

Employment Law: Why it is Smart to Classify the Tribe's Probationary and Short-Term Employees as At-Will

By the Legislative Operating Committee

The Legislative Operating Committee and the Oneida Business Committee have made the development and adoption of a new Employment Law one of their top priorities. If the Employment Law is adopted by the General Tribal Council it will frame and provide outer limits to the Oneida Employee Handbook, which will replace the Personnel Policies and Procedures. It is important to understand the Employment Law and the Oneida Employee Handbook before the General Tribal Council votes, so the Legislative Reference Office will be releasing informational articles regarding new policy directions in the Employment Law and Handbook which will explain the intent and effect of the legislation. This article focuses on the Employment Law's creation of at-will employees and explains what employment "at-will" means, who it will apply to under the current draft of the Employment Law and why designating the Tribe's probationary and short-term employees as at-will is in the best interest of both the Tribe and regular status employees and applicants.

The Employment Law does create a new class of at-will employees, but that class is limited to new Employees on proba-

tion and Employees working for the Tribe on a temporary basis. The Employment Law defines "At-Will Employee" as "an employee working for the Tribe on a short term basis that is not hired through the standard hiring procedures, including, but not limited to, political appointees, seasonal, volunteer workers and new Employees that have not yet completed their probationary period pursuant to the Rules developed by HRD."

Today, of our 2,708 total employees, only 206 employees or 7.6% of the Tribe's employment base would be classified an at-will employee based on the definition contained in the Employment Law. Of those 206 employees that would be classified as at-will, 113 are new employees on probation that will become regular status employees upon completion of their probationary period, which amounts to 4.2% of the Tribe's employment base. Accordingly, of our current 2,708 total employees, only 93 employees or 3.4% of the Tribe's employment base would be considered at-will employees for the duration of their employment with the Tribe based on the Employment Law.

The legal effect of classification as an at-will employee is that the Tribe may terminate an at-will employee at any time for any reason and

the at-will employee will not have the ability to appeal any employment action taken by the Tribe. The creation of at-will employees was intentionally designed to save the Tribe's limited resources and to protect the availability of regular status positions and the Tribe's hiring procedures.

Using at-will employment for probationary employees allows the Tribe to screen out employees that demonstrate early on in their employment that they are not a good fit for the Tribe. Providing this group of employees with full employee benefits and, if terminating, potentially also a lengthy and costly appeal process, is not the best use of the Tribe's limited resources.

At-will employment for short-term positions is likewise a strategic policy decision because it protects the availability of regular status positions for applicants and enhances the integrity of the Tribe's hiring procedures, which have been carefully designed to include Oneida and Indian preference and to select the most qualified applicants. The Employment Law maintains the current hiring practice which allows supervisors to hire short-term employees without following the standard hiring procedures that require posting of the position Tribe-wide and potentially to the gen-

eral public. This means a supervisor hiring an at-will employee would not know if other people are interested in the position that may be better qualified than the at-will employee. Once hired by the Tribe on a short-term basis, an at-will employee could transfer into a regular status position and still may not be subject to the Tribe's full hiring requirements. By classifying these positions as at-will and making them less attractive to applicants, the Tribe is making a statement that in order to receive full employment rights an employee must participate in the Tribe's full hiring process.

The Employment Law also makes use of at-will positions less attractive for supervisors by giving at-will positions the ability to negotiate their compensation the same as all other Employees. The current Personnel Policies and Procedures and HRD's policy require positions that the Employment Law classifies as at-will to be paid no more than fifteen percent above the minimum compensation of the position's determined grade.

In sum, the Oneida Personnel Commission's earlier statement that the new Employment Law creates a new group of at-will employees is true. It is also true that the designation of at-will employee carries specific

implications that were intentionally designed to save the Tribe's limited resources and to protect the availability of regular status positions and the Tribe's hiring procedures. Lastly, it is important to recognize that the at-will designation will apply to a very small portion of the Tribe's employment base: only 7.6% of the Tribes entire employment base, which includes 4.2% of all employees that are currently on probation that will become regular status upon completion of their probationary periods and 3.4% of all employees that would be at-will employees for the duration of their employment because they are short-term positions hired outside of the normal hiring procedures.

Stay Informed and Ask Questions

Please keep in mind that the Employment Law is still in draft form, so it remains subject to

change as the drafting team continues to receive valuable input from the Tribe's employment base and membership. A current version of the Employment Law and Employment Law fact sheets are available on the Oneida Register's homepage at <https://oneida-nsn.gov/Register/>. Please watch for upcoming meetings to be scheduled discussing the proposed Employment Law and the Oneida Employee Handbook and for our next information article on the Employment Law, which will discuss changes proposed to the corrective action and grievance process. Employee and Tribal member feedback is essential to developing the best Employment Law possible. If you have any questions or comments regarding the Employment Law, please contact the Legislative Reference Office at by e-mail at LOC@oneidanation.org or by telephone at 920-869-4375.

Total number of Oneida Employees:	2708
Number of employees that would classify as at-will:	206
Percentage of Total	7.6%