

Oneida Nation
Legislative Operating Committee

Committee Members
Brandon Stevens, Chairperson
Tehassi Hill, Vice Chairperson
Fawn Billie, Councilmember
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

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LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center

July 20, 2016 9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be approved**
 1. July 6, 2016 LOC Meeting Minutes
- III. Current Business**
 1. Mortgage and Foreclosure
 2. Back Pay Amendments
 - ~~3. Community Support Fund Amendments~~
 4. Petition: Debraska – Per Capita Distribution
- IV. New Submissions**
 - ~~1. Drug and Alcohol Free Workplace Place Policy Emergency Amendments~~
- V. Additions**
 1. Garnishment Amendments
 2. Membership Ordinance Emergency Amendments
- VI. Administrative Updates**
- VII. Executive Session**
- VIII. Recess/Adjourn**



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center

July 6, 2016 9:00 a.m.

Present: Brandon Stevens, Tehassi Hill, David P. Jordan

Excused: Jennifer Webster, Fawn Billie

Others Present: Taniquelle Thurner, Maureen Perkins, Doug McIntyre, Krystal John, Rae Skenandore, Dale P. Wheelock, Scott Denny, Cathy Metoxen, Bonnie Pigman, Elena Hill, Michelle Mays, Mike Debraska, Nancy Barton, Trina Schuyler

I. Call to Order and Approval of the Agenda

Brandon Stevens called the July 6, 2016 Legislative Operating Committee meeting to order at 9:02 a.m.

Motion by Tehassi Hill to adopt the agenda with the addition of the Membership Ordinance Emergency Amendments and the deletion of the Community Support Fund, deferring this item to the next LOC meeting; seconded by David P. Jordan. Motion carried unanimously.

II. Minutes to be approved

1. June 15, 2016 LOC Meeting Minutes

Motion by David P. Jordan to approve the June 15, 2016 LOC meeting minutes; seconded by Tehassi Hill. Motion carried unanimously.

III. Current Business

1. Eviction and Termination (13:30-15:50)

Motion by Tehassi Hill to accept the legislative analysis for the Eviction and Termination law and to approve the public meeting packet which schedules a public meeting for August 4, 2016; seconded by David P. Jordan. Motion carried unanimously.

2. Fitness for Duty (15:55-20:15)

Motion by Tehassi Hill to accept the Fitness for Duty law public meeting comments and defer review of the comments to a work meeting; seconded by David P. Jordan. Motion carried unanimously.

3. Petition: Debraska – Per Capita Distribution (20:20-26:26)

Motion by David P. Jordan to accept the statement of effect update memorandum for

the Petition-Per Capita Distribution, and to forward it to the Oneida Business Committee; seconded by Tehassi Hill. Motion carried unanimously.

~~4. **Community Support Fund Amendments** (item deleted at adoption of agenda)~~

5. **Rules of Administrative Procedure** (26:39-27:56)

Motion by Tehassi Hill accept the memorandum as FYI and defer the Rules of Administrative Procedure back to the sponsor to bring back when ready; seconded by David P. Jordan. Motion carried unanimously.

6. **Garnishment Law Amendments** (27:58-49:34)

Motion by Tehassi Hill to accept the second public meeting comments regarding the Garnishment law amendments and include the term Oneida Entity; seconded by David P. Jordan. Motion carried unanimously.

Note: Oneida Entity shall be defined as a department, board, committee, commission or chartered corporation of the Nation or the Judiciary.

7. **Per Capita Law Amendments** (49:38-1:10:13)

Motion by Tehassi Hill to accept the public meeting comments regarding the Per Capita law amendments from the May 19, 2016 and June 16, 2016 public meetings and direct desired changes; seconded by David P. Jordan. Motion carried unanimously.

Note: Directed change: remove the word automatic from section 9.6-1(d)(1)(C)(i).

IV. New Submissions

V. Additions

1. **Membership Ordinance Emergency Amendments** (1:10:25-1:36:25)

Motion by David P. Jordan to add the Membership Ordinance Emergency Amendments to the Active Files List and direct the Legislative Reference Office to schedule a work meeting with the Oneida Business Committee within two weeks and to bring this item back to the next LOC meeting; seconded by Tehassi Hill. Motion carried unanimously.

VI. Administrative Updates

VII. Executive Session

VIII. Recess/Adjourn

Motion by Tehassi Hill to adjourn the July 6, 2016 Legislative Operating Committee meeting at 10:40 a.m.; seconded by David P. Jordan. Motion carried unanimously.



Legislative Operating Committee

July 20, 2016

Mortgage and Foreclosure Law

Submission Date: October 7, 2015

Public Meeting: 6/30/16
 Emergency Enacted:

LOC Sponsor: David P. Jordan

Summary: *Is a new law that will explain how the Tribe deals with mortgages and foreclosures. This law is being developed because the Land Commission's hearing responsibilities are transferring the Judiciary.*

10/7/15 LOC: Motion by David P. Jordan to add the Real Property Law Amendments, Probate Law, Mortgage Law, Landlord-Tenant Law and Land Commission Bylaws Amendments to the Active Files List with himself as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

12/16/15 LOC: Motion by David P. Jordan to accept the memorandum update as FYI and to defer the Mortgage Law back to the sponsor and to bring back when ready; seconded by Fawn Billie. Motion carried unanimously.

2/3/16 LOC: Motion by David P. Jordan to forward the Mortgage and Foreclosure Law to the Legislative Reference Office for a legislative analysis and to the Finance Department for a fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.

5/18/16 LOC: Motion by David P. Jordan to accept the legislative analysis of the Mortgage and Foreclosure law with revisions (adding section references and noting that the Mortgage and Foreclosure law conflicts with the current Real Property Law, and the Mortgage and Foreclosure law will govern upon adoption) and to defer to the Mortgage and Foreclosure law to the Legislative Reference Office to prepare a public meeting packet for a public meeting to be held on June 16, 2016; seconded by Tehassi Hill. Motion carried unanimously.

6/1/16 LOC: Motion by David P. Jordan to approve the public meeting packet for the Mortgage and Foreclosure law and forward to a public meeting to be held on June 30, 2016; seconded by Fawn Billie. Motion carried unanimously.

6/30/16: Public Meeting held.

Next Steps:

- Accept the Mortgage and Foreclosure public comments; and
- Direct an adoption packet be prepared, including any revisions directed as a result of the public meeting comments.



TO: Legislative Operating Committee (LOC)
FROM: Krystal L. John, Staff Attorney
DATE: July 20, 2016
RE: Mortgage and Foreclosure Law: Public Meeting Comment Review

On June 16, 2016, a public meeting was held regarding a new Mortgage and Foreclosure law, which would:

- Contain the minimum framework for the Nation's mortgage programs and foreclosure process;
- Delegate joint rulemaking authority to Division of Land Management and the Land Commission to develop rules that may contain more detailed requirements;
- Require that at least one Tribal member must be included on a mortgage application;
- Allow non-tribal member spouses to remain in the mortgaged property in the event of death or divorce of the Tribal member;
- Allow mortgagors in default an opportunity to enter into an agreement to cure default prior to foreclosure at the discretion of the Division of Land Management;
- Require an order to vacate once a judgment to foreclose has been issued by the Judiciary;
- Provide the mortgagor has a 6 month redemption period if the home was occupied prior to the judgment to foreclose, or 5 weeks if the home was abandoned prior to the judgment to foreclose. The mortgagor may redeem the mortgage by paying the full amount of the mortgage and any related fees. If this occurs, the Judiciary will vacate the order to foreclose;
- Prohibit the Nation from reselling the foreclosed property until after the redemption period has lapsed and all appeals have been exhausted; and
- Transfer hearing body authority regarding foreclosure judgments from the Land Commission to the Judiciary.

This memorandum is submitted as a review of the oral comments received during the public meeting process; there were not any written comments received within the public comment period. The public meeting draft with comments is attached for your review.

Comment 1 – Mortgage Satisfaction/Agreement to Cure Default Prior to Judgment of Foreclosure

64.7-2. Mortgage Satisfaction or Agreement to Cure Default Prior to Judgment of Foreclosure.
If the mortgagor satisfies the mortgage that is the subject of a foreclosure complaint or the parties

reach an agreement to cure default prior to the Judiciary's entering of a judgment of foreclosure, the Judiciary shall dismiss the foreclosure complaint.

Leyne Orosco: My name is Leyne Orosco. I have only one question and that is on line 206 of the document. Where it reads:

64.7-2. Mortgage Satisfaction or Agreement to Cure Default Prior to Judgment of Foreclosure. If the mortgagor satisfies the mortgage that is the subject of a foreclosure complaint or the parties reach an agreement to cure default prior to the Judiciary's entering of a judgment of foreclosure, the Judiciary shall dismiss the foreclosure complaint.

Shouldn't that be the Nation would request a dismissal? I think that is just the language. I understand what it is standing there saying but without something from the petitioner or the respondent the Judiciary will not dismiss anything. So that statement where the "Judiciary shall dismiss the foreclosure complaint" I think shall read in there the Nation will submit a motion to dismiss or something to that effect.

Response

The commenter is correct that absent a request for dismissal from one of the parties, the Judiciary would not initiate a dismissal itself. However, the language the commenter is requesting is already included in subsections (a) and (b) which further detailed the process and read as follows, the highlighted portions speak directly to the commenter's concerns:

(a) *Mortgage Satisfaction.* A mortgagor named in a foreclosure complaint may satisfy the subject mortgage at any time prior to the Judiciary's entering of a judgment of foreclosure. Under such circumstances, the mortgagor shall submit to the Judiciary proof of payment in full of the mortgage principal, any interest owed and any court costs incurred by the Nation. Upon receipt of verified proof of satisfaction, the Judiciary shall dismiss the foreclosure complaint based on satisfaction of the mortgage.

(b) *Agreement to Cure Default.* Should the Nation and the mortgagor reach an agreement to cure default in accordance with section 64.6 after foreclosure proceedings have been initiated, which may include provisions requiring the mortgagor to reimburse the Nation for any court costs incurred, the mortgagor shall submit to the Judiciary a copy of the executed agreement to cure default. Upon receipt of an executed agreement to cure default, the Judiciary shall dismiss the foreclosure complaint without prejudice based on the agreement to cure default.

Chapter 64
Mortgage and Foreclosure
Tsi> Thotin&hsote> laotlihw@-ke
that of their houses – their issues

64.1.	Purpose and Policy.	64.5.	Default.
64.2.	Adoption, Amendment, Repeal.	64.6.	Agreement to Cure Default.
64.3.	Definitions.	64.7.	Foreclosure.
64.4.	Mortgage Programs.	64.8.	Appeal Rights.

64.1. Purpose and Policy.

64.1-1. *Purpose.* It is the purpose of this law to set the standards and requirements for participation in the mortgage programs and to prescribe the foreclosure process required to be used in the event of a default of a mortgage.

64.1-2. *Policy.* It is the policy of this law to administer mortgage programs aimed at maintaining and improving the standard of living for Tribal members, while protecting the Nation’s assets and expanding the Tribal land base.

64.2. Adoption, Amendment, Repeal.

64.2-1. This law is adopted by the Oneida Business Committee by Resolution _____.

64.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

64.2-3. 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.

64.2-4. 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.

64.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

64.3. Definitions.

64.3-1. 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) “Abandoned” means the relinquishment of possession or control of a mortgaged premises whether or not the mortgagor or the mortgagor’s assigns have relinquished equity and title to the mortgaged interest.

(b) “Agreement to Cure Default” means a signed contract between a customer of a mortgage program and the Division of Land Management on behalf of the Nation whereby the parties agree upon a temporary payment schedule to allow the mortgagor to cure a default.

(c) “Appraisal” means the valuation of real property by the estimate of an authorized person.

(d) “Business Day” means Monday through Friday from 8:00 a.m. - 4:30 p.m., excluding holidays recognized by the Nation.

(e) “Default” means a failure to comply with the payment terms of a mortgage.

- 37 (f) “Foreclosure” means a legal proceeding initiated by the Nation to terminate a
38 mortgagor’s interest in real property, by taking possession of the real property as a partial
39 or complete satisfaction of a default.
- 40 (g) “Home Inspection” means an examination of a property’s condition.
- 41 (h) “Judiciary” means the judicial system established by General Tribal Council
42 resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of
43 the Nation.
- 44 (i) “Mortgage” means a lien, held by the Nation, on a real property interest that is given
45 as security for the payment of a debt and/or the performance of a duty, including the
46 refinancing of an original conveyance, that will become void upon the payment and/or
47 performance according to the stipulated terms.
- 48 (j) “Mortgagor” means the borrower in a mortgage.
- 49 (k) “Nation” means the Oneida Nation.
- 50 (l) “Notice of Default” means a formal and dated notice of default.
- 51 (m) “Personal Property” means any property that does not fit the definition of real
52 property and is generally movable.
- 53 (n) “Real Property” means land and anything growing on, attached to, or erected on the
54 land, excluding anything that may be severed without injury to the land.
- 55 (o) “Redemption Period” means the timeframe during which a defaulting mortgagor
56 may recover a mortgaged interest that is the subject of a judgment of foreclosure by
57 paying the outstanding debt owed.
- 58 (p) “Refinance” means an exchange of an old debt for a new debt, as by renegotiating a
59 different interest rate, term of the debt, or by repaying the existing loan with money
60 acquired from a new loan.
- 61 (q) “Reservation” means all the property within the exterior boundaries of the
62 reservation of the Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat.
63 566, and any lands added thereto pursuant to federal law.
- 64 (r) “Rule” means a set of requirements, including citation fees and penalty schedules,
65 enacted by the Division of Land Management in accordance with the Administrative
66 Rulemaking law based on authority delegated in this law in order to implement, interpret
67 and/or enforce this law.
- 68 (s) “Title” means legal evidence of a person’s ownership rights in real property.
- 69 (t) “Title Report” means the written analysis of the status of title to real property,
70 including a property description, names of titleholders and how the title is held, tax rate,
71 encumbrances and any real property taxes due.
- 72 (u) “Tribal Land” means any land held in fee or trust status by the Nation within the
73 reservation.
- 74 (v) “Tribal Member” means an enrolled member of the Nation.

75
76 **64.4. Mortgage Programs.**

77 64.4-1. *Available Mortgage Purposes.* Consistent with available funds, the Division of Land
78 Management shall provide mortgage programs for the following purposes and shall establish
79 rules naming said programs and providing the specific requirements for each program:

- 80 (a) Financing the purchase or down payment of existing homes and lands;
81 (b) Construction of new homes;
82 (c) Repairs and improvements to existing homes;

83 (d) Refinancing existing mortgages.

84 64.4-2. *Mortgage Eligibility Requirements.* In order to be eligible for a mortgage, applicants
85 shall meet the following conditions:

86 (a) Be at least eighteen (18) years of age at the time of the application;

87 (b) Be a Tribal member(s);

88 (1) If the application is for joint applicants, at least one (1) applicant shall be a
89 Tribal member.

90 (2) For married joint applicants, both spouses shall be named applicants on the
91 application and joint mortgagors.

92 (c) Not have a discharged bankruptcy within two (2) years from the date of the
93 application;

94 (d) Not be involved in a bankruptcy proceeding that has not yet been discharged at the
95 time of the application; and

96 (e) Not have had a mortgage foreclosed upon within the seven (7) years from the date of
97 the application.

98 64.4-3. *Mortgage Selection.* The Land Commission and the Division of Land Management
99 shall jointly develop rules governing the selection of applicants for the issuance of a mortgage.
100 At a minimum, the Land Commission and the Division of Land Management shall ensure that
101 the mortgage selection rules require that the mortgagor:

102 (a) Have an acceptable credit rating as defined in the rules;

103 (b) Have an acceptable debt to income ratio as defined in the rules;

104 (c) Have all delinquent debts owed to the Nation paid in full prior to signing the
105 mortgage document;

106 (d) Have no more than the allowable amount of accumulated judgments, collections
107 and/or profit and loss write-offs based on the rules, and, if any debts are being paid
108 through a debt collector, the monthly payment must be listed as a monthly debt on the
109 application;

110 (1) In the rules, the Land Commission and the Division of Land Management
111 shall provide the allowable timeframe, in relation to the date of selection, for
112 applicants to bring any judgments, collections and/or profit and loss write-offs
113 within the allowable amount.

114 (2) Applicants failing to bring said debts within the allowable amount based on
115 the timeframe provided become ineligible for the mortgage.

116 64.4-4. *Mortgage Requirements.* The Land Commission and the Division of Land Management
117 shall jointly develop rules governing the requirements of mortgages entered into by the Division
118 of Land Management. At a minimum, the Land Commission and the Division of Land
119 Management shall ensure that the mortgage requirement rules:

120 (a) Require the mortgage document to identify the source of the ownership interest in the
121 real property as attributable either to a deed or a residential lease entered into pursuant to
122 the Leasing law;

123 (b) Require the real property that is the subject of the mortgage be insured under a
124 homeowner's insurance policy paid for by the mortgagor and include enforcement
125 provisions in the event of noncompliance herewith;

126 (c) Require that the mortgage be the first or second secured interest on the real property;

127 (d) Require proof of clear title, as defined by the rules, prior to entering into a mortgage;

128 (e) Establish which administrative fees, if any, that may be assessed in the mortgage;

- 129 (f) Require that the mortgage be for real property located within the reservation;
130 (g) Require the mortgage include interest at a rate provided in the rules.

131 64.4-5. *Non-Tribal Member Spouses.* The following applies when one of the mortgagors is a
132 non-Tribal member:

133 (a) *Death of the Tribal Member Spouse.* So long as the mortgage is not defaulted upon,
134 the death of the Tribal member spouse does not affect a mortgage. If the non-Tribal
135 member spouse defaults on the mortgage, the mortgage is subject to the regular
136 foreclosure proceedings as outlined in this law.

137 (b) *Refinancing due to Death or Divorce.* In the event that a mortgagor seeks refinancing
138 due to the death or divorce of a spouse, the mortgagor shall comply with the refinancing
139 rules established pursuant to Section 64.4-1(d).

140

141 **64.5. Default.**

142 64.5-1. *Notice of Default.* The mortgage officer shall send a notice of default to mortgagors
143 by first class mail for each month for which the mortgagor defaults on the subject mortgage,
144 provided that the mortgage officer shall send the notices of default a minimum of thirty (30)
145 calendar days apart and ensure that the notice contains the following information:

- 146 (a) The notice number;
147 (b) The dates of the default;
148 (c) The amount of the default;
149 (d) The requirement to cure the default, including important dates affecting the
150 mortgagor's rights;
151 (e) The mortgagor's available options to cure a default; and
152 (f) The actions that may be taken by the Nation if the default is not timely cured.

153

154 **64.6. Agreement to Cure Default.**

155 64.6-1. *Entering into an Agreement to Cure Default.* The Division of Land Management may,
156 in its full discretion, work with mortgagors able to pay a mortgage default over time to enter into
157 an agreement to cure default over a reasonable time not to exceed one (1) year.

158 (a) A mortgagor may enter into one (1) agreement to cure default per twelve (12) month
159 period. A mortgagor may request more than one (1) agreement to cure the default in a
160 twelve (12) month period if the mortgagor is able to demonstrate the additional
161 agreement is necessary due to extenuating circumstances faced by the mortgagor,
162 provided that, the director of the Division of Land Management shall approve any such
163 agreements before said agreement may become effective.

164 (b) The Division of Land Management may not permit mortgagors to increase payroll
165 deduction payments to cure a default without first entering into an agreement to cure
166 default.

167 (c) In the event a mortgagor violates the terms of an agreement to cure default, the
168 Division of Land Management shall enforce the remedies afforded the Nation in the
169 agreement to cure default and may not amend the terms of an unsatisfied agreement to
170 cure default without the approval of the director of the Division of Land Management.

171 64.6-2. *Elements of an Agreement to Cure Default.* All agreements to cure default entered
172 into by the Division of Land Management are required to contain the following elements:

- 173 (a) The effective date of the agreement;
174 (b) The parties to the agreement;

- 175 (c) The amount of payments under the mortgage and any agreements to cure default
176 previously entered into;
177 (d) A statement that the mortgage and, if applicable, any previous agreement to cure
178 default are in default;
179 (e) The amount of the increased payments under the agreement;
180 (f) The terms of the agreement, including the remedies available to the Nation in the
181 event that the mortgagor violates the terms of the agreement; and
182 (g) Notice that a failure to follow the terms of the agreement may result in the immediate
183 filing of a foreclosure.
184

185 **64.7. Foreclosure.**

186 64.7-1. *Decision to Foreclose.* Any mortgage that is in default for two (2) consecutive months
187 may be subject to foreclosure, provided that the Nation has complied with the notice of default
188 requirement in section 64.5-1.

189 (a) After the two (2) notices of default have been sent, the Division of Land Management
190 shall determine whether initiating foreclosure proceedings would be in the best interest of
191 the Nation, provided that the Division of Land Management shall abide by the
192 foreclosure determination standard operating procedure approved by both the director of
193 the Division of Land Management and the Land Commission.

194 (1) Should the Division of Land Management determine that initiating a
195 foreclosure is in the best interest of the Nation, the Division of Land Management
196 shall submit a complaint to the Judiciary in compliance with the Nation's laws
197 and the Judiciary's requirements. The complaint may not be submitted until after
198 thirty (30) calendar days from the date of the second notice of default.

199 (2) The Division of Land Management shall include in all complaints a demand
200 judgment for any deficiency that may remain due to the Nation after the Nation's
201 reclamation of title against every party who is personally liable for the debt
202 secured by the mortgage that is the subject of the foreclosure.

203 64.7-2. *Mortgage Satisfaction or Agreement to Cure Default Prior to Judgment of*
204 *Foreclosure.* If the mortgagor satisfies the mortgage that is the subject of a foreclosure
205 complaint or the parties reach an agreement to cure default prior to the Judiciary's entering of a
206 judgment of foreclosure, the Judiciary shall dismiss the foreclosure complaint.¹

207 (a) *Mortgage Satisfaction.* A mortgagor named in a foreclosure complaint may satisfy
208 the subject mortgage at any time prior to the Judiciary's entering of a judgment of
209 foreclosure. Under such circumstances, the mortgagor shall submit to the Judiciary proof
210 of payment in full of the mortgage principal, any interest owed and any court costs

¹ **Leyne Orosco:** My name is Leyne Orosco. I have only one question and that is on line 206 of the document. Where it reads:

64.7-2. Mortgage Satisfaction or Agreement to Cure Default Prior to Judgment of Foreclosure. If the mortgagor satisfies the mortgage that is the subject of a foreclosure complaint or the parties reach an agreement to cure default prior to the Judiciary's entering of a judgment of foreclosure, the Judiciary shall dismiss the foreclosure complaint.

Shouldn't that be the Nation would request a dismissal? I think that is just the language. I understand what it is standing there saying but without something from the petitioner or the respondent the Judiciary will not dismiss anything. So that statement where the "Judiciary shall dismiss the foreclosure complaint" I think shall read in there the Nation will submit a motion to dismiss or something to that effect.

211 incurred by the Nation. Upon receipt of verified proof of satisfaction, the Judiciary shall
212 dismiss the foreclosure complaint based on satisfaction of the mortgage.

213 (b) *Agreement to Cure Default*. Should the Nation and the mortgagor reach an agreement
214 to cure default in accordance with section 64.6 after foreclosure proceedings have been
215 initiated, which may include provisions requiring the mortgagor to reimburse the Nation
216 for any court costs incurred, the mortgagor shall submit to the Judiciary a copy of the
217 executed agreement to cure default. Upon receipt of an executed agreement to cure
218 default, the Judiciary shall dismiss the foreclosure complaint without prejudice based on
219 the agreement to cure default.

220 64.7-3. *Judgment of Foreclosure*. If the Judiciary finds in favor of the Nation, it shall issue a
221 judgment of foreclosure. At a minimum, the Judiciary shall include the following in each
222 judgment of foreclosure:

- 223 (a) A description of the mortgaged premises;
- 224 (b) The amount of the mortgage debt due;
- 225 (c) The mortgagor's redemption period;
- 226 (d) An order to vacate the mortgaged premises within thirty (30) calendar days of the
227 judgment;
- 228 (e) An order transferring title of the mortgaged premises to the Nation as partial or full
229 payment of the amount of mortgage debt then due;
- 230 (f) So long as the Nation's complaint reserves the right to demand a judgment of
231 deficiency for costs that may remain due after the transfer of title to the Nation pursuant
232 to foreclosure, an order recognizing the Nation's reserved right, which may include sums
233 advanced by the Nation for insurance, necessary repairs, inspection costs, appraisal fees
234 and other costs; and
- 235 (g) An order that within seven (7) months of receipt of a judgment of foreclosure, the
236 Nation submit either a motion demanding a judgment of deficiency or a motion to
237 enforce the judgment of foreclosure, each of which are required to include a final
238 accounting and a confirmation of appraisal.

239 64.7-4. *Redemption Period*. The Judiciary shall afford all mortgagors subject to a judgment
240 of foreclosure a redemption period. To redeem a real property interest, the mortgagor shall pay
241 the full amount of the mortgage debt due and any costs incurred by the Nation for insurance,
242 necessary repairs, inspection costs, appraisal fees and other costs.

243 (a) *Occupied Premises*. The required redemption period for occupied premises is six (6)
244 months. Absent an affirmative finding of abandonment, the Judiciary shall presume that
245 premises are occupied premises.

246 (b) *Abandoned Premises*. The required redemption period for abandoned premises is, at
247 a minimum, five (5) weeks. A redemption period based on abandoned premises requires
248 an affirmative finding of abandonment by the Judiciary based on evidence submitted by
249 the Division of Land Management on behalf of the Nation.

250 (1) In determining whether the mortgaged premises have been abandoned, the
251 Judiciary shall consider the totality of the circumstances, including the following:

- 252 (A) Boarded, closed or damaged windows or doors to the premises;
- 253 (B) Missing, unhinged or continuously unlocked doors to the premises;
- 254 (C) Terminated utility accounts for the premises;
- 255 (D) Accumulation of trash or debris on the premises;

256 (E) At least two (2) reports to law enforcement officials of trespassing,
257 vandalism, or other illegal acts being committed on the premises when the
258 mortgagor is not present; and

259 (F) Conditions that make the premises unsafe or unsanitary or that make
260 the premises in imminent danger of becoming unsafe or unsanitary.

261 (2) The Division of Land Management may include testimony from a
262 representative of the city, town, village or county where the mortgaged premises
263 is located as part of its evidence of abandonment.

264 (c) *Redeemed Premises.* Should the mortgagor successfully redeem the mortgaged
265 interest that is the subject of a judgment of foreclosure, the Nation shall issue the
266 mortgagor a certificate of redemption. Upon receipt of a certificate of redemption, the
267 mortgagor shall file a motion to vacate the judgment of foreclosure with the Judiciary.
268 Upon receipt from the Judiciary, the mortgagor shall duly record the order to vacate the
269 judgment of foreclosure with the Oneida Nation Register of Deeds.

270 64.7-5. *Mortgage Holder's Responsibilities upon Receipt of a Judgment of Foreclosure.*
271 Upon receipt of a judgment of foreclosure, the Division of Land Management, on behalf of the
272 Nation as the mortgage holder, shall:

273 (a) Secure and take possession of the real property once the timeframe in the order to
274 vacate has expired.

275 (1) The Division of Land Management shall provide the mortgagor notice of
276 when the property's locks are scheduled to be changed, which, at a minimum,
277 includes the following:

278 (A) The property address;

279 (B) The date and time the locks are scheduled to be changed;

280 (C) Notice to mortgagor that an Oneida Police Officer will be present
281 while the locks are being changed;

282 (D) Information on how the disposition of personal property will be
283 managed based on section 64.7-5(a)(3);

284 (E) The contact information for Division of Land Management staff whom
285 the mortgagor may contact in regards to the property; and

286 (F) A copy of the judgment of foreclosure.

287 (2) The Division of Land Management shall contact the Oneida Police
288 Department to request that an Oneida police officer be on the scene while the
289 locks are being changed.

290 (3) In the event the mortgagor has left personal property in the home, he or she
291 may retrieve said personal property by contacting the Division of Land
292 Management staff listed on the work order. The Division of Land Management
293 shall hold personal property for a minimum of five (5) business days.

294 (A) The Division of Land Management shall keep a written log of the date
295 and the work time the Nation's staff expends storing and/or removing
296 personal property and/or removing/disposing of debris left at the property
297 after the expiration of the timeframe provided in the order to vacate.

298 (B) The Division of Land Management and the Land Commission shall
299 jointly create rules further governing the disposition of personal property.

- 300 (b) Order a title report from the Land Title and Trust Department with specific
301 instructions to contact the Accounting Department to verify whether the mortgagor owes
302 any outstanding debts to the Nation and based on the title report shall:
- 303 (1) Seek payment of outstanding water bills and/or other liens or charges
304 appearing on the tax rolls from the mortgagor. In the event of a failure to pay, the
305 Nation shall make payment and include such costs in the Nation's final
306 accounting required by the judgment of foreclosure and as explained in section
307 64.7-5(e);
- 308 (2) Request proof of payment of any judgments noted on the title report which
309 can be attached to the real property;
- 310 (3) Request proof of satisfaction of any mortgage liens issued by an outside
311 financial institution other than the Nation, provided that, said mortgage liens may
312 not be satisfied by the Nation until the redemption period has either expired or
313 been terminated by the Judiciary.
- 314 (c) Order an appraisal of the real property to be completed;
- 315 (d) Order a home inspection, including a well and septic inspection, of the real property
316 to be completed and based on the findings of the home inspection shall coordinate which
317 repairs will be completed.
- 318 (1) In order for repair costs to be included in a judgment of deficiency 64.7-3(f),
319 the Nation shall include the following in its demand for the said judgment:
- 320 (A) A record of all receipts for materials and invoices for services related
321 to the said repairs;
- 322 (B) A record of all hours expended by the Nation's staff related to the said
323 repairs; and
- 324 (C) Photographic evidence demonstrating the condition of the real
325 property both before and after the repairs were made.
- 326 (2) If, based on the home inspection, the Division of Land Management
327 determines it to be in the best interest of the Nation to raze a foreclosed upon
328 property, it may do so in accordance with the rules which the Division of Land
329 Management and the Land Commission shall jointly develop. Any costs related
330 to the razing of a property may be included in the Nation's demand for a
331 judgment of deficiency.
- 332 (e) Wrap up the foreclosure by filing with the Judiciary either a motion demanding a
333 judgment of deficiency or a motion for enforcement of the judgment of foreclosure.
- 334 (1) *Demand for a Judgment of Deficiency.* The Nation shall file a demand for a
335 judgment of deficiency if the total of the amount of the mortgage debt due in the
336 judgment of foreclosure and the sums advanced by the Nation for insurance,
337 necessary repairs, inspection costs, appraisal fees and other costs exceeds the
338 value of the real property based on the appraisal. A demand for a judgment of
339 deficiency is required to include a confirmation of appraisal and an accounting of
340 all sums advanced by the Nation.
- 341 (2) *Motion for Enforcement of the Judgment of Foreclosure.* The Nation shall file
342 a motion for enforcement of the judgment of foreclosure if the total of the amount
343 of the mortgage debt due in the judgment of foreclosure and the sums advanced
344 by the Nation for insurance, necessary repairs, inspection costs, appraisal fees and
345 other costs are less than or equal to the value of the real property based on the

346 appraisal. If the total of the amount of the mortgage debt due in the judgment of
347 foreclosure and the sums advanced by the Nation for insurance, necessary repairs,
348 inspection costs, appraisal fees and other costs are less than the value of the real
349 property based on the appraisal, the Division of Land Management shall include
350 in the motion to enforce a copy of the signed apron issued to the mortgagor
351 providing the refunded amount.

352 64.7-6. *Resale Following Foreclosure.* The Division of Land Management may begin
353 advertising a foreclosed upon property for re-sale immediately following its receipt of an order to
354 enforce the judgment of foreclosure, provided that it may not complete a sale of said property
355 until the mortgagor's appeal rights have expired.

356

357 **64.8. Appeal Rights.**

358 64.8-1. *Decisions of the Division of Land Management are Final.* All decisions made by the
359 Division of Land Management in regards to the mortgage programs provided under this law are
360 final decisions and are not subject to appeal.

361 64.8-2. *Appeal of a Foreclosure.* A mortgagor whose real property has been foreclosed upon
362 may appeal a determination made by the Judiciary in accordance with the Judiciary law and the
363 Rules of Appellate Procedure.

364

365

Adopted BC-

Oneida Nation

Legislative Reference Office

P.O. Box 365
Oneida, WI 54155
(920) 869-4375
(800) 236-2214



Committee Members

Brandon Stevens, Chairperson
Tehassi Hill, Vice Chairperson
Fawn Billie, Councilmember
Jennifer Webster, Councilmember
David P. Jordan, Councilmember

LEGISLATIVE OPERATING COMMITTEE

Public Meeting on the Mortgage and Foreclosure
Business Committee Conference Room-2nd Floor
Norbert Hill Center
June 16, 2016 12:15 p.m.

PRESENT: Tehassi Hill, Jenn Falck, Maureen Perkins, Douglass McIntyre, Leyne Orosco, Danelle Wilson

Mortgage and Foreclosure

Tehassi Hill: Good afternoon. It is 12:15 p.m. and today's date is Thursday June 30, 2016. I will now call the public meeting for the Mortgage and Foreclosure to order. The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding this legislative proposal. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday July 7th. In attendance is Tehassi Hill, LOC Vice-Chair.

We will begin today's public meeting for Mortgage and Foreclosure. This is a proposal for a new law that would:

- Contain the minimum framework for the Nation's mortgage programs and foreclosure process;
- Delegate joint rulemaking authority to Division of Land Management and the Land Commission to develop rules that may contain more detailed requirements;
- Require that at least one Tribal member must be included on a mortgage application;
- Allow non-tribal member spouses to remain in the mortgaged property in the event of death or divorce of the Tribal member;
- Allow mortgagors in default an opportunity to enter into an agreement to cure default prior to foreclosure at the discretion of the Division of Land Management;
- Require an order to vacate once a judgment to foreclose has been issued by the Judiciary;
- Provide the mortgagor has a 6 month redemption period if the home was occupied prior to the judgment to foreclose, or 5 weeks if the home was abandoned prior to the

judgment to foreclose. The mortgagor may redeem the mortgage by paying the full amount of the mortgage and any related fees. If this occurs, the Judiciary will vacate the order to foreclose;

- Prohibit the Nation from reselling the foreclosed property until after the redemption period has lapsed and all appeals have been exhausted; and
- Transfer hearing body authority regarding foreclosure judgments from the Land Commission to the Judiciary.

The LOC may impose a time limit for all speakers pursuant to 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of five minutes. This time limit shall be applied equally to all persons. We have one person signed up to give testimony. Okay Leyne, you have five minutes.

Leyne Orosco: My name is Leyne Orosco. I have only one question and that is on line 206 of the document. Where it reads:

64.7-2. Mortgage Satisfaction or Agreement to Cure Default Prior to Judgment of Foreclosure. If the mortgagor satisfies the mortgage that is the subject of a foreclosure complaint or the parties reach an agreement to cure default prior to the Judiciary's entering of a judgment of foreclosure, the Judiciary shall dismiss the foreclosure complaint.

Shouldn't that be the Nation would request a dismissal? I think that is just the language. I understand what it is standing there saying but without something from the petitioner or the respondent the Judiciary will not dismiss anything. So that statement where the "Judiciary shall dismiss the foreclosure complaint" I think shall read in there the Nation will submit a motion to dismiss or something to that effect.

Tehassi Hill: Ok. Thank you. It is 12:20. I will give it five more minutes and if no more speakers present themselves we will go ahead and close at 12:25 if no one else shows up.

Alright, it is 12:25. We waited ten minutes for any additional people wishing to provide oral comment. With there being no more speakers registered, the public meeting for Mortgage and Foreclosure is now closed at 12:25.

Written comments may be submitted until close of business on Thursday July 7, 2016. Thank you.

-End of meeting-



Legislative Operating Committee

July 20, 2016

Back Pay Amendments

Submission Date: 6/11/15

Public Meeting: 5/5/2016
 Emergency Enacted:
Expires:

LOC Sponsor: David P. Jordan

Summary: *This request was submitted to clarify two conflicting provisions related to whether health insurance coverage continues during involuntary separation/terminations, and to require reinstated employees to reimburse CHS dollars used if an employee claims medical treatment from CHS prior to reinstatement.*

6/17/15 LOC: Motion by David P. Jordan to add the Back Pay Policy Amendments to the active files list with himself as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

8/19/15 LOC: Motion by Jennifer Webster to accept the memorandum regarding the status of the Back Pay Policy Amendments as FYI; seconded by Fawn Billie. Motion carried unanimously.

10/21/15 LOC: Motion by David P. Jordan to make the noted changes clarifying employment benefits and defer the Back Pay Policy Amendments for a legislative analysis and fiscal impact statement; seconded by Fawn Billie. Motion carried unanimously.

3/22/16 LOC: Motion by David P. Jordan to accept the legislative analysis of the Back Pay Law and prepare for a public meeting of May 5th, 2016; seconded by Tehassi Hill. Motion carried unanimously.

For the record: Brandon Stevens stated the LOC is changing back to using “shall” instead of “must” and the Back Pay Policy will be re-titled as the Back Pay Law based on the LOC direction of changing all policies into laws.

4/6/16 LOC: Motion by David P. Jordan to prepare the Back Pay Law Amendments for a public meeting scheduled May 5th, 2016; seconded by Jennifer Webster. Motion carried unanimously.

5/5/16: *Public Meeting Held.*

5/18/16 LOC: Motion by David P. Jordan to accept the public meeting comments regarding the Back Pay Amendments, to request reports from the Accounting Department and the Oneida Law Office regarding their timeframes for processing back pay awards and to direct the Legislative Reference Office to bring options back to the LOC regarding the back pay formula; seconded by Tehassi Hill. Motion carried unanimously.

Next Steps:

- Review the memorandums from the Legislative Reference Office and Oneida Law Office;
- Direct any necessary changes to the draft; and
- Direct the Legislative Reference Office to prepare an adoption packet for Back Pay Amendments.



Memorandum

TO: Legislative Operating Committee
FROM: Douglass A. McIntyre, Staff Attorney
DATE: July 20, 2016
RE: Back Pay Amendments: Section 306.4-3(b)(2)

On May 18, 2016, the Legislative Operating Committee directed the Legislative Reference Office to provide information on the timeframes for processing back pay and to investigate potential alternatives to the language in section 306.4-3(b)(2) of the proposed amendments to Back Pay. The timeframes for processing a back pay claim is discussed in the accompanying memorandum from the Oneida Law Office. The focus of this memorandum is to provide potential alternatives to the language in section 306.4-3(b)(2) of the proposed amendments.

Public Meeting Comments

During the public meeting period several comments were raised about the formula in section 306.4-3(b)(2). The comments expressed concern that employees are not being fairly compensated because of this formula. These comments included the following:

- If back pay is truly intended to make the employee whole, it should be calculated according to the individual employee's regularly scheduled days and wages and the employee should be paid accordingly.
- Most employees do not work 6 days a week. In order to truly 'make an employee whole', I believe you need to:
 1. Actually pay them the amount of hours they missed multiplied by their hourly rate at the time of the incident, or
 2. Use the average weekly rate and divide that rate by the number of days the employee actually works (hardly no one works 6 days a week) or
- It doesn't matter if the employee's regularly scheduled hours are five, 8-hours days per week or four, 10 hour days per work. Their weekly work hours are divided by 6, as if they work 6 days per week, and they are paid accordingly.
- According to the formula used in both the existing policy and the proposed policy, it doesn't matter if the employee works two 20-hour days per week or five 8-hours days per week; the fractional work week hours are divided by 6 days and that's the back pay.

Back Pay Agreements

The Oneida Law Office has processed forty (40) back pay agreements under the equivalent of section 306.4-3(b)(2) in the current . The statistics are provided below:

	Terminations	Involving use of (b)(2)
Terminations	16	13
Positive Test Results	6	6
Suspensions	17	17
Other	1	0
Total	Total 40	36

As the statistics indicate, the fractional formula has been used in the vast majority of back pay cases and is not simply for short term separations such as suspensions and positive drug test results.

Alternative 1. Additional Language for Scheduled Hours

One alternative would be to include additional language to require that scheduled days be paid in full. Sample language is below:

(2) If the involuntary separation period involves a fractional week, the indemnity shall be paid for the hours the employee was scheduled to work. If this information is not available, the indemnity shall be paid for each day of such week at the rate of one-sixth (1/6) of the weekly indemnity.

This proposed change would help to alleviate the feelings that employees are getting less than the employee would have gotten if the separation had not happened. However this would not solve the need for a formula as this could only be applied to employees that already had a schedule set. For longer separations, like a termination, an employee is not likely to be scheduled during the entire back pay portion.

Alternative 2. Formula Using Work Average

In speaking with several departments, most Nation employees do not work six (6) days a week, but average between four (4) and five (5) days. It would be easier to calculate the average number of hours worked and use that to determine the fractional week. Additionally, this would not punish an employee whose back pay period partially includes a Nation-wide increase in pay. Sample language is below:

(2) If the involuntary separation period involves a fractional week, the indemnity shall be ~~paid for each day of such week at the rate~~ determined by this section.
(a) the average number of hours worked immediately prior to the involuntary separation shall be determined.
(b) the indemnity shall be paid for each day of a fractional week at the rate of the average number of hours worked. ~~of one sixth (1/6) of the weekly indemnity.~~

In speaking with the Law Office, the average number of hours worked would be a number easily acquired.

It is suggested that if this alternative is selected that immediately be replaced with a definitive time period.

Alternative 3. Return to the pre 2014 amendments

The 2010 version of Back Pay stated:

4-1. Back Pay Period. Calculation of back pay begins on the day the employee is suspended or terminated and ends on the day the employee returns to work, due to either the end of the suspension period or reinstatement.

(a) If the employee is offered reinstatement but refuses to return to work, the back pay period ends on the date the offer of reinstatement was made.

(b) **The employee shall be paid according to the schedule or the average number of hours worked immediately prior to suspension or termination.**

For instance, if the employee observed a reduced-hour schedule at the time of termination, back pay shall be calculated according to the same schedule.

This alternative removes the formula entirely. However, the 2014 amendments were made, in part, to ensure that employees with poor attendance records were not given more than what the employee would have received if the separation did not occur.

It is suggested that if this alternative is selected that immediately be replaced with a definitive time period.

Alternative 4. Keep the current language

Back pay is a special feature the Oneida Nation provides to its employees. The 2014 amendments were made, in part, to ensure that employees with poor attendance records were not given more than what the employee would have received if the separation did not occur. Additionally, having a formula in the law helps to resolve back pay agreements quicker as the formula will be applied in all cases.

Requested action:

Determine which of the alternative(s) should be put into the law.

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 JAMES R. BITTORF
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 REBECCA M. WEBSTER, PHD
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MEMORANDUM

TO: Attorney Douglass McIntyre, Staff Attorney
 Legislative Reference Office

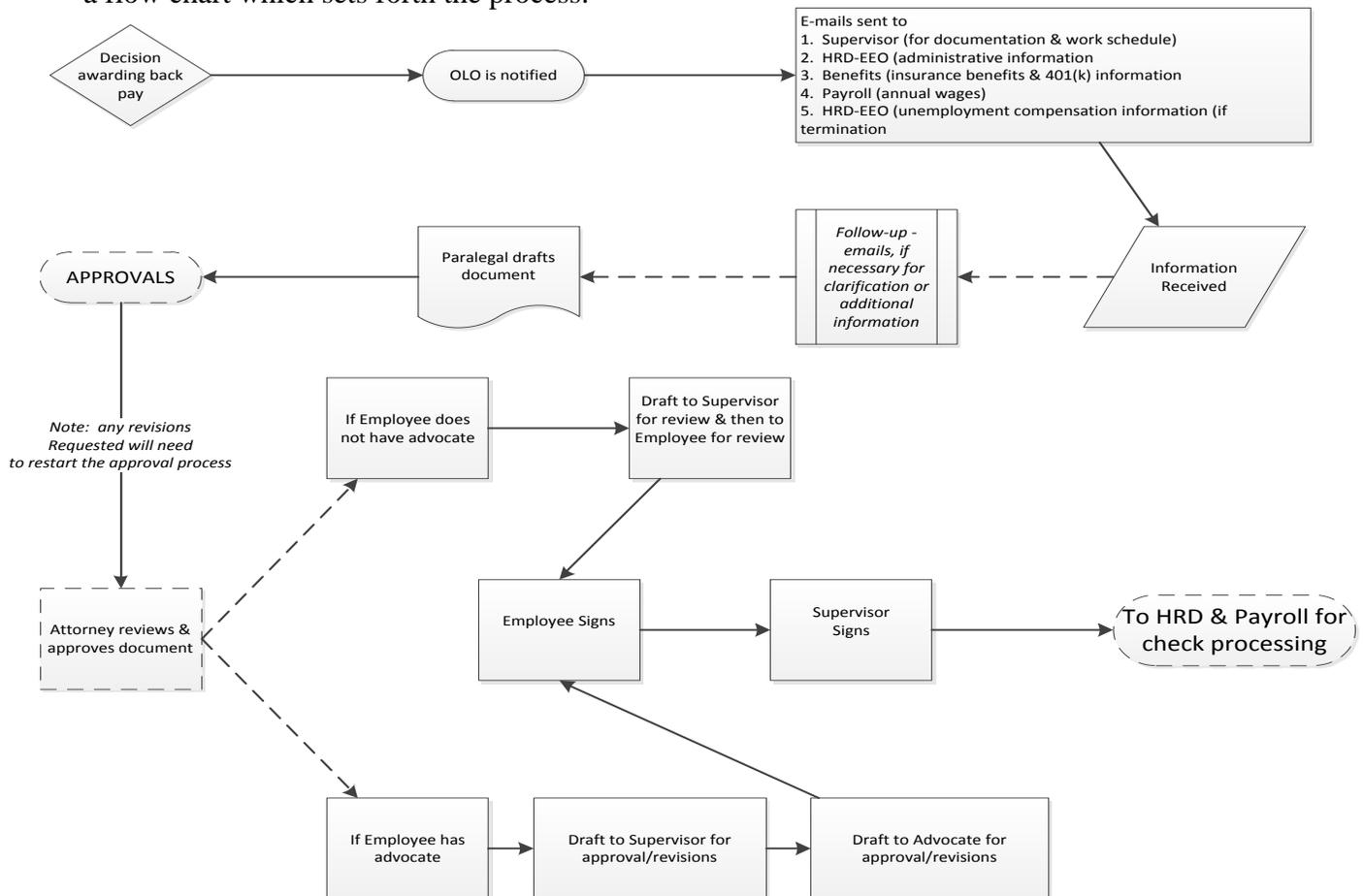
FROM: Jeri L. Bauman, Senior Paralegal

DATE: June 9, 2016

SUBJECT: Back Pay Policy

You indicated that the Legislative Operating Committee requested time frames for processing back pay awards. Specifically, you asked me to calculate the average time it takes to complete the back pay agreement from the time the Law Office received the decision awarding back pay to the date the check is issued.

Prior to setting forth the average time, it is necessary to understand the process the Law Office follows in order to complete a back pay award in accordance with the Back Pay Policy. Below is a flow chart which sets forth the process.



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Back Pay Policy

I have reviewed fifty of most recent back pay agreements that have been processed through this office. During this time period the back pay awards range from suspensions (52%), terminations (34%) and negative alcohol/drug testing results (14%). It is important to note, that from an employee's perspective, the time frame for the process would start from the date the employee became eligible for back pay, such as the date of the decision awarding back pay or negative alcohol/drug testing results, and not the date the Law Office received notice of the decision awarding back pay.

From the date of the decision awarding back pay to the date the Law Office received notice of the decision, the minimum days for the Law Office to receive a notice of a back pay award was "0" days and the maximum amount of days was "95," with an overall average of 13 days. Of the 50 cases, the Law Office received said notice from various parties as follows¹:

Employee (or his/her advocate)	34%
Supervisor (or his/her advocate)	30%
HRD/EEO	22%
Area Manager	12%
Appeals Commission	2%

As the above flow chart indicates, the Law Office sends e-mails to the Supervisor (for work schedule and tips information), HRD-EEO (for administrative information such as employee number, job code, date of hire, etc.), Benefits (for insurance and 401(k) benefits information), Central Payroll (for wage information) and in cases of termination, HRD-EEO (for unemployment compensation information). The average response time for each contact is as follows:

	Days
Supervisor ²	4
HRD-EEO (administrative information)	1
Benefits	4
Central Payroll	1
HRD-EEO ³ (Unemployment compensation information)	12

Upon receipt of the information requested above, an agreement is drafted which sets forth the calculation of back pay pursuant to the Back Pay Policy. The draft is first sent to the Supervisor for his/her review. Below is the breakdown of average time from receipt of the decision by the Law Office to the date the first draft of the Back Pay Agreement is sent to the Supervisor.

¹ With the exception of 1 or 2 cases reviewed, the Law Office was not a participant in the actual disciplinary/grievance process and therefore relies on the Supervisor to notify the Law Office of a back pay decision since the Supervisor is a party in the disciplinary/grievance process. However, it has been discovered that in some cases in which an Area Manager has overturned a disciplinary action, the Supervisor is not always included in the notification. Also, prior to the Judiciary, the Supervisor was not a party to the grievance action before the Personnel Commission or Appeals Commission (the Area Manager was a litigant along with the Employee).

² This average is for the first response received from the Supervisor, and does not include follow-up communications that may be necessary for clarification/questions or additional information needed to complete the back pay agreement.

³ Unemployment compensation information is required under the Back Pay Policy since its revision in 2014. HRD-EEO contacts the State Unemployment Office directly.

Page 3
Back Pay Policy

	Days
Alcohol/Drug	12
Suspension	15
Termination	26
Overall Average	18

If the Employee is represented by an attorney or advocate, the draft Back Pay Agreement is then sent to the attorney/advocate for review prior to signatures⁴.

Upon approval of the draft Back Pay Agreement by both the Supervisor and the Employee, the agreement must be signed prior to processing by Payroll. The obtaining of signatures takes an average of 3 days. Once both parties have signed the Back Pay Agreement it is forwarded to HRD and then on to Payroll for the issuance of an "On Demand" check. The data shows that this final step, on average, takes 3 days.⁵

⁴ Should the Employee or the attorney/advocate request modifications to the draft agreement, an approval from the Supervisor is necessary.

⁵ On Demand checks are not printed on Wednesdays during the normal Payroll cycle. Holidays and end-of-year processing also affect the timeline.

Chapter 306
BACK PAY

1
2
3
4 306.1. Purpose and Policy
5 306.2. Adoption, Amendment, Appeal
6 306.3. Definitions

7 306.4. Back Pay Calculation
8 306.5. Back Pay Process

9

10
11 **306.1. Purpose and Policy**

12 306.1-1. The purpose of this law is to set forth standards used in the calculation of back pay for
13 all employees of the Nation in accordance with the Nation’s law.

14 306.1-2. It is the policy of the Nation to have consistent and standard procedures for the
15 management of employee back pay.

16
17 **306.2. Adoption, Amendment, Appeal**

18 306.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-24-06-PP
19 and amended by resolutions BC-06-23-10-F, BC-08-13-14-C and BC_____.

20 306.2-2. This law may be amended or repealed by the Oneida Business Committee or the
21 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures
22 Act.

23 306.2-3. Should a provision of this law or the application thereof to any person or circumstances
24 be held as invalid, such invalidity shall not affect other provisions of this law which are
25 considered to have legal force without the invalid portions.

26 306.2-4. In the event of a conflict between a provision of this law and a provision of another
27 law, the provisions of this law shall control.

28 306.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

29
30 **306.3. Definitions**

31 306.3-1. This section shall govern the definitions of words and phrases used within this law. All
32 words not defined herein shall be used in their ordinary and everyday sense.

33 (a) “Advocate” means a non-attorney person as provided by law and other person who is
34 admitted to practice law and is presented to the court as the representative or advisor to a
35 party.

36 (b) “Back pay” means money damages owed to the Employee for a salary or wage to
37 ~~make~~compensate the employee ~~whole~~ as determined by the formulas set forth within this
38 law.

39 (c) “Consequential Damages” means damages that are not a direct and immediately result
40 of an act, but a consequence of the initial act, including but not limited to penalties on
41 early withdrawal of retirement account.

42 (d) “Consultant” means a professional who is contracted externally whose expertise is
43 provided on a temporary basis for a fee.

44 (e) “Earnings” includes vacation/personal time, shift differential, holiday pay, merit
45 increases, bonuses and incentives, employment benefits and income received during the
46 back pay period.

47 (f) “Employee” means any individual who is employed by the Nation and is subject to the
48 direction and control of the Nation with respect to the material details of the work
49 performed, or who has the status of an employee under the usual common law rules
50 applicable to determining the employer-employee relationship. “Employee” includes, but

51 is not limited to; an individual employed by any program or enterprise of the Nation, but
52 does not include elected or appointed officials or individuals employed by a Tribally
53 Chartered Corporation. For purposes of this law, individuals employed under an
54 employment contract as a limited term employee are employees of the Nation, not
55 consultants.

56 (g) "Involuntarily separated" means an employee removed from employment through
57 whatever means, other than a layoff, by the employer. This shall include, but is not
58 limited to, investigative leave, suspension or termination.

59 (h) "Judiciary" means the judicial system that was established by Oneida General Tribal
60 Council resolution GTC-01-07-13-B to administer the judicial authorities and
61 responsibilities of the Nation.

62 (i) "Nation" means the Oneida Nation.

63 (j) "Punitive Damages" means monetary compensation awarded to an injured party that
64 goes beyond that which is necessary to compensate the individual for losses and that is
65 intended to punish the other party.

66 **306.4. Back Pay Calculation**

67 **306.4-1. Back Pay Limitations.** Back pay shall only include the items identified in this Section
68 as they relate to the employee. Back pay shall include and be subject to the following:

69 (a) *Vacation/Personal Time Accrual.* Employees shall receive prorated credit for
70 vacation/ personal time which would have accrued during the back pay period.

71 (1) Reinstated employees shall be credited for vacation/ personal time. If the
72 crediting of vacation/personal time would result in the employee exceeding the
73 accrual cap pursuant to the Nation's laws, rules and policies, then any amount
74 over that cap shall be provided as a cash payout. Non-reinstated employees shall
75 be paid out vacation/personal time in lieu of crediting personal/vacation time.

76 (b) *Shift Differential.* Shift differential shall be included in the back pay amount to the
77 extent it is a part of the employee's regularly scheduled hours.

78 (c) *Tips.* If the employee received pooled tips at the time of involuntary separation, tips
79 shall be included in the total back pay amount at the same tip rate that other employees in
80 the same position and on the same shift received on the same dates.

81 (1) If the employee received individual tips at the time of involuntary separation,
82 the employee shall be ineligible for tips during the back pay period.

83 (d) *Holiday Pay.* Holiday pay shall be included in the back pay amount to the extent the
84 employee would have received such pay if the employee had not been involuntarily
85 separated.

86 (e) *Merit Increases.* The hourly rate used to calculate back pay shall be increased
87 according to the merit increase system/standard used by the employee's supervisor during
88 the back pay period and will include any increases from Oneida Business Committee or
89 General Tribal Council directives.

90 (1) The effective date of the employee's merit increase shall be the same as the
91 effective date for other employees in the same department. Retroactive increases
92 shall be calculated back to the retroactive date used for other employees in the
93 same department.

94 (2) The most recent performance review issued to the employee prior to being
95 involuntarily separated shall be used to determine the level of merit increase.
96 However, if the employee appealed the performance review to the Human
97

98 Resource Department Manager prior to involuntary separation, a method under
99 the Nation's laws, rules and policies shall be used to determine the merit increase.

100 (f) *Bonuses and Incentives.* All bonus and incentive payments for which the employee
101 would have been eligible during the back pay period shall be included in the total back
102 pay amount, except for non-monetary gifts distributed by the Nation to all employees
103 (e.g. winter gift) or other non-monetary benefits, such as clothing allowance.

104 (g) *Employment Benefits.* Employee benefits shall be subject to the provisions in this
105 section.

106 (1) *Insurance Benefits.* Coverage by the Nation for health insurance, dental
107 insurance, vision insurance, life insurance, long-term disability and short-term
108 disability coverage shall continue during an involuntary separation, except in the
109 event of a termination where the coverage will discontinue. The Nation shall
110 deduct the employee's share of premiums paid from any back pay award.

111 (A) If the employee's circumstances have changed during the back pay
112 period and such circumstances affect the employee's insurance needs, the
113 employee shall notify the Nation of such changes at the time of
114 reinstatement.

115 (B) An employee who is reinstated shall sign a waiver from Contract Health
116 authorizing a review of the back pay period to determine if Contract Health
117 services were rendered. If Contract Health determines services were
118 rendered during the back pay period, an Employee shall timely submit
119 insurance information to Contract Health in order for Contract Health to
120 retroactively bill the insurance provider to recoup funds for those services
121 rendered during the back pay period.

122 (2) *Flexible Benefit Plan Contributions.* If a terminated employee was
123 contributing to the Nation's flexible benefit plan at the time of termination, the
124 status of the employee's flex benefit plan shall be subject to the provisions of the
125 Internal Revenue Code.

126 (3) *Retirement Benefit Contributions.* In the event the employee was participating
127 in the Nation's retirement plan at the time of involuntary separation, the employee
128 shall be responsible for contacting the retirement plan administrator and
129 reactivating contributions.

130 (A) The employee may choose whether to have the employee's contribution
131 to the retirement plan that would have been made during the back pay
132 period deducted from the total back pay amount and deposited into the
133 employee's retirement account.

134 (B) If the employee was eligible for employer matching contributions at the
135 time of involuntary separation and the employee chooses to make a
136 contribution through back pay, the Nation shall contribute the employer
137 match into the employee's retirement account.

138 (C) If the employee was not participating in the Nation's retirement plan or
139 chooses not to make contributions through the back pay process, then the
140 Nation shall not make employer match contributions into the employee's
141 retirement account.

142 (h) *Income Received During the Back Pay Period.*

143 (1) *Unemployment Benefits.* Depending upon the unemployment compensation
144 financing option elected by the Nation, either:

145 (A) Any unemployment compensation paid by the Nation to the State of
146 Wisconsin for an involuntarily separated employee shall be deducted from
147 the employee's back pay award; or

148 (B) The employee is directly responsible for the reimbursement to the State
149 of Wisconsin. The Nation shall send a copy of the completed and signed
150 settlement agreement to the appropriate state department. The State then
151 may determine the amount, if any, of unemployment compensation benefits
152 received during the back pay period should be repaid.

153 (2) *Income Received Through Employment.* Except as provided in Section 4-
154 1(h)(2)(B), income earned by an employee during the back pay period shall be
155 deducted from the total back pay amount.

156 (A) The employee shall provide information to verify the amount of or lack
157 of earned income and sign an affidavit attesting to the amount of or lack of
158 earned income.

159 (B) If the employee worked an additional job prior to being involuntarily
160 separated and continued working in the same capacity, the income earned
161 from that employment shall not be deducted from the total back pay amount
162 to the extent that the income is consistent with pre-involuntary separation
163 earnings. Where the employee worked the additional job, the employee
164 shall provide information from the employer to verify the income earned
165 before and during the back pay period.

166 306.4-2. *Payments Not Allowed.* The Nation shall not include the following in any back pay
167 amount:

- 168 (a) Punitive damages;
- 169 (b) Consequential damages;
- 170 (c) Attorney's or advocate's fees;
- 171 (d) Time when the employee would not have been eligible to work;
- 172 (e) Monies normally paid for additional duties while working where an alternate
173 employee assumed that function while the employee was involuntarily separated, unless
174 the additional duties are a part of such involuntarily separated employee's regular
175 schedule.

176 306.4-3. *Back Pay Period.* Calculation of back pay begins on the day the employee is
177 involuntarily separated and ends on the day the employee is reinstated.

178 (a) If the employee is reinstated but refuses to return to work, the back pay period ends on
179 the date reinstatement would have taken effect, but was refused by the employee.

180 (b) Back pay shall be calculated by taking the employee's earnings during the fifty-two
181 (52) week period immediately preceding the date of the involuntary separation and divide
182 that amount by the number of weeks worked.

183 (1) If the employment prior to the involuntary separation was less than fifty-two
184 (52) weeks, the average weekly wage shall be calculated by taking the employee's
185 earnings and divide that amount by the number of weeks worked.

186 (2) If the involuntary separation period involves a fractional week, the indemnity
187 shall be paid for each day of such week at the rate of one-sixth (1/6) of the weekly
188 indemnity.

189
190 **306.5. Back Pay Process**

191 306.5-1. The Oneida Law Office shall develop necessary forms and procedures for the purpose

192 of implementing this law.
193 306.5-2. Internal departments shall cooperate as necessary with the Oneida Law Office in
194 providing information needed to assemble and prepare the back pay agreement.
195 306.5-3. A reasonable effort shall be made to complete the back pay agreement within thirty
196 (30) calendar days, starting the day after the party to the grievance action provides to the Oneida
197 Law Office a judgment ordering back pay or the results of an investigation or test showing the
198 employee is cleared of any wrongdoing.
199 306.5-4. An employee not receiving back pay in accordance with the back pay agreement may
200 seek enforcement by the Judiciary.

201
202 *End.*

204 Adopted - BC-5-24-06-PP
205 Amended - BC-06-23-10-F
206 Amended - BC-08-13-14-C



Legislative Operating Committee July 20, 2016

Community Support Fund Policy Amendments

Submission Date: 6/25/15

Public Meeting: 10/29/15
 Emergency Enacted:

LOC Sponsor: David P. Jordan

Summary: *This item was brought forward to add language found in BC Resolution 12-11-13-D into the policy to clarify that someone who receives assistance from the Fund program does not have to cost share if they are at or below the federal Poverty Guidelines. The Fund operators have requested additional changes.*

- 7/1/15 LOC:** Motion by David P. Jordan to add the Community Support Fund Policy Amendments to the active files list; seconded by Tehassi Hill. Motion carried unanimously.
- 7/22/15 OBC:** Direct LOC to make requested changes to the Community Support Fund. Item deferred to the next regular Business Committee meeting.
- 8/12/15 OBC:** Direct LOC to make requested changes to the Community Support Fund. Item sent to a Business Committee special meeting agenda at the adjournment of the meeting.
- 8/17/15 OBC:** Direct LOC to make requested changes to the Community Support Fund. Motion by Jennifer Webster to direct the requested changes to the Community Support Fund Policy to the Legislative Operating Committee and for proposed changes due back to the September 23, 2015 regular Business Committee meeting, seconded by David Jordan. Motion carried with one opposed and one abstention.
- 9/2/15 LOC:** Motion by Jennifer Webster to forward the current draft of the Community Support Fund (Policy) for the required analyses; seconded by Fawn Billie. Motion carried unanimously.

- 9/16/15 LOC:** Motion by David P. Jordan to accept the update on the Community Support Fund Policy Amendments and forward to the Oneida Business Committee; seconded by Fawn Billie. Motion carried unanimously.
- 9/23/15 OBC:** Motion by David Jordan to accept the update from the Legislative Operating Committee regarding the status of the Community Support Fund amendments, seconded by Brandon Stevens. Motion carried unanimously.
- 10/7/15 LOC:** Motion by Jennifer Webster to forward the Community Support Fund Policy Amendments to a public meeting to be held on October 29, 2015 at 12:15 p.m.; seconded by David P. Jordan. Motion carried unanimously.
- 10/29/15:** Public Meeting held.
- 11/18/15 LOC:** Motion by David P. Jordan to accept the public meeting comments regarding the Community Support Fund Policy Amendments and defer to a LOC work meeting to be held tentatively on December 4, 2015; seconded by Fawn Billie. Motion carried unanimously.
- 12/4/15:** Work meeting held. Attendees include David P. Jordan, Brandon Stevens, Jennifer Webster, Danelle Wilson, Rhiannon Metoxen, Nicolas Reynolds, Trina Schuyler, Nancy Barton, Bradley Graham, Bill Graham, Cathy Metoxen, Candice Skenandore, Tani Thurner, Maureen Perkins, Douglass McIntyre.
- 1/15/16:** Work Meeting Held. Attendees include David P. Jordan, Jennifer Webster, Fawn Billie, Tehassi Hill, Trina Schuyler, Nancy Barton, Bradley Graham, Bill Graham, Leyne Orosco, Cathy Metoxen, Douglass McIntyre.
- 2/3/16 LOC:** Motion by Fawn Billie to accept the draft of the Community Support Fund Policy Amendments, to forward to the Legislative Reference Office for an updated analysis and to the Finance Department for a fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.
- 7/6/16 LOC:** Motion by Tehassi Hill to adopt the agenda with the addition of the Membership Ordinance Emergency Amendments and the deletion of the Community Support Fund, deferring this item to the next LOC meeting; seconded by David P. Jordan. Motion carried unanimously.

Next Steps:

- Approve the adoption packet for the Community Support Fund Amendments; and
- Forward to the Oneida Business Committee for consideration.



Memorandum

To: Oneida Business Committee
From: Brandon Stevens, LOC Chairperson
Date: July 27, 2016
Re: Community Support Fund Amendments

Please find the following attached backup documentation for your consideration of the Community Support Fund Amendments:

1. Resolution: Adoption of Community Support Fund Amendments
2. Statement of Effect: Adoption of Community Support Fund Amendments
3. Fiscal Impact Statement
4. Community Support Fund Amendments Draft (redline with analysis)
5. Community Support Fund Amendments Draft (clean)

Overview

The attached resolution will adopt amendments to the Community Support Fund. Amendments were initially requested by a community member and further changes were requested by the operators of the Fund. These amendments:

- Re-title the Community Support Fund as a law instead of a policy;
- Clarify that the Fund is a fund of last resort;
- Provide an exception for cost sharing where an individual is at or below 175% of the federal poverty guidelines;
- Give the Operators of the Fund the ability to promulgate rules instead of SOPs to manage the Fund;
- Add new items to the list of “Items covered by the Fund”:
 - Utility Disconnections
 - Inpatient Treatment
 - Fire recovery/natural disaster assistance
 - Home renovations required for handicap accessibility
 - Family Medical Leave Act wage replacement
 - Social Security Disability Determination utility assistance
- Add new items to the list of “Items not covered by the Fund”:
 - Homeless lodging assistance,
 - Stabilization rent assistance,
 - Department of Correction re-entry assistance,
 - Health membership fees,
 - Food and personal care items

- Adds timeline and further requirements for appealing a funding decision;

Requested Action

Approve the Resolution: Adoption of Community Support Fund Amendments

BC Resolution _____*Adoption of Community Support Fund Amendments*

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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 Nation Constitution by the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee originally adopted the Community Support Fund Policy (Policy) on May 15, 1996, and made amendments on January 8, 1997 and December 11, 2013; and

WHEREAS, these amendments re-title the Fund as a law instead of a policy; and

WHEREAS, these amendments clarify that the Fund is a fund of last resort; and

WHEREAS, these amendments provide an exception for cost sharing where an individual is at or below 175% of the federal poverty guidelines; and

WHEREAS, these amendments give the operators of the Fund the ability to promulgate rules instead of SOPs to manage the Fund; and

WHEREAS, these amendments add new items to the list of “Items covered by the Fund”:

Utility disconnections

Inpatient treatment

Fire recovery/natural disaster assistance

Home renovations required for handicap accessibility

Family Medical Leave Act wage replacement

Social Security Disability Determination utility assistance; and

WHEREAS, these amendments add new items to the list of “Items not covered by the Fund”:

Homeless lodging assistance

Stabilization rent assistance

Department of Corrections re-entry assistance

Health membership fees

Food and personal care items; and

WHEREAS, these amendments add a timeline and further requirements for appealing a funding decision; and

WHEREAS, a public meeting on these amendments was held on October 29, 2015, in accordance with the Legislative Procedures Act.

NOW THEREFORE BE IT RESOLVED, that the attached amendments to the Community Support Fund are hereby adopted effective immediately.



Statement of Effect

Adoption of Community Support Fund Amendments

Summary

This resolution amends the Community Support Fund by re-titling the policy as a law, providing clarification to various sections of the law, providing the Fund operator with the rulemaking authority and adding additional items to the “items covered by the fund” and “items not covered by the fund” sections.

By Douglass A. McIntyre, Staff Attorney, Legislative Reference Office

Analysis from Legislative Reference Office

This resolution adopts amendments to the Community Support Fund, which was originally adopted as the Community Support Fund Policy on May 15, 1996, and amended on January 8, 1997 and December 11, 2013.

Amendments were initially requested by a community member and further changes were requested by the operators of the Fund and through the public meeting comments.

These amendments:

- Re-title the Community Support Fund as a law instead of a policy;
- Clarify that the Fund is a fund of last resort;
- Provide an exception for cost sharing where an individual is at or below 175% of the federal poverty guidelines;
- Give the Operators of the Fund the ability to promulgate rules instead of SOPs to manage the Fund;
- Add new items to the list of “Items covered by the Fund”:
 - Utility Disconnections
 - Inpatient Treatment
 - Fire recovery/natural disaster assistance
 - Home renovations required for handicap accessibility
 - Family Medical Leave Act wage replacement
 - Social Security Disability Determination utility assistance
- Add new items to the list of “Items not covered by the Fund”:
 - Homeless lodging assistance,
 - Stabilization rent assistance,
 - Department of Correction re-entry assistance,
 - Health membership fees,
 - Food and personal care items

- Add a timeline and further requirements for appealing a funding decision;

The intent of these amendments is to clarify various sections of the law and to add changes that were requested by the operators of the Fund. Additionally, the Fund has been re-titled as law and all references to the Oneida Tribe of Indians of Wisconsin have been changed to Oneida Nation in line with the secretarial election results.

A public meeting was held on October 29, 2015 in accordance with the Legislative Procedures Act.

Conclusion

There are no legal bars to adopting the resolution.

July 27, 2016



Community Support Fund Amendments

<i>Analysis by the Legislative Reference Office</i>					
Title	Community Support Fund Law (currently a policy)				
Sponsor	David P. Jordan	Drafter	Doug McIntyre	Analyst	Tani Thurner
Requester & Reason for Request	This item was brought forward by LOC Chair Brandon Stevens, to clarify an inconsistency between the Policy and the adopting resolution. Additional changes are also made to update/streamline the draft, including re-titling it as a law.				
Purpose	The Law identifies requirements for how funds may be disbursed to Oneida members who are facing emergency situations.				
Authorized/ Affected Entities	Governmental Services Division Director, Social Services Area (or designee) administers the Fund.				
Related Legislation	There are various laws/policies which identify how Tribal funds would be disbursed; however nothing is directly related.				
Enforcement & Due Process	Eligibility requirements; case manager decisions appealable to supervisor, then to area manager, then to the Judiciary.				
Public Meeting Status	A public meeting was held on October 29, 2015, and any comments received during the public comment period have been reviewed and considered by the LOC.				

Overview

In December 2013, amendments were adopted to the Community Support Fund Policy. The adopting Resolution (OBC #12-11-13-D) stated:

“the amendments to the Policy [...] specifically states that someone who receives assistance from the Fund program does not have to cost share if they are at or below the Federal Poverty Guidelines”

However the policy, as amended, did not specifically state that. The proposed amendments reconcile the policy with the adopting resolution, and additional changes are also made, including re-titling the policy as a law, as part of a broader change to rename existing Oneida policies into laws; since they are recognized as having the same legal effect. The new Law is scheduled to become chapter 204 of the Oneida Code of Laws.

Cost Sharing

The Community Support Fund law (Law) now defines “cost share” as “the portion of the assistance that the applicant is responsible for contributing” [204.3-1(f)]. Applicants are still required to cost share a percentage of the funds provided, but an exception is added: applicants whose household income is at or below 175% of the federal poverty guidelines are exempt from the requirement to cost share. [204.4-4(b)]

This means, for most households, that applicants only cost-share if they earn more than:

Household size	175% of Fed. Pov. Guidelines	Household size	175% of Fed. Pov. Guidelines	Household size	175% of Fed. Pov. Guidelines
1	\$20,790	4	\$42,525	7	\$64,277.50
2	\$28,035	5	\$49,770	8	\$71,557.50
3	\$35,280	6	\$57,015		

Two provisions related to cost-sharing are deleted, but similar requirements may still be established in

rules. The Law no longer states that:

- Persons who receive assistance for paying utilities must repay 50% of the funds received within 4 months, or else their per capita payments may be garnished. [Current policy, 6-3]
- Case managers must consider “the ability of the applicant to cost-share” as a factor used to determine the level of assistance an applicant may receive. [Current policy, 5-1(b)]

Rulemaking

- A definition for “Rule” is added – it means a set of requirements enacted in accordance with the Administrative Rulemaking law. [204.3-1(o)]
- The Social Services Area is still responsible for administering the Fund, but is now authorized to designate the operation of the fund to a department within its control. Fund operators must now promulgate rules for administering the fund, instead of SOPs. [204.4-1]
 - The rules are required to include the list of categories the fund covers (this appears to mean the items listed in 204.6-1) and to set caps (per event/household/person, depending on the category).
 - Rules may also include additional things not listed in the law which the fund will cover, as long as the rule does not conflict with this law.
- When determining the level of assistance that may be provided to an applicant, case managers must now consider the Fund’s “appropriate promulgated rules.” [204.5-1(d)]
- Currently, the Policy prohibits applicants from reapplying for the same catastrophic event, illness, injury or emergency event more than twice. Under the amendments, applicants are instead prohibited from reapplying for the same reason more than the limit stated within the Law or the Fund’s rules. [204.8-4(e)] There are three limits specifically identified in the Law, so unless additional limits are set out in rules, only the following will apply:
 - Inpatient treatment – a new limit is added: once per lifetime. [204.6-1(h)]
 - Security deposits – the law still limits it to one request per household. [204.6-2(c)]
 - Assistance with paying utilities - currently capped at once every three years; amendments reduce it to once every two years. [204.6-3]

Fund Coverage/Application

The Law includes lists of things that are specifically covered by the Fund, and of things that are specifically not covered. Several changes were made to both lists:

New Items specifically covered [204.6-1]	New Items specifically NOT covered [204.7-1]	Changes to items already covered by the Fund [204.6-1]
<ul style="list-style-type: none"> ➤ Utility Disconnections ➤ Inpatient Treatment ➤ Fire recovery/natural disaster assistance ➤ Home renovations required for handicap accessibility ➤ Family Medical Leave Act wage replacement ➤ Social Security Disability Determination utility assistance 	<ul style="list-style-type: none"> ➤ Homeless lodging assistance ➤ Stabilization rent assistance ➤ Department of Corrections re-entry assistance ➤ Health membership fees ➤ Food/personal care items. 	<ul style="list-style-type: none"> ➤ Instead of covering all health insurance payments, the Fund only covers COBRA Insurance Payments.” ➤ The Fund may cover the <u>purchase of medical- related equipment, supplies, or furniture</u>, instead of just the rental of medical equipment.

Other Changes to the Law

- 36 • Applicants are now all required to provide additional information to be eligible for assistance: sufficient
37 documentation of Tribal enrollment, and of all household income for the 30 business days (*i.e.* roughly 6
38 weeks) immediately before applying. [204.8-2(c) and (d)]
- 39 • Funds can now benefit Tribal members only and can no longer be provided:
- 40 ○ For minors who are eligible for enrollment but not enrolled [204.4-2], or
- 41 ○ When a non-Tribal member is applying on behalf of a Tribal member, unless the funds would
- 42 benefit the Tribal member only (*i.e.* funds could not be provided for things such as rent, utility
- 43 bill assistance, etc.; if non-Tribal members lived in the same household as the Tribal member).
44 [204.4-2]
- 45 • Currently, the only non-Oneida persons who may apply for assistance on behalf of an Oneida member
46 are the member’s parents and legal guardians. The amendments also allow non-Tribal persons with
47 “legal responsibility” for a Tribal member to apply. [204.4-2(c)]
- 48 • The Governmental Services Division Director must report quarterly to the OBC, instead of semi-
49 annually. [204.4-1(b)]
- 50 • Fund operators can limit (instead of just denying) benefits to applicants who have elected not to be
51 covered by employer benefits such as disability or health insurance. [204.4-6]
- 52 • Timelines and requirements for appealing a funding decision are added:
- 53 ○ The case manager’s decision must be appealed within 60 days.
- 54 ○ The case manager’s supervisor must review the appeal within 10 business days.
- 55 ○ If the supervisor upholds the decision, the supervisor’s decision to uphold must be appealed to the
56 Area Manager within 30 days. [204.9]
- 57 ○ The Law does not identify a timeline for appealing the Area Manager’s decision to the Judiciary.
- 58 • The definition of “applicant” is changed to clarify that it means the subject of an application, not a person
59 applying on behalf of another person. [204.3-1(a)]
- 60 • The Law lists different examples of a catastrophic illness/injury that would involve continuing treatment
61 due to a chronic serious health condition. [204.3-1(e)(2)]
- 62 • Currently, the Fund may be used for a “catastrophic event, illness, or injury.” The amendments add that
63 assistance also covers an “emergency event.” [204.1 and 204.3-1(g)]
- 64 • A definition for “Reservation” is deleted as the term is not used.[Current policy, 204.3-1(n)]

65 **Other**

66 To reflect the 2015 Constitutional amendments, several references to the “Tribe” are replaced with
67 references to the “Nation,” and a definition for “Nation” is added. [204.3-1(n)] Various other minor revisions
68 were made to improve the language and organization of the document, and to ensure this document complies
69 with standard drafting and formatting practices. These changes do not affect the content of the law.

70 **Considerations**

71 The following are issues the LOC may want to consider:

- 72 • 204.6-2 states that for security deposits, “only one request per household shall be considered” – but this
73 may cause confusion - It may be helpful to clarify whether this means one request at a time, or one
74 request ever, etc; or for how long only that one request would be considered.
- 75 • The fund may now not be used for “stabilization rent assistance” or “Department of Corrections re-entry
76 assistance” but it is not clear what either of these terms means or what is intended. This may make it
77 difficult for a reader to understand what is intended. [204.7-1]
- 78

Chapter 204
Community Support Fund Policy

<u>204.1. Purpose and Policy</u>	10	<u>204.5. Priorities for Consideration</u>
<u>204.2. Adoption, Amendment, Repeal</u>	11	<u>204.6. Items Covered by the Fund</u>
<u>204.3. Definitions</u>	12	<u>204.7. Items not Covered by the Fund</u>
<u>204.4. Responsibilities, Eligibility and Qualifications</u>	13	<u>204.8. Application Requirements</u>
	14	<u>204.9. Appeal</u>

<u>204.1. Purpose and Policy</u>
<u>204.2. Adoption, Amendment, Repeal</u>
<u>204.3. Definitions</u>
<u>204.4. Responsibilities, Eligibility and Qualifications</u>
<u>204.5. Priorities for Consideration</u>
<u>204.6. Items Covered by the Fund</u>
<u>204.7. Items not Covered by the Fund</u>
<u>204.8. Application Requirements</u>
<u>204.9. Appeal</u>

27 **Article I.**

204.1. Purpose and Policy

204.1-1. Purpose. The purpose of this Policylaw is to assist the greatest number of Tribal members of the Oneida Tribe of Indians of WisconsinNation who apply for assistance to the Community Support Services Fund in times of a catastrophic event, illness ~~or,~~ injury or emergency event when no other resources for assistance exist.

204.1-2. Policy. It is the policy of the Oneida Tribe of Indians of WisconsinNation to assist their people in a time of need after a catastrophic event, illness ~~or,~~ injury or emergency event, when there is no other assistance available or all other assistance has been exhausted.

Article II. 204.2. Adoption, Amendment, Repeal

204.2-1. This Policy is law was adopted by the Oneida Business Committee by resolution #BC-5-15-96-A; and amended by resolution #resolutions BC-01-08-97-G, and amended by resolution #BC-12-1-13-D and BC-_____.

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

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

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

204.2-5. This Policylaw is adopted under authority of the Constitution of the Oneida Tribe of Indians of WisconsinNation.

Article III. 204.3. Definitions

204.3-1. This artielesection shall govern the definitions of words and phrases used within this policylaw. All words not herein-defined herein shall be used in their ordinary and everyday sense.

(a) "Applicant" shall meanmeans the person applyingsubject of the application for assistance for themselves or on behalf of another person who is otherwise unable to do so due to age or incapacity.

- 60 | (b) “Business days” ~~shall mean~~means Monday through Friday 8:00 a.m. to 4:30 p.m.,
61 | ~~except for recognized~~excluding Nation holidays ~~as listed on the official calendar of the~~
62 | ~~Tribe.~~
- 63 | (c) “Case manager” ~~shall mean the~~means an employee ~~of the Social Services Area~~
64 | responsible for administering ~~Community Support Services Fund benefits according to~~
65 | ~~the established guidelines set forth below.~~
- 66 | (d) “Catastrophic event” ~~shall mean~~means a natural or man-made incident, which results
67 | in substantial damage or loss requiring major financial resources to repair or recover (i.e.
68 | house fire, tornado, flood, or other disaster).
- 69 | (e) “Catastrophic illness or injury” ~~shall mean~~means a serious debilitating illness, injury,
70 | impairment, or physical or mental condition that involves:
71 | (1) in-patient care; or
72 | (2) a period of continuing treatment due to a chronic serious health condition
73 | (~~asthma, diabetes, epilepsy, etc.~~);such as chemotherapy/radiation, dialysis,
74 | daily/weekly therapy resulting from trauma, etc.); or
75 | (3) a period of illness or injury that is long-term due to a condition for which
76 | treatment may be ineffective (stroke, terminal disease, etc.); or
77 | (4) ~~receipt of~~ multiple treatments either for restorative surgery after an accident or
78 | other injury, or for a chronic condition. (i.e. cancer or kidney disease)
- 79 | (f) “Cost share” ~~shall mean~~means the ~~request to have the applicant agree to contribute to~~
80 | ~~the cost~~portion of the assistance ~~given that the applicant is responsible for contributing.~~
- 81 | (g) “Emergency” ~~shall mean~~ event” means a situation that poses an immediate risk to
82 | health, life, safety, property or environment. Emergencies require urgent intervention to
83 | prevent further illness, injury, death, or other worsening of the situation.
- 84 | (h) “Emergency medical travel” ~~shall mean~~means an unexpected serious health situation
85 | or occurrence, requiring the immediate presence of immediate family. (i.e., end of life
86 | situation, life support, etc.)
- 87 | (i) “Fund” ~~shall mean~~means the Community Support ~~Services~~ Fund.
- 88 | (j) “Immediate family” ~~shall mean~~means that group of persons who make up a family
89 | unit normally defined as husband, wife, children, sister, brother, in-laws, step family,
90 | grandparents and grandchildren, and/or a person who has legal responsibility for ~~a~~
91 | ~~member of their immediate family~~the applicant.
- 92 | (k) “Legal guardian” ~~shall mean~~means a person who has the legal authority to care for
93 | the personal and property interests of another person granted through Court order.
- 94 | (l) “Legal responsibility” ~~shall mean~~means specific duties imposed upon a person to care
95 | or provide for another including liability for personal obligations as granted through a
96 | Power of Attorney or Court order.
- 97 | (m) “Major medical surgery” ~~shall mean~~means a surgical procedure that carries a degree
98 | of risk to the patient’s life, or the potential for severe disability if something goes wrong
99 | during surgery. It is a surgical procedure that usually requires a patient to be put under
100 | general anesthesia and given respiratory assistance because he or she cannot breathe
101 | independently.
- 102 | (n) “Nation” means the Oneida Nation.
- 103 | (o) “Rule” means a set of requirements enacted in accordance with the Administrative
104 | Rulemaking law.
- 105 | ~~(n) “Reservation” shall mean all the lands and waters within the exterior boundaries of~~

~~the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.~~

~~(o) "Severity" shall mean the verified rate or level of need.~~

~~(p) "Shelter" shall mean mortgage payments or rent payments.~~

~~(q) "Tribal" or "Tribe" shall mean the Oneida Nation Tribe of Indians of Wisconsin.~~

~~(r) "Verification" shall mean the evidence or proof that confirms the accuracy or truth of the alleged catastrophic event, illness or injury and of Tribal membership (i.e., estimates, photographs, doctor statements/report, check stubs, tribal identification card/letter, etc.).~~

Article IV. Social Service

204.4. Responsibilities, Eligibility and Qualifications

204.4-1. The Social Services Area of the Governmental Services Division shall ~~create and administer the Fund.~~

~~(a) The Social Services Area shall create standard operating procedures~~ be responsible for the administration operation of the Fund, but may designate the operation of the Fund to a department within its control.

(a) The operators of the Fund shall promulgate rules, for the administration of the Fund that are consistent with this law. The ~~standard operating procedures~~ rules:

(1) shall include the list of categories the Fund covers and a cap that sets the amount of assistance per event/ per household, except for funeral expenses which shall be set per event/ per person.

(2) may include additional items not listed in section 204.6, as long as the rule does not conflict with this law.

~~(b) The Governmental Services Division Director shall report semi-annually~~ quarterly to the Oneida Business Committee. The report shall include, but is not limited to, the amount of funds paid out under each category.

~~(c) The Social Services Area~~ or designee shall ensure that the Tribal membership is informed of what assistance is available through the Fund, how to apply for assistance, and specify who is eligible for assistance.

204.4-2. Eligibility for assistance provided under the Fund is reserved for enrolled Tribal members. Applications may be made by a non-tribal ~~parent or legal guardian~~ member on the behalf of an enrolled Tribal member, ~~or minor eligible for enrollment~~, provided the requested funds will benefit the Tribal member ~~or child~~ only and the non-tribal member has one of the following relationships to the applicant:

(a) is a parent of the applicant

(b) is the legal guardian of the applicant

(c) has legal responsibility for the applicant

204.4-3. Residency within the State of Wisconsin is not a prerequisite for assistance, except for requests for a security deposit in accordance with sSection 204.6-2.

204.4-4. The Fund is a fund of last resort and provides assistance when there is no other financial assistance available.

~~(a) Applicants will be asked to contribute a percentage of the~~ or all other assistance ~~being requested.~~

~~(b) has been exhausted.~~ Applicants shall first seek out other resources that can meet the needs of their request. Proof of requesting assistance from other sources shall be provided with the

152 application.

153 (a) Applicants shall cost share a percentage of the assistance being requested.

154 (b) Exception. Applicants whose household income is at or below one hundred and
155 seventy-five percent (175%) of the federal poverty guidelines shall be exempt from the
156 obligation to cost share.

157 204.4-5. The following types of catastrophic events, illnesses or injuries qualify an applicant for
158 assistance:

159 (a) Terminally ill

160 (b) Physically challenged or incapacitated

161 (c) Major medical surgery

162 (d) Life threatening (i.e. cancer, AIDS, stroke, disabling injuries due to motor vehicle
163 accident, etc.)

164 (e) Natural disaster (i.e. tornado, fire, flood, etc.)

165 (f) Death in immediate family

166 204.4-6. ~~A Case Manager reserves~~The operators of the Fund reserve the right to deny or limit
167 benefits to applicants who have elected not to be covered by employer benefits such as disability
168 or health insurance.

169 204.4-7. All payments shall be provided directly to the service provider. However, payments
170 for funeral travel shall be reimbursed to the applicant.

171 204.4-8. Assistance available under the Fund is subject to change according to fiscal year
172 funding levels.

173 204.4-9. ~~Tribal~~Oneida programs and enterprises are not eligible for these funds.

174

175 ~~Article V~~204.5. Priorities for Consideration

176 204.5-1. The case ~~Managers~~manager shall determine the level of assistance to be provided based
177 on:

178 (a) Severity of event, illness ~~or,~~ injury or emergency event

179 (b) ~~Ability of applicant to cost share~~

180 ~~(c) Cost (usual and customary fees)~~

181 ~~(d) Amount of time elapsed since catastrophic event, illness ~~or,~~ injury~~ or emergency
182 event occurred

183 (d) The Fund's appropriate promulgated rules

184 204.5-2. The case manager shall assess each individual case, prioritize and assist with
185 immediate needs. Priorities are as follows:

186 (a) Life-threatening emergency requests

187 (b) Emergency medical travel

188 (c) Other needs

189

190 ~~Article VI~~204.6. Items Covered by the Fund

191 204.6-1. Requests for assistance from the Fund ~~must~~shall be tied to or be a result of a
192 catastrophic event, illness ~~or,~~ injury or emergency event. Upon verification of a catastrophic
193 event, illness ~~or,~~ injury or emergency event, the Fund may be used for the following:

194 (a) ~~Health insurance, including~~ COBRA Insurance Payments

195 (b) Prescriptions not available through an HHS Indian Health Service clinic

196 (c) Medical transportation/emergency medical travel ~~(including vehicle repairs)~~

197 (d) ~~Rental of medical~~Medical-related equipment, supplies, or furniture

- 198 (e) Medical bills (dental, optical, hospital) not covered by insurance
199 (f) ~~Shelter~~Mortgage payments and utilities~~rent payments (including security deposits),~~
200 where no other resources exist (~~including security deposits~~)
201 in accordance with section 204.6-2. Requests
202 (g) Utility disconnections in accordance with section 204.6-3
203 (h) Inpatient Treatment (with a limit of once per lifetime)
204 (i) Fire recovery/natural disaster assistance
205 (j) Home renovations required for handicap accessibility
206 (k) Family Medical Leave Act wage replacement
207 (l) Social Security Disability Determination utility assistance
208 (m) Travel expenses to arrange or attend a funeral for immediate family members outside
209 the state where an applicant resides, in accordance with section 204.6-4.
210 204.6-2. Security deposit. The Fund shall only provide assistance for a security deposit ~~shall~~
211 ~~be~~when it is tied to or ~~be~~a result of; a catastrophic event, illness ~~or~~ injury ~~and are~~or emergency
212 event, on an emergency basis which shall include, but is not limited to, pending eviction and
213 homelessness. Security deposit assistance is limited to Tribal members who are Wisconsin
214 residents only.
215 (a) The ~~Tribal member~~applicant shall demonstrate the ability to fulfill the terms of the
216 rental lease. The operators of the Fund ~~does~~shall not co-sign any lease.
217 (b) Security deposits are non-transferable and the amount paid for a security deposit shall
218 be paid back to the Fund ~~Program~~ before another security deposit is issued at any time in
219 the future.
220 (c) Only one (1) request per household ~~will~~shall be considered.
221 ~~(d) Security deposits shall be issued on an emergency basis which shall include, but is~~
222 ~~not limited to, pending eviction and homelessness.~~
223 204.6-3. Requests for Utilities. Assistance for the payment of utilities shall only be allowed once
224 every ~~three~~ (two (2)) years by the person listed as responsible to pay with the utility company.
225 ~~Those who receive assistance in paying their utilities shall cost share those~~
226 204.6-4. Funeral expenses by paying back fifty percent (50%) of the funds received within four
227 ~~(4) months. If those funds are not. An applicant may be~~ reimbursed ~~to the fund by the required~~
228 ~~date, the Community Support Program may garnish the individual's per capita payments.~~
229 6-4. for mileage or airfare expenses up to a maximum amount of five hundred dollars (\$500) for
230 travel expenses to arrange or attend a funeral for immediate family members outside the state ~~of~~
231 ~~where an applicant resides shall be paid by~~where the applicant ~~first, and the Fund shall reimburse~~
232 ~~those applicants for mileage or airfare expenses up to a maximum amount of five hundred dollars~~
233 ~~(\$500).~~resides.
234
235 **Article VII.—204.7. Items not Covered by the Fund**
236 204.7-1. The Fund ~~does~~shall not be used to cover payments that are not for a catastrophic event,
237 illness ~~or~~ injury or emergency event as defined above. The following is a list of items not
238 covered by the Fund; however, this is not an exhaustive list:
239 (a) Car payments
240 (b) Taxes
241 (c) Credit card or charge accounts
242 (d) Commercial loans
243 (e) Defaults/fines/bankruptcy charges

244 (f) Expenses not tied to basic needs (cable, internet, memberships, etc.)

245 (g) Legal fees/court costs/judgments

246 (h) Homeless lodging assistance

247 (i) Stabilization rent assistance

248 (j) Department of Corrections re-entry assistance

249 (k) Health membership fees

250 (l) Food and personal care items

251 204.7-2. The operators of the Fund reservesreserve the right to deny or limit benefits if evidence
252 is found regarding the applicant as to the following:

253 (a) The catastrophic event, illness~~or,~~ injury or emergency event is the result of a
254 violation of the law as proven by a citation or criminal conviction.

255 (b) The applicant or others in the household benefiting from assistance from the Fund are
256 non-compliant with the requirements of other ~~tribal~~Nation programs, policies or laws ~~(i.e.~~
257 Zoning, etc.)

258 (c) The applicant or others in the household benefiting from assistance from the Fund are
259 non-compliant with the requirements of the Fund.

260 ~~If the Fund chooses~~204.7-3. When a decision is made to approve, deny, or limit benefits~~under~~
261 ~~this section, an~~the operators of the Fund shall provide an explanation of the decision ~~shall be~~ in
262 writing ~~and provided~~ to the applicant with a copy placed in the ~~Fund's~~applicant's file.

263

264 ~~Article VIII.~~204.8 Application Requirements

265 204.8-1. To be considered for assistance and before receiving assistance the applicant ~~must~~shall
266 complete the full application process. All applicants shall cooperate with the case manager to
267 assist the case manager in comprehensively addressing the needs of the applicant:~~(s).~~

268 204.8-2. Supporting documentation ~~shall be~~is required in all cases. The applicant is responsible
269 to provide all documentation requested by the case manager. No assistance may be provided
270 without sufficient documentation of:

271 ~~(a) No assistance shall be provided without sufficient documentation of~~ the catastrophic
272 event~~or,~~ illness~~or,~~ injury ~~as requested by the Case Manager.~~or emergency event.

273 ~~(b) No assistance shall be provided without sufficient documentation~~(b) proof that the
274 applicant sought assistance from other agencies with an explanation of benefits received
275 or refusal of assistance by the other agencies.

276 (c) enrollment in the Nation.

277 (d) all household income the last thirty (30) business days immediately prior to the
278 submission of the application.

279 (e) status of employment which shall include:

280 (1) leave of absence paperwork

281 (2) balance of personal and vacation time accumulation

282 (3) disability insurance or workmen's compensation coverage

283 204.8-3. Documentation includes, but is not limited to:

284 (a) Medical reports

285 (b) Bills or statements

286 (c) Estimates

287 (d) Letters

288 (e) Police or fire reports

289 (f) Obituary or formal notice of death

- 290 (g) Check stubs
291 (h) Pictures or photographs
292 (i) Applications for assistance from other agencies
293 (j) Approval of assistance or denial of assistance letters from other agencies
294 ~~8-4. Verification of status of employment is required and includes the following documentation:~~
295 ~~(a) Leave of absence paperwork~~
296 ~~(b) Balance of personal and vacation time accumulation~~
297 ~~(c) Disability insurance or workmen's compensation coverage~~
298 ~~(d) Check stubs~~
299 ~~8-5.204.8-4.~~ Requests submitted without supporting documentation shall be kept on file for
300 thirty (30) business days.
301 (a) ~~A~~ The case manager shall request ~~for~~ additional information ~~by a Case Manager shall~~
302 be ~~made~~provided when an application contains insufficient information to make an
303 informed decision.
304 (b) Applicants may deliver, scan, fax, mail, or e-mail additional requested information.
305 (c) Failure to submit the requested information within the thirty (30) business days
306 ~~will~~shall result in closing the application file, with no further action taken in regard to
307 that application.
308 (d) ~~Applicant~~Applicants shall be sent a notice that the file has been closed and reason(s)
309 for the file being closed.
310 (e) After the file is closed, the applicant shall start the application process over again in
311 order to be considered for assistance from the Fund. However, no applicant may re-apply
312 for the same catastrophic event, illness ~~or~~, injury or emergency event more than ~~twice~~the
313 limit stated within this law or the Fund's rules.
314 ~~8-6. Application~~204.8-5. Applications for assistance shall be made within a reasonable time
315 period, not to exceed thirty (30) business days of a catastrophic event or illness ~~or~~, injury ~~or~~
316 emergency event. Applications made after thirty (30) business days shall not be considered.
317
318 **Article IX 204.9. Appeal**
319 204.9-1. An appeal of the case manager's decision shall be ~~made~~requested in writing to the case
320 manager's supervisor within sixty (60) calendar days of notice of the decision. Within ten (10)
321 business days of the appeal, the matter shall be reviewed by the case manager's supervisor to
322 determine if the decision should be overturned or upheld.
323 204.9-2. If the supervisor upholds the decision, ~~it~~the applicant may then ~~be appealed~~appeal to
324 the Area Manager of the Social Services ~~Division~~Area by submitting a written request to the
325 Area Manager within thirty (30) calendar days of notice of the decision.
326 204.9-3. If the decision is upheld by the Area Manager, the decision may be appealed as a final
327 decision to the Judiciary.
328
329 *End.*
330
331 Adopted - BC-5-15-96-A
332 Amended - BC-1-8-97-G
333 Amended - BC-12-11-13-D
334 Amended - BC-

Chapter 204 Community Support Fund

<p>204.1. Purpose and Policy</p> <p>204.2. Adoption, Amendment, Repeal</p> <p>204.3. Definitions</p> <p>204.4. Responsibilities, Eligibility and Qualifications</p> <p>204.5. Priorities for Consideration</p>	<p>10</p> <p>11</p> <p>12</p> <p>13</p>	<p>204.6. Items Covered by the Fund</p> <p>204.7. Items not Covered by the Fund</p> <p>204.8. Application Requirements</p> <p>204.9. Appeal</p>
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204.1. Purpose and Policy

204.1-1. *Purpose.* The purpose of this law is to assist the greatest number of members of the Oneida Nation who apply for assistance to the Fund in times of a catastrophic event, illness, injury or emergency event when no other resources for assistance exist.

204.1-2. *Policy.* It is the policy of the Oneida Nation to assist their people in a time of need after a catastrophic event, illness, injury or emergency event, when there is no other assistance available or all other assistance has been exhausted.

204.2. Adoption, Amendment, Repeal

204.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-15-96-A and amended by resolutions BC-01-08-97-G, BC-12-1-13-D and BC-_____.

204.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the 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 provisions of this law shall control.

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

204.3. Definitions

204.3-1. 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) "Applicant" means the subject of the application for assistance.

(b) "Business days" means Monday through Friday 8:00 a.m. to 4:30 p.m., excluding Nation holidays.

(c) "Case manager" means an employee responsible for administering Fund benefits.

(d) "Catastrophic event" means a natural or man-made incident, which results in substantial damage or loss requiring major financial resources to repair or recover (i.e. house fire, tornado, flood, or other disaster).

(e) "Catastrophic illness or injury" means a serious debilitating illness, injury, impairment, or physical or mental condition that involves:

(1) in-patient care; or

(2) a period of continuing treatment due to a chronic serious health condition (such as chemotherapy/radiation, dialysis, daily/weekly therapy resulting from trauma, etc.); or

(3) a period of illness or injury that is long-term due to a condition for which treatment may be ineffective (stroke, terminal disease, etc.); or

- 56 (4) multiple treatments either for restorative surgery after an accident or other
57 injury, or for a chronic condition. (i.e. cancer or kidney disease)
- 58 (f) “Cost share” means the portion of the assistance that the applicant is responsible for
59 contributing.
- 60 (g) “Emergency event” means a situation that poses an immediate risk to health, life,
61 safety, property or environment. Emergencies require urgent intervention to prevent
62 further illness, injury, death, or other worsening of the situation.
- 63 (h) “Emergency medical travel” means an unexpected serious health situation or
64 occurrence, requiring the immediate presence of immediate family. (i.e., end of life
65 situation, life support, etc.)
- 66 (i) “Fund” means the Community Support Fund.
- 67 (j) “Immediate family” means that group of persons who make up a family unit normally
68 defined as husband, wife, children, sister, brother, in-laws, step family, grandparents and
69 grandchildren, and/or a person who has legal responsibility for the applicant.
- 70 (k) “Legal guardian” means a person who has the legal authority to care for the personal
71 and property interests of another person granted through Court order.
- 72 (l) “Legal responsibility” means specific duties imposed upon a person to care or provide
73 for another including liability for personal obligations as granted through a Power of
74 Attorney or Court order.
- 75 (m) “Major medical surgery” means a surgical procedure that carries a degree of risk to
76 the patient’s life, or the potential for severe disability if something goes wrong during
77 surgery. It is a surgical procedure that usually requires a patient to be put under general
78 anesthesia and given respiratory assistance because he or she cannot breathe
79 independently.
- 80 (n) “Nation” means the Oneida Nation.
- 81 (o) “Rule” means a set of requirements enacted in accordance with the Administrative
82 Rulemaking law.
- 83 (p) “Tribal” means the Oneida Nation.
- 84

85 **204.4. Responsibilities, Eligibility and Qualifications**

86 204.4-1. The Social Services Area of the Governmental Services Division shall be responsible
87 for operation of the Fund, but may designate the operation of the Fund to a department within its
88 control.

- 89 (a) The operators of the Fund shall promulgate rules, for the administration of the Fund
90 that are consistent with this law. The rules:
- 91 (1) shall include the list of categories the Fund covers and a cap that sets the
92 amount of assistance per event/ per household, except for funeral expenses which
93 shall be set per event/ per person.
- 94 (2) may include additional items not listed in section 204.6, as long as the rule
95 does not conflict with this law.
- 96 (b) The Governmental Services Division Director shall report quarterly to the Oneida
97 Business Committee. The report shall include, but is not limited to, the amount of funds
98 paid out under each category.
- 99 (c) The Social Services Area or designee shall ensure that the Tribal membership is
100 informed of what assistance is available through the Fund, how to apply for assistance,
101 and specify who is eligible for assistance.

102 204.4-2. Eligibility for assistance provided under the Fund is reserved for enrolled Tribal
103 members. Applications may be made by a non-tribal member on the behalf of an enrolled Tribal
104 member provided the requested funds will benefit the Tribal member only and the non-tribal
105 member has one of the following relationships to the applicant:

- 106 (a) is a parent of the applicant
- 107 (b) is the legal guardian of the applicant
- 108 (c) has legal responsibility for the applicant

109 204.4-3. Residency within the State of Wisconsin is not a prerequisite for assistance, except for
110 requests for a security deposit in accordance with section 204.6-2.

111 204.4-4. The Fund is a fund of last resort and provides assistance when there is no other
112 financial assistance available or all other assistance has been exhausted. Applicants shall first
113 seek out other resources that can meet the needs of their request. Proof of requesting assistance
114 from other sources shall be provided with the application.

- 115 (a) Applicants shall cost share a percentage of the assistance being requested.
- 116 (b) *Exception.* Applicants whose household income is at or below one hundred and
117 seventy-five percent (175%) of the federal poverty guidelines shall be exempt from the
118 obligation to cost share.

119 204.4-5. The following types of catastrophic events, illnesses or injuries qualify an applicant for
120 assistance:

- 121 (a) Terminally ill
- 122 (b) Physically challenged or incapacitated
- 123 (c) Major medical surgery
- 124 (d) Life threatening (i.e. cancer, AIDS, stroke, disabling injuries due to motor vehicle
125 accident, etc.)
- 126 (e) Natural disaster (i.e. tornado, fire, flood, etc.)
- 127 (f) Death in immediate family

128 204.4-6. The operators of the Fund reserve the right to deny or limit benefits to applicants who
129 have elected not to be covered by employer benefits such as disability or health insurance.

130 204.4-7. All payments shall be provided directly to the service provider. However, payments
131 for funeral travel shall be reimbursed to the applicant.

132 204.4-8. Assistance available under the Fund is subject to change according to fiscal year
133 funding levels.

134 204.4-9. Oneida programs and enterprises are not eligible for these funds.

135

136 **204.5. Priorities for Consideration**

137 204.5-1. The case manager shall determine the level of assistance to be provided based on:

- 138 (a) Severity of event, illness, injury or emergency event
- 139 (b) Cost (usual and customary fees)
- 140 (c) Amount of time elapsed since catastrophic event, illness, injury or emergency event
141 occurred
- 142 (d) The Fund's appropriate promulgated rules

143 204.5-2. The case manager shall assess each individual case, prioritize and assist with
144 immediate needs. Priorities are as follows:

- 145 (a) Life-threatening emergency requests
- 146 (b) Emergency medical travel
- 147 (c) Other needs

148

149 **204.6. Items Covered by the Fund**

150 204.6-1. Requests for assistance from the Fund shall be tied to or be a result of a catastrophic
151 event, illness, injury or emergency event. Upon verification of a catastrophic event, illness,
152 injury or emergency event, the Fund may be used for the following:

- 153 (a) COBRA Insurance Payments
- 154 (b) Prescriptions not available through an Indian Health Service clinic
- 155 (c) Medical transportation/emergency medical travel including vehicle repairs
- 156 (d) Medical-related equipment, supplies, or furniture
- 157 (e) Medical bills (dental, optical, hospital) not covered by insurance
- 158 (f) Mortgage payments and rent payments (including security deposits), where no other
159 resources exist in accordance with section 204.6-2
- 160 (g) Utility disconnections in accordance with section 204.6-3
- 161 (h) Inpatient Treatment (with a limit of once per lifetime)
- 162 (i) Fire recovery/natural disaster assistance
- 163 (j) Home renovations required for handicap accessibility
- 164 (k) Family Medical Leave Act wage replacement
- 165 (l) Social Security Disability Determination utility assistance
- 166 (m) Travel expenses to arrange or attend a funeral for immediate family members outside
167 the state where an applicant resides, in accordance with section 204.6-4.

168 204.6-2. *Security deposit.* The Fund shall only provide assistance for a security deposit when it
169 is tied to or a result of a catastrophic event, illness injury or emergency event, on an emergency
170 basis which shall include, but is not limited to, pending eviction and homelessness. Security
171 deposit assistance is limited to Tribal members who are Wisconsin residents only.

172 (a) The applicant shall demonstrate the ability to fulfill the terms of the rental lease. The
173 operators of the Fund shall not co-sign any lease.

174 (b) Security deposits are non-transferable and the amount paid for a security deposit shall
175 be paid back to the Fund before another security deposit is issued at any time in the
176 future.

177 (c) Only one (1) request per household shall be considered.

178 204.6-3. *Utilities.* Assistance for the payment of utilities shall only be allowed once every two
179 (2) years by the person listed as responsible to pay with the utility company.

180 204.6-4. *Funeral expenses.* An applicant may be reimbursed for mileage or airfare expenses up
181 to a maximum amount of five hundred dollars (\$500) for travel expenses to arrange or attend a
182 funeral for immediate family members outside the state where the applicant resides.

183

184 **204.7. Items not Covered by the Fund**

185 204.7-1. The Fund shall not be used to cover payments that are not for a catastrophic event,
186 illness, injury or emergency event as defined above. The following is a list of items not covered
187 by the Fund; however, this is not an exhaustive list:

- 188 (a) Car payments
- 189 (b) Taxes
- 190 (c) Credit card or charge accounts
- 191 (d) Commercial loans
- 192 (e) Defaults/fines/bankruptcy charges
- 193 (f) Expenses not tied to basic needs (cable, internet, memberships, etc.)

- 194 (g) Legal fees/court costs/judgments
- 195 (h) Homeless lodging assistance
- 196 (i) Stabilization rent assistance
- 197 (j) Department of Corrections re-entry assistance
- 198 (k) Health membership fees
- 199 (l) Food and personal care items

200 204.7-2. The operators of the Fund reserve the right to deny or limit benefits if evidence is found
201 regarding the applicant as to the following:

- 202 (a) The catastrophic event, illness, injury or emergency event is the result of a violation
203 of the law as proven by a citation or criminal conviction.
- 204 (b) The applicant or others in the household benefiting from assistance from the Fund are
205 non-compliant with the requirements of other Nation programs, policies or laws
- 206 (c) The applicant or others in the household benefiting from assistance from the Fund are
207 non-compliant with the requirements of the Fund.

208 204.7-3. When a decision is made to approve, deny, or limit benefits, the operators of the Fund
209 shall provide an explanation of the decision in writing to the applicant with a copy placed in the
210 applicant's file.

211

212 **204.8 Application Requirements**

213 204.8-1. To be considered for assistance and before receiving assistance the applicant shall
214 complete the full application process. All applicants shall cooperate with the case manager to
215 assist the case manager in comprehensively addressing the needs of the applicant(s).

216 204.8-2. Supporting documentation is required in all cases. The applicant is responsible to
217 provide all documentation requested by the case manager. No assistance may be provided
218 without sufficient documentation of:

- 219 (a) the catastrophic event, illness, injury or emergency event.
- 220 (b) proof that the applicant sought assistance from other agencies with an explanation of
221 benefits received or refusal of assistance by the other agencies.
- 222 (c) enrollment in the Nation.
- 223 (d) all household income the last thirty (30) business days immediately prior to the
224 submission of the application.
- 225 (e) status of employment which shall include:
 - 226 (1) leave of absence paperwork
 - 227 (2) balance of personal and vacation time accumulation
 - 228 (3) disability insurance or workmen's compensation coverage

229 204.8-3. Documentation includes, but is not limited to:

- 230 (a) Medical reports
- 231 (b) Bills or statements
- 232 (c) Estimates
- 233 (d) Letters
- 234 (e) Police or fire reports
- 235 (f) Obituary or formal notice of death
- 236 (g) Check stubs
- 237 (h) Pictures or photographs
- 238 (i) Applications for assistance from other agencies
- 239 (j) Approval of assistance or denial of assistance letters from other agencies

240 204.8-4. Requests submitted without supporting documentation shall be kept on file for thirty
241 (30) business days.

242 (a) The case manager shall request additional information be provided when an
243 application contains insufficient information to make an informed decision.

244 (b) Applicants may deliver, scan, fax, mail, or e-mail additional requested information.

245 (c) Failure to submit the requested information within the thirty (30) business days shall
246 result in closing the application file, with no further action taken in regard to that
247 application.

248 (d) Applicants shall be sent a notice that the file has been closed and reason(s) for the file
249 being closed.

250 (e) After the file is closed, the applicant shall start the application process over again in
251 order to be considered for assistance from the Fund. However, no applicant may re-apply
252 for the same catastrophic event, illness, injury or emergency event more than the limit
253 stated within this law or the Fund's rules.

254 204.8-5. Applications for assistance shall be made within a reasonable time period, not to
255 exceed thirty (30) business days of a catastrophic event or illness, injury or emergency event.
256 Applications made after thirty (30) business days shall not be considered.

257

258 **204.9. Appeal**

259 204.9-1. An appeal of the case manager's decision shall be requested in writing to the case
260 manager's supervisor within sixty (60) calendar days of notice of the decision. Within ten (10)
261 business days of the appeal, the matter shall be reviewed by the case manager's supervisor to
262 determine if the decision should be overturned or upheld.

263 204.9-2. If the supervisor upholds the decision, the applicant may then appeal to the Area
264 Manager of the Social Services Area by submitting a written request to the Area Manager within
265 thirty (30) calendar days of notice of the decision.

266 204.9-3. If the decision is upheld by the Area Manager, the decision may be appealed as a final
267 decision to the Judiciary.

268

269 *End.*

270

271 Adopted - BC-5-15-96-A

272 Amended - BC-1-8-97-G

273 Amended - BC-12-11-13-D

274 Amended - BC-



Legislative Operating Committee July 20, 2016

Petition: Debraska - Per Capita Distribution

Submission Date: 5/11/2016

Public Meeting: N/A
 Emergency Enacted:
Expires:

LOC Sponsor: Brandon Stevens

Summary: This petition requests a per capita distribution of five-thousand dollars (\$5,000) for enrolled members over the age of sixty-two (62) and three-thousand dollars (\$3,000) for enrolled members under the age of sixty-one (61), that the distribution date be set by General Tribal Council (GTC), that GTC determine any necessary lay-offs, restructuring, reduction or eliminations and that the petition be heard at the same meeting as the Metivier per capita petition.

5/11/16 OBC: Motion by David Jordan to accept the verified petition from Michael Debraska regarding Per Capita Distribution; to send the verified petition to the Law, Finance, Legislative Reference, and Direct Report Offices for the legal, financial, legislative, and administrative analyses to be completed; to direct the Law, Finance, and Legislative Reference Offices to submit the analyses to the Tribal Secretary's Office within sixty (60) days, and that a progress report be submitted in forty-five (45) days; and to direct the Direct Report Offices to submit the appropriate administrative analyses to the Tribal Secretary's Office within thirty (30) day, seconded by Lisa Summers. Motion carried unanimously.

5/25/16 OBC: Motion by Lisa Summers to accept the financial analysis regarding Petitioner Michael Debraska: Special GTC meeting for Per Capita Distribution \$3,000/\$5,000, seconded by David Jordan. Motion carried unanimously.

6/1/16 LOC: Motion by David P. Jordan to add Petition: Debraska Per Capita Distribution to the Active Files List; seconded by Jennifer Webster. Motion carried unanimously.

Note: Brandon Stevens will be the sponsor for this item.

7/6/16 LOC: Motion by David P. Jordan to accept the statement of effect update memorandum and to forward it to the Oneida Business Committee; seconded by Tehassi Hill. Motion carried unanimously.

7/13/16 OBC: *The statement of effect update memorandum was accepted at the July 13, 2016 Oneida Business Committee meeting.*

Next Steps:

- Accept the statement of effect for Petition-Debraska Per Capita Distribution; and
- Forward the statement of effect for Petition-Debraska Per Capita Distribution to the Oneida Business Committee.



Statement of Effect

Petition: Debraska Per Capita Distribution

Summary

This petition requests a per capita distribution of five-thousand dollars (\$5,000) for enrolled members over the age of sixty-two (62) and three-thousand dollars (\$3,000) for enrolled members under the age of sixty-one (61), that the distribution date be set by General Tribal Council (GTC), that GTC determine any necessary lay-offs, restructuring, reduction or eliminations and that the petition be heard at the same meeting as the Metivier per capita petition.

Submitted by Douglass A. McIntyre, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

On April 27, 2016, a petition was submitted to the Tribal Secretary's Office and has since been verified by the Enrollment Department. On May 11, 2016, the Oneida Business Committee accepted the receipt of the petition and forwarded it for the appropriate analyses, including this statement of effect considering legislative impacts the proposal may have on the Nation's laws and policies. The petition requests a special General Tribal Council (GTC) meeting to be called concerning the five (5) sections within the petition.

Per Capita Distributions

The first two sections of the petition read:

- 1. A per capita distribution of \$3,000 to all enrolled Oneida members under the age of 61; and**
- 2. A per capita distribution of \$5,000 to all enrolled Oneida members over the age of 62; and**

No legislation of the Nation, including the Per Capita Law, sets a specific amount for a per capita distribution. The law only provides that per capita distributions be set and issued at the discretion of GTC. *See Per Capita Law 9.4-3.* Additionally, GTC resolutions GTC-08-11-97-A and GTC-06-30-90-A establishes "elder per capita distributions" for elders sixty-two (62) and sixty-five (65) of age.

While the Per Capita Law makes mention of several different categories of members (minors, incompetent adults, adults and the elderly) and certain rules may apply only to certain categories (such as distributions to minors are placed into trust accounts), per capita distributions have always been distributed to all members of the Nation. The language of this petition would exclude members aged 61 (the language reads "under the age of 61") and 62 (the language reads "over the age of 62") from receiving this per capita distribution. This would be in conflict with

the Per Capita Law. The Per Capita Law defines adult as “those Tribal members who are at least eighteen (18) years old” and “adult” is referenced throughout the Law. These references indicate that a per capita distribution does not exclude certain individuals based on age. Additionally, under the Constitution “All members of the Nation shall be accorded equal opportunities to participate in the economic resources and activities of the Nation.” As such this section would be in conflict with the Per Capita Law and the Constitution.

Distribution Date

The third section of the petition reads:

- 3. The distribution of this \$3/5K per capita payment take place on a date to be determined by General Tribal Council; and**

The Per Capita Law requires that annual per capita distributions be made on or before September 30th. *See Per Capita Law 9.5-3(d)*. Additionally the law provides other deadlines including a new enrollment application deadline (January 31st), enrollment deadline (March 31st), membership payment form sent to members deadline (July 1st), submission of completed membership payment form (September 1st), request for prior unclaimed payment (September 1st), a request for a claimed payment but not redeemed (September 1st) and a deadline for when the payments must be distributed (September 30th). *See Per Capita Law 9.5-3*.

Depending on the distribution date that GTC selects, there could be a conflict with the Per Capita Law. If a date was selected that conflicted with this, the petition would be in conflict with the Per Capita Law.

GTC Determination of Lay-offs, Restructuring, Reduction and/or Eliminations

The fourth section reads:

- 4. If there is to be any lay-offs (terminations, furloughs or the like), restructuring, programs or department(s) reduced or eliminated, General Tribal Council will make the determination as to whom is laid-off (terminated, furloughed or the like), which areas or department(s) are restructured or programs that are or will be reduced or eliminated; and**

With the adoption of the Personnel Policy and Procedures (also known as the Bluebook), GTC delegated responsibility for employment matters to the HRD and various other positions. Additionally, GTC has relied on the Oneida Business Committee to create legislation governing different aspects of employment. The language of this petition appears to indicate that GTC

would decide terminations, furloughs or lay-offs on an individual case-by-case basis. This would be in conflict with current law and policy.

Under the Bluebook, termination is reserved for disciplinary action and the Bluebook provides for a detailed account of when an employee can be terminated. *See Personnel Policy and Procedures V.D.2.b.* The Furlough Policy details how a furlough plan is to be developed including how furloughed individuals are to be selected, allows the supervisor to identify the employees to be furloughed and allows an appeal of a furlough based on disciplinary reasons. The Layoff Policy details how a layoff plan is to be developed, the order of lay-offs (first emergency temporary employees, then limited term employees and then regular employees) and that a lay-off is for a maximum time of twenty-six (26) weeks. For GTC to take the role of deciding which employee is terminated, furloughed or laid-off, these laws would need to be amended.

GTC Agenda Date

The fifth section reads:

5. **Since the previous \$3/5K petition submitted by Dr. John Powless was withdrawn by him in an e-mail to Lisa Liggins and seeing as how both the fiscal (financial) and legal analysis' were already completed for Dr. Powless' petition, it should only take minor modifications for both the fiscal (financial) and legal analysis' and then this petition can be brought forward for GTC's consideration in June 2016 and placed with Yvonne Metivier's per capita petition on the same agenda and heard the same day as hers since previous Business Committee action was to place like petitions with like petitions, as previously stated by Secretary Lisa Summers and Chief Counsel.**

This section requests that this petition be brought forward for GTC consideration at the same meeting where a per capita petition from Yvonne Metivier concerning per capita payments was to be heard. The Metivier petition was heard at a GTC meeting on June 13, 2016.

This petition was submitted to the Secretary's Office on April 27, 2016 and added to the agenda of the next scheduled Oneida Business Committee meeting on May 11, 2016. For an item to comply with section 3 of the Oneida General Tribal Council Ten-day Notice Policy, and to allow for adequate time for the printing and mailing of GTC meeting packet, the petition and all necessary accompanying documents would have needed to be approved by the OBC at the May 11, 2016 meeting.

For all petitions, the OBC requests a legal analysis, a financial analysis and a legislative statement of effect to accompany the petition to GTC meeting. The OBC routinely sets a sixty (60) day deadline for the various departments to finish these items. Unlike the Metivier petition

which contained a single sentence (“GTC directs OBC to pay two thousand dollars (\$2,000) per capita beginning Budget year 2017 and 2018, 2019, 2020 and 2021.”) this petition contains additional sections that require, at a minimum, a new legislative analysis.

Additionally, a petition itself is not binding and has no effect until after it is considered by GTC and some action is directed. However, this section of the petition is moot as the date has since passed.

Conclusion

This petition conflicts with current laws and policies of the Nation. Changes to the relevant laws and policies would be needed prior to the petition being implemented.

This statement of effect is limited to an analysis of the contents of the petition and does not constitute a review of the laws and policies which were discussed herein.

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: July 20, 2016
- 2) Contact Person(s): Rob Orcutt Dept: Law Office
 Phone Number: 869-4312 Email: rorcutt@oneidanation.org
- 3) Agenda Title: Drug & Alcohol Free Workplace Policy
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
The Oneida Law Office has requested an emergency amendment to the Drug & Alcohol Free Workplace Policy, to comply with OSHA

List any supporting materials included and submitted with the Agenda Request Form

- 1) Proposed language 3) _____
- 2) Memo from Law Office 4) _____

- 5) Please List any laws, ordinances or resolution that might be affected:

- 6) Please List all other departments or person(s) you have brought your concern to:
Law Office, HRD, EHN, Risk Management
- 7) Do you consider this request urgent? Yes No
 If yes, please indicate why: To comply with an OSHA August deadline

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: _____

Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376

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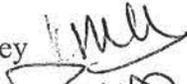
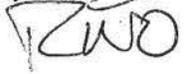
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ATTORNEY CLIENT COMMUNICATION PRIVILEGED AND CONFIDENTIAL M E M O R A N D U M

TO: Jennifer Falck, Legislative Reference Office Director

FROM: Kelly M. McAndrews, Staff Attorney 
Robert W. Orcutt, Staff Attorney 

DATE: July 14, 2016

SUBJECT: Potential Conflict Between New OSHA Rule and Tribe's Drug and Alcohol Free Workplace Policy

Last month, the Law Office was notified of a new final rule (also "Rule") adopted by the Occupational Health and Safety Administration ("Agency"), the agency charged with implementing the Occupational Health and Safety Act ("OSHA"). The new Rule updates injury reporting methods by allowing electronic reporting and, importantly for the Tribe's purposes, includes a provision prohibiting an employer from "retaliating" against an employee for reporting an injury.

The Rule:

29 CFR §1904.35(b)(1)(A) provides that employers must give notice to employees that employees have the right to report work related injuries and illnesses. Subsection (B) of the Rule further provides that "Employers are prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses". The purpose of the Rule is to encourage employees to report work related injuries and illnesses and to prevent any barriers which may prevent them from doing so.

The Agency received many comments which focused on an employer's ability to conduct drug testing of its employees, and discipline them for violations, in light of the Rule. The Agency responded that "Although drug testing of employees may be a reasonable workplace policy in some situations, it is often perceived as an invasion of privacy, so if an injury or illness is very unlikely to have been caused by employee drug use, or if the method of drug testing does not identify impairment but only use at some time in the recent past, requiring the employee to be drug tested may inappropriately deter reporting." Further, the Agency "believes the evidence in the rulemaking record shows that blanket post-injury drug testing policies deter proper reporting." Finally, the Agency recognizes that "this final rule does not ban drug testing of employees. However, the final rule does prohibit employers from using drug testing (or the threat

of drug testing) as a form of adverse action against employees who report injuries or illnesses.”
Generally see Comments to Rule.

The Tribe’s Drug and Alcohol Free Workplace Policy:

The Tribe implemented the Drug and Alcohol Free Workplace Policy (“Policy”) in 1994. Since then, it has been amended several times. Most recently, the Policy was amended in December of 2013 to include a provision which requires employees to submit to drug and alcohol testing anytime they are involved a work related accident. See § 8.3 of the Policy. Work related accident is defined in the Policy as “an unexpected event involving an employee that occurs in the employee’s working environment or during an activity related to work, that:

- (1) results in an injury to the employee and requires medical intervention by a police officer or emergency medical technician, or treatment at a medical facility;
- (2) results in death of the employee or another person; or
- (3) involves any property damage.” See § 3-1(M). If the results of the drug and alcohol test are positive, the employee may face disciplinary action, including termination (discharge).

The Policy also provides that the Tribe may require employees to submit to drug and alcohol testing when there is reasonable suspicion to believe the employee may be under the influence of drugs or alcohol at work.

Applicability of OSHA to the Tribe:

The Law Office has opined several times about the applicability of OSHA to the Tribe. OSHA is a law of general applicability and in most cases, laws of general applicability apply to Tribes unless one of three exceptions exist: “(1) the law touches on exclusive rights of self-governance in purely intramural matters (2) the application of the law to the tribe would abrogate rights guaranteed by Indian treaties, or (3) there is proof by legislative history or some other means that Congress intended the law not to apply to Indians on their reservations.” Donovan v. Coeur d’Alene Tribal Farm, 751 F.2d 1113 (9th Cir., 1985). The Seventh Circuit Court of Appeals, which covers Wisconsin, has not squarely addressed the issue of OSHA’s applicability to a tribal government, but it has held that OSHA applies to a commercial enterprise owned and operated by the Menominee Tribe. See Menominee Tribal Enterprises v. Solis, 601 F.3d 669 (7th Cir. 2010). In that case, the Seventh Circuit found that none of the exceptions applied to prevent the application of OSHA, as a law of general applicability, to the Menominee Tribe’s commercial timber mill. *Id.* Thus, courts would likely minimally find OSHA to apply to the Tribe’s commercial enterprises. It is our understanding that for purposes of consistency, the Tribe attempts to voluntarily comply with most provisions of OSHA across the board.

Potential Conflict between the Rule and the Policy:

Since the Rule prohibits employers from discriminating against or discharging employees for reporting workplace injuries and since the Policy could subject employees to potential discharge from reporting workplace injuries by way of a positive drug test, there is a conflict. The Tribe has several options for dealing with this conflict. First, the Tribe could argue that OSHA does



Memorandum

To: Oneida Business Committee
From: Brandon Stevens, LOC Chairperson
Date: July 27, 2016
Re: Drug and Alcohol Free Workplace Policy Emergency Amendments

Please find attached the following for your consideration:

1. Resolution: Adoption of Emergency Amendments to the Drug and Alcohol Free Workplace Policy
2. Statement of Effect: Adoption of Emergency Amendments to the Drug and Alcohol Free Workplace Policy
3. Drug and Alcohol Free Workplace Policy Emergency Amendments (redline with analysis)
4. Drug and Alcohol Free Workplace Policy Emergency Amendments (clean)

Overview

Emergency amendments to the Drug and Alcohol Free Workplace Policy are requested by the Oneida Law Office to comply with a new final rule concerning the Occupational Health and Safety Act. The new rule has an effective date of August 10, 2016 and non-emergency amendments cannot be processed in time to meet this timeline.

The Oneida Business Committee can temporarily enact legislation when necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and the amendment of legislation is required sooner than would be possible under the Legislative Procedures Act.

These emergency amendments will become effective immediately and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted.

Requested Action

Approve the Resolution: Adoption of Emergency Amendments to the Drug and Alcohol Free Workplace Policy

BC Resolution _____*Adoption of Emergency Amendments to the Drug and Alcohol Free Workplace Policy*

1
2
3
4 **WHEREAS**, the Oneida Nation is a federally recognized Indian government and a treaty tribe
5 recognized by the laws of the United States of America; and
6

7 **WHEREAS**, the Oneida General Tribal Council is the governing body of the Oneida Nation; and
8

9 **WHEREAS**, the Oneida Business Committee has been delegated the authority of Article IV, Section
10 1, of the Oneida Nation Constitution by the Oneida General Tribal Council; and
11

12 **WHEREAS**, the Oneida Business Committee originally adopted the Drug and Alcohol Free
13 Workplace Policy through resolution BC-10-25-95-A and made amendments through
14 resolutions BC-10-20-99-A, BC-12-05-07-B and BC-12-11-13-F; and
15

16 **WHEREAS**, a new rule has been adopted by the Occupational Health and Safety Administration, the
17 agency charged with implementing the Occupational Health and Safety Act (OSHA),
18 that “prohibits employers from using drug testing (or the threat of drug testing) as a
19 form of adverse action against employees who report injuries or illnesses;” and
20

21 **WHEREAS**, the new OSHA rule is scheduled to become effective August 10, 2016; and
22

23 **WHEREAS**, the Nation’s current Drug and Alcohol Free Workplace Policy will be in conflict with
24 the new OSHA rule; and
25

26 **WHEREAS**, these emergency amendments remove language from the Drug and Alcohol Free
27 Workplace Policy regarding post-accident testing for all instances of work related
28 injuries to comply with the new OSHA rule; and
29

30 **WHEREAS**, the Legislative Procedures Act allow the Oneida Business Committee to enact
31 emergency legislation where it “is necessary for the immediate preservation of the
32 public health, safety, or general welfare” and the “legislation is required sooner than
33 would be possible under this law;” and
34

35 **WHEREAS**, non-emergency amendments to the Drug and Alcohol Free Workplace Policy cannot be
36 completed by the effective date of the new OSHA rule; and
37

38 **WHEREAS**, these amendments are necessary to comply with federal law; and
39

40 **WHEREAS**, these emergency amendments will be in effect for a period of six (6) months and may
41 be renewed for an additional six (6) months; and
42

43 **WHEREAS**, the Legislative Procedures Act does not require a public meeting for emergency
44 legislation; and
45

46 **NOW THEREFORE BE IT RESOLVED**, that the attached emergency amendments to the Drug and
47 Alcohol Free Workplace Policy are hereby adopted effective immediately for a period of six (6)
48 months.



Statement of Effect

Adoption of Emergency Amendments to the Drug and Alcohol Free Workplace Policy

Summary

This resolution provides emergency amendments to the Drug and Alcohol Free Workplace Policy to comply with a new rule regarding the Occupational Health and Safety Act which is scheduled to become effective on August 10, 2016.

By Douglass A. McIntyre, Staff Attorney, Legislative Reference Office

Analysis from Legislative Reference Office

This resolution adopts emergency amendments to the Drug and Alcohol Free Workplace Policy which was adopted through resolution BC-10-25-95-A and amended by resolutions BC-10-20-99-A, BC-12-05-07-B and BC-12-11-13-F.

Emergency amendments are requested by the Oneida Law Office to comply with a new rule concerning the Occupational Safety and Health Act (OSHA). These changes prohibit an employer from using post-incident drug testing or the threat of drug testing as retaliation against an employee that reports workplace injuries and/or illnesses. The rule still allows drug testing policies but post-incident testing is limited to situations in which drug use is likely to have contributed to the incident. This rule is scheduled to take effect on August 10, 2016.

The Nation's current Drug and Alcohol Free Workplace Policy requires that an employee immediately report workplace accidents to a supervisor and submit to alcohol and drug testing. A refusal to submit to any post-incident testing carries the same consequences as a positive test result. This conflicts with the new rule concerning OSHA. These emergency amendments remove language requiring post-accident testing for all instances of work related injuries and references to work-related accidents to comply with the requirements of OSHA.

The Legislative Procedures Act allow the Oneida Business Committee to enact emergency legislation where it "is necessary for the immediate preservation of the public health, safety, or general welfare" and "enactment or amendment of legislation is required sooner than would be possible under this law." Here, amendments to comply with the changes in federal law cannot be completed before the effective date and thus emergency amendments are needed.

These emergency amendments will be in effect for a period of six (6) months and may be renewed for an additional six (6) months.

In accordance with the Legislative Procedures Act, a public meeting nor fiscal impact statement are required for emergency legislation.

Conclusion

There are no legal bars to adopting the resolution.



Drug and Alcohol Free Workplace Policy Amendments

<i>Analysis by the Legislative Reference Office</i>					
Title	Drug and Alcohol-Free Workplace Policy (the Policy)				
Sponsor	N/A	Drafter	Rob Orcutt – Oneida Law Office; Doug McIntyre	Analyst	Tani Thurner
Requester & Reason for Request	The Law Office has requested these changes due to a recently adopted change to federal law.				
Purpose	This policy governs drug/alcohol testing of Tribal employees.				
Authorized/ Affected Entities	HRD, all employee supervisors.				
Related Legislation	Personnel Policies and Procedures; Workers Compensation Law				
Enforcement & Due Process	The Policy identifies how reasonable suspicion can be established, such that an employee can be sent for drug and/or alcohol testing; it does not appear that an employee can appeal/challenge this determination.				
Public Meeting Status	This draft is presented for adoption on an emergency basis; meaning no public meeting is required until the amendments are submitted for permanent adoption.				

Overview

The proposed amendments to the Drug and Alcohol-Free Workplace Policy (the Policy) were requested in response to an upcoming change to federal law (29 CFR 1904), which will go into effect August 10, 2016; and which is intended to prevent employers from discouraging employees from reporting workplace injuries and illnesses. The change to federal law more clearly prohibits employers from using drug testing, or the threat of it, as a form of retaliation against employees who report injuries or illnesses. The comments for the Final Rule, published on the Federal Register, states:

“[t]he final rule does prohibit employers from using drug testing (or the threat of drug testing) as a form of adverse action against employees who report injuries or illnesses. To strike the appropriate balance here, drug testing policies should limit post-incident 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.”

Currently, the Tribe’s Policy requires employees to immediately notify their supervisors and to undergo alcohol and drug testing every time they are involved in a work-related accident. [3-1(m), 8-3] The Policy treats a failure to do so as “refusal to test” and the employee would be punished accordingly. [Article 9] In response to the upcoming change to federal law, the proposed amendments delete this requirement. Article 9 is also amended to delete references to work-related accidents when identifying what “refusal to test” entails.

These changes mean that Oneida employees will no longer be subject to mandatory drug and alcohol testing for every work-related accident. The Policy will not identify any situations where an employee is subject to mandatory post-accident testing. However, employees may still be subject to drug and alcohol testing if their supervisor has “reasonable suspicion” that the

5 employee may be under the influence. The Policy already identifies standards/processes for how
6 supervisors can establish reasonable suspicion [7-1]

Work-Related Accident/Injury

8 This Policy defines a work related accident as one that either:

- 9 • results in an injury to the employee that requires medical intervention [...], or treatment
10 at a medical facility, or
- 11 • results in death of the employee or another person, or
- 12 • involves any property damage.

13 Although this Policy no longer requires employees to immediately inform their supervisors
14 when they are involved in a work-related accident;

- 15 • section V.2.c.IV.f. of the Personnel Policies and Procedures still identifies penalties for
16 any employee who fails “to immediately report any work-related injuries to the
17 immediate supervisor.”
- 18 • The Oneida Fleet Management Policy requires drivers of Tribal vehicles (including
19 Tribal employees) to immediately report all accidents or damage to Tribal vehicles that
20 occurs while they are using them. [Fleet Management Policy, 8-21 and 10-1]

21 As such, after deleting this provision, employees are still required to report work-related
22 accidents that result in injury or in damage to a Tribal vehicle, but are no longer required to
23 report work-related accidents that result in deaths of other persons, or in property damage only
24 (including motor vehicle accidents that only result in damage to their own car or to other
25 vehicles).

Other

26 Section 16.9-5 of the Legislative Procedures Act authorizes the OBC to temporarily enact an
27 emergency law where legislation is necessary for the immediate preservation of the public
28 health, safety or general welfare of the reservation population and the enactment or amendment
29 of legislation is required sooner than would be possible by utilizing the standard legislative
30 process. [Legislative Procedures Act, 16.9-5(b)] In this situation, there would not be time to
31 amend the policy through the standard legislative process prior to the changes to federal law
32 going into effect.

33 If adopted on an emergency basis, these amendments will become effective immediately, and
34 will remain in effect for up to six months, with a possibility of a one-time extension of up to an
35 additional six months. [Legislative Procedures Act, 16.9-5(b)]
36
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Drug and Alcohol Free Workplace Policy

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Article I. Purpose and Policy
Article II. Adoption, Amendment, Repeal
Article III. Definitions
Article IV. Application
Article V. Shared Responsibility
Article VI. Prohibited Behavior
Article VII. Reasonable Suspicion
Article VIII. Drug and Alcohol Testing

11 Article IX. Refusal to Test
12 Article X. Waiting Period
13 Article XI. Consequences for Prohibited Behavior
14 Article XII. Re-hire
15 Article XIII. Other Potential Consequences
16 Article XIV. Confidentiality
17 Article XV. Communication
18

19

20 **Article I. Purpose and Policy**

21 1-1. The Tribe is committed to protecting the safety, health and well-being of all employees, and
22 other individuals in the workplace. The Tribe recognizes that alcohol abuse and drug use pose a
23 significant health and safety threat to customers and other employees. The Tribe also recognizes
24 that alcohol/drug abuse and addiction are treatable illnesses. The Tribe realizes that early
25 intervention and support may improve the success of rehabilitation.

26 1-2. It is the policy of the Tribe to establish a drug and alcohol-free workplace program that
27 balances respect for individuals with the need to maintain an alcohol and drug-free environment.
28 The Tribe encourages employees to voluntarily seek help for their personal drug and alcohol-
29 related problems.

30

31 **Article II. Adoption, Amendment, Repeal**

32 2-1. This Policy was adopted by the Oneida Business Committee by resolution BC-10-25-95-A
33 and amended by BC-10-20-99-A, BC-12-05-07-B and BC-12-11-13-F.

34 2-2. This Policy may be amended or repealed by the Oneida Business Committee or the Oneida
35 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

36 2-3. Should a provision of this Policy or the application thereof to any person or circumstances be
37 held as invalid, such invalidity shall not affect other provisions of this Policy which are considered
38 to have legal force without the invalid portions.

39 2-4. In the event of a conflict between a provision of this Policy and a provision of another Policy,
40 the provisions of this Policy shall control.

41 2-5. This Policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of
42 Wisconsin.

43

44 **Article III. Definitions**

45 3-1. This Article shall govern the definitions of words or phrases as used herein. All words not
46 defined herein shall be used in their ordinary and everyday sense.

47 (a) "Appropriate authority" shall mean the Human Resource hiring representative,
48 immediate supervisor, MRO, and/or EAP who requests the drug and/or alcohol testing for
49 reasons of pre-employment, reasonable suspicion, and/or follow-up testing.

50 (b) "Confirmed positive test result" shall mean a lab-confirmed drug test that is verified by
51 the MRO that exceeds the cut-off levels established by this Policy (levels established by the
52 US Department of Health and Human Services), confirmed saliva testing, confirmed
53 evidential breath alcohol test results of 0.02 or greater; and/or refusal to test.

54 (c) "Employee" shall mean any individual who is employed by the Tribe and is subject to
55 the direction and control of the Tribe with respect to the material details of the work
56 performed, or who has the status of an employee under the usual common law rules
57 applicable to determining the employer-employee relationship. "Employee" includes, but

58 is not limited to; an individual employed by any program or enterprise of the Tribe, but
 59 does not include elected or appointed officials, or individuals employed by a Tribally
 60 Chartered Corporation. For purposes of this Policy, individuals employed under an
 61 employment contract as a limited term employee are employees of the Tribe, not
 62 consultants.

63 (d) “External applicant” shall mean a person who is applying for a position and not
 64 currently employed by the Tribe.

65 (e) “HRD” shall mean the Human Resources Department and/or representatives
 66 performing Human Resources functions applicable to this Policy.

67 (f) “Internal applicant” shall mean a person who is applying for a position who is currently
 68 employed by the Tribe, this shall include those employed under a temporary status.

69 (g) “MRO” shall mean Medical Review Officer who is a licensed physician who is
 70 responsible for receiving and reviewing laboratory results generated by an employer’s drug
 71 testing program and evaluating medical explanations for certain drug test results.

72 (h) “ONEAP” shall mean the Oneida Nation Employee Assistance Program which is a
 73 professional counseling program staffed by clinical social workers licensed by the State of
 74 Wisconsin which offers services to Tribal employees and family members.

75 (i) “Prohibited drug(s)” shall mean marijuana, cocaine, opiates, amphetamines,
 76 phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other
 77 substance included in Schedules I through V, as defined by Section 812 of Title 21 of the
 78 United States Code. This shall also include prescription medication or over-the-counter
 79 medicine used in an unauthorized or unlawful manner.

80 (j) “Return-to-Work Agreement” shall mean an agreement, developed by an ONEAP
 81 counselor and signed by the employee and the ONEAP counselor, and the referring
 82 supervisor, which sets out the actions the employee needs to complete in order to return to
 83 work and remain employed.

84 (k) “Supervisor” shall mean the immediate supervisor, or person who has taken on the role
 85 of supervisor due to an absence that is responsible for performance review, corrective
 86 action, and day-to-day assignments of duties.

87 (l) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.

88 (m) “Work-related accident” shall mean an unexpected event involving an employee that
 89 occurs in the employee’s working environment or during an activity related to work, that:

- 90 (1) results in an injury to the employee and requires medical intervention by a
- 91 police officer or emergency medical technician, or treatment at a medical facility,
- 92 (2) results in death of the employee or another person, or
- 93 (3) involves any property damage.

94 **Article IV. Application**

95 4-1. This Policy applies to all applicants for employment, whether external or internal, and all
 96 employees during working hours and when on-call.

97 4-2. Employees are prohibited from the use of intoxicants and prohibited drugs while on official
 98 business travel while the conference or meeting is in session.

99 4-3. An employee is not exempted from this Policy if they travel to another state, territory or
 100 country where the use of certain drugs is legal.

101

102

103 **Article V. Shared Responsibility**

104 5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation and
105 shared responsibility between the employer and employees.

106 5-2. *Employee*. It is the employee's responsibility to:

107 (a) Be free from the effects of prohibited drugs, and/or alcohol during working hours,
108 and/or when scheduled to be on-call.

109 (b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any
110 prohibited drugs while working.

111 (c) Comply with drug and alcohol testing if directed to do so upon the request of an
112 appropriate authority.

113 (d) Confidentially report suspicious behavior of an employee immediately to the
114 supervisor of the employee in question.

115 (e) Cooperate with the requests made by the MRO and return the call of the MRO within
116 twenty-four (24) hours of the call being made to the employee. Employees who fail to
117 cooperate and do not contact the MRO within twenty-four (24) hours of receiving contact
118 shall not receive back pay for any time between the date the MRO placed the call until the
119 time the employee does return the call of the MRO.

120 (f) Sign a consent form to be tested for alcohol and drugs when requested by a supervisor,
121 EHN, a certified drug and alcohol technician, or police personnel in accordance with this
122 Policy.

123 5-3. *Supervisor*. It is the supervisor's responsibility to:

124 (a) Be familiar with this Policy and any related policies and procedures.

125 (b) Investigate reported suspicious behaviors while maintaining the confidentiality of the
126 person who reported the suspicious behavior.

127 (c) Promptly intervene with employees who are believed to be under the influence of
128 prohibited drugs and/or alcohol.

129 (d) Monitor the employee under the influence of prescription and/or over-the-counter
130 medications that could compromise the safety of the employee, fellow employees, or the
131 public.

132 (e) Send the employee through the contracted transportation service for drug and alcohol
133 forensic testing.

134 (f) Take appropriate action as outlined by this Policy.

135 (g) Sign the Return to Work Agreement along with the employee and ONEAP counselor
136 that was developed by ONEAP.

137 (h) Send a copy of the consent to submit to drug and alcohol testing form signed by the
138 employee to EHN.

139 5-4. *Supervisor and Employee*. Supervisors and employees that fail to adhere to their
140 responsibilities under this Policy may be subject to disciplinary action or other consequences as
141 explained in Article XIII.

142 5-5. *Off-duty Use of Prohibited Drugs or Alcohol*. Off-duty use of prohibited drugs or alcohol
143 may result in continued impairment during on-duty hours, which shall then constitute a violation of
144 this Policy. It is the employee's responsibility to understand the consequences of off-duty use, and
145 take steps to avoid the possibility of on-duty impairment. In the case where employee is called in
146 for an emergency or unplanned work (this does not include those on-call), and he or she has been
147 using prohibited drugs or drinking alcoholic beverages prior to such a call, such employee should

148 decline to report until the effects of the prohibited drugs or alcohol have left his or her system.
 149 Such refusal to report shall not be viewed as improper, and disciplinary action shall not arise
 150 specifically from such refusal.

151 5-6. *Use of Controlled Substances That May Affect Safety or Performance.* Employees who are
 152 taking or are under the influence of any controlled substances during working hours (such as
 153 prescription medication or over the counter medication), which may affect the employee's job
 154 performance or safety of the employee, fellow employees, public, or assets of the Tribe have the
 155 following obligations:

- 156 (a) The employee shall notify the employee's immediate supervisor about the use of the
 157 substance and possible work-related effects prior to commencing work.
- 158 (b) Upon request, the employee may be required to obtain a written statement of any work
 159 restrictions or impact on performance or safety relating to the legal substances from his
 160 or her physician or pharmacist.
- 161 (c) An employee shall not sell or share his or her prescribed medications with any other
 162 person, and shall not take medications that are prescribed to another person.
- 163 (d) It may be necessary for the employee's supervisor, area manager or Employee Health
 164 Nursing (EHN) to consult with the employee's personal physician or an MRO to
 165 determine if the medication might impact the employee's ability to perform his or her
 166 job, or pose a hazard to other employees or to the general public.
- 167 (e) The employee's duties may be temporarily modified for up to one hundred eighty (180)
 168 days. Any modification of duties shall result in the appropriate modification of pay as
 169 established by the Human Resources Department.

170

171 **Article VI. Prohibited Behavior**

172 6-1. An applicant or employee of the Tribe is in violation of this Policy if he or she:

- 173 (a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited
 174 drugs or alcohol while on duty. Notwithstanding Article XI, any employee who is caught
 175 using, possessing or selling prohibited drugs shall be immediately terminated from employment
 176 with the Tribe.
- 177 (b) Fails to inform his or her supervisor of being under the influence of prescription
 178 medication and/or over-the-counter medication(s) which may affect the employee's job
 179 performance or safety of the employee, fellow employees, public, or assets of the Tribe.
- 180 (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses
 181 prescription medications.
- 182 (d) Refuses to test.
- 183 (e) Has a confirmed positive test after completing a drug and/or alcohol forensic test
 184 through EHN or its designee, or has a confirmatory test come back as positive.

185

186 **Article VII. Reasonable Suspicion**

187 7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by
 188 personal observation and/or secondary reported observation that an employee may be under the
 189 influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee
 190 has taken or possess prohibited drugs or prescription medication that is not specifically prescribed
 191 to that employee. In order to make a reasonable suspicion determination, the supervisor shall
 192 evaluate the following:

193 Specific, contemporaneous and articulable observations concerning appearance,
 194 behavior, speech, or body odors of the employee consistent with possible drug use or
 195 alcohol misuse. The observations may include indications of the chronic and
 196 withdrawal effects of prohibited drugs or alcohol.

197 7-2. The supervisor shall document his or her observations and discuss the matter with the
 198 employee. During this discussion, the supervisor may ask the employee for proof of a
 199 prescription. The employee shall comply with this request. If after a discussion with the
 200 employee, the supervisor continues to suspect the employee may currently still be under the
 201 influence or reasonable suspicion is otherwise established, the supervisor shall refer the employee
 202 for drug and alcohol forensic testing.

203

204 **Article VIII. Drug and Alcohol Testing**

205 8-1. Drug and alcohol tests are forensic in nature, meaning they are performed to formalize
 206 conditions of employment as described in this Policy. To ensure the accuracy and fairness of this
 207 Policy, all forensic testing shall be conducted according to the Department of Health and Human
 208 Services, Substance Abuse and Mental Health Services Administration (SAMSHA) guidelines for
 209 Federal Workplace Drug testing Programs

210 8-2. The Employee Health Nursing Department or its designee shall use Federal Drug
 211 Administration approved urine tests and National Highway Transportation Safety Administration
 212 (NHTSA) certified evidential breath testing devices or NHTSA certified saliva-screening devices,
 213 operated by technicians whose training terminology, procedures, methods, equipment, forms, and
 214 quality assurance comply with best practices.

215 (a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory
 216 which is certified by the U.S. Department of Health and Human Services using its
 217 confirmation methods and established cut-off levels. Laboratory-confirmed results shall
 218 undergo the verification process by a MRO.

219 (b) Confirmation breath alcohol testing shall be performed using an NHTSA certified
 220 evidential breath testing device.

221 (c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA
 222 certified saliva test.

223 ~~8-3. If an employee is involved in a work-related accident, he or she shall immediately inform his~~
 224 ~~or her supervisor of the accident. Alcohol and drug testing shall be conducted on the employee~~
 225 ~~immediately following the accident by certified drug and alcohol technicians or police personnel.~~
 226 ~~Upon arriving at a medical facility, the employee shall inform the medical care provider that this~~
 227 ~~was a work-related accident. If the alcohol and drug testing is not conducted by certified drug and~~
 228 ~~alcohol technician or police, then the supervisor shall direct the employee to go to EHN or its~~
 229 ~~designee to be tested within one (1) hour of being directed by the Supervisor to do so or within one~~
 230 ~~(1) hour of being treated and released at the medical facility. Refusal to submit to any post-~~
 231 ~~accident alcohol and drug testing requested by certified drug and alcohol technicians, police, EHN,~~
 232 ~~or its designee shall be treated as a refusal to test pursuant to this Policy.~~

233 ~~8-34.~~ Each employee, as a condition of employment, is required to participate in pre-employment,
 234 reasonable suspicion, and follow-up testing upon the request of an appropriate authority.

235 ~~8-45.~~ A negative test result is required for employment eligibility. In cases where a test result is
 236 diluted or the test was cancelled, retesting urine for drugs is required. If the re-test results in a
 237 negative-dilute, the applicant shall be given a negative test result. If the re-test results in a

238 positive-dilute, then the applicant shall be given a positive test result. Other retesting may also be
 239 required at the direction of the MRO.

240

241 **Article IX. Refusal to Test**

242 9-1. Refusal to test is prohibited behavior as defined in Article VI. Refusal to test carries the same
 243 consequences as a non-negative and/or confirmed positive test result. Examples of refusal to test
 244 include, but are not limited to:

245 (a) Substituting, adulterating (falsifying), or diluting the specimen

246 (b) Refusal to sign the required forms

247 (c) Refusal to cooperate in the testing process in such a way that prevents completion of
 248 accurate testing and as directed by the collector

249 (d) Failing to remain at the testing site until the testing process is complete

250 (e) Providing an insufficient sample of urine or breath

251 (f) Failing to test or to re-test

252 (g) Failing to appear within two (2) hours after an order or request is made for testing or
 253 re-testing, ~~including for work-related accidents.~~

254 (h) Behaving in a confrontational or discourteous manner that disrupts the collection
 255 process

256 ~~(i) Failing to inform the medical facility that alcohol and drug testing is needed due to a
 257 work-related accident~~

258

259 **Article X. Waiting Period**

260 10-1. An employee shall be immediately removed from duty without pay during the waiting
 261 period between the time of specimen collection and the employer's notification of negative results
 262 on both tests, alcohol and drugs, or MRO-verified negative test results.

263 10-2. When negative test results are made available to the employer, the supervisor shall notify
 264 the employee by telephone and by certified mail using the contact information provided by the
 265 employee. The notice to the employee shall identify a reinstatement date. Back pay shall be
 266 provided in accordance with the Back Pay Policy. However, if the employee fails to return to
 267 work on the assigned reinstatement date as instructed in the notice from the supervisor, the
 268 supervisor shall discipline the employee in accordance with the Personnel Policies and Procedures,
 269 unless an extension is granted in writing by the supervisor along with the reason for the extension.
 270 An employee who is ultimately terminated for failure to return to work on his or her assigned
 271 reinstatement date shall not be eligible for employment for one (1) year after the date of
 272 termination.

273 10-3. This article applies only to current employees who meet the reasonable suspicion standard.
 274 It does not apply to applicants.

275

276 **Article XI. Consequences for Prohibited Behavior**

277 11-1. Either an internal applicant or an external applicant may decline the position at any time
 278 before being directed to the Employee Health Nursing Department or other designated testing site
 279 for his or her drug and alcohol testing.

280 11-2. *External Applicant.* If an external applicant fails to show at the testing site within the time
 281 allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
 282 section 6-1(e) that has been documented, the employment offer shall be withdrawn. An external

283 applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the
284 date of the urine drug screening test.

285 11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the time
286 allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
287 section 6-1, the employment offer shall be withdrawn. The applicant shall be removed from duty
288 and subject to respective consequences of this Policy. The applicant shall not be eligible for hiring
289 consideration in a different position for one hundred eighty (180) days from the date of the urine
290 drug screening test.

291 11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section 6-1,
292 and/or fails to cooperate by not responding to contact from the MRO within ten (10) business days
293 (which shall be deemed thereafter as a definite positive test), he or she shall be removed from duty
294 and subject to the respective consequences of this Policy.

295 11-5. *Consequences.*

296 (a) *First Violation.*

297 (1) Any employee who engages in prohibited behavior as defined in Article VI for
298 the first time shall be removed from duty without pay and shall receive a mandatory
299 referral to ONEAP for an assessment. The ONEAP shall also determine if the
300 employee shall be subject to return-to-duty/follow-up testing. If follow-up testing
301 is required, the testing shall be at the employee's expense.

302 (2) The employee shall be required to sign a Return-to-Work Agreement and
303 submit it to his or her supervisor within ten (10) calendar days or the employee shall
304 be terminated and ineligible for re-hire for one (1) year.

305 (A) When the supervisor signs the Return-to-Work Agreement the
306 employee shall be placed back on the work schedule by the next regularly
307 scheduled workday.

308 (3) Failure to comply with the Return-to-Work Agreement shall result in the
309 employee being terminated and ineligible for re-hire for one (1) year.

310 (b) *Second Violation.*

311 (1) Any employee who engages in prohibited behavior as defined in Article VI a
312 second time within his or her lifetime of employment with the Tribe shall be
313 removed from duty without pay and shall receive a mandatory referral to ONEAP
314 for an assessment.

315 (2) The employee shall be required to sign a Return-to-Work Agreement and
316 submit it to their supervisor for signature within ten (10) calendar days or the
317 employee shall be terminated and ineligible for re-hire for one (1) year. After a
318 second violation the employee shall not be placed back on the work schedule until:

319 (A) The employee receives approval from the ONEAP that they have
320 demonstrated sufficient progress in a treatment program that would indicate
321 the employee is drug and alcohol free within thirty (30) days of the
322 employee being removed from duty; and

323 (B) The employee completes a return-to-duty drug screening and alcohol
324 test at a SAMHSA-certified facility at their own expense, which shall be
325 negative within thirty (30) days of the employee being removed from duty;

326 (C) The ONEAP notifies the supervisor of the employee's eligibility to
327 return to work.

328 (3) As a condition of continuing employment, the employee shall participate in
 329 follow-up testing with continued negative results as directed by the ONEAP and
 330 listed in the Return-to-Work Agreement. All follow-up testing shall be at the
 331 employee's expense.

332 (4) Failure to comply with the Return-to-Work agreement shall result in the
 333 employee being terminated and ineligible for re-hire for one (1) year.

334 (c) *Third Violation.*

335 (1) Any employee who engages in prohibited behavior as defined in Article VI a
 336 third time in his or her lifetime of employment with the Tribe shall be terminated.
 337 The employee shall not be eligible for employment unless he or she receives a
 338 forgiveness pursuant to the Pardon and Forgiveness Law. An employee that
 339 receives a forgiveness shall not be eligible for re-hire for one (1) year after the date
 340 of termination.

341

342 **Article XII. Re-hire**

343 12-1. Former employees that were terminated due to violations of this Policy shall provide, along
 344 with their application for employment, the following:

- 345 (a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and
- 346 (b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed
 347 within the last thirty (30) days. This drug screening and alcohol test shall be done at their
 348 own expense.

349

350 **Article XIII. Other Potential Consequences**

351 13-1. The violation of this Policy may result in consequences to the employee beyond any
 352 discipline or corrective action that may be taken. Other potential consequences include the
 353 following:

- 354 (a) *Disqualification of Unemployment Benefits:* Employees who are terminated as a result
 355 of a violation of this Policy may be ineligible for unemployment benefits.
- 356 (b) ~~Reduction Impact on~~ Workers Compensation Benefits: Workers' Compensation
 357 benefits may be impacted pursuant to the Oneida Workers' Compensation Ordinance if an
 358 eEmployees who suffers an injury in a work-related accident that occurred while engaged
 359 in a violation of this Policy ~~may have any workers compensation benefits reduced.~~
- 360 (c) *Criminal Penalties:* Employees whose conduct violates state or federal criminal laws
 361 may be referred to appropriate law enforcement for criminal prosecution.
- 362 (d) *Liability for Accidents:* Employees whose conduct in violation of this Policy causes an
 363 accident may be held personally responsible for losses associated with the accident, and
 364 may be required to pay for those losses.

365

366 **Article XIV. Confidentiality**

367 14-1. Information related to the application of this Policy is confidential. Access to this
 368 information is limited to those who have a legitimate "need to know" in compliance with relevant
 369 laws and personnel policies and procedures.

370 14-2. All drug and alcohol testing information shall be maintained in confidential records,
 371 separate from the employee's clinical and personnel files. The employee may request a copy of his

372 or her records. The records may be requested by a third party in accordance with the Oneida
 373 Personnel Policies and Procedures.

374

375 **Article XV. Communication**

376 15-1. HRD shall communicate this Policy to all employees to ensure all employees are aware of
 377 their role in supporting this Policy:

378 (a) All employees shall be given information on how to access this Policy.

379 (b) This Policy shall be reviewed in new employee orientation and other means, as deemed
 380 appropriate by HRD.

381 (c) All employees shall sign an acknowledgment form stating they have received a copy of
 382 this Policy, have read and understand it, and agree to follow this Policy.

383

384 *End.*

385

386 See GTC-1-31-94-B

387 Adopted by the OBC on 8-17-94

388 Emergency Amendments BC-04-20-95-C

389 Adopted BC-10-25-95-A (repealed previous versions)

390 Amended BC-10-20-99-A

391 Amended BC-12-05-07-B

392 Amended BC-12-11-13-F

393

Drug and Alcohol Free Workplace Policy

1
2
3 Article I. Purpose and Policy
4 Article II. Adoption, Amendment, Repeal
5 Article III. Definitions
6 Article IV. Application
7 Article V. Shared Responsibility
8 Article VI. Prohibited Behavior
9 Article VII. Reasonable Suspicion
10 Article VIII. Drug and Alcohol Testing

11 Article IX. Refusal to Test
12 Article X. Waiting Period
13 Article XI. Consequences for Prohibited Behavior
14 Article XII. Re-hire
15 Article XIII. Other Potential Consequences
16 Article XIV. Confidentiality
17 Article XV. Communication
18

19
20 **Article I. Purpose and Policy**

21 1-1. The Tribe is committed to protecting the safety, health and well-being of all employees, and
22 other individuals in the workplace. The Tribe recognizes that alcohol abuse and drug use pose a
23 significant health and safety threat to customers and other employees. The Tribe also recognizes
24 that alcohol/drug abuse and addiction are treatable illnesses. The Tribe realizes that early
25 intervention and support may improve the success of rehabilitation.

26 1-2. It is the policy of the Tribe to establish a drug and alcohol-free workplace program that
27 balances respect for individuals with the need to maintain an alcohol and drug-free environment.
28 The Tribe encourages employees to voluntarily seek help for their personal drug and alcohol-
29 related problems.

30
31 **Article II. Adoption, Amendment, Repeal**

32 2-1. This Policy was adopted by the Oneida Business Committee by resolution BC-10-25-95-A
33 and amended by BC-10-20-99-A, BC-12-05-07-B and BC-12-11-13-F.

34 2-2. This Policy may be amended or repealed by the Oneida Business Committee or the Oneida
35 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

36 2-3. Should a provision of this Policy or the application thereof to any person or circumstances be
37 held as invalid, such invalidity shall not affect other provisions of this Policy which are considered
38 to have legal force without the invalid portions.

39 2-4. In the event of a conflict between a provision of this Policy and a provision of another Policy,
40 the provisions of this Policy shall control.

41 2-5. This Policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of
42 Wisconsin.

43
44 **Article III. Definitions**

45 3-1. This Article shall govern the definitions of words or phrases as used herein. All words not
46 defined herein shall be used in their ordinary and everyday sense.

47 (a) "Appropriate authority" shall mean the Human Resource hiring representative,
48 immediate supervisor, MRO, and/or EAP who requests the drug and/or alcohol testing for
49 reasons of pre-employment, reasonable suspicion, and/or follow-up testing.

50 (b) "Confirmed positive test result" shall mean a lab-confirmed drug test that is verified by
51 the MRO that exceeds the cut-off levels established by this Policy (levels established by the
52 US Department of Health and Human Services), confirmed saliva testing, confirmed
53 evidential breath alcohol test results of 0.02 or greater; and/or refusal to test.

54 (c) "Employee" shall mean any individual who is employed by the Tribe and is subject to
55 the direction and control of the Tribe with respect to the material details of the work
56 performed, or who has the status of an employee under the usual common law rules
57 applicable to determining the employer-employee relationship. "Employee" includes, but

58 is not limited to; an individual employed by any program or enterprise of the Tribe, but
 59 does not include elected or appointed officials, or individuals employed by a Tribally
 60 Chartered Corporation. For purposes of this Policy, individuals employed under an
 61 employment contract as a limited term employee are employees of the Tribe, not
 62 consultants.

63 (d) “External applicant” shall mean a person who is applying for a position and not
 64 currently employed by the Tribe.

65 (e) “HRD” shall mean the Human Resources Department and/or representatives
 66 performing Human Resources functions applicable to this Policy.

67 (f) “Internal applicant” shall mean a person who is applying for a position who is currently
 68 employed by the Tribe, this shall include those employed under a temporary status.

69 (g) “MRO” shall mean Medical Review Officer who is a licensed physician who is
 70 responsible for receiving and reviewing laboratory results generated by an employer’s drug
 71 testing program and evaluating medical explanations for certain drug test results.

72 (h) “ONEAP” shall mean the Oneida Nation Employee Assistance Program which is a
 73 professional counseling program staffed by clinical social workers licensed by the State of
 74 Wisconsin which offers services to Tribal employees and family members.

75 (i) “Prohibited drug(s)” shall mean marijuana, cocaine, opiates, amphetamines,
 76 phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other
 77 substance included in Schedules I through V, as defined by Section 812 of Title 21 of the
 78 United States Code. This shall also include prescription medication or over-the-counter
 79 medicine used in an unauthorized or unlawful manner.

80 (j) “Return-to-Work Agreement” shall mean an agreement, developed by an ONEAP
 81 counselor and signed by the employee and the ONEAP counselor, and the referring
 82 supervisor, which sets out the actions the employee needs to complete in order to return to
 83 work and remain employed.

84 (k) “Supervisor” shall mean the immediate supervisor, or person who has taken on the role
 85 of supervisor due to an absence that is responsible for performance review, corrective
 86 action, and day-to-day assignments of duties.

87 (l) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.

88 (m) “Work-related accident” shall mean an unexpected event involving an employee that
 89 occurs in the employee’s working environment or during an activity related to work, that:

- 90 (1) results in an injury to the employee and requires medical intervention by a
- 91 police officer or emergency medical technician, or treatment at a medical facility,
- 92 (2) results in death of the employee or another person, or
- 93 (3) involves any property damage.

94 **Article IV. Application**

95 4-1. This Policy applies to all applicants for employment, whether external or internal, and all
 96 employees during working hours and when on-call.

97 4-2. Employees are prohibited from the use of intoxicants and prohibited drugs while on official
 98 business travel while the conference or meeting is in session.

99 4-3. An employee is not exempted from this Policy if they travel to another state, territory or
 100 country where the use of certain drugs is legal.

101

103 **Article V. Shared Responsibility**

104 5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation and
105 shared responsibility between the employer and employees.

106 5-2. *Employee*. It is the employee's responsibility to:

107 (a) Be free from the effects of prohibited drugs, and/or alcohol during working hours,
108 and/or when scheduled to be on-call.

109 (b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any
110 prohibited drugs while working.

111 (c) Comply with drug and alcohol testing if directed to do so upon the request of an
112 appropriate authority.

113 (d) Confidentially report suspicious behavior of an employee immediately to the
114 supervisor of the employee in question.

115 (e) Cooperate with the requests made by the MRO and return the call of the MRO within
116 twenty-four (24) hours of the call being made to the employee. Employees who fail to
117 cooperate and do not contact the MRO within twenty-four (24) hours of receiving contact
118 shall not receive back pay for any time between the date the MRO placed the call until the
119 time the employee does return the call of the MRO.

120 (f) Sign a consent form to be tested for alcohol and drugs when requested by a supervisor,
121 EHN, a certified drug and alcohol technician, or police personnel in accordance with this
122 Policy.

123 5-3. *Supervisor*. It is the supervisor's responsibility to:

124 (a) Be familiar with this Policy and any related policies and procedures.

125 (b) Investigate reported suspicious behaviors while maintaining the confidentiality of the
126 person who reported the suspicious behavior.

127 (c) Promptly intervene with employees who are believed to be under the influence of
128 prohibited drugs and/or alcohol.

129 (d) Monitor the employee under the influence of prescription and/or over-the-counter
130 medications that could compromise the safety of the employee, fellow employees, or the
131 public.

132 (e) Send the employee through the contracted transportation service for drug and alcohol
133 forensic testing.

134 (f) Take appropriate action as outlined by this Policy.

135 (g) Sign the Return to Work Agreement along with the employee and ONEAP counselor
136 that was developed by ONEAP.

137 (h) Send a copy of the consent to submit to drug and alcohol testing form signed by the
138 employee to EHN.

139 5-4. *Supervisor and Employee*. Supervisors and employees that fail to adhere to their
140 responsibilities under this Policy may be subject to disciplinary action or other consequences as
141 explained in Article XIII.

142 5-5. *Off-duty Use of Prohibited Drugs or Alcohol*. Off-duty use of prohibited drugs or alcohol
143 may result in continued impairment during on-duty hours, which shall then constitute a violation of
144 this Policy. It is the employee's responsibility to understand the consequences of off-duty use, and
145 take steps to avoid the possibility of on-duty impairment. In the case where employee is called in
146 for an emergency or unplanned work (this does not include those on-call), and he or she has been
147 using prohibited drugs or drinking alcoholic beverages prior to such a call, such employee should

148 decline to report until the effects of the prohibited drugs or alcohol have left his or her system.
 149 Such refusal to report shall not be viewed as improper, and disciplinary action shall not arise
 150 specifically from such refusal.

151 5-6. *Use of Controlled Substances That May Affect Safety or Performance.* Employees who are
 152 taking or are under the influence of any controlled substances during working hours (such as
 153 prescription medication or over the counter medication), which may affect the employee's job
 154 performance or safety of the employee, fellow employees, public, or assets of the Tribe have the
 155 following obligations:

- 156 (a) The employee shall notify the employee's immediate supervisor about the use of the
 157 substance and possible work-related effects prior to commencing work.
- 158 (b) Upon request, the employee may be required to obtain a written statement of any work
 159 restrictions or impact on performance or safety relating to the legal substances from his
 160 or her physician or pharmacist.
- 161 (c) An employee shall not sell or share his or her prescribed medications with any other
 162 person, and shall not take medications that are prescribed to another person.
- 163 (d) It may be necessary for the employee's supervisor, area manager or Employee Health
 164 Nursing (EHN) to consult with the employee's personal physician or an MRO to
 165 determine if the medication might impact the employee's ability to perform his or her
 166 job, or pose a hazard to other employees or to the general public.
- 167 (e) The employee's duties may be temporarily modified for up to one hundred eighty (180)
 168 days. Any modification of duties shall result in the appropriate modification of pay as
 169 established by the Human Resources Department.

170

171 **Article VI. Prohibited Behavior**

172 6-1. An applicant or employee of the Tribe is in violation of this Policy if he or she:

- 173 (a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited
 174 drugs or alcohol while on duty. Notwithstanding Article XI, any employee who is caught
 175 using, possessing or selling prohibited drugs shall be immediately terminated from employment
 176 with the Tribe.
- 177 (b) Fails to inform his or her supervisor of being under the influence of prescription
 178 medication and/or over-the-counter medication(s) which may affect the employee's job
 179 performance or safety of the employee, fellow employees, public, or assets of the Tribe.
- 180 (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses
 181 prescription medications.
- 182 (d) Refuses to test.
- 183 (e) Has a confirmed positive test after completing a drug and/or alcohol forensic test
 184 through EHN or its designee, or has a confirmatory test come back as positive.

185

186 **Article VII. Reasonable Suspicion**

187 7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by
 188 personal observation and/or secondary reported observation that an employee may be under the
 189 influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee
 190 has taken or possess prohibited drugs or prescription medication that is not specifically prescribed
 191 to that employee. In order to make a reasonable suspicion determination, the supervisor shall
 192 evaluate the following:

193 Specific, contemporaneous and articulable observations concerning appearance,
 194 behavior, speech, or body odors of the employee consistent with possible drug use or
 195 alcohol misuse. The observations may include indications of the chronic and
 196 withdrawal effects of prohibited drugs or alcohol.

197 7-2. The supervisor shall document his or her observations and discuss the matter with the
 198 employee. During this discussion, the supervisor may ask the employee for proof of a
 199 prescription. The employee shall comply with this request. If after a discussion with the
 200 employee, the supervisor continues to suspect the employee may currently still be under the
 201 influence or reasonable suspicion is otherwise established, the supervisor shall refer the employee
 202 for drug and alcohol forensic testing.

203

204 **Article VIII. Drug and Alcohol Testing**

205 8-1. Drug and alcohol tests are forensic in nature, meaning they are performed to formalize
 206 conditions of employment as described in this Policy. To ensure the accuracy and fairness of this
 207 Policy, all forensic testing shall be conducted according to the Department of Health and Human
 208 Services, Substance Abuse and Mental Health Services Administration (SAMSHA) guidelines for
 209 Federal Workplace Drug testing Programs

210 8-2. The Employee Health Nursing Department or its designee shall use Federal Drug
 211 Administration approved urine tests and National Highway Transportation Safety Administration
 212 (NHTSA) certified evidential breath testing devices or NHTSA certified saliva-screening devices,
 213 operated by technicians whose training terminology, procedures, methods, equipment, forms, and
 214 quality assurance comply with best practices.

215 (a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory
 216 which is certified by the U.S. Department of Health and Human Services using its
 217 confirmation methods and established cut-off levels. Laboratory-confirmed results shall
 218 undergo the verification process by a MRO.

219 (b) Confirmation breath alcohol testing shall be performed using an NHTSA certified
 220 evidential breath testing device.

221 (c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA
 222 certified saliva test.

223 8-3. Each employee, as a condition of employment, is required to participate in pre-employment,
 224 reasonable suspicion, and follow-up testing upon the request of an appropriate authority.

225 8-4. A negative test result is required for employment eligibility. In cases where a test result is
 226 diluted or the test was cancelled, retesting urine for drugs is required. If the re-test results in a
 227 negative-dilute, the applicant shall be given a negative test result. If the re-test results in a
 228 positive-dilute, then the applicant shall be given a positive test result. Other retesting may also be
 229 required at the direction of the MRO.

230

231 **Article IX. Refusal to Test**

232 9-1. Refusal to test is prohibited behavior as defined in Article VI. Refusal to test carries the same
 233 consequences as a non-negative and/or confirmed positive test result. Examples of refusal to test
 234 include, but are not limited to:

235 (a) Substituting, adulterating (falsifying), or diluting the specimen

236 (b) Refusal to sign the required forms

- 237 (c) Refusal to cooperate in the testing process in such a way that prevents completion of
 238 accurate testing and as directed by the collector
 239 (d) Failing to remain at the testing site until the testing process is complete
 240 (e) Providing an insufficient sample of urine or breath
 241 (f) Failing to test or to re-test
 242 (g) Failing to appear within two (2) hours after an order or request is made for testing or
 243 re-testing.
 244 (h) Behaving in a confrontational or discourteous manner that disrupts the collection
 245 process
 246

247 **Article X. Waiting Period**

248 10-1. An employee shall be immediately removed from duty without pay during the waiting
 249 period between the time of specimen collection and the employer's notification of negative results
 250 on both tests, alcohol and drugs, or MRO-verified negative test results.

251 10-2. When negative test results are made available to the employer, the supervisor shall notify
 252 the employee by telephone and by certified mail using the contact information provided by the
 253 employee. The notice to the employee shall identify a reinstatement date. Back pay shall be
 254 provided in accordance with the Back Pay Policy. However, if the employee fails to return to
 255 work on the assigned reinstatement date as instructed in the notice from the supervisor, the
 256 supervisor shall discipline the employee in accordance with the Personnel Policies and Procedures,
 257 unless an extension is granted in writing by the supervisor along with the reason for the extension.
 258 An employee who is ultimately terminated for failure to return to work on his or her assigned
 259 reinstatement date shall not be eligible for employment for one (1) year after the date of
 260 termination.

261 10-3. This article applies only to current employees who meet the reasonable suspicion standard.
 262 It does not apply to applicants.
 263

264 **Article XI. Consequences for Prohibited Behavior**

265 11-1. Either an internal applicant or an external applicant may decline the position at any time
 266 before being directed to the Employee Health Nursing Department or other designated testing site
 267 for his or her drug and alcohol testing.

268 11-2. *External Applicant.* If an external applicant fails to show at the testing site within the time
 269 allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
 270 section 6-1(e) that has been documented, the employment offer shall be withdrawn. An external
 271 applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the
 272 date of the urine drug screening test.

273 11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the time
 274 allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
 275 section 6-1, the employment offer shall be withdrawn. The applicant shall be removed from duty
 276 and subject to respective consequences of this Policy. The applicant shall not be eligible for hiring
 277 consideration in a different position for one hundred eighty (180) days from the date of the urine
 278 drug screening test.

279 11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section 6-1,
 280 and/or fails to cooperate by not responding to contact from the MRO within ten (10) business days

281 (which shall be deemed thereafter as a definite positive test), he or she shall be removed from duty
282 and subject to the respective consequences of this Policy.

283 11-5. *Consequences.*

284 (a) *First Violation.*

285 (1) Any employee who engages in prohibited behavior as defined in Article VI for
286 the first time shall be removed from duty without pay and shall receive a mandatory
287 referral to ONEAP for an assessment. The ONEAP shall also determine if the
288 employee shall be subject to return-to-duty/follow-up testing. If follow-up testing
289 is required, the testing shall be at the employee's expense.

290 (2) The employee shall be required to sign a Return-to-Work Agreement and
291 submit it to his or her supervisor within ten (10) calendar days or the employee shall
292 be terminated and ineligible for re-hire for one (1) year.

293 (A) When the supervisor signs the Return-to-Work Agreement the
294 employee shall be placed back on the work schedule by the next regularly
295 scheduled workday.

296 (3) Failure to comply with the Return-to-Work Agreement shall result in the
297 employee being terminated and ineligible for re-hire for one (1) year.

298 (b) *Second Violation.*

299 (1) Any employee who engages in prohibited behavior as defined in Article VI a
300 second time within his or her lifetime of employment with the Tribe shall be
301 removed from duty without pay and shall receive a mandatory referral to ONEAP
302 for an assessment.

303 (2) The employee shall be required to sign a Return-to-Work Agreement and
304 submit it to their supervisor for signature within ten (10) calendar days or the
305 employee shall be terminated and ineligible for re-hire for one (1) year. After a
306 second violation the employee shall not be placed back on the work schedule until:

307 (A) The employee receives approval from the ONEAP that they have
308 demonstrated sufficient progress in a treatment program that would indicate
309 the employee is drug and alcohol free within thirty (30) days of the
310 employee being removed from duty; and

311 (B) The employee completes a return-to-duty drug screening and alcohol
312 test at a SAMHSA-certified facility at their own expense, which shall be
313 negative within thirty (30) days of the employee being removed from duty;

314 (C) The ONEAP notifies the supervisor of the employee's eligibility to
315 return to work.

316 (3) As a condition of continuing employment, the employee shall participate in
317 follow-up testing with continued negative results as directed by the ONEAP and
318 listed in the Return-to-Work Agreement. All follow-up testing shall be at the
319 employee's expense.

320 (4) Failure to comply with the Return-to-Work agreement shall result in the
321 employee being terminated and ineligible for re-hire for one (1) year.

322 (c) *Third Violation.*

323 (1) Any employee who engages in prohibited behavior as defined in Article VI a
324 third time in his or her lifetime of employment with the Tribe shall be terminated.
325 The employee shall not be eligible for employment unless he or she receives a

326 forgiveness pursuant to the Pardon and Forgiveness Law. An employee that
 327 receives a forgiveness shall not be eligible for re-hire for one (1) year after the date
 328 of termination.
 329

330 **Article XII. Re-hire**

331 12-1. Former employees that were terminated due to violations of this Policy shall provide, along
 332 with their application for employment, the following:

- 333 (a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and
- 334 (b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed
 335 within the last thirty (30) days. This drug screening and alcohol test shall be done at their
 336 own expense.

337 **Article XIII. Other Potential Consequences**

338 13-1. The violation of this Policy may result in consequences to the employee beyond any
 339 discipline or corrective action that may be taken. Other potential consequences include the
 340 following:
 341

- 342 (a) *Disqualification of Unemployment Benefits:* Employees who are terminated as a result
 343 of a violation of this Policy may be ineligible for unemployment benefits.
- 344 (b) *Impact on Workers Compensation Benefits:* Workers' Compensation benefits may be
 345 impacted pursuant to the Oneida Workers' Compensation Ordinance if an employee
 346 suffers an injury in a work-related accident that occurred while engaged in a violation of
 347 this Policy.
- 348 (c) *Criminal Penalties:* Employees whose conduct violates state or federal criminal laws
 349 may be referred to appropriate law enforcement for criminal prosecution.
- 350 (d) *Liability for Accidents:* Employees whose conduct in violation of this Policy causes an
 351 accident may be held personally responsible for losses associated with the accident, and
 352 may be required to pay for those losses.
 353

354 **Article XIV. Confidentiality**

355 14-1. Information related to the application of this Policy is confidential. Access to this
 356 information is limited to those who have a legitimate "need to know" in compliance with relevant
 357 laws and personnel policies and procedures.

358 14-2. All drug and alcohol testing information shall be maintained in confidential records,
 359 separate from the employee's clinical and personnel files. The employee may request a copy of his
 360 or her records. The records may be requested by a third party in accordance with the Oneida
 361 Personnel Policies and Procedures.
 362

363 **Article XV. Communication**

364 15-1. HRD shall communicate this Policy to all employees to ensure all employees are aware of
 365 their role in supporting this Policy:

- 366 (a) All employees shall be given information on how to access this Policy.
- 367 (b) This Policy shall be reviewed in new employee orientation and other means, as deemed
 368 appropriate by HRD.
- 369 (c) All employees shall sign an acknowledgment form stating they have received a copy of
 370 this Policy, have read and understand it, and agree to follow this Policy.

- 371
- 372 *End.*
- 373

- 374 See GTC-1-31-94-B
- 375 Adopted by the OBC on 8-17-94
- 376 Emergency Amendments BC-04-20-95-C
- 377 Adopted BC-10-25-95-A (repealed previous versions)
- 378 Amended BC-10-20-99-A
- 379 Amended BC-12-05-07-B
- 380 Amended BC-12-11-13-F
- 381



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54115-0365
 Oneida-nsn.gov



HANDOUT

TO: Oneida Business Committee
 FROM: Brandon Stevens, LOC Chairperson *BS*
 DATE: July 27, 2016
 RE: Garnishment Law Amendments

Please find the following attached backup documentation for your consideration of the Garnishment law amendments:

1. Resolution: Garnishment (Law) Amendments
2. Statement of Effect: Garnishment (Law) Amendments
3. Garnishment (Law) Amendments Legislative Analysis
4. Garnishment (Law) Amendments Redline Draft
5. Garnishment (Law) Amendments Clean Draft
6. Garnishment (Law) Amendments Fiscal Impact Statement

Overview

This Resolution adopts amendments to the Garnishment law which are summarized as follows:

- The current law sets the garnishment action fee at \$25.00 and the administrative fee at \$5.00. These amounts have been removed from the law and instead the Judiciary is authorized to determine the garnishment action fee amount [see 58.5-3(a)(1)], while the Accounting Department determines administrative fee amount [see 58.5-6(a)].
- The current law allows the parties to be represented by someone to speak on their behalf. The proposed amendments limit representation to an attorney or advocate [see 58.5-4(d)].
- A post judgment interest must be applied to the amount received on the date of the garnishment order [see 58.5-6(d)]. The post judgment interest rate is a fixed rate and will be determined by 1) an agreement by both parties or 2) an annual post judgment rate equal to one percent plus the prime rate that was in effect on the date of the judgment [see 58.5-6(d)(1)&(2)].
- Oneida entities, including chartered corporations, do not require a judgment or a garnishment order to garnish an employee's earnings to collect a debt owed to the Nation [see 58.6-1]. Oneida entities must follow the notification procedure [see 58.6-2]. An employee can request a garnishment hearing with the Judiciary within 30 days of the date of the final notice to challenge the debt owed to the Nation or to request a reduced garnishment amount [see 58.6-7]. The debtor is responsible for the Judiciary's garnishment action fee [see 58.6-3(b)(8)].

In accordance with the Legislative Procedures Act, a public meeting was held regarding these amendments on February 18, 2016 with a comment period closing on February 25, 2016. Those comments were considered by the Legislative Operating Committee (LOC) at a work meeting

held on April 6, 2016. Based on the public comments received significant revisions were made to the garnishment process, namely no longer requiring Oneida entities, including chartered corporations, to receive a judgment or a garnishment order to garnish an employee's earnings to collect a debt owed to the Nation [see 58.6-1].

Because this was such a significant revision, the LOC held a second public meeting on June 3, 2016 with a comment period closing on June 10, 2016. The public meeting comments from the second public meeting were considered by the LOC at the July 6, 2016 LOC meeting.

Requested Action

Approve the Resolution: Garnishment (Law) Amendments

HANDOUT

BC Resolution _____
Garnishment (Law) Amendments

- 1
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- 4 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
5 recognized by the laws of the United States of America; and
- 6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation;
7 and
- 8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV,
9 Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal
10 Council; and
- 11 **WHEREAS,** the law allows the Judiciary to issue a garnishment order based on a creditor's
12 judgment received from a court of competent jurisdiction; and
- 13 **WHEREAS,** the law is silent as to whether post-judgment interest may be included in a
14 garnishment order; and
- 15 **WHEREAS,** in order to compensate the creditor for the time and effort spent to enforce the
16 judgment, the amendments to the law require the Judiciary to include post-
17 judgment interest in the garnishment order; and
- 18 **WHEREAS,** the law requires all creditors, including entities of the Nation, to receive a
19 judgment from a court of competent jurisdiction prior to a garnishment, which
20 requires the Nation's government to expend funds and staff time collecting the
21 Nation's debt through the Judiciary; and
- 22 **WHEREAS,** in order to facilitate the collection of debts owed to the Nation, the amendments to
23 the law revise the process for collection of debt owed to the Nation to allow for
24 automatic garnishment upon satisfaction of the notice requirement without
25 requiring a judgment from a court of competent jurisdiction or a garnishment
26 order from the Judiciary; and
- 27 **WHEREAS,** debtors contesting the validity of a debt owed to the Nation may request a hearing
28 with the Judiciary; under such circumstances a judgment is still not required, but
29 the Nation may not garnish without a garnishment order from the Judiciary; and
- 30 **WHEREAS,** the law sets the garnishment action fee at \$25.00 and the administrative fee at
31 \$5.00, which requires the law be amended in order to change the fee; and
- 32 **WHEREAS,** in order to provide flexibility in the setting of fees, the amendments to the law
33 remove the exact amount of the fees and instead authorizes the Judiciary to
34 determine the garnishment action fee amount and the Accounting Department to

35 determine the administrative fee amount so long as the fee amounts are posted at
36 the Judiciary and on the Judiciary's website; and

37 **WHEREAS**, the law allows a debtor to be represented by another person to speak on their
38 behalf; and

39 **WHEREAS**, in order to be consistent with the Rules of Civil Procedure, the amendments to the
40 law limit representation to an attorney or advocate; and

41 **NOW THEREFORE BE IT RESOLVED**, that the amendments to the Garnishment (law) are
42 hereby adopted and become effective in thirty (30) calendar days.

43

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Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54115-0365
 Oneida-nsn.gov



HANDOUT

Statement of Effect

Resolution: Garnishment (Law) Amendments

Summary

This resolution adopts permanent amendments to the Garnishment law, formerly called the Garnishment Ordinance. The amendments can be summarized as follows:

- The current law sets the garnishment action fee at \$25.00 and the administrative fee at \$5.00. These amounts have been removed from the law and instead the Judiciary is authorized to determine the garnishment action fee amount [see 58.5-3(a)(1)], while the Accounting Department determines administrative fee amount [see 58.5-6(a)].
- The current law allows the parties to be represented by someone to speak on their behalf. The proposed amendments limit representation to an attorney or advocate [see 58.5-4(d)].
- A post judgment interest must be applied to the amount received on the date of the garnishment order [see 58.5-6(d)]. The post judgment interest rate is a fixed rate and will be determined by 1) an agreement by both parties or 2) an annual post judgment rate equal to one percent plus the prime rate that was in effect on the date of the judgment [see 58.5-6(d)(1)&(2)].
- Oneida entities, including chartered corporations, do not require a judgment or a garnishment order to garnish an employee's earnings to collect a debt owed to the Nation [see 58.6-1]. Oneida entities must follow the notification procedure [see 58.6-2]. An employee can request a garnishment hearing with the Judiciary within 30 days of the date of the final notice to challenge the debt owed to the Nation or to request a reduced garnishment amount [see 58.6-7]. The debtor is responsible for the Judiciary's garnishment action fee [see 58.6-3(b)(8)].

Submitted by Krystal L. John, Staff Attorney

Analysis from Legislative Reference Office

This Resolution adopts permanent amendments to the Garnishment (law), previously the Garnishment Ordinance, which was adopted through resolution BC-01-02-97-G and subsequently amended by resolution BC-06-25-14-B.

The first noted amendment to the law is removing the actual amount of the applicable fees from the law. Rather, the law allows the garnishment action fee and the administrative fee to be determined by the Judiciary and the Accounting Department respectively, so long as the fee amounts are posted at the Judiciary and on the Judiciary's website. This maintains notice of the fees while simultaneously providing flexibility to adjust the fee amounts without requiring amendments to the law.

The second noted amendment to the law changes the provision which generally allowed any party to speak on behalf of the debtor to limit representation to attorneys and advocates. This is consistent with the Rules of Civil Procedure, which apply to matters heard by the Trial Court, including garnishment hearings.

The third noted amendment was to include a provision that requires the Judiciary to include post-judgment interest in all garnishment orders. Including post-judgment interest serves to compensate the creditor for the time and effort required to enforce the creditor's judgment. The post-judgment interest rate is a fixed rate that is determined either by (1) an agreement by both parties or (2) an annual post judgment rate equal to one percent plus the prime rate that was in effect on the date of the judgment.

The fourth noted amendment was to revise the garnishment process as it applies to the collection of debt owed to the Nation. Currently, tribal entities, including chartered corporations, are required to receive a judgment from a court of competent jurisdiction and go through the judiciary to enforce the judgment through garnishment, just like any other creditor. In order to make collection of debt owed to the Nation simpler, as other governments have done, the amendments to the law allow for automatic garnishment upon satisfaction of the named notice requirements.

Due process is provided to debtors of the Nation by affording debtors the opportunity to request a hearing with the Judiciary in the event there is a dispute at the validity or amount of the debt. When a hearing is requested, the Nation's entity is still allowed to skip the step that requires a judgment prior to seeking garnishment, but stops the automatic garnishment by requiring a garnishment order from the Judiciary prior to garnishment.

Conclusion

Adoption of this Resolution would not conflict with the Nation's laws.

Draft # 5
2016 07 20

HANDOUT



Garnishment Amendments

<i>Analysis by the Legislative Reference Office</i>					
Title	Garnishment (law) Amendments				
Sponsor	David P. Jordan	Drafter	Krystal L. John	Analyst	Candice E. Skenandore / Maureen Perkins
Requester & Reason for Request	Judiciary. To determine whether or not to include interest when a garnishment is ordered.				
Purpose	The purpose of this law 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 [see 58.1-1].				
Authorized/ Affected Entities	Employees of the Nation that incur personal debt, the Accounting Department, the Judiciary (excluding the Family Court), creditors (can include Oneida entities), and a court of competent jurisdiction				
Related Legislation	Judiciary Law and Rules of Appellate Procedure. The Child Support Law and Per Capita Law have similar concepts.				
Enforcement & Due Process	<p>The Judiciary can issue a garnishment order against a debtor [see 58.5-4].</p> <p>Oneida entities do not need a judgment or garnishment order [see 58.6-1]; however the debtor can request a garnishment hearing to contest the validity of the debt or to request a reduced garnishment amount [see 58.6-7].</p> <p>The debtor can request a reduction in the required twenty (20) percent of their disposable income with appropriate justification and documentation [see 58.5-6(c)(1)(A)].</p> <p>Garnishments will not affect current or potential employment with the Nation [see 58.8].</p> <p>Either party can appeal a decision regarding a garnishment order to the Court of Appeals [see 58.9].</p>				
Public Meeting Status	Public meetings were held February 18 and June 3, 2016. The LOC has reviewed the public comments received during the public comment period; any changes made based on the public comments received have been incorporated into this draft.				

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Overview

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This law and the Child Support law both deal with wage withholdings; however, this law sets the process for withholdings of the Nation's employees that have personal debt. This personal debt can include, but is not limited to child support orders from a court of competent jurisdiction. Child Support sets the process for child support orders made by the Family Court; those orders will not follow this law [see 58.7 and Child Support 78.9-2].

This law explains how a creditor can seek a garnishment order against an employee of the Nation for personal debt. The creditor, other than Oneida entities, must file a petition with the Judiciary and once the petition is received, the Judiciary must hold a garnishment hearing within 60 days. Within five business days of the garnishment hearing, the judge will make a final

5 decision and notify the parties. If the judge issues a garnishment order, he/she will calculate a
6 percentage of the debtor's disposable income that will be garnished, starting with a presumption
7 that 20 percent of the debtor's disposable income can be garnished. However, the debtor can
8 request a lesser percentage be garnished from his/her disposable income if the debtor meets
9 established criteria. The debtor can also request a greater percentage be garnished. Once the
10 garnishment order is issued, the Accounting Department will begin deducting the appropriate
11 amount from the debtor's paycheck within ten business days of receiving a copy of the
12 garnishment order. If the debtor owes \$50 or less, the Judge can hold a summary proceeding
13 which does not require a formal hearing.

14 Oneida entities are not subject to the garnishment process requirements regarding a
15 judgment and can garnish without going through the Judiciary unless the debtor requests a
16 garnishment hearing. The entity owed the debt must provide two written notices of the debt to
17 the debtor before issuing the notice to garnish. The notice to garnish must also appear in the
18 Nation's newspaper. Once this has been satisfied, the Accounting Department will calculate the
19 garnishment amount or the Nation's entity owed debt. The Accounting Department will begin
20 deducting the appropriate amount from the debtor's paycheck within ten business days of the
21 close of the debtor's thirty (30) calendar day time period to resolve the debt or request a
22 garnishment hearing or enter into an alternate garnishment agreement.

23 A party can appeal the judge's decision regarding the garnishment. An employee cannot
24 be discharged, disciplined or an applicant cannot be turned away solely because he/she is subject
25 to a garnishment action.

26 27 **Proposed Amendments**

- 28 ■ The current law sets the garnishment action fee at \$25.00 and the administrative fee at
29 \$5.00. These amounts have been removed from the law and instead the Judiciary is
30 authorized to determine the garnishment action fee amount [see 58.5-3(a)(1)], while the
31 Accounting Department determines administrative fee amount [see 58.5-6(a)].
- 32 ■ The current law allows the parties to be represented by someone to speak on their behalf.
33 The proposed amendments limit representation to an attorney or advocate [see 58.5-
34 4(d)].
- 35 ■ A post judgment interest must be applied to the amount received on the date of the
36 garnishment order [see 58.5-6(d)]. The post judgment interest rate is a fixed rate and will
37 be determined by 1) an agreement by both parties or 2) an annual post judgment rate
38 equal to one percent plus the prime rate that was in effect on the date of the judgment
39 [see 58.5-6(d)(1)&(2)].
- 40 ■ Oneida entities, including chartered corporations, do not require a judgment or a
41 garnishment order to garnish an employee's earnings to collect a debt owed to the Nation
42 [see 58.6-1]. Oneida entities must follow the notification procedure [see 58.6-2]. An
43 employee can request a garnishment hearing with the Judiciary within 30 days of the date
44 of the final notice to challenge the debt owed to the Nation or to request a reduced
45 garnishment amount [see 58.6-7]. The debtor is responsible for the Judiciary's
46 garnishment action fee [see 58.6-3(b)(8)].

47 48 **Other**

49 Oneida Tribe of Indians of Wisconsin has been changed to Oneida Nation to reflect
50 approved constitutional amendments. Please refer to the fiscal impact statement for any financial

51 impacts.

52 **Considerations**

53 The LOC may want to consider the following:

- 54 ▪ This law defines Judiciary as “the judicial system that was established by . . . GTC
55 Resolution 01-07-13-B to administer the judicial authorities and responsibilities of the
56 Nation” [see 58.3-1 (o)]. Because the Family Court was adopted pursuant to BC
57 Resolution 05-08-13-A, it not included in the definition for “Judiciary” and cannot hold
58 garnishment hearings in accordance with this law. This is appropriate because the
59 Judiciary is the appropriate court to determine garnishment actions for the Family Court.

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Chapter 58
GARNISHMENT Ordinance
Lotihwistáhkwa Olihwá·ke
the matter of taking money out

HANDOUT

6	58.1.	Purpose and Policy	11	58.6.	Garnishment to Collect Debt Owed to the Nation
7	58.2.	Adoption, Amendment, Repeal	12	58.7.	Recognition of Child Support Orders
8	58.3.	Definitions	13	58.8.	Discharge from Employment
9	58.4.	General	14	58.9.	Appeals
10	58.5.	Garnishment Action Procedure	15		
16			18	58.1-1.	

58.1. Purpose and Policy.

58.1-1. The purpose of this ~~Ordinance~~ law is to ~~utilize~~ exercise the authority of the ~~Oneida Tribe of Indians~~ Nation to provide an effective mechanism for creditors to access an employee's income for reduction of personal debt.

58.1-2. It is the policy of the ~~Oneida Tribe of Indians of Wisconsin~~ Nation to afford all individuals due process.

~~58.2-1.~~ **Adoption, Amendment, Repeal.**

58.2-1. 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 _____.

58.2-2. 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 ~~Administrative~~ Legislative Procedures Act ~~by the Oneida Business Committee or Oneida General Tribal Council.~~

58.2-3. 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.

~~58.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this law are hereby repealed unless specifically re-enacted after adoption of this policy.~~

58.2-4. 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.

58.2-5. This law may be cited as the "Garnishment Ordinance."

~~58.2-6. This law may be interpreted to allow the fullest protections available to respondents available by is adopted under the federal Consumer Protection Act, 16 U.S.C. §1671, et seq., state laws protecting respondents in Child Support Orders, and other federal laws authority of the Constitution of the Oneida Nation.~~

~~58.3-1.~~ **58.3. Definitions**

58.3-1. This ~~Article~~ 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.

~~58.3-2. "Compensation" shall mean remuneration paid or payable for personal services and travel, denominated as wages, bonuses, salary, expenses, and/or mileage. Compensation shall include any trade back for cash benefit or final paycheck involving pay-out of benefits for a discharged employee.~~

- 54 ~~58.3-3.~~ “Creditor” shall refer to one who seeks payment from the respondent through the
55 process of garnishment, pursuant to a Final Judgment through a garnishment action. The
56 Oneida Tribe is not excluded from being the creditor. This includes all departments,
57 programs, enterprises, authorities, or other bodies created pursuant to Tribal law. Should
58 the Oneida Tribe (a) “Accounting Department” means the area of the Nation
59 charged with keeping the records of financial transactions and includes accounts payable
60 and receivable, inventory, payroll, fixed assets and other financial elements.
61 (b) “Administrative Fee” means the fee assessed against the debtor each week the
62 Accounting Department is responsible for processing the garnishment to cover the
63 Accounting Department’s costs associated with implementing the garnishment.
64 (c) “Business Day” means Monday through Friday between the hours of 8:00 a.m. and
65 4:30 p.m., excluding holidays recognized by the Nation.
66 (d) “Creditor” means anyone who is awarded a money judgment which includes both
67 Oneida entities and outside entities. Should the Nation be the creditor, a designee of the
68 department, program or enterprise from the Oneida entity shall represent the claim of
69 indebtedness.
- 70 ~~58.3-4.~~ “Employee” shall mean any employee of the Oneida Tribe.
- 71 ~~58.3-5.~~ “Oneida Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.
- 72 ~~58.3-6.~~ (e) “Debtor” means the employee whom the judgment has been awarded against
73 and/or whom owes a debt to the Nation.
74 (f) “Disposable Earnings” means the part of the debtor’s gross earnings for a pay period
75 remaining after deductions required by state and federal law and for health insurance
76 costs which is presumed to be thirty percent (30%) of the debtor’s gross earnings.
77 (g) “Earnings” means compensation payable in exchange for personal services and
78 includes, but is not limited to, wages, salaries, bonuses, commissions, expense
79 reimbursements, trade-back-for-cash benefits and/or final paychecks involving pay-out of
80 benefits.
81 (h) “Employee” means any individual hired by the Nation and on the Nation’s payroll
82 and encompasses all forms of employment, including but not limited to, full-time, part-
83 time, at-will, elected/appointed officials, political appointees and contracted persons.
84 (i) “Garnishment” shall ~~mean~~ means the legal process in which money in the hands of the
85 Oneida Tribe the earnings of Indians of Wisconsin as employer, due to the respondent
86 and the debtor are being claimed by a creditor required to be withheld by the Nation for a
87 payment of a debt.
- 88 ~~58.3-7.~~ (j) “Garnishment Action Fee” means the fee paid to the Judiciary to cover the
89 administrative costs incurred during the garnishment proceedings.
90 (k) “Garnishment Hearing” means the time and location where the Judiciary hears
91 relevant evidence, determines the validity of the petition for garnishment and identifies
92 the amount of the garnishment order, if applicable.
93 (l) “Garnishment Order” means the order issued by the Judiciary which requires the
94 Nation to withhold an employee’s earnings in order to satisfy a creditor’s unpaid money
95 judgment or a debt owed to an entity of the Nation and includes any fees assessed against
96 the debtor.
97 (m) “Judge” means the member of the Judiciary assigned to hear the petition for
98 garnishment.

99 (n) “Judgment” means any judgment, decree, or order from a court of competent
 100 jurisdiction, including, but not limited to, the Judiciary, which awards money to one or
 101 more parties.

102 (o) “Judiciary” means the judicial system that was established by Oneida General Tribal
 103 Council resolution GTC-01-07-13-B to administer the judicial authorities and
 104 responsibilities of the Tribe.Nation.

105 58.3-8. “Reservation” shall mean all lands within the- (p) “Oneida Indian
 106 ReservationEntity” means a department, board, committee, commission or chartered
 107 corporation of the Nation or the Judiciary.

108 (q) “Nation” means the Oneida Nation.

109 (rq) “Petition” means a formal written request to the Judiciary to hear a garnishment
 110 matter.

112 **58.4 Wisconsin as established. General**

113 58.4-1. Jurisdiction. By filing a petition, creditors are submitting to the jurisdiction of the
 114 Nation for the subject action.

115 58.4-2. Consumer Protection Act. This law may be interpreted to allow the fullest protections
 116 available to debtors by the Treaty federal Consumer Protection Act, 16 U.S.C. §1671, et seq.,
 117 state laws protecting debtors in child support orders, and other federal laws.

118 **58.5. Garnishment Action Procedure**

120 58.5-1. Applicability. This section applies to the collection of all debt through the garnishment
 121 process except as provided in section 58-6.

122 58.5-2. Judgment Required. Except as provided in section 58-6, a judgment is required prior to
 123 filing a garnishment petition.

124 58.5-3. Filing Action. In order to initiate a garnishment, the creditor shall file a petition with
 125 the Oneida, 1838 Judiciary. The creditor shall ensure that the petition identifies the creditor, the
 126 intended debtor, any other interested parties, the reason for the claim, the name of the court that
 127 issued the judgment, the amount awarded; the creditor shall also include a copy of the judgment
 128 the petition is based upon.

129 58.3-9. “Respondent”(a) The Creditor shall mean pay the employee garnishment action
 130 fee before the Judiciary may consider the petition complete.

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

133 58.5-4. Garnishment Hearing. The Judiciary shall hold a garnishment hearing within sixty (60)
 134 days of receiving the completed petition.

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

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

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

143 (d) Throughout the garnishment proceedings, the parties may choose to represent
 144 themselves or may be represented by an attorney or advocate. The Judiciary shall

145 provide all parties with an equal opportunity to present evidence at the garnishment
 146 hearing.

147 58.5-5. Final Decision. The judge shall make the final decision regarding a garnishment order
 148 within five (5) business days of the garnishment hearing. The judge shall provide written notice
 149 of the final decision to all parties within ten (10) business days of his or her decision. If a
 150 garnishment order is issued, the Judiciary shall include a copy of the garnishment order in the
 151 written notice.

152 58.5-6. Garnishment Orders. Should the Judiciary issue a garnishment order, it is required to
 153 include the following:

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

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

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

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

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

173 (i) The debtor is subject to a ~~repayment action~~ child support
 174 orders that would leave him or her with less than fifty percent
 175 (50%) of his or her earnings;

176 (ii) The debtor receives, is eligible for or, within six (6) months
 177 of the date the Judiciary received the completed petition, received
 178 public assistance;

179 (iii) The debtor's household income is below the current federal
 180 poverty level;

181 (iv) The garnishment of twenty percent (20%) of the debtor's
 182 disposable earnings would cause the debtor's household income to
 183 drop below the current federal poverty level; or

184 (v) The garnishment of twenty percent (20%) of the debtor's
 185 disposable earnings would cause the debtor undue harm for
 186 reasons not identified in this section.

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

190 (3) Nothing in this law prohibits the debtor from making additional payments to
 191 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.

58.5-7. 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.

58.5-8. 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.

58.5-9. 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.

58.5-10. 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.

58.5-11. 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 58.5-6(c)(1)(A).

~~58.658.3 10. "Hearing Officer" shall mean the Judiciary and the representative designated to hear the garnishment action.~~

~~58.3-11. "Accounting Department" means that department of the Oneida Tribe charged with managing the finances of the Oneida Tribe, specifically, the office charged with responsibility for the payroll of the Oneida Tribe. That office shall designate a representative for receiving garnishment orders, irrevocable voluntary payroll deduction agreements, and child support orders, which shall be forwarded to the Hearing Body.~~

Garnishment to Collect Debt Owed to the Nation

58.6-1. 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 58.5 unless a garnishment hearing is requested under section

237 58.6-7. In all other circumstances, Oneida entities do not require a judgment or a garnishment
238 order in order to garnish an employee's earnings to collect debt owed to the Nation.

239 58.6-2. Notice of Indebtedness. Prior to initiating a garnishment, the entity owed the debt shall
240 provide written notice of indebtedness to the debtor by first (1st) class mail.

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

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

246 (1) How many notices of indebtedness have been provided prior to the subject
247 notice and the dates of all prior notices;

248 (2) The amount of the debtor's indebtedness;

249 (3) Information for making payment on the debt; and

250 (4) An explanation that if the debt is not paid in full within thirty (30) calendar
251 days from the date of the second consecutive monthly notice, the entity may
252 initiate an automatic garnishment of the debtor's earnings.

253 58.6-3. Initiating a Garnishment. After thirty (30) calendar days have lapsed since the entity
254 sent the second consecutive monthly notice of indebtedness, the entity may initiate a garnishment
255 by providing the debtor with a final notice of indebtedness with intent to garnish. The entity
256 shall send the final notice to the debtor by certified mail and shall provide a copy to the
257 Accounting Department. Additionally, the entity shall post notice of intent to garnish in the
258 Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed
259 a debt and the Oneida entity's contact information for payment. The entity shall submit its
260 request to post to the newspaper at the same time the final notice with intent to garnish is mailed
261 in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days
262 before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request
263 a garnishment hearing. The entity shall include the following in the final notice of indebtedness
264 with intent to garnish:

265 (a) The dates of all prior notices of indebtedness provided to the debtor;

266 (b) The amount of the debtor's indebtedness;

267 (c) Information for making payment on the debt;

268 (d) An explanation that this is the final notice and the entity has by this final notice
269 initiated a garnishment against the debtor;

270 (e) An explanation that if the debt is not paid in full within thirty (30) calendar days from
271 the date of the final notice of indebtedness with intent to garnish that the Accounting
272 Department will automatically begin garnishing the debtor's earnings until the debt is
273 satisfied in full;

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

277 (g) An explanation that the debtor may negotiate a reduced weekly garnishment amount
278 with the entity, excluding the administrative fee which is not negotiable, and may request
279 that a higher percentage than what is required under section 58.6-4(a)(2) be deducted
280 weekly. Provided that, if an agreement is not reached and noticed to the Accounting
281 Department within thirty (30) calendar days from the date of the of the final notice of
282 indebtedness, the Accounting Department shall proceed with the garnishment amount
283 provided in the notice; and

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

289 58.6-4. Accounting Department Responsibilities.

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

292 (1) The administrative fee to be assessed against the debtor each pay period until
293 the debt is paid in full. The Accounting Department shall use the same
294 administrative fee that is noticed in the Judiciary and on the Judiciary's website as
295 required in section 58.5-6(a).

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

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

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

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

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

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

322 (1) Copies of all final notices with intent to garnish sent to debtors; and

323 (2) Bookkeeping records.

324 58.6-5. Negotiating an Alternate Garnishment Agreement. It is within the entities' discretion to
325 negotiate an alternate garnishment agreement that would reduce the weekly garnishment amount.
326 Such negotiations may include a reduced interest rate and/or a reduced amount of the weekly
327 garnishment attributable to payment of the debt.

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

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

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

337 58.6-6. *Payments in Excess of the Required Garnishment Amount.* A debtor may at any time
 338 make payments in excess of the required garnishment amount as noticed to them in the final
 339 notice of indebtedness with intent to garnish.

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

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

346 58.6-7. *Requesting a Garnishment Hearing.* A debtor may request a garnishment hearing with
 347 the Judiciary to contest the validity of the debt or request a reduced garnishment amount by
 348 submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the
 349 final notice of indebtedness with intent to garnish.

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

353 (b) The debtor shall pay

354
 355 ~~**58.4-1. Garnishment Action Procedure.** Judgement Required. A creditor shall begin a~~
 356 ~~garnishment action against an employee of the Oneida Tribe by first obtaining a final judgment~~
 357 ~~from an appropriate court. A garnishment action under this section shall not begin unless the~~
 358 ~~creditor has already obtained a valid final judgment and can show proof of judgment to the~~
 359 ~~Hearing Officer.~~

360 ~~58.4-2. Filing Action. The creditor shall be responsible for notifying the Hearing Officer~~
 361 ~~of its intent to begin the garnishment action fee before the Judiciary may consider the~~
 362 ~~petition complete.~~

363 ~~(a) A written notice shall be mailed or given to the Hearing Officer indicating the~~
 364 ~~creditor, the intended respondent, the reason for the claim and the amount of the claim.~~

365 ~~(b) The Hearing Officer shall, within ten days, set a date and time (c) When a~~
 366 ~~request for a garnishment hearing. The date for the hearing shall be within sixty days of~~
 367 ~~receipt of the first notification to the Hearing Officer.~~

368 ~~(c) It is the responsibility of the Hearing Officer to notify the creditor, respondent, and~~
 369 ~~any other parties in interest as to the date, time and place of timely made, the garnishment~~
 370 ~~hearing.~~

371 ~~process contained in sections 58.5-4-3. Hearing. The Hearing Officer shall establish a~~
 372 ~~designated date, time, and place to hear evidence in order to render a determination as to the~~
 373 ~~validity of a claim by the creditor in a garnishment action and the amount of the garnishment~~
 374 ~~order to be entered. Hearings shall not be utilized to challenge the validity of the final judgement~~
 375 ~~other than the authenticity of the document. The time may be used to resolve one or more~~
 376 ~~deduction claims of one or more employees. However, each claim shall be heard and determined~~
 377 ~~separately. This hearing will be known as the Garnishment Hearing.~~

378 58.4 4. Final Decision. The Hearing Officer will make the final decision as to the garnishment
379 action within five days of the garnishment hearing and notify by formal order all parties within
380 ten days of the decision.

381 58.4 5. Representation. The respondent and creditor may represent themselves or be
382 represented by someone to speak on their behalf, if they so choose. Both parties shall have an
383 equal opportunity to present evidence as to the action to be taken before a Hearing Officer at the
384 garnishment hearing.

385 58.4 6. Notice of Garnishment. The Hearing Officer will notify the Accounting Department
386 should a decision to garnish an employee's compensation be made. Such notice shall be
387 forwarded after the deadline for an appeal has passed. Provided that, no garnishments shall be
388 allowed where an appeal has been filed by an employee within the appeal deadline. The notice
389 shall contain the amount to be garnished, how long the garnishment will take place or the
390 number of garnishment and any related fees authorized under this Ordinance.

391 58.4 7. Garnishment Implementation. The Accounting Department shall begin garnishments
392 within ten days of notification of the judgment. The Accounting Department shall then:

393 (a) Send to the creditor the allowable amount garnished from the employee's paycheck
394 following each payroll period.

395 (b) Notify the employee and creditor when the garnishments are terminated.

396 58.4 8. Summary Process. Where the claim of indebtedness is \$50.00 or less, it shall be
397 processed summarily by the Hearing Officer unless the debtor formally requests a hearing.

398 58.4 9. Appeals. A respondent has ten days from the date of receipt of the notice to file an
399 appeal of a garnishment order with the Judiciary.

400 58.4 10. Records. The Hearing Officer shall keep complete records of all garnishment actions
401 that are started and/or completed. The records shall contain:

402 (a) Correspondence and notices to all parties involved.

403 (b) Bookkeeping records.

404 (c) Garnishment evidence presented by all parties.

405 (d) Decisions made by the Hearing Officer.

406
407 through 58.5-1. Garnishment Action Fee. At the time of creditor's first notice to the Hearing
408 Officer, the creditor shall pay a fee of \$25.00 which shall be known as the Garnishment Action
409 Fee. The Hearing Officer is 10 controls. In such circumstances, the entity is still not required to
410 begin any action on the claim until the fee is paid. The fee shall be charged to the respondent
411 should a decision be made to garnish. The fee will be applicable in each case, except that in
412 cases where indebtedness is with a department, program or enterprise of the Oneida Tribe.

413 58.5 2. Administrative Fee. An administrative fee of \$5.00 shall be deducted monthly
414 along with the ordered garnishment until the amount claimed is paid in full. This fee is to
415 cover the cost of obtain a judgment, but shall receive a garnishment order prior to
416 garnishing as expended by the Accounting Department.

417 58.5 3. Amount of Garnishment. The Hearing Officer may order the employee's compensation
418 to be subject to a garnishment of up to twenty percent of the employee's disposable weekly
419 wage, the remainder to be identified as a protected subsistence allowance. Provided that, in
420 calculating twenty percent, the Hearing Officer shall not include amounts garnished regarding
421 child support orders. The employee may voluntarily request more to be deducted. The request
422 shall be made directly to the Accounting Department.

423 58.5 4. Exceptions to 20 % Presumption. It is presumed that the beginning amount to be
424 deducted in any garnishment hearing shall begin at twenty percent of the employee's weekly

425 wages. The respondent is responsible for presenting evidence that it is unreasonable to require
 426 the full twenty percent to be deducted. Examples of exceptions shall include, but not be limited
 427 to, pre-existing garnishment orders,

428 **58.7. Recognition of Child Support Orders**

429 58.7-1. Recognition and Enforcement of Child Support Orders. The Judiciary shall
 430 recognize and enforce child support orders that would leave less than 50% of the debtor's wages,
 431 other evidence presented which would cause garnishments such that additional garnishment
 432 orders would cause undue harm.

433
 434 **58.6-1. Irrevocable Voluntary Payroll Deduction.** An employee may request an irrevocable
 435 voluntary payroll deduction negotiated with a creditor for legal debts. The request must be
 436 signed by the employee and submitted to the Accounting Department.

437 58.6-2. Preemption of Garnishment Action. If the request is made prior to a garnishment action
 438 decision or during a garnishment action:

439 (a) ~~The irrevocable voluntary payroll deduction request must be made to the Hearing~~
 440 ~~Officer.~~

441 (b) The Hearing Officer shall notify the creditor of the request.

442 (c) If the parties agree, the Hearing Officer may then cancel the hearing, notify all parties and
 443 forward the executed agreement to the Accounting Department.

444 ~~58.6-3. Administrative Fee.~~ An administrative fee of \$5.00 shall be assessed monthly so long as
 445 the irrevocable voluntary payroll deduction is in effect.

446
 447 **58.7-1. Recognition of Order.** Orders for child support against any employee shall be
 448 recognized and enforced, provided that the order has been issued from a court of competent
 449 jurisdiction.

450 58.7-2. Authenticity of Order. The Hearing Officer shall receive such orders, and Parties
 451 seeking to garnish based on a child support order shall submit the order to the Judiciary, which
 452 shall verify the order's authenticity of the order. Upon verification of the child support order,
 453 the Hearing Officer/judge shall forward such order to the Accounting Department for action.

454 58.7-3. Administrative Fee. An administrative fee of \$5.00 shall be required to be assessed
 455 monthly so long as the child support deduction is in effect.

456
 457 **58.8-1. 58.8. Discharge from Employment**

458 58.8-1. ~~The Oneida Tribe shall~~ Nation may not discharge from employment, refuse to employ
 459 or otherwise take disciplinary action against an employee solely because ~~an~~ the employee is being
 460 ~~subjected~~ subject to a garnishment action.

461
 462 **58.8-2. Jurisdiction. All creditor filing 9. Appeals**

463 58.9-1. A party may appeal a garnishment action must sign a Jurisdiction Submission
 464 Statement. The statement will indicate that with the creditor is submitting to the
 465 jurisdiction/Judiciary's Court of the Oneida Tribe Appeals in that particular action accordance with
 466 the Judiciary Law and any applicable rules and procedures.

467
 468
 469 *End.*

470
 471 Adopted - BC-6-2-92

- 472 Adopted - BC-6-10-92
- 473 Adopted - BC-4-2-97-G
- 474 Amended - BC-06-25-14-B

HANDOUT

Chapter 58
GARNISHMENT
Lotihwistáhkwa Olihwá·ke
the matter of taking money out

6	58.1.	Purpose and Policy	11	58.6.	Garnishment to Collect Debt Owed to the Nation
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58.1. Purpose and Policy

58.1-1. 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.

58.1-2. It is the policy of the Nation to afford all individuals due process.

58.2. Adoption, Amendment, Repeal

58.2-1. 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 _____.

58.2-2. 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.

58.2-3. 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.

58.2-4. 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.

58.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

58.3. Definitions

58.3-1. 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.

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

84

85 **58.4. General**

86 58.4-1. *Jurisdiction.* By filing a petition, creditors are submitting to the jurisdiction of the
87 Nation for the subject action.

88 58.4-2. *Consumer Protection Act.* This law may be interpreted to allow the fullest protections
89 available to debtors by the federal Consumer Protection Act, 16 U.S.C. §1671, et seq., state laws
90 protecting debtors in child support orders, and other federal laws.

91

92 **58.5. Garnishment Action Procedure**

93 58.5-1. *Applicability.* This section applies to the collection of all debt through the garnishment
94 process except as provided in section 58-6.

95 58.5-2. *Judgment Required.* Except as provided in section 58-6, a judgment is required prior to
96 filing a garnishment petition.

97 58.5-3. *Filing Action.* In order to initiate a garnishment, the creditor shall file a petition with
98 the Judiciary. The creditor shall ensure that the petition identifies the creditor, the intended

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

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

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

106 58.5-4. *Garnishment Hearing.* The Judiciary shall hold a garnishment hearing within sixty (60)
107 days of receiving the completed petition.

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

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

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

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

120 58.5-5. *Final Decision.* The judge shall make the final decision regarding a garnishment order
121 within five (5) business days of the garnishment hearing. The judge shall provide written notice
122 of the final decision to all parties within ten (10) business days of his or her decision. If a
123 garnishment order is issued, the Judiciary shall include a copy of the garnishment order in the
124 written notice.

125 58.5-6. *Garnishment Orders.* Should the Judiciary issue a garnishment order, it is required to
126 include the following:

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

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

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

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

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

- 146 (i) The debtor is subject to child support orders that would leave
147 him or her with less than fifty percent (50%) of his or her earnings;
148 (ii) The debtor receives, is eligible for or, within six (6) months
149 of the date the Judiciary received the completed petition, received
150 public assistance;
151 (iii) The debtor's household income is below the current federal
152 poverty level;
153 (iv) The garnishment of twenty percent (20%) of the debtor's
154 disposable earnings would cause the debtor's household income to
155 drop below the current federal poverty level; or
156 (v) The garnishment of twenty percent (20%) of the debtor's
157 disposable earnings would cause the debtor undue harm for
158 reasons not identified in this section.
- 159 (2) The debtor may request a higher percentage be deducted from his or her
160 disposable earnings. The debtor shall make such requests directly to the
161 Judiciary.
- 162 (3) Nothing in this law prohibits the debtor from making additional payments to
163 satisfy the garnishment order, provided that, if a creditor receives payments from
164 the debtor outside of the garnishment process, the creditor shall provide notice of
165 said payment to the Accounting Department with a copy to the debtor.
- 166 (d) *Post Judgment Interest.* The Judiciary shall include in the garnishment order a one
167 (1) time post judgment interest charge to judgment amount. The Judiciary shall
168 determine the post judgment interest rate by one (1) of the following means:
- 169 (1) An agreement by the parties to the garnishment as to a fair post judgment
170 interest rate; or
171 (2) A post judgment interest rate equal to one percent (1%) plus the prime rate in
172 effect on the date in which the judgment was awarded or the date of the final
173 notice of indebtedness with intent to garnish, as reported by the Federal Reserve
174 Board in federal reserve statistical release H. 15.
- 175 58.5-7. *Notice of Garnishment to Accounting Department.* The Judiciary shall provide the
176 Accounting Department with a copy of the garnishment order after the timeframe for all appeals
177 has been exhausted.
- 178 58.5-8. *Garnishment Implementation.* Within ten (10) business days of receiving a copy of the
179 garnishment order the Accounting Department shall implement the garnishment by deducting the
180 appropriate amount from the debtor's paycheck(s) and forwarding that amount to the creditor.
181 The Accounting Department shall notify the debtor and creditor when the garnishment order has
182 been fulfilled.
- 183 58.5-9. *Summary Process.* The Judiciary shall summarily process petitions when the debtor
184 owes fifty dollars (\$50) or less, unless the debtor formally requests a garnishment hearing. For
185 the purposes of this section, to summarily process a petition means a judge may make a
186 determination regarding the garnishment order without holding a garnishment hearing.
- 187 58.5-10. *Records.* The Judiciary shall keep records of all garnishment actions it hears and shall
188 ensure such records include the following:
- 189 (a) Correspondence and notices to all parties involved;
190 (b) Bookkeeping records;
191 (c) Garnishment evidence presented by all parties; and
192 (d) Decisions made by the Judge.

193 58-5-11. *Modifying a Garnishment Order.* A debtor may petition the Judiciary at any time
194 following the issuance of a garnishment order to request a reduced garnishment amount if he or
195 she is able to demonstrate a change in circumstances that may justify a reduced amount as
196 provided in section 58.5-6(c)(1)(A).
197

198 **58.6. Garnishment to Collect Debt Owed to the Nation**

199 58.6-1. *No Judgment or Garnishment Order Required.* Oneida entities, which for the purposes
200 of this section include its chartered corporations, are not subject to the garnishment process
201 requirements contained in section 58.5 unless a garnishment hearing is requested under section
202 58.6-7. In all other circumstances, Oneida entities do not require a judgment or a garnishment
203 order in order to garnish an employee's earnings to collect debt owed to the Nation.

204 58.6-2. *Notice of Indebtedness.* Prior to initiating a garnishment, the entity owed the debt shall
205 provide written notice of indebtedness to the debtor by first (1st) class mail.

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

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

211 (1) How many notices of indebtedness have been provided prior to the subject
212 notice and the dates of all prior notices;

213 (2) The amount of the debtor's indebtedness;

214 (3) Information for making payment on the debt; and

215 (4) An explanation that if the debt is not paid in full within thirty (30) calendar
216 days from the date of the second consecutive monthly notice, the entity may
217 initiate an automatic garnishment of the debtor's earnings.

218 58.6-3. *Initiating a Garnishment.* After thirty (30) calendar days have lapsed since the entity
219 sent the second consecutive monthly notice of indebtedness, the entity may initiate a garnishment
220 by providing the debtor with a final notice of indebtedness with intent to garnish. The entity
221 shall send the final notice to the debtor by certified mail and shall provide a copy to the
222 Accounting Department. Additionally, the entity shall post notice of intent to garnish in the
223 Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed
224 a debt and the Oneida entity's contact information for payment. The entity shall submit its
225 request to post to the newspaper at the same time the final notice with intent to garnish is mailed
226 in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days
227 before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request
228 a garnishment hearing. The entity shall include the following in the final notice of indebtedness
229 with intent to garnish:

230 (a) The dates of all prior notices of indebtedness provided to the debtor;

231 (b) The amount of the debtor's indebtedness;

232 (c) Information for making payment on the debt;

233 (d) An explanation that this is the final notice and the entity has by this final notice
234 initiated a garnishment against the debtor;

235 (e) An explanation that if the debt is not paid in full within thirty (30) calendar days from
236 the date of the final notice of indebtedness with intent to garnish that the Accounting
237 Department will automatically begin garnishing the debtor's earnings until the debt is
238 satisfied in full;

- 239 (f) That the garnishment amount that may be deducted from the debtor's earnings each
240 week consists of an administrative fee, the payment of the debt each to a maximum of
241 twenty percent (20%) of the debtor's disposable earnings and an interest charge; and
242 (g) An explanation that the debtor may negotiate a reduced weekly garnishment amount
243 with the entity, excluding the administrative fee which is not negotiable, and may request
244 that a higher percentage than what is required under section 58.6-4(a)(2) be deducted
245 weekly. Provided that, if an agreement is not reached and noticed to the Accounting
246 Department within thirty (30) calendar days from the date of the of the final notice of
247 indebtedness, the Accounting Department shall proceed with the garnishment amount
248 provided in the notice; and
249 (h) An explanation that the debtor may request a garnishment hearing with the Judiciary
250 to contest the validity of the debt or request a reduced garnishment amount, by submitting
251 a petition to the Judiciary within thirty (30) calendar days from the date of the of the final
252 notice of indebtedness with intent to garnish and that the debtor is responsible for the
253 Judiciary's garnishment action fee.

254 58.6-4. *Accounting Department Responsibilities.*

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

257 (1) The administrative fee to be assessed against the debtor each pay period until
258 the debt is paid in full. The Accounting Department shall use the same
259 administrative fee that is noticed in the Judiciary and on the Judiciary's website as
260 required in section 58.5-6(a).

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

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

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

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

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

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

287 (1) Copies of all final notices with intent to garnish sent to debtors; and

288 (2) Bookkeeping records.

289 58.6-5. *Negotiating an Alternate Garnishment Agreement*. It is within the entities' discretion to
290 negotiate an alternate garnishment agreement that would reduce the weekly garnishment amount.
291 Such negotiations may include a reduced interest rate and/or a reduced amount of the weekly
292 garnishment attributable to payment of the debt.

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

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

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

302 58.6-6. *Payments in Excess of the Required Garnishment Amount*. A debtor may at any time
303 make payments in excess of the required garnishment amount as noticed to them in the final
304 notice of indebtedness with intent to garnish.

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

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

311 58.6-7. *Requesting a Garnishment Hearing*. A debtor may request a garnishment hearing with
312 the Judiciary to contest the validity of the debt or request a reduced garnishment amount by
313 submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the
314 final notice of indebtedness with intent to garnish.

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

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

320 (c) When a request for a garnishment hearing is timely made, the garnishment process
321 contained in sections 58.5-4 through 58.5-10 controls. In such circumstances, the entity
322 is still not required to obtain a judgment, but shall receive a garnishment order prior to
323 garnishing.

324

325 **58.7. Recognition of Child Support Orders**

326 58.7-1. *Recognition and Enforcement of Child Support Orders*. The Judiciary shall recognize
327 and enforce child support orders against any employee, provided that the order has been issued
328 from a court of competent jurisdiction.

329 58.7-2. *Authenticity of Order*. Parties seeking to garnish based on a child support order shall
330 submit the order to the Judiciary, which shall verify the order's authenticity. Upon verification

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

333 58.7-3. *Administrative Fee.* An administrative fee is required to be assessed monthly so long
334 as the child support deduction is in effect.

335

336 **58.8. Discharge from Employment**

337 58.8-1. The Nation may not discharge from employment, refuse to employ or otherwise take
338 disciplinary action against an employee solely because the employee is subject to a garnishment
339 action.

340

341 **58.9. Appeals**

342 58.9-1. A party may appeal a garnishment action with the Judiciary's Court of Appeals in
343 accordance with the Judiciary Law and any applicable rules and procedures.

344

345

346 *End.*

347

348 Adopted - BC-6-2-92

349 Adopted - BC-6-10-92

350 Adopted - BC-4-2-97-G

351 Amended - BC-06-25-14-B

ONEIDA TRIBE OF INDIANS OF WISCONSIN



Onedas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE
Because of the help of this Oneda Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

ONEIDA FINANCE OFFICE
Office: (920) 869-4325 • Toll Free: 1-800-236-2214
FAX # (920) 869-4024

MEMORANDUM

HANDOUT

DATE: July 18, 2016

FROM: Rae Skenandore, Project Manager

TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Finance Officer

RE: **Financial Impact of Amendments to the Garnishment Law**

I. Background

Under consideration are changes to the existing Garnishment Ordinance. A garnishment is the legal process in which the earnings of the debtor are required to be withheld by the Nation for a payment of a debt. This Law was first adopted by the Oneida Business Committee by resolution # BC-4-2-97-G and amended by resolution BC-06-25-14-B. The amendments were requested by the Judiciary in order to determine whether or not to include interest charges/costs when a garnishment is ordered.

A garnishment must be petitioned through the Judiciary, with the exception of Oneida Nation entities. The law details the due process rights of the debtor and allow for interest rates to be applied. The amendments remove specific amounts for fees and delegate the authority to set the fee schedules to the Judiciary and the Accounting Department.

II. Executive Summary of Findings

A "Fiscal Impact Statement" means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the law after implementation.

According to the Oneida Judiciary, there are no additional startup, personnel, office, or documentation costs and the amendments can be implemented within 30 days from the adoption of the Law.

Financial Impact

No fiscal impact.

RECOMMENDATION

The Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that General Tribal Council has sufficient information to render a decision.



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54115-0365
Oneida-nsn.gov



HANDOUT

TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: July 20, 2016
Re: Membership Ordinance Emergency Amendments

Background

The Membership Ordinance allows for a parent to relinquish a child's membership only if it is to enroll that child with another tribe.

A few cases have arisen in which an Oneida father has signed a Voluntary Paternity Acknowledgement Form agreeing that he is the father. That form was used to enroll the minor child with the Oneida Nation- only to find out later that the Oneida father is not actually the biological father.

However, as the Membership Ordinance is written, there is no way to remove the child from the membership rolls.

Consequences

The non-Oneida minor child will continue to receive all the benefits that the Nation offers- including per capita payments, higher education funding, etc.

Option One: Emergency Amendment

Emergency amendments to the Membership Ordinance to allow for the voidance of enrollment for a child who is enrolled and later determined by genetic testing to no longer be eligible for enrollment.

Option 2: Rulemaking

The Trust/Enrollment draft and adopt rules for voiding a membership that does not comply with the Membership Ordinance.

Action(s)

1. At the July 6 LOC meeting, the LOC directed a work meeting with the Oneida Business Committee (OBC) be scheduled within two (2) weeks to discuss the issue further and that the item be brought back to the July 20, 2016 LOC meeting.
2. The OBC met to discuss the issue on July 15. They decided to remove the emergency amendments from the Active Files List, presuming that the Enrollments Department verifies that there aren't any non-Oneida children who are close to disbursement age (18).

3. LOC will request that Trust/Enrollments respond with their decision whether or not to take up rulemaking to address this issue.

July 2016

July 2016

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August 2016

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	Monday	Tuesday	Wednesday	Thursday	Friday
	Jun 27	28	29	30	Jul 1
Jun 27 - Jul 1					
	4	5	6	7	8
Jul 4 - 8	Independence Day Holi		9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar 6:00pm 10:00pm GTC Meeting		
	11	12	13	14	15
Jul 11 - 15			BC Meeting (BCCR)		3:15pm 4:15pm OBC MEETING - Membership Ordinance Emergency Amendments (BC_Exec_Conf_Room) - Douglass A. McIntyre
	18	19	20	21	22
Jul 18 - 22			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar	12:15pm 2:15pm FW: Public Meeting - Landlord-Tenant law & Vendor Licensing law Amendments (BC_Conf_Room) - Douglass A. McIntyre	
	25	26	27	28	29
Jul 25 - 29			BC Meeting (BCCR)		

August 2016

August 2016

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September 2016

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	Monday	Tuesday	Wednesday	Thursday	Friday
Aug 1 - 5	Aug 1	2	3	4	5
			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar	12:15pm 2:15pm FW: PUBLIC MEETING: Eviction & Termination Law (BC_Conf_Room) - Jennifer A. Falck	
Aug 8 - 12	8	9	10	11	12
			BC Meeting (BCCR)		
Aug 15 - 19	15	16	17	18	19
			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar		
Aug 22 - 26	22	23	24	25	26
			BC Meeting (BCCR)		
Aug 29 - Sep 2	29	30	31	Sep 1	2