

# Oneida Nation

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## **BC Resolution # 04-12-17-C Drug and Alcohol Free Workplace Law Amendments**

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Drug and Alcohol Free Workplace Policy (the "Policy") was adopted by the Oneida Business Committee by resolution BC-10-25-95-A and amended by BC-12-11-13-F; and
- WHEREAS,** the federal Occupational Safety and Health Administration (OSHA) adopted amendments to 29 CFR 1904, a final rule which became effective on November 1, 2016, and which prohibited employers from retaliating against workers who report work-related injuries and illnesses; and
- WHEREAS,** the prohibition of retaliation against workers who report work-related injuries and illnesses includes limiting post-incident drug and alcohol testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use; and
- WHEREAS,** the Oneida Business Committee adopted emergency amendments to the Policy pursuant to Resolution BC-10-26-16-D in accordance with the emergency adoption process set forth in the Legislative Procedures Act (LPA); and
- WHEREAS,** the emergency amendments brought the Policy into compliance with OSHA requirements by removing the requirement that all employees must immediately undergo mandatory drug and alcohol testing following a workplace accident; and
- WHEREAS,** the emergency amendments to the Policy expire April 26, 2017; and
- WHEREAS,** the adoption of the emergency amendments to the Policy on a permanent basis are necessary to remain compliant with OSHA requirements; and
- WHEREAS,** although the permanent amendments contain the removal of mandatory drug and alcohol testing requirements following a workplace accident, employees are still required to immediately report all workplace accidents to their supervisor and can undergo drug and alcohol testing at any time if there is reasonable suspicion that the employee is under the influence of alcohol or drugs; and
- WHEREAS,** additional permanent amendments include changing the Policy to a law to align with the Legislative Operating Committee's directive that all legislation is to be classified as laws moving forward; and

**WHEREAS,** amendments clarify that the Law applies to all employees when operating a vehicle owned by the Nation or a vehicle rented by the Nation in addition to during working hours and when on-call; and

**WHEREAS,** amendments add the responsibility of providing the appropriate information to EHN in the event a medical condition prevents the employee from properly completing drug and alcohol testing so alternative drug and alcohol testing measures can be taken by EHN; and

**WHEREAS,** amendments clarify that a supervisor's decision made in regard to reasonable suspicion drug and alcohol testing of an employee is final and non-appealable; and

**WHEREAS,** amendments clarify how diluted drug test results will be handled; and

**WHEREAS,** in accordance with the LPA, a public meeting was held regarding the Drug and Alcohol Free Workplace law amendments on March 2, 2017, with a comment period closing on March 9, 2017. Those comments were accepted and considered by the Legislative Operating Committee at the April 5, 2017, Legislative Operating Committee meeting; and

**NOW THEREFORE BE IT RESOLVED,** that the amendments to the Drug and Alcohol Free Workplace law are hereby adopted and are effective immediately.

#### **CERTIFICATION**

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 6 members were present at a meeting duly called, noticed and held on the 12<sup>th</sup> day of April, 2017; that the forgoing resolution was duly adopted at such meeting by a vote of 5 members for, 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.



Lisa Summers, Tribal Secretary  
Oneida Business Committee

\*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."