opportunities; however, the Nation shall follow the preferences outlined in 300.6-2 and such preferences may not be considered a violation of this law.

300.6-2. *Oneida and Indian Preference.* The Nation shall apply Oneida and Indian Preference to all hiring practices.

(a) Unless otherwise prohibited by law or grant funding requirements, the Nation 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 Nation.

(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 300.6-2(a), the Nation 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 no Tribal members apply who are qualified and eligible and possess the necessary skills or licensing to assume the vacancy, only then may a non-tribal member be selected to fill the vacancy. In the event that a non-Tribal member is hired for a position originally designated as Oneida-only based on this provision, HRD shall hire the employee under contract so that the Nation may consider whether a Tribal member may be available to assume the position upon the expiration of the contract term.

300.6-3. *Education.* Employees shall have or obtain a high school diploma, a high school equivalency diploma or a general equivalency diploma within one (1) year of being hired. Exceptions and/or extensions to this requirement may be included in the handbook developed by HRD pursuant to 300.5-1(a).

300.6-4. *Workplace Safety.* The handbook shall contain requirements 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 the Nation's elected and appointed officials. The Employee Health Nursing Department shall make the approved program available to all persons to which it applies.

300.6-5. *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.

300.6-6. *Right to Work.* No person may be required to do any of the following in order to become or remain an employee of the Nation:

(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.

[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.

300.7. Compensation and Benefits

300.7-1. *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.

300.7-2. *Designation of Employees.* The Nation 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.

300.7-3. *Insurance and Retirement.* Any modification to the insurance and employment benefits offered by the Nation requires approval by Oneida Business Committee resolution.

300.7-4. *Time Off.* The Nation shall afford employees accumulated paid time off based on continuous service to the Nation. HRD shall establish rates of accrual and the process for requesting paid time off in the handbook created pursuant to 300.5-1(a).

300.7-5. *Leaves.* Employees of the Nation may be allowed leave as provided in the handbook created pursuant to 300.5-1(a) and any other applicable laws and policies of the Nation.

300.8. General

300.8-1. *Employee Development.* The Nation 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 HRD to develop a career ladders plan.

300.8-2. *Entities.* Individual entities shall comply with this law and the handbook promulgated under 300.5-1(a) and, if necessary, shall develop internal rules and standard operating procedures for the implementation of this law and its associated handbook.

300.8-3. *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 Nation shall maintain safety standards in accordance with the Nation's applicable laws and policies. The Nation shall also maintain standards requiring employees to perform their job duties in a safe, secure, productive and effective manner.

300.8-4. *Unemployment Insurance.* The Nation shall comply with the State of Wisconsin's unemployment insurance program; the Nation's employees may be eligible for unemployment benefits in accordance with the provisions of the laws of the State of Wisconsin.

300.9. Employee Responsibilities

300.9-1. *Harassment and Ensuring Equal Employment Opportunities.* All employees are expressly prohibited from committing sexual harassment of another individual or engaging in any conduct that deprives another of an equal employment opportunity.

300.9-2. *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.

300.9-3. *Employee Protection.* The Nation may not retaliate against any employee who reports an employee's, political appointee's and/or any official of the Nation's violation(s) of laws, policies or rules of the Nation and shall protect any employees who report such violations from

retaliatory actions.

(a) HRD shall include procedures in the handbook designed to protect employees reporting others' violations of the Nation's laws, policies or rules from any and all forms of retaliation.

300.10. Layoffs and Furloughs

300.10-1. Employees may be laid off and/or furloughed to the extent necessary for the Nation to operate effectively and efficiently in varying conditions pursuant to the Nation's laws, policies and rules.

300.10-2. Layoffs and furloughs may not be used for disciplinary reasons and may not under any circumstances be considered adverse employment actions.

300.10-3. The Nation's decision to layoff and/or furlough an employee is not subject to appeal.

300.11. Employee Discipline and Appeals

300.11-1. Employee supervisors shall use the corrective action procedures in the handbook to address employees' unacceptable work performance and/or behavior.

300.11-2. 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 handbook, and based on the following available levels of review:

(a) *Internal Review by the Nation – Reconsideration by the Reviewing Supervisor.* An employee may request reconsideration of any corrective action or other action which may amount to an adverse employment action taken by his or her employee supervisor to his or her reviewing supervisor. The reviewing supervisor may affirm, modify or overturn the decision of the employee supervisor.

(b) *First Level of Appeal.* Any employee, excluding at-will employees, alleging a wrongful suspension or termination or that a supervisor's actions amount to an adverse employment action may contest the action to the Trial Court using the Rules of Administrative Procedure so long as the employee has requested reconsideration from his or her reviewing supervisor according to 300.11-2(a).

(1) An employee supervisor may not initiate a first level appeal in the event that the reviewing supervisor overturns the employee supervisor's action.

(2) In considering an appeal of a corrective action, the Trial Court may consider previous corrective actions upon which the suspension or termination was based, provided that, the employee must demonstrate that he or she requested a reviewing supervisor's reconsideration of such prior corrective actions in accordance with Article 13-1. When reviewing prior corrective actions, the Trial Court shall only consider whether the corrective action was justified based on the employee's behavior; procedural compliance may not be considered.

(c) *Second Level of Appeal.* Any party, excluding at-will employees, that is dissatisfied with the Trial Court's decision, may appeal the Trial Court's decision to the Oneida Judiciary's Appellate Court.

300.11-3. *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.

300.11-4. The Oneida Judiciary shall waive any and all court fees on behalf of employees seeking to appeal a corrective action or an action alleged to be an adverse employment action.

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.