

**Title 2. Employment – Chapter 211
WHISTLEBLOWER PROTECTION**

Λshakotiyá'tanunhe? Lotiyó'tΛhse? Aolihwá'ke

They will watch over them they the workers on this issue

211.1 Purpose and Policy

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211.1. Purpose and Policy

211.1-1. The purpose of this law is to give protection to employees who give information that is intended to protect the Nation from fraud, theft or other detrimental effects.

211.1-2. It is the policy of the Oneida Nation to extend protection to employees who act within this law to protect the Nation's interests.

211.2. Adoption, Amendment, Repeal

211.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-12-19-B.

211.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

211.2-3. 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.

211.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control, provided that this law repeals the following:

- (a) The Employee Protection Policy adopted by emergency pursuant to BC-04-20-95-B, permanently adopted pursuant to BC-12-06-95-B and subsequently amended pursuant to BC-01-20-99-B, BC-06-30-04-J, and BC-02-25-15-C.

211.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

211.3. Definitions

211.3-1. This section shall govern the definitions of words as phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "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, political appointees, and contracted persons.
- (b) "Entity" means a department, program, service, board, committee, or commission of the Nation.
- (c) "Nation" means the Oneida Nation.
- (d) "Official" means an individual elected or appointed to serve on a board, committee, or commission of the Nation, including the Oneida Business Committee.

211.4. Disclosure of Information

211.4-1. Whistleblowing occurs when an employee discloses information that the employee reasonably believes provides evidence that protects the Nation from any adverse actions of its employees that may result in a detrimental effect to the Nation. Adverse action that may result in a detrimental effect to the Nation includes, but is not limited to:

- (a) Any dishonest or fraudulent act;

- (b) Deceptive business practices;
- (c) Theft;
- (d) Extortion;
- (e) Bribery;
- (f) Embezzlement;
- (g) Blackmail;
- (h) Tampering and/or falsifying records, contracts, or reports;
- (i) Forgery;
- (j) Misappropriate and/or misuse of the Nation's funds;
- (k) Disclosure of confidential information;
- (l) Destruction, removal, or inappropriate use of property of the Nation;
- (m) Unsafe working conditions;
- (n) Poor management;
- (o) Unethical conduct and conduct that violates a law and/or policy of the Nation.

211.4-2. An employee shall be protected from retaliatory action that results from making a disclosure of information as directed within this law. Retaliatory action includes all action whether disciplinary or otherwise.

(a) Disciplinary action that may be retaliatory includes, but is not limited to:

- (1) dismissal;
- (2) demotion;
- (3) transfer;
- (4) removal of duty;
- (5) refusal to restore;
- (6) layoff;
- (7) furlough;
- (8) suspension; and/or
- (9) reprimand.

(b) Action other than disciplinary action that may be retaliatory may include, but is not limited to:

- (1) loss of hours;
- (2) rescheduling shifts outside of normal shift changes;
- (3) change of job requirements without notice;
- (4) verbal or physical harassment;
- (5) reduction of pay;
- (6) denial of educational benefits;
- (7) reassignment; and/or
- (8) failure to increase base pay.

(c) Any action that can be reasonably justified as taken in good faith based on documented employee performance shall be excluded from classification as retaliatory action.

211.4-3. An employee shall make a disclosure of information through the:

- (a) use of the anonymous Fraud hotline; or
- (b) submission of a written disclosure to the Nation's Internal Audit Department.

211.4-4. Once a disclosure of information is made, the disclosing employee shall be provided an incident number confirming receipt of the disclosure.

211.4-5. The Internal Audit Department shall then have the authority to review the disclosure and conduct an investigation and/or an internal audit into the disclosure, if deemed appropriate. Upon the conclusion of the investigation the Internal Audit Department shall, where necessary, report

their findings to an appropriate entity for action to address the findings, including, but not limited to, the:

- (a) Oneida Business Committee;
- (b) Oneida Law Office or other legal prosecuting agency;
- (c) Human Resources Department;
- (d) Oneida Police Department or other law enforcement agency;
- (e) Audit Committee; and/or
- (f) any other entity of the Nation.

211.5. Protection from Retaliation

211.5-1. If an employee alleges retaliatory action has been threatened or taken based on the employee's disclosure of information under this law, the employee may file a complaint for the retaliatory action in accordance with the grievance procedures provided in the Nation's laws and policies governing employment.

211.5-2. The employee shall be protected from the retaliatory action if the following is found:

- (a) the employee made a disclosure of information;
 - (1) The confirmation of disclosure that is provided when information is disclosed, as well as any resulting findings by the Internal Audit Department, shall be used as a reference to prove a disclosure of information.
- (b) the individual alleged to have taken retaliatory action against the disclosing employee was aware or became aware the disclosing employee had disclosed information;
- (c) the action taken against the disclosing employee was retaliatory as a result of the disclosure of information.

211.5-3. An individual who is found to have retaliated against an employee who made a disclosure of information pursuant to this law shall be subject to:

- (a) disciplinary action, up to and including termination, pursuant to the Nation's laws and policies governing employees, if an employee of the Nation;
- (b) sanctions and penalties pursuant to the Nation's laws and policies governing sanctions and penalties, if an official of the Nation;
- (c) removal pursuant to the Nation's laws and policies governing removal, if an elected official; and/or
- (d) termination of appointment pursuant to the Nation's laws and policies governing boards, committees, and commissions, if an appointed official.

End.

Adopted - BC-02-12-19-B