

**Chapter 300**  
**EMPLOYMENT LAW**

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3 **300.1. Purpose and Policy**  
4 300.1-1. It is the purpose of this law to provide a fair, consistent and efficient structure to govern  
5 all employment matters and to provide employment preference to Oneida Tribal members and  
6 members of other federally recognized tribes.

7 300.1-2. It is the Nation’s policy to provide entities latitude to create human resource practices  
8 to fit their individual industry standards, while creating a strong and healthy work environment.  
9 In addition, although certain federal and state laws, specifically Title VII, do not apply to the  
10 Nation, the Nation’s employment policy is to afford applicants and employees equal employment  
11 opportunities while recognizing the Nation’s Oneida and Indian employment preference. The  
12 Nation’s hiring philosophy is to recruit, hire, retain and develop individuals who are culturally  
13 respectful, professionally competent and familiar with the Oneida community.

14 **300.2. Adoption, Amendment, Repeal**

15 300.2-1. This law was adopted by the Oneida General Tribal Council by resolution  
16 \_\_\_\_\_ and is effective six (6) months from the date of adoption.

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 This law may be amended or repealed by the Oneida General Tribal Council pursuant  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

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

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

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

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

41 | 300.2-~~5~~6. This law is adopted under authority of the Constitution of the Oneida Nation.  
42

### 43 **300.3. Definitions**

44 300.3-1. This section shall govern the definitions of words and phrases used within this law. All  
45 words not defined herein shall be used in their ordinary and everyday sense.

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

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

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

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

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

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

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

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

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

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

87 law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained  
88 through legal adoption.

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

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

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

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

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

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.

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116 **300.4. Applicability**

117 300.4-1. *Applicability to Elected Officials.* The provisions of Sections 300.6 - 300.8 apply to  
118 the Nation’s elected officials that work full-time (30 hours or more per week) and receive  
119 salaries for their service, provided that, because other laws govern discipline of the elected  
120 officials, the Removal law for example, elected officials may not be subjected to corrective  
121 action pursuant to this law or handbook.

122 300.4-2. *Oneida Nation School Board.* To the extent that the provisions of this law and  
123 handbook conflict with the provisions of the memorandum of agreement between the Oneida  
124 Business Committee and the Oneida Nation School Board and any rules promulgated pursuant to  
125 authority delegated under said agreement, the memorandum and corresponding rules govern.

126 300.4-3. *Oneida Police Commission.* To the extent that any provisions of this law and  
127 handbook conflict with the provisions of the Law Enforcement Ordinance and the Oneida Police  
128 Commission’s rulemaking authority as delegated under that law, the Law Enforcement  
129 Ordinance and corresponding rules govern.

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131 **300.5. Human Resources Department**

132 300.5-1. *General Responsibilities.* The HRD shall:

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

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

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

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

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

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

145 (1) HRD shall provide quarterly reports to the Oneida Business Committee, or its  
146 designee, in accordance with the schedule provided by the Nation's Secretary's  
147 office.

148 (2) The Oneida Business Committee may not have direct access to employee  
149 information and/or personnel files, especially information relating to individual  
150 compensation or corrective actions; provided that, Oneida Business Committee  
151 members that are also employee supervisors may access the employee records of  
152 any of his or her direct employees pursuant to 300.5-1(f)(3)(B).

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

156 (A) A current or past employee may have access to his or her own  
157 employment record; an employee supervisor may have access to his or her  
158 current employees' records; a hiring supervisor may have access to the last  
159 twelve months of a current or former employee's work history; and HRD  
160 managers may have access to any employee's employment record.

161 (B) If required by law, the Nation shall release the information required to  
162 be released to the party the law designates as entitled to receive said  
163 information.

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

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

171 300.5-2. HRD shall uphold the Nation's sovereignty, laws and policies in its hiring and  
172 employment practices.

173 300.5-3. *HRD Oversight by the Oneida Business Committee.* HRD shall report to the Oneida  
174 Business Committee, or its designee, as directed by the Oneida Business Committee.

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176 **300.6. Hiring**

177 300.6-1. *Equal Employment Opportunities.* The Nation and HRD shall afford all applicants and  
178 employees equal employment opportunities; however, the Nation shall follow the preferences  
179 outlined in 300.6-2 and such preferences may not be considered a violation of this law.

180 300.6-2. *Oneida and Indian Preference.* The Nation shall apply Oneida and Indian Preference  
181 to all hiring practices.

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

184 (1) Persons who are tribal members.

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

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

189 (4) All other non-Indian persons.

190 (b) If a law or grant funding requirement prohibits the application of Oneida and Indian  
191 Preference in accordance with 300.6-2(a), the Nation shall make staffing decisions in  
192 accordance with the Indian Preference requirements of the said law or grant.

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

195 (d) Oneida-Only Positions. To the extent possible, all top administrative and political  
196 appointee positions must be held by tribal members.<sup>1</sup> If a position requires specific skills  
197 and/or licensing by the state or federal government and no Tribal members apply who are  
198 qualified and eligible and possess the necessary skills or licensing to assume the vacancy,  
199 only then may a non-tribal member be selected to fill the vacancy. In the event that a  
200 non-Tribal member is hired for a position originally designated as Oneida-only based on  
201 this provision, HRD shall hire the employee under contract so that the Nation may  
202 consider whether a Tribal member may be available to assume the position upon the  
203 expiration of the contract term.

204 300.6-3. *Education.* Employees shall have or obtain a high school diploma, a high school  
205 equivalency diploma or a general equivalency diploma within one (1) year of being hired.  
206 Exceptions and/or extensions to this requirement may be included in the handbook developed by  
207 HRD pursuant to 300.5-1(a).

208 300.6-4. *Workplace Safety.* The handbook shall contain requirements and procedures as  
209 necessary to protect the safety, health and well-being of all employees and other individuals in  
210 the workplace.

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

216 300.6-5. *Conflicts.* An applicant is ineligible for positions for which he or she has a conflict of  
217 interest, as defined by the Conflict of Interest Policy, and/or if he or she would be directly  
218 supervised by an immediate family member.

219 300.6-6. *Right to Work.* No person may be required to do any of the following in order to  
220 become or remain an employee of the Nation:

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

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

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

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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.

225 **300.7. Compensation and Benefits**

226 300.7-1. *Compensation Plan.* HRD shall develop and institute an Employee Compensation  
227 Plan to assure equitable salary and wage levels and shall consider data from the Bureau of Labor  
228 Statistics for average earnings in the Green Bay area; the said plan must be approved by the  
229 Oneida Business Committee prior to becoming effective.

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

235 300.7-2. *Designation of Employees.* The Nation shall use the standards created under the Fair  
236 Labor Standards Act to designate its employees as either nonexempt or exempt and to set  
237 minimum wage and maximum hour restrictions for employees receiving an hourly wage.

238 300.7-3. *Insurance and Retirement.* Any modification to the insurance and employment  
239 benefits offered by the Nation requires approval by Oneida Business Committee resolution.

240 300.7-4. *Time Off.* The Nation shall afford employees accumulated paid time off based on  
241 continuous service to the Nation. HRD shall establish rates of accrual and the process for  
242 requesting paid time off in the handbook created pursuant to 300.5-1(a).

243 300.7-5. *Leaves.* Employees of the Nation may be allowed leave as provided in the handbook  
244 created pursuant to 300.5-1(a) and any other applicable laws and policies of the Nation.

245

246 **300.8. General**

247 300.8-1. *Employee Development.* The Nation encourages the advancement and transfer of  
248 Employees in order to make the best possible use of human resources. Employees who wish to  
249 advance in the organization may work with the HRD to develop a career ladders plan.

250 300.8-2. *Entities.* Individual entities shall comply with this law and the handbook promulgated  
251 under 300.5-1(a) and, if necessary, shall develop internal rules and standard operating procedures  
252 for the implementation of this law and its associated handbook.

253 300.8-3. *Safety and Fitness-for-Duty.* In order to create a safe and healthy work environment  
254 for employees and to keep the number of job-related illnesses and/or injuries to a minimum, the  
255 Nation shall maintain safety standards in accordance with the Nation’s applicable laws and  
256 policies. The Nation shall also maintain standards requiring employees to perform their job  
257 duties in a safe, secure, productive and effective manner.

258 300.8-4. *Unemployment Insurance.* The Nation shall comply with the State of Wisconsin’s  
259 unemployment insurance program; the Nation’s employees may be eligible for unemployment  
260 benefits in accordance with the provisions of the laws of the State of Wisconsin.

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262 **300.9. Employee Responsibilities**

263 300.9-1. *Harassment and Ensuring Equal Employment Opportunities.* All employees are  
264 expressly prohibited from committing sexual harassment of another individual or engaging in  
265 any conduct that deprives another of an equal employment opportunity.

266 300.9-2. *Anonymous Information.* Employees who receive anonymous information of any type  
267 shall maintain the confidentiality of the said information and forward a summary of the  
268 information to the Chief of the Oneida Police Department expressly noting that the information  
269 was provided anonymously.

270 300.9-3. *Employee Protection.* The Nation may not retaliate against any employee who reports  
271 an employee’s, political appointee’s and/or any official of the Nation’s violation(s) of laws,  
272 policies or rules of the Nation and shall protect any employees who report such violations from

273 retaliatory actions.

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

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278 **300.10. Layoffs and Furloughs**

279 300.10-1. Employees may be laid off and/or furloughed to the extent necessary for the Nation to  
280 operate effectively and efficiently in varying conditions pursuant to the Nation's laws, policies  
281 and rules.

282 300.10-2. Layoffs and furloughs may not be used for disciplinary reasons and may not under any  
283 circumstances be considered adverse employment actions.

284 300.10-3. The Nation's decision to layoff and/or furlough an employee is not subject to appeal.

285

286 **300.11. Employee Discipline and Appeals**

287 300.11-1. Employee supervisors shall use the corrective action procedures in the handbook to  
288 address employees' unacceptable work performance and/or behavior.

289 300.11-2. Employees, excluding at-will employees, who disagree with a corrective action or  
290 allege that a supervisor's actions amount to an adverse employment action may contest the action  
291 using the handbook, and based on the following available levels of review:

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

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

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

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

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

314 300.11-3. *Compensatory Damages.* Should the Oneida Judiciary determine that there was an  
315 intentional deprivation of an equal employment opportunity, the Oneida Judiciary may award  
316 compensatory damages, including, but not limited to, attorney's or advocate's fees and court  
317 costs, as against the individual(s) found to have engaged in the intentional deprivation of an  
318 equal employment opportunity. Said compensatory damages may not be awarded against the  
319 Nation.

320 | 300.11-4. The Oneida Judiciary ~~shall waive any and all~~may not charge employees appealing  
321 | employment matters any court filing fees ~~on behalf of employees seeking to appeal a corrective~~  
322 | ~~action or an action alleged to be an adverse employment action.~~  
323 |

324 | **300.12. Violations**

325 | 300.12-1. Unless expressly stated otherwise in this law, claims of alleged violations of this law  
326 | may be filed with the Oneida Judiciary.

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328 | End.  
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