

NOTICE OF
PUBLIC MEETING

TO BE HELD

March 31, 2016 at 12:15 p.m.

IN THE

**OBC CONFERENCE ROOM
(2nd FLOOR—NORBERT HILL CENTER)**

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

TOPIC: EMPLOYMENT LAW

This is a proposal for a new Tribal law which would:

- ◆ Replace the current Personnel Policies and Procedures;
- ◆ Provide a fair, consistent and efficient structure to govern all employment matters;
- ◆ Streamline current processes to reduce cost, time and resources;
- ◆ Provide the framework for Employment matters with the detailed content currently contained in the Personnel Policies and Procedures being delegated to HRD in the form of rules HRD shall create pursuant to the Administrative Rulemaking Law;
- ◆ Allow tribal entities the latitude to adjust certain employment practices to best fit their individual entities;
- ◆ Dissolve the Personnel Commission and redirect its currently assigned duties; the Oneida Judiciary will absorb the hearing body authority and the duties related to hiring process are transferred to HRD.

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office.

**PUBLIC COMMENT PERIOD
OPEN UNTIL APRIL 7, 2016**

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

**Legislative Reference Office
PO Box 365 Oneida, WI 54155
LOC@oneidation.org
Phone: (920) 869-4376 or (800) 236-2214
Fax: (920) 869-4040**



Employment Law

3/15/16 Draft 2 to Draft 17

<i>Analysis by the Legislative Reference Office</i>					
Title	Employment Law (Law)				
Requester	OBC Directive	Drafter	Krystal L. John	Analyst	Maureen Perkins
Reason for Request	To develop an employment law to replace the Personnel Policies and Procedures (PPP), also known as the blue book.				
Purpose	To provide a fair, consistent and efficient structure to govern all employment matters [See 300.1-1].				
Authorized/ Affected Entities	Human Resources Department (HRD), current and future Tribal employees, Tribal Entities, Supervisors, Reviewing Supervisors, Oneida Business Committee (OBC)				
Due Process	Reviewing Supervisor and/or Judiciary [See 300.10].				
Related Legislation	Anonymous Letters Policy, Lay Off Policy, Furlough Policy, Conflict of Interest Policy, Drug and Alcohol Free Workplace, Garnishment Ordinance, Military Services Employee Protection Act, Early Return to Work, Oneida Safety Law, Oneida Worker's Compensation Law, Computer Resources Ordinance, Clean Air Policy, Paper Reduction Policy, Social Media Policy, Oneida Travel and Expense Policy				
Enforcement	Corrective Action including verbal & written warnings, suspension and/or termination [See 300.3-1 (c)].				

Overview

This is a new Law that will replace the current Personnel Policies and Procedures. The Law provides a fair, consistent and efficient structure to govern all employment matters. The Law streamlines current processes to reduce cost, time and resources. The Law contains the framework and much of the detailed content of the current Policies and Procedures have moved to the Handbook. The GTC retains authority to amend or repeal the law under the Legislative Procedures Act. Under the Administrative Rulemaking Law, the HRD would have the authority to amend the Handbook with OBC approval. The Law dissolves the Personnel Commission and redirects the duties currently assigned. Hearing Body Authority will move to Oneida Judiciary and the duties within the hiring process will move to HRD.

- Dissolves Personnel Commission moving duties to HRD.
- Oneida Judiciary will hear appeals.
- Change to at-will employment for all temporary and probationary employees.
- Temporary employees no longer receive holiday pay.
- Funeral Leave for immediate family has increased to five (5) days and is non-discretionary.

Repealed Resolutions

- (a) The Oneida Tribal Management System and amendments to the Tribal Management System, including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985;
- (b) BC Resolution BC-05-11-11-A entitled Establish Tuberculosis Control Program;
 - The TB program appears in the Law [see 300.5-5 (a)].

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- 24 • (c) The Employee Protection Policy adopted by emergency pursuant to BC-4-20-95-
25 B, permanently adopted pursuant to BC-12-6-95-B and subsequently amended
26 pursuant to BC-1-20-99-B and BC-6-30-04-J;
27 ○ Employee Protection appears in the Handbook [see XIV 14-1 to 14-3].
- 28 • (d) The GED Policy approved by the Oneida Business Committee on October 21,
29 1992;
30 ○ GED Policy appears in the Law [see 300.5-4] and the Handbook [see 4-3(b)].
- 31 • (e) BC Resolution BC-07-22-09-B entitled Oneida Nation Veterans Affairs
32 Committee, Paid Time Off for Selected Color Guard Members Who Are Employees;
33 ○ Included in the Handbook [see 9-8].
- 34 • (f) The Parent Leave Policy adopted pursuant to BC-03-02-94-A;
35 ○ Parent leave is included in the Handbook [see 9-6].
- 36 • (g) BC Resolution 04-05-95-A regarding a paid break for donating blood at a blood
37 drive coordinated by the Nation;
38 ○ Paid blood donation break appears in the Handbook [8-1(d)].
- 39 • (h) BC Resolution 05-12-93-J regarding HRD’s role in the interpretation,
40 implementation and enforcement of the Personnel, Policies and Procedures;
41 ○ HRD’s role and responsibilities are included in the law [see 300.4].
- 42 • (j) GTC Resolution 05-23-11-A entitled Personnel Policies and Procedures
43 Amendments to Strengthen Indian Preference in Hiring.
44 ○ Some of the content of this resolution appears in the Law and Handbook,
45 some of the content has changed.

Proposed Amendments

Current Policies and Procedures Section II Recruiting

- 49 • Repeal GTC Resolution 5-23-11-A
- 50 • Change policy regarding labor pools
- 51 • Temporary employees are at-will with no appeal rights
- 52 • Temporary employees no longer receive holiday pay

Current Policies and Procedures	Proposed Law	Analysis
Section II Recruiting		
1. Recruiting Strategy	Removed	
2. Applicant Pool	Removed	

Current Policies and Procedures	Proposed Law	Resolutions	Analysis
Section II B Labor Pools 3. ...All qualified applicants will then be placed in a pool according to the Tribe's Oneida and Indian Preference Policy and the date the application was received. All applicants will be notified of acceptance into or rejection from the pool.	Handbook 5.7(d) (1) Work with a Hiring Representative to interview, pursuant to Article 5-8, and rank, pursuant to Article 5-9, each applicant in the labor pool. When all interviews and rankings of the labor pool are complete, the Supervisor shall make a selection pursuant to Article 5-10; or (2) Request that a hiring	GTC Resolution 5-23-11-A Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring: “...requiring that all Labor Pool Positions will be considered based, first on Indian Preference and second, on the date the	Indian Preference still applies to Labor Pools. This Law requests GTC to repeal GTC Resolution 5-23-11-A and changes the policy removing the date the application was received as a place in the pool.

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	<p>representative complete a pre-screening of the labor pool based on the applications submitted and the screening process contained in Article 5-6 to provide the supervisor with the top (3) qualified applicants for the position. The supervisor may then interview the top three (3) applicants in the labor pool pursuant to Article 5-8(a) and (b), and rank them, pursuant to Article 5-9. When all interviews and rankings are complete, the supervisor shall make a selection, provided that, if there is one (1) or more Oneida applicant in the top three (3) most qualified, an Oneida applicant must be selected.</p>	<p>application was received would also increase the number of Tribal members who are employed by the Tribe”.</p>	<p>LOC may consider incorporating GTC directive into Proposed Handbook or repeal the GTC Resolution 5-23-11-A.</p>
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Emergency Temporary Positions			
<p>e. Temporary employees will be paid within the Grade in which the job is classified and salary will be negotiated within the first three (3) steps of respective grade. 1. Any negotiated salary beyond step three will require written justification and approval from the respective General Manager.</p>	<p>Handbook 5-11. Hiring Negotiations. The supervisor shall review the Wage and Salary charts created by HRD pursuant to Article 7-1(a) and shall determine the Wage or Salary to offer the applicant, which must be approved by HRD to ensure procedural compliance with Article 7-1(b). Should the supervisor seek to deviate from the standard Grade placement, HRD must approve the selected Wage or Salary.</p>		<p>The final wage negotiation has moved from the General Manager to HRD.</p>
<p>g. Temporary employees that are terminated due to documented cause will have the right to the appeal process as outlined in the personnel policies and procedures.</p>	<p>5-18. At-Will Employees. (i) At-will Employees may be terminated at any time, for any reason, provided that, if the at-will Employee has not demonstrated behavior related issues but is not a good fit for the position, the supervisor shall separate, not terminate, the at-will Employee. (j) At-will employees, excluding political appointees that are hired through the normal hiring process, do not have access to the grievance process provided in Article 13.</p>		<p>Change to at-will employment for temporary employees. Temporary employees can be let go at any time and do not have access to appeal process.</p>
<p>4. Benefits ET...eligible for benefits as defined in this section of the Personnel Policies and Procedures as Mandatory Benefits and Holiday pay.</p>	<p>7-11. Paid Holidays. (a) The following employees are not eligible for paid holidays: (1) Temporary at-will employees;</p>		<p>Temporary employees no longer receive Holiday pay.</p>

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Current Policies and Procedures Section III Selection Policy

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- 58 ● Hiring Philosophy condensed.
- 59 ● Oneida and Indian Preference changed for descendants per GTC resolution and BC
- 60 action.
- 61 ● Step relationships added to the immediate family definition for purposes of determining
- 62 nepotism and conflict of interest.
- 63 ● Electronic submission of applications added.
- 64 ● Initial posting for Oneida applicants only has been removed; Oneida’s are still given
- 65 preference in the interview process and Oneida and Indian Preference still apply to all
- 66 hiring decisions.
- 67 ● Selection has changed from the top two to the top three.
- 68 ● Interim transfers have been reduced to a maximum of one year.
- 69 ● Change in the transfer process.
- 70 ● Employees separated or terminated during probationary period no longer receive credit
- 71 for accrued personal time off.
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Current Policies and Procedures	Proposed Law	Analysis
<p>A. ONEIDA PREFERENCE AND INDIAN PREFERENCE POLICY STATEMENT</p> <p>“...As a sovereign Indian Tribe and a unique cultural group, the Oneida Tribe has determined that a highly desirable employment characteristic is a knowledge of Oneida culture that can be attained only by membership (or eligibility for membership) in the Oneida Tribe. Further, the Tribe recognizes the unique, shared culture of Native American Indians and has determined that a desirable employment characteristic is status as a member of an American Indian tribe. At a minimum, the Tribe has determined that some knowledge of Indian culture is a desirable employment characteristic...”</p>	<p>300.1. Purpose and Policy</p> <p>300.1-2. It is the Nation’s policy to provide entities latitude to create human resource practices to fit their individual industry standards, while creating a strong and healthy work environment. In addition, although certain federal and state laws, specifically Title VII, do not apply to the Nation, the Nation’s employment policy is to afford applicants and employees equal employment opportunities while recognizing the Nation’s Oneida and Indian employment preference. The Nation’s hiring philosophy is to recruit, hire, retain and develop individuals who are culturally respectful, professionally competent and familiar with the Oneida community.</p>	<p>Condensed. See Oneida and Indian Preference section for additional detail.</p>

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Current Policies and Procedures	Proposed Law	Resolution	Analysis
<p>Priorities of Indian Preference</p> <p>1. Enrolled Oneida Tribal member;</p> <p>2. Oneida Indians eligible for enrollment in the Oneida Tribe;</p> <p>3. Documented first generation</p>	<p>300.5-3. Oneida and Indian Preference. The Nation shall apply Oneida and Indian Preference to all hiring practices.</p> <p>(a) Unless otherwise prohibited by law or grant funding requirements, the Nation shall apply the following order of Oneida and Indian Preference in staffing decisions:</p> <p>(1) Persons who are tribal members.</p> <p>(2) Persons who meet the blood quantum requirements contained in the Membership Ordinance, but are not currently tribal members, and/or persons who are documented first generation descendants of a tribal member.</p> <p>(3) Persons enrolled in any federally recognized tribe other than this Nation.</p>	<p>GTC Resolution 5-23-11-A Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring</p>	<p>Change in preference for descendants per BC work meeting 10/8/15 and GTC Resolution.</p>

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Oneida descendant; 4. Other Native American Indian; 5. Other (non-Indian).	(4) All other non-Indian persons. (b) If a law or grant funding requirement prohibits the application of Oneida and Indian Preference in accordance with 300.5-3(a), the Nation shall make staffing decisions in accordance with the Indian Preference requirements of the said law or grant. (c) Oneida and Indian Preference applies only when an applicant meets all the minimum requirements of the position applied for. (d) Oneida-Only Positions. To the extent possible, all top administrative and political appointee positions must be held by tribal members. ¹ If a position requires specific skills and/or licensing by the state or federal government and there are no available tribal members who possess the necessary skills or licensing to assume the vacancy, only then may a non-tribal member be selected to fill the vacancy.		
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Current Policies and Procedures	Proposed Law	Analysis
B. HIRING PROCEDURE		
1. Statement of Policy	Removed	

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e. Conflict of Interest and Nepotism	Step relationships added	
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2. Hiring Procedures b. Personnel Commission	Removed	
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4. Job Descriptions	Detail removed	
d. Applications	Detail removed	
3) Application Deadline	Mailed application removed Electronic submission added	
4) All applications will be acknowledged.	Removed	

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Current Policies and Procedures	Proposed Law	Resolutions	Analysis
e. Advertising 2) Unless otherwise prohibited by external grant source or federal law, the first posting for a position vacancy shall be limited to enrolled Oneida members and shall be posted for a minimum of seven (7) calendar days.	Handbook 5-3. Posting Vacancies. (a) New Positions. All new positions, excluding those intended to be filled with an At-Will Employee, must simultaneously be posted internally and externally for a minimum of seven (7) days. 5-8. Interviews. (a) (1) If there are two (2) or more qualified and eligible Oneida applicants the hiring representative shall schedule interviews with the Oneida applicants first. In such circumstances, the remaining applicants, if any, may only be scheduled for interviews if an Oneida applicant has not been selected pursuant	GTC Resolution 5-23-11-A Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring: "...Initially posting all vacant positions as "Oneida Only" would increase the number of Tribal members who are employed by the Tribe".	All postings are now completed at one time; if two (2) or more qualified Oneida's apply, they will be interviewed first and a selection made as long as there are at least two (2) eligible Oneida's after the interview process has been completed. This Law requests GTC to repeal GTC Resolution 5-23-11-A. LOC may consider

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	<p>to Article 5-10. (2) If there are not two (2) or more qualified and eligible Oneida applicants, the hiring representative shall schedule interviews if there are three (3) or more qualified and eligible applicants in total. 5-10. Selection. (a) When all interviews have been conducted, if applicable, the supervisor shall select an applicant for the position based on the following, provided that if there are two (2) or more qualified and eligible Oneida applicants, one (1) of the Oneida applicants must be selected: ...</p>		<p>incorporating GTC directive into Proposed Handbook or repeal the GTC Resolution 5-23-11-A.</p>
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Current Policies and Procedures	Proposed Law	Analysis
<p>f. Screening of Applicants 2) The HRD Office shall notify screened out applicants within five (5) working days after the initial screening and reserve these applications in the general recruiting pool.</p>	<p>Removed</p>	
<p>h. Selection 1) The supervisor shall select one of the top two (2) candidates as ranked through the rating scale.</p>	<p>Handbook 5-10. Selection. All hiring decisions must adhere to the Oneida and Indian preference policy as contained in the Employment Law. (a) The Hiring Representative shall provide the supervisor(s) with the top three (3) ranked applicants.</p>	<p>Selection has changed from the top two to the top three ranked applicants. Oneida and Indian Preference apply.</p>

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Current Policies and Procedures	Proposed Law	Analysis
<p>C. TRANSFERS AND PROMOTIONS POLICY Procedure a. Internal Posting and Bidding 1) Open positions as determined by a supervisor and his/her Area Manager will be posted internally for five (5) working days. This internal posting will be concurrent with the external (public) posting of positions. 2) Tribal employees may bid for transfers by notifying their immediate supervisor and submitting an Application Form to the</p>	<p>Handbook 5-2. Approval Process for Posting Employment Vacancies. (2) Interim transfers may be requested in six (6) months increments, provided that transfers for positions that require posting prior to being filled on an interim basis may not exceed one (1) year. 5-14. Career Ladders: Student Internships and Promotions. (a) Promotions. Supervisors may reward an employee's performance achievements by promoting the employee. 5-15. Employee Transfers. Employee transfers must be approved by HRD for procedural compliance and by the prospective transfer's employee supervisor and reviewing supervisor. (a) Upon approval of a transfer, the employee's current employee supervisor and prospective</p>	<p>Current Tribe Wide SOP: Interim transfers are up to two (2) years. Proposed interim capped at one (1) year. The initial five (5) day posting for transfers has been removed. Transfers can be considered at any time in the posting and selection process. Positions can be posted internally first to consider transfers at the supervisor's discretion. Positions may also be posted both internally and</p>

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<p>HRD Office.</p> <p>a) The HRD Manager will inform all affected Area Managers of each transfer bid.</p> <p>3) At the end of the five day internal posting period, the HRD Manager will schedule a conference with the open position's supervisor and the Area Manager.</p> <p>a) The conference committee will consist of the supervisor, the Area Manager and the HRD Manager (or designate) acting as this Committee will:</p> <ul style="list-style-type: none"> i. Establish selection criteria; and ii. Review each bid. <p>b) The Committee may select the best-qualified applicant but is not required to choose an applicant to fill the open position from those employees who have submitted an application for a transfer or promotion.</p> <p>c) If the Committee does not fill the position from the transfer/promotion process, the process will continue through the full advertising, screening and interview steps.</p> <p>c) An employee must have completed one year of service to the Tribe before being eligible for a promotion or transfer (requests for transfers for documented medical conditions will be handled on a case by case basis and only when in the best interests of both the employee and the Tribe);</p> <p>d) The newly transferred or promoted employee shall be require to complete a three (3) month probation period (all conditions of the Tribe's Probation Policy shall apply).</p>	<p>employee supervisor shall discuss and agree upon a transition plan for the employee which will allow the current employee supervisor adequate time to respond to the newly vacant position. Unless otherwise agreed to by the employee and the supervisors, all transfers must be complete within forty-five (45) days of the date notice of the transfer was provided to the employee's current employee supervisor.</p> <ul style="list-style-type: none"> (b) Employees become eligible to transfer within their entity after achieving six (6) months of continuous employment with the Nation and are eligible to transfer organization-wide after achieving one (1) year of continuous employment with the Nation. (c) Transferring employees are not subject to an additional probationary period, but are subject to the evaluation requirements for probationary employees as provided in Article 5-13(d). 	<p>externally at the supervisor's discretion.</p> <p>The process to apply for a transfer and the detail regarding transfers being considered prior to all other applicants is not included in the Handbook.</p> <p>The length of employment to be considered for transfer has remained at one year external to the employee's department and changed from one year to six months internally within employee's department.</p> <p>Transfers for medical reasons are not mentioned in the Law or Handbook.</p> <p>The probationary period for transfers has been removed but the evaluation period has remained.</p>
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Current Policies and Procedures	Proposed Law	Analysis
D. Probation		
3. Completion of Probation Period b. Employees who are terminated during the probation period will receive credit for accrued vacation/personal days in their final paycheck.	(a) Employees accrue paid time off during their probationary period. An Employee may not use or, in the event of Separation or termination, be paid out for any accrued paid time off until the Employee has successfully completed his or her probationary period, except that Employees whose probation period is extended may begin using accrued paid time off beginning after the close of the initial ninety (90) probation period.	Employees separated or terminated during probationary period no longer receive credit for accrued personal time. Employees may not use accrued PTO until after their initial 90 day probationary period and cannot make purchases using payroll deduction.

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Current Policies and Procedures Section IV Compensation and Benefits

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- Change in notice to supervisor for PTO for unforeseen circumstances.

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- Change from PTO taken without 24 hour notice limited to 6 occurrences with no supervisor discretion in a 12 month period after which a corrective action may be initiated.

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- A 12th floater holiday was added.

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- Change in personal and vacation time combined into Personal Time Off (PTO) without a change in the number of hours. Change from days off to hours off.

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- Change from meeting attendance to speaker responsibilities with a change in the amount of compensation an employee can keep.

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- Funeral leave has changed.

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- Change in leaves of absence to personal leave.

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- Change in maternity leave to include paternity leave and adoption.

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- Change in accruals for military leave.

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Current Policies and Procedures	Proposed Law	Analysis
2. Workday b. 2) In case of an unavoidable delay or absence, the supervisor must be notified no later than thirty (30) minutes after the scheduled starting time. Employees are encouraged to notify their supervisor before their scheduled starting time. a) Employees failing to report to their assigned jobs or failing to call in within the thirty (30) minute time allowed will be subject to disciplinary action.	Handbook 8-1. Business Day. (h) In the case of an illness or unforeseen circumstances, an employee must notify his or her employee supervisor that he or she will be absent no less than fifteen (15) minutes prior to the employee's scheduled starting time. Employees may use PTO based the reduced notice requirements in this Article a maximum of six (6) occurrence's in twelve (12) month period. (i) Entities may develop their own standard operation procedures that deviate from the requirements contained in sub-Articles (g) and (h), provided that, in regards to sub-Article (h), Entities may not provide Employees with less than six (6)	Change from required notice to supervisor 30 minutes after to a minimum of 15 minutes before scheduled work start time. Entities may develop their own standard operating procedure to require increased notice. Employees are

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	occurrences to request PTO using the reduced notice requirements and may not require greater than two (2) hours of notice. Such standard operating procedures may include blackout dates deemed critical to business during which no PTO may be taken regardless of whether it is proposed to be taken pursuant to sub-Article (g) or (h) above.	entitled to six (6) occurrences of reduced notice PTO with no supervisor discretion in a twelve (12) month period.
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Current Policies and Procedures	Proposed Law	Analysis
<p>4. Holidays. a. Tribal holidays consist of the following: 1) One-half day Christmas Eve 2) Christmas Day 3) New Year's Day 4) Memorial Day 5) Veteran's Day 6) Independence Day 7) Labor Day 8) Thanksgiving Day 9) Indian Day (day after Thanksgiving) 10) One-half day Good Friday 11) Code Talkers Day (National Oneida Day) (Friday prior to Memorial Day)</p>	<p>7-11. Paid Holidays. (a). The Nation observes the following paid holidays: (1) New Year's Day; (2) Good Friday (half day); (3) Oneida Code Talkers Day (observed the Friday prior to Memorial Day); (4) Memorial Day; (5) Independence Day; (6) Labor Day; (7) Veteran's Day; (8) Thanksgiving Day; (9) Indian Day (observed the day after Thanksgiving); (10) Christmas Eve (half day); (11) Christmas Day; and (12) Possibly a floater holiday. (A) Employees of an entity that does not operate under the Nation's standard business day may, if approved by his or her employee supervisor, substitute one (1) of the above holidays for a holiday not listed (i.e. Cinco de Mayo, Hanukah, etc.). (B) Prior to offering employees a floating holiday, the entity shall create a standard operating procedure to govern the approval process for such requests and the standard operating procedure must be submitted to and approved by HRD.</p>	<p>A 12th floater holiday was added to the list of paid holidays.</p>

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Current Policies and Procedures	Proposed Law	Analysis
<p>5. Vacation/Personal Days c. Except as provided for in section g, the accrual of personal days shall be as follows: 1) 0-3 years service - 6 days per year; 2) 4-7 years service - 8 days per year; 3) 8-14 years service - 10 days per year; 4) 15 + years service - 12 days per year; d. Except as provided for in section g, the accrual of vacation days shall be as follows,: 1) 0-3 years service - 12 days per year; 2) 4-7 years service - 15 days per year; 3) 8-14 years service - 20 days per year; 4) 15 + years service - 25 days per year.</p>	<p>Handbook 7-12. Paid Time Off (PTO). Employees accrue PTO based on years of continuous service, provided that temporary employees are not eligible to accrue PTO. (a) PTO accrual rates for full-time employees are as follows: (1) 0-3 years of service – 144 hours annually (2) 4-7 years of service – 184 hours annually (3) 8-15 years of service – 240 hours annually (4) 16 + years of service – 296 hours annually</p>	<p>Personal and vacation combined into paid time off. Accruals remain the same. Days have been calculated at 8 hours each.</p>

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Current Policies and Procedures	Proposed Law	Analysis
<p>1) Employees who have used the Tribally-sponsored loan program will</p>	<p>Removed</p>	

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be required to honor the terms of the loan agreement.		
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Current Policies and Procedures	Proposed Law	Analysis
<p>D. Leaves</p> <p>1. Meeting Attendance</p> <p>a) Approval for attending any meetings inside normal working hours must be approved in advance by the employee's immediate supervisor. <u>(BC Action, 5-16-89)</u></p> <p>b) Employees who receive stipends or honoraria in excess of \$50.00 for attending meetings during working hours will forfeit the amount in excess of \$50.00 from their regular paycheck. Stipends for travel or per diem will not be deducted if accompanied by receipts for such expenses.</p> <p>c) Stipends or honoraria for intra-tribal meetings during normal working hours will result in the employee's paycheck being reduced by the full amount of the stipend.</p>	<p>Handbook</p> <p>7-8. Speaker and/or Presenter Compensation.</p> <p>An employee whom is offered compensation by a third party for participating in an event as a speaker and/or presenter as related to his or her position's duties must either:</p> <p>(a) Request paid time off to attend the event for which the employee will speak and/or present and keep the compensation offered by the third party; or</p> <p>(b) Collect his or her normal compensation from the Nation for the time spent speaking and/or presenting as related to his or position's duties and forward the compensation provided by the third party to the Nation's Accounting Department to be added to the employee's entity's budget as income.</p> <p>(c) Employees receiving compensation, including gifts and gift cards, equal or less than fifty dollars (\$50.00) in value are exempt from this requirement.</p>	<p>Change from meeting attendance to speaker and/or presenter compensation. Compensation received in excess of \$50.00 will be forfeited if earned during working hours.</p>

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Current Policies and Procedures	Proposed Law	Analysis
<p>2. Funeral Leave</p> <p>a) All regular employees will be given a three (3) day leave without loss of pay for funeral services for immediate family. Immediate family includes: Husband, Mother, Brother, Wife, Father, Sister, Mother-in-law, Son, Grandparent, Father-in-law, Daughter, Grandchild,</p> <p>b) Three (3) day leave for other persons will be given only if the employee is responsible for making funeral arrangements, subject to prior approval of supervisor.</p> <p>c) All other funeral leave will be limited to no more than one (1) day with pay subject to the notification and approval of the immediate supervisor.</p>	<p>Handbook</p> <p>9-5. Funeral/Bereavement Leave.</p> <p>(a) An employee may take up to five (5) days of paid funeral/bereavement leave for the death of an immediate family member, which the employee supervisor may not deny. An employee that is primarily responsible for making funeral arrangements for the death of someone outside of his or her immediate family may also take up to five (5) days of paid funeral/bereavement leave, provided that such leave is at the discretion of his or her employee supervisor.</p> <p>(1) Persons primarily responsible for making funeral arrangements are those responsible for making major decisions including, but not limited to, the place of the service, the date and time of the services, the type of service and/or burial.</p> <p>(2) The five (5) days of paid funeral/bereavement leave is not required to be taken consecutively and may be split into different work weeks to the extent that it is related to funeral services.</p> <p>(b) An employee, excluding at-will employees, may, at the employee supervisor's discretion, take up to three (3) additional days of unpaid funeral/bereavement leave if the employee is assisting with funeral arrangements, which may</p>	<p>Funeral leave has been increased from three (3) to five (5) days for the loss of an immediate family member and this leave is not discretionary. Five (5) days of discretionary leave is available for those who are responsible for funeral arrangements outside of the immediate family.</p> <p>Immediate family has been extended to include step-relationships.</p> <p>Three (3) days of funeral unpaid leave is extended to individuals assisting with funeral arrangements (being a fire-keeper, coordinating meals, or being a pall-bearer, speaker or singer).</p> <p>Three (3) hours are available for employees for the death of someone</p>

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	<p>include but are not limited to, being a fire-keeper, coordinating meals, or being a pall-bearer, speaker or singer.</p> <p>(c) An employee may take up to three (3) paid hours of funeral/bereavement leave for the death of someone outside of his or her immediate family, provided that his or her employee supervisor must approve such leave.</p>	<p>outside of the immediate family.</p>
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Current Policies and Procedures	Proposed Law	Analysis
<p>3. Leave of Absence 3) No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.</p> <p style="padding-left: 20px;">i. Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process.</p>	<p>Handbook 9-2. Personal Leaves.</p> <p>(a) So long as an employee is able to return to work following a personal leave, his or her job must be made available upon return, unless a business need of the Nation has eliminated the position, in which case the employee must be placed within the closest comparable and available position for which the employee is eligible.</p> <p>(b) If an employee is not able to return to work following a personal leave, he or she must be separated.</p>	<p>Leaves of absence have been changed to personal leaves.</p> <p>The 15 day notice to return from a leave does not appear in the Handbook.</p>

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Current Policies and Procedures	Proposed Law	Analysis
<p>4. Maternity Leave a. Maternity leave will be granted for a period of six (6) weeks without pay.</p> <p>1) An employee may elect to cover any portion of this time by using accumulated sick days.</p> <p>2) Any maternity-related absences for longer than six (6) weeks must be taken as a medical leave of absence.</p>	<p>9-3. Maternity and Paternity Leave. Employees, both male and female, are eligible for six (6) weeks of unpaid maternity/paternity leave for the birth and/or adoption of the employee's child.</p> <p style="padding-left: 20px;">(a) An employee may elect to use accrued PTO to cover any portion of this six (6) week period.</p> <p style="padding-left: 20px;">(b) Any maternity/paternity related absence for a period of longer than six (6) weeks must be taken as either FML or personal leave, with guidance provided by HRD.</p>	<p>Paternity leave was added making the leave applicable to women and men.</p> <p>Adoption was added to this leave.</p>

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Current Policies and Procedures	Proposed Law	Analysis
<p>5. Military Leave Time off for inactive duty training, examinations to determine fitness for duty and funeral honors duty shall be afforded to</p>	<p>9-4. Military Leave. (b) Leave for inactive duty training, examinations to determine fitness for duty and funeral honors duty is afforded to employees and during such leave employees will continue to accrue PTO and to be eligible for holiday pay. Further, the Nation shall pay employees for any absences attributed to required reservist training, provided that; the employee shall</p>	<p>Personal time off has changed for military leave. Employees on leave for inactive duty will accumulate personal time off and holiday pay.</p>

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<p>employees without the accumulation or loss of holiday, vacation or personal time. An employee will receive pay from the Tribe for any hours work that the employee was required to miss due to reservist training.</p>	<p>provide documentation from the military of such training dates.</p>	
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Current Policies and Procedures Section V Employee Relations

- Employees will no longer be placed on probation for unsatisfactory evaluations.
- Career development has been eliminated.
- The formal complaint process has been eliminated.

Current Policies and Procedures	Proposed Law	Analysis
<p>Evaluations</p> <p>4. Satisfactory evaluations may result in the employee receiving an increase in pay within their grade level provided that the employee has not attained the highest step within the grade.</p> <p style="padding-left: 20px;">a. Unsatisfactory evaluations will result in probation status for the employee. The supervisor shall provide documentation to the Area Manager and to the employee detailing the deficiency(s). A repeat evaluation will be conducted three (3) months after the unsatisfactory evaluation. This second evaluation will result in the employee:</p> <ol style="list-style-type: none"> 1) Being removed from probation and receiving a salary increase if the second evaluation results in an overall satisfactory rating; or 2) Receiving appropriate disciplinary actions if the second evaluation also results in an unsatisfactory rating. 	<p>Handbook</p> <p>6-1. Annual Performance Evaluations.</p> <ol style="list-style-type: none"> (a) Employees who disagree with their annual performance evaluation may seek mediation with their employee supervisor at HRD. (b) All employees receiving an overall unsatisfactory score on their annual performance evaluation must be re-evaluated by their employee supervisor within ninety (90) days of their signed annual performance evaluation. <ol style="list-style-type: none"> (1) During the re-evaluation, the employee supervisor shall follow up on and reassess the employee development plan with the employee. (2) Employee's receiving a re-evaluation based on an initial unsatisfactory evaluation, must receive an annual evaluation score that is an average of the initial evaluation score and the re-evaluation score. <p>7-1. Tribal Compensation Plan.</p> <ol style="list-style-type: none"> (1) Merit based increases where a merit based increase is an increase in an employee's compensation based on performance as reflected in the employee's annual performance evaluation; (2) Entities may also independently initiate merit based increases through their annual budgets. Entities must develop and submit to HRD a standard operation procedure for awarding merit based increases. Prior to implementation, merit based increases must be approved by HRD for procedural compliance with the standard operating procedure. 	<p>Employees will now be evaluated on the annual date of hire.</p> <p>Supervisors will receive an email near the time when the employee evaluation is due.</p> <p>The supervisor's supervisor will be emailed if evaluations are not timely received.</p> <p>Employee evaluations will be implemented for employees to evaluate supervisors.</p> <p>Regular status employees will no longer be placed on probation for unsatisfactory evaluations.</p> <p>Merit based increases are included in the Tribal Compensation Plan which must be adopted by the Business Committee annually. Merit based increases may also be initiated by the department in the budget with approval of a standardized SOP.</p>

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<p>C. CAREER DEVELOPMENT</p> <p>1. Tribal employees are encouraged to develop their skills and abilities by pursuing education at a local educational institution.</p> <p style="padding-left: 20px;">a. Tribal employees must provide a general Career Development Plan to the supervisor listing the goals and objectives of the training and education to be undertaken.</p> <p>2. Tribal employees may be eligible for assistance for one (1) course per semester. The employee must attempt to arrange to take the class outside his/her normal working hours.</p> <p style="padding-left: 20px;">a. Where a class conflicts with the employee's work schedule, the needs of the Tribal unit take precedence; however, the supervisor shall attempt to accommodate the employee's request.</p> <p style="padding-left: 20px;">b. In no case shall the accommodation exceed actual class hours plus reasonable travel time.</p> <p style="padding-left: 20px;">c. Employees must obtain the approval of their immediate supervisor to take a course on Tribal time.</p> <p>3. The supervisor's approval and estimated cost must be submitted to the HRD Office, the Area Manager and the General Manager.</p> <p>4. The cost of the books, tuition and fees for the course shall be paid by the Tribe through funds budgeted in programs or through the Higher Education program.</p> <p style="padding-left: 20px;">a. Reimbursement for books, tuition and fees is contingent upon the employee receiving at least a C (2.0 on a 4.0 point scale).</p> <p style="padding-left: 20px;">b. Employees who receive less than the required grade point will be required to reimburse the program for whatever costs were incurred.</p>	<p>Removed</p>	<p>Employees can no longer take classes during work time and the Nation will no longer fund employee education.</p>
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Current Policies and Procedures	Proposed Law	Analysis
<p>D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES</p> <p>1.COMPLAINTS</p> <p style="padding-left: 20px;">a. Should an employee have a disagreement with another employee, he/she may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor.</p>	<p>Complaint process removed</p>	<p>The formal complaint process has been removed. Employees can still submit written complaints but there is no process or timelines attached.</p>

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<p>b. The supervisor will investigate the complaint and attempt to resolve the disagreement.</p> <p>c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she may ask the Area Manager to attempt a resolution.</p> <p>d. There is no further appeal of this process.</p> <p>5. Disciplinary Procedure</p> <p>The following procedure shall be adhered to whenever disciplinary action is taken:</p> <p>a. Supervisor becomes aware of unsatisfactory work performance or violation.</p> <p>1) Supervisor investigates through a meeting with the employees and determines whether disciplinary action is warranted.</p> <p>b. If disciplinary action is warranted, within five (5) working days the supervisor will fill out the five (5) part disciplinary action form stating the behavior for which the action is being taken, the time and date of its occurrence, and the specific policy section under which action is being taken.</p> <p>3. Accumulated Disciplinary Actions Warranting Termination</p> <p>a. The accumulation of three (3) upheld warning notices within any twelve (12) month period. (T)</p> <p>b. The accumulation of two (2) upheld suspensions within any twelve (12) month period.(T)</p> <p>c. The accumulation of three (3) of any combination of upheld warning , notices and/or upheld suspensions within any twelve (12) month period. (T)</p>	<p>Handbook</p> <p>VII. Corrective Actions</p> <p>(a) Within ten (10) business days of the date the employee supervisor learns of prohibited behavior meriting corrective action, the employee supervisor shall:</p> <p>(1) Investigate the alleged prohibited behavior meriting corrective action through a meeting with the employee and, if applicable, witnesses to determine if corrective action is appropriate, provided that, an investigation is not required if the supervisor personally witnessed the prohibited behavior meriting corrective action.</p> <p>Handbook</p> <p>12-5. Progressive Corrective Actions.</p> <p>(c) Termination. A termination is the release of an employee from employment against the employee's will.</p> <p>(1) Termination must be used as the corrective action under the following circumstances:</p> <p>(A) The employee accumulates any three (3) corrective actions provided under Article 12-5 within any twelve (12) month period where the termination itself constitutes the third corrective action; or</p> <p>(B) The employee has engaged in a prohibited action that rises to the level of a criminal or otherwise illegal act.</p> <p>(2) At-will employees may be terminated at any time, for any reason.</p> <p>(3) If the employee supervisors determines that the terminated employee</p>	<p>The timeframe for a supervisor to correct behavior warranting a corrective action has changed from five (5) working days to ten (10).</p> <p>The EEO officer through HRD will guide supervisors through the corrective action process to ensure all corrective actions are handled correctly.</p> <p>The third accumulated corrective action in a twelve (12) month period is now grounds for termination. The current policy is unclear and the practice has been that the fourth written warning is termination. The Handbook clarifies that the accumulation of any three corrective actions requires termination.</p>
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<p>6. Grievance a.2. The Area Manager, for all disciplinary action investigations, will have ten (10) working days from the receipt of the employee's appeal to complete the investigation. One extension of no more than five (5) working days may be requested of and granted by the Oneida Human Resources Manager (or designee) at his or her discretion.</p> <p>b. The employee may appeal the Area Manager's decision to the Oneida Personnel Commission. The appeal must be filed with the Oneida Personnel Commission within ten (10) working days from employee's receipt of the Area Manager's decision. Upon receipt of the appeal the Commission shall, within ten business day, notify the Oneida Human Resources Manager (or designee) that an appeal has been filed by the employee.</p>	<p>is likely to create a potentially hostile and/or dangerous situation, he or she shall contact the Internal Security Director or the Oneida Police Department for assistance.</p> <p>Handbook 13-1. Requesting Reconsideration of a Corrective Action and/or Adverse Employment Action. Prior to initiating a formal appeal of a corrective action and/or adverse employment action, an employee shall request reconsideration of the said action with his or her reviewing supervisor, provided that such requests must be made within ten (10) business days from the date of the employee supervisor's action.</p> <p>300.10. Employee Discipline and Grievances 300.10-2(a) <i>First Level of Review.</i> Any employee, excluding at-will employees, contesting the validity of a suspension or termination or allege that a supervisor's actions amount to an adverse employment action may contest the action to the Administrative Hearing Court.</p>	<p>The first level of review for grievances has moved from the Area Manager to the Reviewing Supervisor and extensions are no longer available. This level is now called a request for reconsideration rather than a formal appeal. The Personnel Commission has been removed and formal appeals moved to the Oneida Judiciary. Appeals of Personnel Commission decisions are now heard by the Judiciary.</p>
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New to This Law

- Applicability to Elected Officials [see 300.11]. The Law codifies the current practice of including Elected Officials in compensation and benefits, general and employee responsibilities.
- Suspension and terminations are now appealable to the Judiciary [see 300.6-8].

Considerations

- The LOC may reconsider the hiring philosophy [see 300.1-2] to expressly state the original intent of identifying Oneida tribal members as ideal candidates for employment with the Nation.
- The LOC may consider increasing the length of time for interim transfers which are capped at one year under the current Handbook considering the fact that the appeal process may take longer than one year. The current maximum length for interim transfers is two years.
- The LOC may consider informal public comment for GTC for the Handbook prior to presenting the Law to GTC for adoption. The Personnel Policies and Procedures are

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134 currently considered law that can only be permanently amended by the GTC. The
135 proposed Employment Law contains the framework and most of the content of the
136 current Personnel Policies and Procedures has moved to the Handbook. Once the Law is
137 adopted and with GTC approval, the Handbook will move under HRD under the
138 Administrative Rulemaking law. Although HRD is currently responsible for developing
139 amendments to the Personnel Policies and Procedures, the GTC retains all authority to
140 adopt or deny all proposed amendments. As a result, the Handbook is not currently
141 delegated to the authority of HRD and the proposed changes in the Handbook will not
142 undergo a formal public comment period until the law is passed which delegates the
143 authority to HRD to take the Handbook through the process required by the
144 Administrative Rulemaking law. The Handbook is currently going through informal
145 public comment through informational employee meetings. The LOC may consider
146 informal public comment for GTC for the Handbook prior to presenting the Law to GTC
147 for adoption.

- 148 • LOC may consider moving repealed laws that appear in the Handbook to the Law. Under
149 Administrative Rulemaking, HRD can revise or change content in the Handbook and
150 changes become effective upon adoption by HRD unless challenged by the BC. Current
151 laws can only be amended or repealed by the BC or GTC.

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153 **Miscellaneous**

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155 A public meeting is scheduled for March 31, 2016. Please refer to the fiscal impact statement for
156 any financial impacts. Public comment regarding the Handbook can be directed to
157 | bstevens@oneidanation.org or kjohn4@oneidanation.org .

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CHAPTER 300
EMPLOYMENT LAW

300.1. Purpose and Policy	300.7. General
300.2. Adoption, Amendment, Repeal	300.8. Employee Responsibilities
300.3. Definitions	300.9. Layoffs and Furloughs
300.4. Human Resources Department	300.10. Employee Discipline and Grievances
300.5. Hiring	300.11. Applicability to Elected Officials
300.6. Compensation and Benefits	300.12. Violations

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300.1. Purpose and Policy

300.1-1. It is the purpose of this Law to provide a fair, consistent and efficient structure to govern all employment matters.

300.1-2. It is the Nation’s policy to provide entities latitude to create human resource practices to fit their individual industry standards, while creating a strong and healthy work environment. In addition, although certain federal and state laws, specifically Title VII, do not apply to the Nation, the Nation’s employment policy is to afford applicants and employees equal employment opportunities while recognizing the Nation’s Oneida and Indian employment preference. The Nation’s hiring philosophy is to recruit, hire, retain and develop individuals who are culturally respectful, professionally competent and familiar with the Oneida community.

300.2. Adoption, Amendment, Repeal

300.2-1. This Law was adopted by the Oneida General Tribal Council by resolution _____ and is effective six (6) months from the date of adoption.

300.2-2. This Law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

300.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity does not affect other provisions of this Law which are considered to have legal force without the invalid portions.

300.2-4. In the event of a conflict between a provision of this Law and a provision of another Law, the provisions of this Law control, provided that this Law repeals the following:

- (a) The Oneida Tribal Management System and amendments to the Tribal Management System, including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985;
- (b) BC Resolution BC-05-11-11-A entitled Establish Tuberculosis Control Program;
- (c) The Employee Protection Policy adopted by emergency pursuant to BC-4-20-95-B, permanently adopted pursuant to BC-12-6-95-B and subsequently amended pursuant to BC-1-20-99-B and BC-6-30-04-J;
- (d) The GED Policy approved by the Oneida Business Committee on October 21, 1992;
- (e) BC Resolution BC-07-22-09-B entitled Oneida Nation Veterans Affairs Committee, Paid Time Off for Selected Color Guard Members Who Are Employees;
- (f) The Parent Leave Policy adopted pursuant to BC-03-02-94-A;
- (g) BC Resolution 04-05-95-A regarding a paid break for donating blood at a blood drive coordinated by the Nation;
- (h) BC Resolution 05-12-93-J regarding HRD’s role in the interpretation, implementation and enforcement of the Personnel, Policies and Procedures; and
- (i) GTC Resolution 05-23-11-A entitled Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring.

40 300.2-6. This Law is adopted under authority of the Constitution of the Oneida Nation.
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42 **300.3. Definitions**

43 300.3-1. This section governs the definitions of words and phrases used within this Law. All
44 words not defined herein are to be used in their ordinary and everyday sense.

45 (a) “Adverse Employment Action” means a supervisor’s failure to comply with the
46 employment rules that results in a significant change in an employee’s employment status
47 that is more disruptive than a mere inconvenience or an alteration of job responsibilities
48 and may include a deprivation of an equal employment opportunity.

49 (b) “At-Will Employee” means an employee working for the Nation on a short term basis
50 that is not hired through the standard hiring procedures, including, but not limited to,
51 political appointees, part-time, seasonal, and volunteer workers, and new Employees that
52 have not yet completed their probationary period pursuant to the Rules developed by
53 HRD.

54 (c) “Corrective Action” means any initiative taken by an employee supervisor with the
55 goal of correcting an employee’s prohibited behavior as identified in the rules created by
56 HRD.

57 (d) “Cost of Living Adjustments” means wage or salary modifications which allow
58 employees to sustain a certain level of living, including basic expenses such as housing,
59 food, taxes and healthcare.

60 (e) “Employee” means any individual who is hired by the Nation through the normal
61 hiring process, works full-time (30 or more hours per week) or part-time (less than 30
62 hours per week) and is subject to the Nation’s direction and control with respect to the
63 material details of the work performed. “Employee” includes, but is not limited to,
64 individuals employed by any entity and individuals employed through an employment
65 contract as a limited term employee, but does not include elected or appointed officials,
66 at-will employees or individuals employed by a tribally chartered corporation.
67 Throughout this Law all references to employee include both employees and at-will
68 employees, unless the term at-will employee is used, in which case only at-will
69 employees are intended.

70 (f) “Employee Supervisor” means the party responsible for directly overseeing the
71 employee and who is responsible for taking corrective actions when employees fail to
72 meet their responsibilities.

73 (g) “Entity” means any of the Nation’s divisions having employees and may include, but
74 is not limited to, divisions, departments, areas, programs, enterprises, board, committees,
75 commissions and the like.

76 (h) “Equal Employment Opportunity” or “EEO” means the Nation’s consideration for
77 hiring selection and position retention and compensation and benefit distribution that is
78 free from discrimination against any person on the basis of race color, religion, sex
79 (including pregnancy), national origin, age, disability, economic status or genetic
80 information. Oneida and Indian Preference are allowable and are not considered a
81 deprivation of an EEO,

82 (i) “HRD” means the Oneida Human Resources Department.

83 (j) “Immediate Family Member” means an individual’s husband, wife, mother, father,
84 step mother, step father, son, daughter, step son, step daughter, brother, sister, step
85 brother, step sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-
86 law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained
87 through legal adoption.

88 (k) “Involuntarily Separated” means an employee is removed from employment.

89 (l) “Nation” means the Oneida Nation.

90 (m) “Political Appointee” means an individual appointed as an executive assistant by an
91 individual Oneida Business Committee member or as an assistant by a board, committee
92 or commission.

93 (n) “Reviewing Supervisor” means the party responsible for overseeing the employee
94 supervisor and who may hear an appeal of a corrective action taken by an employee
95 supervisor.

96 (o) “Rule” means any exercise of authority delegated to HRD in order to implement,
97 interpret and/or enforce this Law. A “rule” does not include any statements,
98 interpretations, decisions, rules, regulations, policies, standard operating procedures or
99 other matters concerning internal management of an entity, or, which do not affect the
100 private rights or interests of individuals outside of the said entity.

101 (p) “Sexual Harassment” means unwelcome sexual advances, requests for sexual favors
102 and other verbal or physical conduct of a sexual nature where:

103 (1) submission to such conduct is made either explicitly or implicitly a term or
104 condition of an individual’s employment; or

105 (2) submission to or rejection of such conduct by an individual is used as the basis
106 for employment decisions affecting such individual; or

107 (3) such conduct has the purpose or effect of substantially interfering with an
108 individual’s work performance or creating an intimidating, hostile or offensive
109 work environment.

110 (q) “Standard Operating Procedure” means an internal procedure that is created to govern
111 how an Entity operates and performs its designated functions; a standard operating
112 procedure does not affect parties outside of the entity to which the procedure belongs.

113 (r) “Tribal Member” means an individual who is an enrolled member of the Oneida
114 Nation.

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116 **300.4. Human Resources Department**

117 300.4-1. *General Responsibilities.* The HRD shall:

118 (a) Develop and amend the rules necessary to carry out the intent of this Law pursuant to
119 the Administrative Rulemaking Law.

120 (b) Implement, interpret and enforce this Law and the associated rules.

121 (c) Provide all employees a copy of all employment rules and all of the Nation’s laws
122 and policies specifically pertaining to employment matters, and shall further notify
123 employees of how such rules, laws and policies may be electronically accessed.

124 (d) Review and approve all entities’ employment related standard operating procedures to
125 ensure compliance with this Law and the rules developed pursuant to this Law.

126 (e) Keep a record of all employment related decisions made by the employee supervisors,
127 reviewing supervisors and the Oneida Judiciary.

128 (f) Collect and maintain data on human resource related information including, but not
129 limited to, information on hiring, appointments, terminations, separations, transfers,
130 employee development, grievances, policy issues and insurances.

131 (1) HRD shall provide quarterly reports to the Oneida Business Committee, or its
132 designee, in accordance with the schedule provided by the Nation’s Secretary’s
133 office.

134 (2) The Oneida Business Committee may not have direct access to employee
135 information and/or personnel files, especially information relating to individual

136 compensation or corrective actions; provided that, Oneida Business Committee
137 members that are also employee supervisors may access the employee records of
138 any of his or her direct employees pursuant to Section 300.4-1(f)(3)(B).

139 (3) HRD shall store these employee records in a manner that maintains the
140 records' private and confidential nature. Information contained in employee
141 records may only be released in the following situations:

142 (A) A current or past employee may have access to his or her own
143 employment record; an employee supervisor may have access to his or her
144 current employees' records; a hiring supervisor may have access to the last
145 twelve months of a current or former employee's work history; and HRD
146 managers may have access to any employee's employment record.

147 (B) If required by law, the Nation shall release the information required to
148 be released to the party the law designates as entitled to receive said
149 information.

150 (C) Should an Employee be alleged to have committed an illegal act in the
151 course of his or her employment with the Nation against the Nation, its
152 customers or its employees, the said employee's record may be released to
153 law enforcement agencies.

154 (D) A third party may access an employee's record if the employee
155 provides written consent to release his or her record to a designated third
156 party.

157 300.4-2. HRD shall uphold the Nation's sovereignty, laws and policies in its hiring and
158 employment practices.

159 300.4-3. *Memorandum of Understanding.* The Oneida Business Committee and HRD shall
160 negotiate and enter into a memorandum of understanding which governs the relationship
161 between the two parties by establishing the responsibilities and expectations of each party with
162 regard to the management of HRD.

163 164 **300.5. Hiring**

165 300.5-1. *Equal Employment Opportunities.* The Nation and HRD shall afford all applicants and
166 employees equal employment opportunities; however, the Nation shall follow the preferences
167 outlined in Section 300.5-3 and such preferences may not be considered a violation of this Law.

168 300.5-2. *Oneida and Indian Preference.* The Nation shall apply Oneida and Indian Preference
169 to all hiring practices.

170 (a) Unless otherwise prohibited by law or grant funding requirements, the Nation shall
171 apply the following order of Oneida and Indian Preference in staffing decisions:

172 (1) Persons who are tribal members.

173 (2) Persons who meet the blood quantum requirements contained in the
174 Membership Ordinance, but are not currently tribal members, and/or persons who
175 are documented first generation descendants of a tribal member.

176 (3) Persons enrolled in any federally recognized tribe other than this Nation.

177 (4) All other non-Indian persons.

178 (b) If a law or grant funding requirement prohibits the application of Oneida and Indian
179 Preference in accordance with Section 300.5-3(a), the Nation shall make staffing
180 decisions in accordance with the Indian Preference requirements of the said law or grant.

181 (c) Oneida and Indian Preference applies only when an applicant meets all the minimum
182 requirements of the position applied for.

183 (d) Oneida-Only Positions. To the extent possible, all top administrative and political

184 appointee positions must be held by tribal members.¹ If a position requires specific skills
185 and/or licensing by the state or federal government and there are no available tribal
186 members who possess the necessary skills or licensing to assume the vacancy, only then
187 may a non-tribal member be selected to fill the vacancy.

188 300.5-3. *Education.* Employees shall have or obtain a high school diploma, a high school
189 equivalency diploma or a general equivalency diploma within one (1) year of being hired.
190 Exceptions and/or extensions to this requirement may be included in the rules developed by
191 HRD pursuant to Section 300.4-1(a).

192 300.5-4. *Workplace Safety.* The Nation shall develop rules and procedures as necessary to
193 protect the safety, health and well-being of all employees and other individuals in the workplace.

194 (a) The Employee Health Nursing Department shall establish, maintain, implement,
195 evaluate and periodically update a Tuberculosis Control Program, which applies to all
196 employees as well as the Nation's elected and appointed officials. The Employee Health
197 Nursing Department shall make the approved program available to all persons to which it
198 applies.

199 300.5-5. *Conflicts.* An applicant is ineligible for positions for which he or she has a conflict of
200 interest, as defined by the Conflict of Interest Policy, and/or if he or she would be directly
201 supervised by an immediate family member.

202 300.5-6. *Right to Work.* No person may be required to do any of the following in order to
203 become or remain an employee of the Nation:

- 204 (a) resign or refrain from being a member of a labor organization;
205 (b) become or remain a member of a labor organization; or
206 (c) pay dues or other charges to a labor organization.

207
208 **300.6. Compensation and Benefits**

209 300.6-1. *Compensation Plan.* HRD shall develop and institute an Employee Compensation
210 Plan to assure equitable salary and wage levels and shall consider data from the Bureau of Labor
211 Statistics for average earnings in the Green Bay area; the said plan must be approved by the
212 Oneida Business Committee prior to becoming effective.

213 (a) Wage and salary adjustments and benefits available to employees are dependent upon
214 available funding allocations, provided that, the compensation plan must require HRD to
215 make reasonable efforts to regularly implement cost of living adjustments based on the
216 United States Department of Labor – Bureau of Labor Statistics' Consumer Price Index
217 for the Midwest Region.

218 300.6-2. *Designation of Employees.* The Nation shall use the standards created under the Fair
219 Labor Standards Act to designate its employees as either nonexempt or exempt and to set
220 minimum wage and maximum hour restrictions for employees receiving an hourly wage.

221 300.6-3. *Insurance and Retirement.* The Nation may provide insurances and/or a retirement
222 plan as a benefit to full-time employees. Emergency and temporary Employees are not eligible
223 for these benefits.

224 300.6-4. *Time Off.* The Nation shall afford employees accumulated paid time off based on
225 continuous service to the Nation. HRD shall establish rates of accrual and the process for
226 requesting paid time off in the Rules created pursuant to Section 300.4-1(a).

¹ January 8, 1990 GTC: Debbie Powless moved that the General Manager's and all top administrative positions be held by enrolled tribal members, motion seconded. ... Main motion carried.

227 300.6-5. *Leaves.* Employees of the Nation may be allowed leave as provided in the Rules
228 created pursuant to Section 300.4-1(a) and any other applicable laws and policies of the Nation.
229

230 **300.7. General**

231 300.7-1. *Employee Development.* The Nation encourages the advancement and transfer of
232 Employees in order to make the best possible use of human resources. Employees who wish to
233 advance in the organization may work with the HRD to develop a career ladders plan.

234 300.7-2. *Entities.* Individual entities shall comply with this Law and the rules promulgated
235 under Section 300.4-1(a) and, if necessary, shall develop internal rules and standard operating
236 procedures for the implementation of this Law and its associated rules.

237 300.7-3. *Safety and Fitness-for-Duty.* In order to create a safe and healthy work environment
238 for employees and to keep the number of job-related illnesses and/or injuries to a minimum, the
239 Nation shall maintain safety standards in accordance with the Nation’s applicable laws and
240 policies. The Nation shall also maintain standards requiring employees to perform their job
241 duties in a safe, secure, productive and effective manner.

242 300.7-4. *Unemployment Insurance.* The Nation shall comply with the State of Wisconsin’s
243 unemployment insurance program; the Nation’s employees may be eligible for unemployment
244 benefits in accordance with the provisions of the laws of the State of Wisconsin.
245

246 **300.8. Employee Responsibilities**

247 300.8-1. *Harassment and Ensuring Equal Employment Opportunities.* All employees are
248 expressly prohibited from committing sexual harassment of another individual or engaging in
249 any conduct that deprives another of an equal employment opportunity.

250 300.8-2. *Anonymous Information.* Employees who receive anonymous information of any type
251 shall maintain the confidentiality of the said information and forward a summary of the
252 information to the Chief of the Oneida Police Department expressly noting that the information
253 was provided anonymously.

254 300.8-3. *Employee Protection.* The Nation may not retaliate against any employee who reports
255 an employee’s, political appointee’s and/or any official of the Nation’s violation(s) of laws,
256 policies or rules of the Nation and shall protect any employees who report such violations from
257 retaliatory actions.

258 (a) HRD shall develop rules designed to protect employees reporting others’ violations of
259 the Nation’s laws, policies or rules from any and all forms of retaliation.
260

261 **300.9. Layoffs and Furloughs**

262 300.9-1. Employees may be laid off and/or furloughed to the extent necessary for the Nation to
263 operate effectively and efficiently in varying economic conditions pursuant to the Nation’s laws,
264 policies and rules.

265 300.9-2. Layoffs and furloughs may not be used for disciplinary reasons and may not under any
266 circumstances be considered adverse employment actions.

267 300.9-3. The Nation’s decision to layoff and/or furlough an employee is not subject to appeal.
268

269 **300.10. Employee Discipline and Grievances**

270 300.10-1. Corrective action rules may be used by employee supervisors to correct employees’
271 unacceptable work performance and/or behavior.

272 300.10-2. Employees, excluding at-will employees, who disagree with a corrective action or
273 allege that a supervisor’s actions amount to an adverse employment action may contest the action
274 using the rules developed by HRD, and based on the following available levels of review:

275 (a) *First Level of Review.* Any employee, excluding at-will employees, contesting the
276 validity of a suspension or termination or allege that a supervisor’s actions amount to an
277 adverse employment action may contest the action to the Administrative Hearing Court.

278 (b) *Second Level of Review.* Any party, excluding at-will employees, that is dissatisfied
279 with the Administrative Hearing Court’s decision, may appeal the Administrative
280 Hearing Court’s decision to the Oneida Judiciary’s Appellate Court.

281 (c) *Compensatory Damages.* Should the Oneida Judiciary determine that there was an
282 intentional deprivation of an equal employment opportunity, the Oneida Judiciary may
283 award compensatory damages, including, but not limited to, attorney’s or advocate’s fees
284 and court costs, as against the individual(s) found to have engaged in the intentional
285 deprivation of an equal employment opportunity. Said compensatory damages may not
286 be awarded against the Nation.

287 300.10-3. The Administrative Hearing Court and the Oneida Judiciary may waive any and all
288 court fees on behalf of employees seeking to appeal a corrective action or an action alleged to be
289 an adverse employment action.

290

291 **300.11. Applicability to Elected Officials**

292 300.11-1. The provisions of Sections 300.6 - 300.8 apply to the Nation’s elected officials that
293 work full-time (30 hours or more per week) and receive salaries for their service.

294

295 **300.12. Violations**

296 300.12-1. Unless expressly stated otherwise in this Law, claims of alleged violations of this Law
297 may be filed with the Oneida Judiciary.

298

299 End.

300
