

Title 2. Employment – Chapter 204
GARNISHMENT
Lotihwistáhkwa Olihwá·ke
the matter of taking money out

204.1.	Purpose and Policy	204.6.	Garnishment to Collect Debt Owed to the Nation
204.2.	Adoption, Amendment, Repeal	204.7.	Recognition of Child Support Orders
204.3.	Definitions	204.8.	Discharge from Employment
204.4.	General	204.9.	Appeals
204.5.	Garnishment Action Procedure		

204.1. Purpose and Policy

204.1-1. The purpose of this law is to exercise the authority of the Nation to provide an effective mechanism for creditors to access an employee’s income for reduction of personal debt.

204.1-2. It is the policy of the Nation to afford all individuals due process.

204.2. Adoption, Amendment, Repeal

204.2-1. This law is adopted by the Oneida Business Committee by resolution # BC-4-2-97-G and amended by resolution BC-06-25-14-B and BC-7-27-16-B.

204.2-2. This law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Oneida Legislative Procedures Act.

204.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

204.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provision of this law shall control.

204.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

204.3. Definitions

204.3-1. This section shall govern the definitions of words or phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Accounting Department” means the area of the Nation charged with keeping the records of financial transactions and includes accounts payable and receivable, inventory, payroll, fixed assets and other financial elements.

(b) “Administrative Fee” means the fee assessed against the debtor each week the Accounting Department is responsible for processing the garnishment to cover the Accounting Department’s costs associated with implementing the garnishment.

(c) “Business Day” means Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding holidays recognized by the Nation.

(d) “Creditor” means anyone who is awarded a money judgment which includes both Oneida entities and outside entities. Should the Nation be the creditor, a designee from the Oneida entity shall represent the claim of indebtedness.

(e) “Debtor” means the employee whom the judgment has been awarded against and/or whom owes a debt to the Nation.

(f) “Disposable Earnings” means the part of the debtor’s gross earnings for a pay period remaining after deductions required by state and federal law and for health insurance costs which is presumed to be thirty percent (30%) of the debtor’s gross earnings.

- (g) “Earnings” means compensation payable in exchange for personal services and includes, but is not limited to, wages, salaries, bonuses, commissions, expense reimbursements, trade-back-for-cash benefits and/or final paychecks involving pay-out of benefits.
- (h) “Employee” means any individual hired by the Nation and on the Nation’s payroll and encompasses all forms of employment, including but not limited to, full-time, part-time, at-will, elected/appointed officials, political appointees and contracted persons.
- (i) “Garnishment” means the legal process in which the earnings of the debtor are required to be withheld by the Nation for a payment of a debt.
- (j) “Garnishment Action Fee” means the fee paid to the Judiciary to cover the administrative costs incurred during the garnishment proceedings.
- (k) “Garnishment Hearing” means the time and location where the Judiciary hears relevant evidence, determines the validity of the petition for garnishment and identifies the amount of the garnishment order, if applicable.
- (l) “Garnishment Order” means the order issued by the Judiciary which requires the Nation to withhold an employee’s earnings in order to satisfy a creditor’s unpaid money judgment or a debt owed to an entity of the Nation and includes any fees assessed against the debtor.
- (m) “Judge” means the member of the Judiciary assigned to hear the petition for garnishment.
- (n) “Judgment” means any judgment, decree, or order from a court of competent jurisdiction, including, but not limited to, the Judiciary, which awards money to one or more parties.
- (o) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (p) “Oneida Entity” means a department, board, committee, commission or chartered corporation of the Nation or the Judiciary.
- (q) “Nation” means the Oneida Nation.
- (rq) “Petition” means a formal written request to the Judiciary to hear a garnishment matter.

204.4. General

204.4-1. *Jurisdiction.* By filing a petition, creditors are submitting to the jurisdiction of the Nation for the subject action.

204.4-2. *Consumer Protection Act.* This law may be interpreted to allow the fullest protections available to debtors by the federal Consumer Protection Act, 16 U.S.C. §1671, et seq., state laws protecting debtors in child support orders, and other federal laws.

204.5. Garnishment Action Procedure

204.5-1. *Applicability.* This section applies to the collection of all debt through the garnishment process except as provided in section 204-6.

204.5-2. *Judgment Required.* Except as provided in section 204-6, a judgment is required prior to filing a garnishment petition.

204.5-3. *Filing Action.* In order to initiate a garnishment, the creditor shall file a petition with the Judiciary. The creditor shall ensure that the petition identifies the creditor, the intended

debtor, any other interested parties, the reason for the claim, the name of the court that issued the judgment, the amount awarded; the creditor shall also include a copy of the judgment the petition is based upon.

(a) The Creditor shall pay the garnishment action fee before the Judiciary may consider the petition complete.

(1) The Judiciary shall determine the amount of the garnishment action fee and post notice of the fee amount at the Judiciary and on the Judiciary's webpage.

204.5-4. *Garnishment Hearing.* The Judiciary shall hold a garnishment hearing within sixty (60) days of receiving the completed petition.

(a) The Judiciary shall provide written notice of the garnishment hearing to the creditor, debtor and any other interested parties within ten (10) business days of receiving the completed petition.

(b) The debtor may challenge the authenticity of the judgment document or the debt owed to an Oneida entity at the garnishment hearing but he or she may not challenge the validity of the judgment.

(c) A garnishment hearing may be used to resolve one (1) or more petitions for one (1) or more debtors; however, the Judiciary shall hear and determine each petition separately.

(d) Throughout the garnishment proceedings, the parties may choose to represent themselves or may be represented by an attorney or advocate. The Judiciary shall provide all parties with an equal opportunity to present evidence at the garnishment hearing.

204.5-5. *Final Decision.* The judge shall make the final decision regarding a garnishment order within five (5) business days of the garnishment hearing. The judge shall provide written notice of the final decision to all parties within ten (10) business days of his or her decision. If a garnishment order is issued, the Judiciary shall include a copy of the garnishment order in the written notice.

204.5-6. *Garnishment Orders.* Should the Judiciary issue a garnishment order, it is required to include the following:

(a) *Administrative Fee.* An administrative fee which the Accounting Department shall determine with notice of the fee amount provided to the Judiciary. The Judiciary shall post notice of the administrative fee amount in the Judiciary and on the Judiciary's webpage.

(b) *Garnishment Action Fee.* If the petition is submitted by the creditor, the judiciary shall include the amount of the garnishment action fee originally paid by the creditor in the garnishment order to reimburse the creditor for his or her costs to enforce the judgment.

(c) *Garnishment Amount.* The judge shall begin with a presumption that a total of twenty percent (20%) of a debtor's disposable earnings per pay period may be subject to garnishment(s) at any one (1) time.

(1) In calculating the amount of the garnishment per pay period, the judge may not include amounts garnished pursuant to child support orders when calculating twenty percent (20%) of the debtor's disposable earnings.

(A) The debtor may request the Judiciary to lower the percentage deducted from his or her disposable earnings if the he or she can show that requiring a deduction of the maximum twenty percent (20%) would cause him or her undue harm by demonstrating that one (1) or more of the following apply:

- (i) The debtor is subject to child support orders that would leave him or her with less than fifty percent (50%) of his or her earnings;
- (ii) The debtor receives, is eligible for or, within six (6) months of the date the Judiciary received the completed petition, received public assistance;
- (iii) The debtor's household income is below the current federal poverty level;
- (iv) The garnishment of twenty percent (20%) of the debtor's disposable earnings would cause the debtor's household income to drop below the current federal poverty level; or
- (v) The garnishment of twenty percent (20%) of the debtor's disposable earnings would cause the debtor undue harm for reasons not identified in this section.

(2) The debtor may request a higher percentage be deducted from his or her disposable earnings. The debtor shall make such requests directly to the Judiciary.

(3) Nothing in this law prohibits the debtor from making additional payments to satisfy the garnishment order, provided that, if a creditor receives payments from the debtor outside of the garnishment process, the creditor shall provide notice of said payment to the Accounting Department with a copy to the debtor.

(d) *Post Judgment Interest.* The Judiciary shall include in the garnishment order a one (1) time post judgment interest charge to judgment amount. The Judiciary shall determine the post judgment interest rate by one (1) of the following means:

- (1) An agreement by the parties to the garnishment as to a fair post judgment interest rate; or
- (2) A post judgment interest rate equal to one percent (1%) plus the prime rate in effect on the date in which the judgment was awarded or the date of the final notice of indebtedness with intent to garnish, as reported by the Federal Reserve Board in federal reserve statistical release H. 15.

204.5-7. *Notice of Garnishment to Accounting Department.* The Judiciary shall provide the Accounting Department with a copy of the garnishment order after the timeframe for all appeals has been exhausted.

204.5-8. *Garnishment Implementation.* Within ten (10) business days of receiving a copy of the garnishment order the Accounting Department shall implement the garnishment by deducting the appropriate amount from the debtor's paycheck(s) and forwarding that amount to the creditor. The Accounting Department shall notify the debtor and creditor when the garnishment order has been fulfilled.

204.5-9. *Summary Process.* The Judiciary shall summarily process petitions when the debtor owes fifty dollars (\$50) or less, unless the debtor formally requests a garnishment hearing. For the purposes of this section, to summarily process a petition means a judge may make a determination regarding the garnishment order without holding a garnishment hearing.

204.5-10. *Records.* The Judiciary shall keep records of all garnishment actions it hears and shall ensure such records include the following:

- (a) Correspondence and notices to all parties involved;
- (b) Bookkeeping records;
- (c) Garnishment evidence presented by all parties; and
- (d) Decisions made by the Judge.

204-5-11. *Modifying a Garnishment Order.* A debtor may petition the Judiciary at any time following the issuance of a garnishment order to request a reduced garnishment amount if he or she is able to demonstrate a change in circumstances that may justify a reduced amount as provided in section 204.5-6(c)(1)(A).

204.6. Garnishment to Collect Debt Owed to the Nation

204.6-1. *No Judgment or Garnishment Order Required.* Oneida entities, which for the purposes of this section include its chartered corporations, are not subject to the garnishment process requirements contained in section 204.5 unless a garnishment hearing is requested under section 204.6-7. In all other circumstances, Oneida entities do not require a judgment or a garnishment order in order to garnish an employee's earnings to collect debt owed to the Nation.

204.6-2. *Notice of Indebtedness.* Prior to initiating a garnishment, the entity owed the debt shall provide written notice of indebtedness to the debtor by first (1st) class mail.

(a) *Frequency of Notice.* Entities shall send debtors notice of indebtedness for each month a debt is owed with each notice being sent a minimum of thirty (30) calendar days apart. Entities shall send two (2) consecutive monthly notices prior to the debt becoming eligible for garnishment.

(b) *Notice Content.* Entities shall include the following in their notices of indebtedness:

- (1) How many notices of indebtedness have been provided prior to the subject notice and the dates of all prior notices;
- (2) The amount of the debtor's indebtedness;
- (3) Information for making payment on the debt; and
- (4) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the second consecutive monthly notice, the entity may initiate an automatic garnishment of the debtor's earnings.

204.6-3. *Initiating a Garnishment.* After thirty (30) calendar days have lapsed since the entity sent the second consecutive monthly notice of indebtedness, the entity may initiate a garnishment by providing the debtor with a final notice of indebtedness with intent to garnish. The entity shall send the final notice to the debtor by certified mail and shall provide a copy to the Accounting Department. Additionally, the entity shall post notice of intent to garnish in the Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed a debt and the Oneida entity's contact information for payment. The entity shall submit its request to post to the newspaper at the same time the final notice with intent to garnish is mailed in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request a garnishment hearing. The entity shall include the following in the final notice of indebtedness with intent to garnish:

- (a) The dates of all prior notices of indebtedness provided to the debtor;
- (b) The amount of the debtor's indebtedness;
- (c) Information for making payment on the debt;
- (d) An explanation that this is the final notice and the entity has by this final notice initiated a garnishment against the debtor;
- (e) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the final notice of indebtedness with intent to garnish that the Accounting Department will automatically begin garnishing the debtor's earnings until the debt is satisfied in full;

(f) That the garnishment amount that may be deducted from the debtor's earnings each week consists of an administrative fee, the payment of the debt each to a maximum of twenty percent (20%) of the debtor's disposable earnings and an interest charge; and

(g) An explanation that the debtor may negotiate a reduced weekly garnishment amount with the entity, excluding the administrative fee which is not negotiable, and may request that a higher percentage than what is required under section 204.6-4(a)(2) be deducted weekly. Provided that, if an agreement is not reached and noticed to the Accounting Department within thirty (30) calendar days from the date of the of the final notice of indebtedness, the Accounting Department shall proceed with the garnishment amount provided in the notice; and

(h) An explanation that the debtor may request a garnishment hearing with the Judiciary to contest the validity of the debt or request a reduced garnishment amount, by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to garnish and that the debtor is responsible for the Judiciary's garnishment action fee.

204.6-4. *Accounting Department Responsibilities.*

(a) *Calculating the Garnishment Amount.* The Accounting Department shall include the following in its calculation of the weekly garnishment amount.

(1) The administrative fee to be assessed against the debtor each pay period until the debt is paid in full. The Accounting Department shall use the same administrative fee that is noticed in the Judiciary and on the Judiciary's website as required in section 204.5-6(a).

(2) The amount of the garnishment attributable to payment of the debt that is equal to twenty percent (20%) of the debtor's disposable earnings per pay period.

(A) If the Accounting Department is currently processing any other garnishments for the same debtor, it shall adjust this amount so that no more than twenty percent (20%) of the debtor's disposable income is subject to garnishment at any one (1) time.

(B) In calculating the amount of the garnishment per pay period, the Accounting Department may not include amounts garnished pursuant to child support orders when calculating twenty percent (20%) of the debtor's disposable earnings.

(3) *Interest.* The Accounting Department shall include in the garnishment amount a one (1) time interest charge to the original amount of the debt. Unless otherwise agreed by the creditor and the debtor, the Accounting Department shall apply the interest using a rate equal to one percent (1%) plus the prime rate in effect on the date of the final notice of indebtedness with intent to garnish, as reported by the Federal Reserve Board in federal reserve statistical release H. 15.

(b) *Garnishment Implementation.* Within ten (10) business days of either the close of the debtor's thirty (30) calendar day time period to resolve the debt or request a garnishment hearing or receipt of an alternate garnishment agreement, the Accounting Department shall implement the garnishment by deducting the appropriate amount from the debtor's paycheck(s) and forwarding that amount to the creditor. The Accounting Department shall notify the debtor and creditor when the debt has been fully satisfied and the garnishment is complete.

(c) *Records.* The Accounting Department shall keep records of all garnishments enforced on behalf of Oneida entities, and shall ensure that such records include the following:

- (1) Copies of all final notices with intent to garnish sent to debtors; and
- (2) Bookkeeping records.

204.6-5. *Negotiating an Alternate Garnishment Agreement.* It is within the entities' discretion to negotiate an alternate garnishment agreement that would reduce the weekly garnishment amount. Such negotiations may include a reduced interest rate and/or a reduced amount of the weekly garnishment attributable to payment of the debt.

(a) In the event of that the entity and the debtor reach an agreement, the entity shall immediately forward the agreement to the Accounting Department and provide a copy to the debtor.

(b) If an agreement is not reached and noticed to the Accounting Department within thirty (30) calendar days from the date of the of the final notice of indebtedness, the Accounting Department shall proceed with the garnishment amount provided in the final notice with intent to garnish.

(c) The garnishment amount attributable to payment of the debt may be amended at any time if agreed to by the entity and the debtor.

204.6-6. *Payments in Excess of the Required Garnishment Amount.* A debtor may at any time make payments in excess of the required garnishment amount as noticed to them in the final notice of indebtedness with intent to garnish.

(a) The debtor may request a higher percentage be deducted from his or her disposable earnings. Debtors shall make such requests directly to the Accounting Department.

(b) Nothing in this law prohibits the debtor from making additional payments to satisfy the garnishment order, provided that, if an entity receives payments from the debtor outside of the garnishment process, the entity shall provide notice of said payment to the Accounting Department with a copy to the debtor.

204.6-7. *Requesting a Garnishment Hearing.* A debtor may request a garnishment hearing with the Judiciary to contest the validity of the debt or request a reduced garnishment amount by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to garnish.

(a) The debtor shall ensure that the petition identifies the creditor, the debtor, any other interested parties, and the reason for requesting the garnishment hearing; the debtor shall also include a copy of the final notice of indebtedness with intent to garnish.

(b) The debtor shall pay the garnishment action fee before the Judiciary may consider the petition complete.

(c) When a request for a garnishment hearing is timely made, the garnishment process contained in sections 204.5-4 through 204.5-10 controls. In such circumstances, the entity is still not required to obtain a judgment, but shall receive a garnishment order prior to garnishing.

204.7. Recognition of Child Support Orders

204.7-1. *Recognition and Enforcement of Child Support Orders.* The Judiciary shall recognize and enforce child support orders against any employee, provided that the order has been issued from a court of competent jurisdiction.

204.7-2. *Authenticity of Order.* Parties seeking to garnish based on a child support order shall submit the order to the Judiciary, which shall verify the order's authenticity. Upon verification

of the child support order, the judge shall forward such order to the Accounting Department for action.

204.7-3. *Administrative Fee.* An administrative fee is required to be assessed monthly so long as the child support deduction is in effect.

204.8. Discharge from Employment

204.8-1. The Nation may not discharge from employment, refuse to employ or otherwise take disciplinary action against an employee solely because the employee is subject to a garnishment action.

204.9. Appeals

204.9-1. A party may appeal a garnishment action with the Judiciary's Court of Appeals in accordance with the Judiciary Law and any applicable rules and procedures.

End.

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