



Oneida Nation  
Oneida Business Committee  
Legislative Operating Committee  
PO Box 365 • Oneida, WI 54155-0365  
Oneida-nsn.gov



TO: Oneida General Tribal Council  
FROM: Brandon Stevens, LOC Chairperson *BS*  
DATE: March 19, 2016  
RE: Employment Law

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Please find the following attached backup documentation for your consideration of the Employment Law:

1. Resolution: Employment Law
2. Statement of Effect: Employment Law
3. Employment Law Legislative Analysis
4. Employment Law (Clean)
5. Employment Law Fiscal Impact Statement
6. Oneida Employee Handbook (For FYI ONLY)

#### Overview

This Resolution adopts the Employment law. This is a proposal for a new law which would:

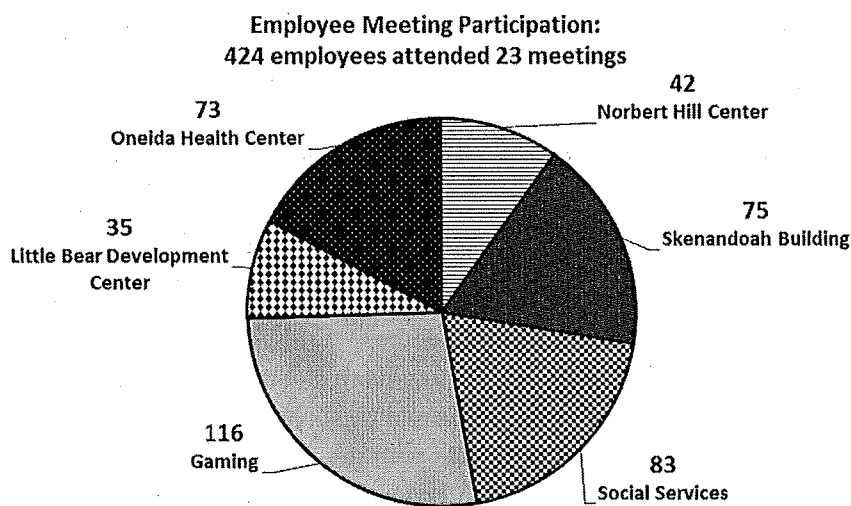
- Replace the current Personnel, Policies and Procedures;
- Provide a fair, consistent and efficient structure to govern all employment matters;
- Streamline current processes to reduce cost, time and resources;
- Provide the framework for Employment matters with the detail currently contained in Personnel Policies and Procedures being delegated jointly to HRD and the Chief Executive Director of Administration in the form of the Oneida Employee Handbook (rules);
- Allow tribal entities the latitude to adjust certain employment practices to best fit their individual entities; and
- Dissolve the Oneida Personnel Commission and redirect its currently assigned duties with hearings transferring to the Oneida Trial Court to operate under Administrative Rules of Procedure and all non-hearing related responsibilities transferring to HRD.

In accordance with the Legislative Procedures Act, a public meeting was held on March 31, 2016, with a comment period ending April 7, 2016.

#### Communication with Employees and Community

Communication with the employment base and the community has been a priority for the Legislative Operating Committee throughout the drafting of this law. The following provides a breakdown of all the meetings have been held for the purpose of sharing information and gathering input for the Employment Law:

Meeting Type	Number of Meetings	Number of Participants
Employee Meetings	23	424 (52 tribal departments)
Second Round of Employee Meetings	8	Forthcoming as data is available, as these meetings will be held after the GTC packet submission date.
Public Meetings and Comment Period	1	8 people made 21 comments. That material can be found on line at the Oneida Register web site.
Community Meetings	6	4



In addition, the LOC has written 5 *Kalihwisaks* articles. The LOC held 6 community meetings and 1 included videoconferencing with SEOTS. The meeting notices were posted on Facebook, Update Oneida, the Oneida Register, and the Community Calendar. The meetings were also published in the *Kalihwisaks* on August 4 and August 18, 2016.

### Survey of Employees

A survey was completed in November 2016, in an effort to gather input from employees regarding the communication efforts for this proposed law. A total of 573 surveys were completed. Some of the findings include;

- 65% of the respondents agreed that attending the Employee Meetings allowed them to be more involved in this legislative process.
- 74% prefer to receive this kind of information via email.
- Many people said they would like to see more Employee Meetings and those have been held.

### Requested Action

Approve the Resolution: Employment Law

1 **GTC Resolution \_\_\_\_\_**

2 *Employment Law*

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 **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 *Current Practices and the Need for Improvements*

12 **WHEREAS,** the Nation currently governs all employment related issues through a combination  
13 of the Personnel Policies and Procedures (the Bluebook), and Human Resources  
14 Department (HRD) Tribe-wide standard operating procedures and work  
15 standards; and

16 **WHEREAS,** in order to update the Nation's employment practices and to make full use of the  
17 Oneida Judiciary which was adopted by the General Tribal Council and affirmed  
18 in the Secretarial Election, the Oneida Business Committee has developed the  
19 Employment law and Oneida Employee Handbook structure to reorganize  
20 employment practices; and

21 *Proposed Structure of the Employment Law and Corresponding Oneida Employee Handbook*

22 **WHEREAS,** the new structure will contain general framework provided in the law, which shall  
23 be adopted and/or amended only by the General Tribal Council, with the  
24 supporting detail contained in one central location, the Oneida Employee  
25 Handbook, which may be amended under the joint rulemaking authority delegated  
26 in the law to HRD and the Chief Executive Director of Administration; and

27 *Employee Appeal/Grievance Process Modified*

28 **WHEREAS,** the Employment law amends the appeal process to replace the Oneida Personnel  
29 Commission with the Oneida Trial Court, which will operate under simplified  
30 rules of procedure; and

31 **WHEREAS,** the Employment law amends the appeal process to allow any employment related  
32 matter to be appealed but limits those appeal rights to regular status employees;  
33 accordingly, temporary employees, as defined in the law, do not have access to  
34 appeal rights under this law as their employment is short term; and

35 **WHEREAS,** under the current procedures, all corrective actions are appealable to the Oneida  
36 Personnel Commission, but previous actions (i.e. a written warning) may not be  
37 considered as part of an appeal of a subsequent action (i.e. termination based on  
38 accumulated written warnings); and

39 **WHEREAS,** the Employment law limits judicial review in regards to corrective actions to  
40 suspensions and terminations, but allows consideration of any prior action that led  
41 to the current action under appeal so long as it was initially appealed to the  
42 reviewing supervisor; and

43 *Oneida Personnel Commission's Non-hearing Related Responsibilities Transferred to HRD*

44 **WHEREAS,** under the current process, the Oneida Personnel Practice is involved in hiring and  
45 other human resource practices, whereas, the Employment law transfers all of the  
46 Oneida Personnel Commission's non-hearing related responsibilities to HRD; and

47 *Public, Employee and Community Meetings and Other Employment Law Outreach*

48 **WHEREAS,** a public meeting on the proposed law was held on March 31, 2016 in accordance  
49 with the Legislative Procedures Act and in addition to the public meeting 6  
50 community meetings were conducted on the Employment law; and

51 **WHEREAS,** through the months of February and March of 2016, there were 23 informational  
52 meetings held with employees representing all levels of employment to receive  
53 feedback and increase the understanding of the proposed law and handbook; and

54 **WHEREAS,** follow-up meetings with employees were held in February of 2017; and

55 **WHEREAS,** information materials on the proposed Employment law and handbook were  
56 posted on the Nation's website, printed in the Kalihwisaks, emailed to employees  
57 and posted in places of employment; and

58 *Adoption of the Employment Law and Effective Date*

59 **NOW THEREFORE BE IT RESOLVED,** that the attached Employment law is hereby  
60 adopted and shall become effective on September 19, 2017;

61 *Transition Plan*

62 **BE IT FURTHER RESOLVED,** that the Oneida Business Committee is hereby directed to  
63 implement a Transition Plan to include the following:

64 (a) *Development of the Administrative Rules of Procedure.* The Oneida Business  
65 Committee shall adopt Rules of Administrative Procedure to govern, among other  
66 items, employment matters appearing before the Oneida Trial Court to be effective no  
67 later than the effective date of the Employment law.

(b) *Adoption of the Oneida Employment Handbook.* HRD and the Chief Executive Director of Administration shall jointly adopt the Oneida Employee Handbook pursuant to the Administrative Rulemaking law to become effective no later than the effective date of the Employment law.

(c) *Oneida Personnel Commission Transition and Dissolution.* The Oneida Personnel Commission shall continue to accept cases and participate in designated human resources related tasks such as hiring interviews until the Employment law becomes effective.

(1) Upon the effective date of the Employment law, the Oneida Personnel Commission shall stop accepting new cases and shall no longer be responsible for any human resource related functions aside from wrapping up pending cases, provided that any cases that remain unresolved as of March 19, 2018 shall be closed out at the Personnel Commission and re-filed with the Oneida Trial Court.

(2) The Oneida Personnel Commission shall be dissolved upon the conclusion of the last of its pending cases following the effective date of the Employment law.

(3) Oneida Trial Court shall begin accepting cases previously filed with the Oneida Personnel Commission upon the effective date of the Employment law.

(d) *Employee Training on the Employment Law and Oneida Employee Handbook.* HRD shall complete employee and supervisor training related to the law and the Oneida Employee Handbook and shall have all training complete prior to the effective date of the Employment law.

*Modifications to the Effective Date and/or Transition Plan to Implement this Law*

**BE IT FINALLY RESOLVED**, that the Oneida Business Committee is authorized to make such modifications and additions to the above effective date and Transition Plan as it deems necessary to implement the Employment law in accordance with the proposed timelines, and shall subsequently file a report at the annual or semi-annual meeting of the General Tribal Council that occurs after any such modifications or additions are made.



## **Statement of Effect**

### *Adoption of the Employment Law*

#### ***Summary***

This Resolution adopts the Employment law. This is a proposal for a new 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 detail currently contained in Personnel Policies and Procedures being delegated jointly to HRD and the Chief Executive Director of Administration in the form of the Oneida Employee Handbook (rules);
- Allow tribal entities the latitude to adjust certain employment practices to best fit their individual entities; and
- Dissolve the Oneida Personnel Commission and redirect its currently assigned duties with hearings transferring to the Oneida Trial Court to operate under Administrative Rules of Procedure and all non-hearing related responsibilities transferring to HRD.

In accordance with the Legislative Procedures Act, a public meeting was held regarding the Employment law on March 31, 2016 with a comment period expiring on April 7, 2016. In addition, 23 information meetings were held with employees in February and March of 2016 with follow-up meetings conducted in February and March of 2017 and there were also 6 community meetings held in 2016.

*By: Krystal L. John, Oneida Law Office*

#### ***Analysis***

Currently, the Nation's employment practices are governed by the Oneida Personnel Policies and Procedures and HRD's Tribe-wide SOPs and Work Standards. Upon the effective date of the Employment law, the Oneida Personnel Policies and Procedures and all of HRD's Tribe-wide SOPs and Work Standards will be repealed. Moving forward, the Employment law and the Oneida Employee Handbook shall govern all employment related matters, excluding those items addressed separately in other laws of the Nation, for example the Worker's Compensation law. The law delegated authority and responsibility to HRD and the Chief Executive Director of Administration to develop and adopt the Oneida Employee Handbook, which is included in your packet as FYI, pursuant to the Administrative Rulemaking law.

The implications of this Employment Law and Oneida Employee Handbook structure are that there will be two levels of authority. The Employment law is only able to be adopted and/or

amended by the General Tribal Council, so the items contained in the law, for example accrual rates and the appeal/grievance process, may not be changed in the rules without GTC amending the corresponding areas of the Employment law first. The Oneida Employee Handbook is a group of rules that contains greater detail into the exact HRD practices. In the Employment law, the General Tribal Council delegates authority to HRD and the Chief Executive Director of Administration to jointly adopt the Handbook based on the Administrative Rulemaking law, which includes a final review by the Oneida Business Committee. By leaving the detail in the rules, as a change in policy/practice becomes necessary, the details are able to be amended without taking the entire revision through the General Tribal Council process because the General Tribal Council has already set the outer guidelines in the Employment law. This will allow more frequent updates to the Nation's employment practices that will allow the Nation to maximize efficiencies and become more competitive in hiring with the surrounding communities.

The following table discusses the impact of items repealed by the Employment law in section 201.2-4:

Item Repealed	Impact of the Repeal
(a) Oneida Tribal Management System – Personnel Policies and Procedures (Bluebook).	The Personnel Policies and Procedures is replaced with the Oneida Employee Handbook (included in this packet for FYI).
(b) BC Resolution BC-05-11-11-A – Establish a Tuberculosis Control Program.	No impact. This item is repealed so that the same requirements are not found in 2 separate locations. The contents of this resolution are in the Employment in section 201.6-4(a).
(c) The Employee Protection Policy, adopted by emergency by BC-04-20-95-B, permanently adopted by BC-12-06-95-B as subsequently amended.	Minimal impact. This item is addressed in the Employment law in section 201.9-3, which makes any retaliation unlawful and requires that the Handbook include additional procedures to ensure employee protection.
(d) The GED Policy approved by the Oneida Business Committee on October 21, 1992.	Minimal impact. This is repealed so that the same requirements are not found in 2 separate locations. The contents of this resolution are contained in the Oneida Employee Handbook in article 4-3(b). In addition to the policy's requirements, the Handbook also includes an exception for physical labor positions only available only to those medically determined to be incapable of completing a GED.

(e) BC Resolution BC-07-22-09-B – Oneida Nation Veterans Affairs Committee, Paid Time Off for Selected Color Guard Members Who Are Employees.	Minimal Impact. This is repealed so that the same requirements are not found in 2 separate locations. The contents of this resolution are contained in the Oneida Employee Handbook in article 9-7. In addition to the resolution's requirements, the Handbook also imposes a maximum of 5 calendar days for any single color guard leave.
(f) The Parent Leave Policy adopted pursuant to BC-03-02-94-A.	Minimal Impact. This is repealed so that the same requirements are not found in 2 separate locations. The contents of this policy are contained in the Oneida Employee Handbook in article 9-6. In addition to the policy's requirements, the Handbook also includes more information as to what constitutes an "educationally sanctioned event."
(g) BC Resolution 04-05-95-A regarding a paid break for donating blood at a blood drive coordinated by the Nation.	No Impact. This is repealed so that the same requirements are not found in 2 separate locations. The contents of this resolution are contained in the Oneida Employee Handbook in article 8-1(d).
(h) BC Resolution 05-12-93-J regarding HRD's role in the interpretation, implementation and enforcement of the Personnel, Policies and Procedures.	This resolution is repealed as it references the Personnel Policies and Procedures, which are being repealed and replaced with the Employment law and the Oneida Employee Handbook. The Employment law details HRD's roles and responsibilities in section 201.5.
(i) GTC Resolution 05-23-11-A – Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring	Minimal Impact. The Employment law contains general provisions requiring Oneida and Indian Preference in hiring in section 201.6-2. The intent of the resolution is maintained in the hiring practices required in articles 5-8, 5-9 and 5-10 of the Oneida Employee Handbook. The resolution required jobs be posted Oneida only first. The Handbook allows all posting to be done at the same time, but requires Oneida candidates be interviewed and preference applied before any other candidates may be considered/interviewed.

### ***Conclusion***

Provided that the Employment law is adopted to include the repealed items listed in section 201.2-4 as items (a) through (i), adoption of the Employment does not conflict with existing laws of the Oneida Nation.



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## Employment

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Employment (law)				
<b>Sponsor</b>	Brandon Stevens	<b>Drafter</b>	Krystal L. John	<b>Analyst</b>	Maureen Perkins
<b>Requester &amp; Reason for Request</b>	OBC Directive To develop an employment law to replace the Personnel Policies and Procedures (PPP), also known as the blue book.				
<b>Purpose</b>	It is the purpose of this law to provide a fair, consistent and efficient structure to govern all employment matters and to provide employment preference to Oneida Tribal members and members of other federally recognized tribes[see 201.1-1].				
<b>Authorized/ Affected Entities</b>	Human Resources Department (HRD), current and future Tribal employees, Oneida Nation Entities, Supervisors, Reviewing Supervisors, Oneida Business Committee (OBC), Judiciary				
<b>Related Legislation</b>	Anonymous Letters Policy, Lay Off Policy, Furlough Policy, Conflict of Interest Policy, Drug and Alcohol Free Workplace, Garnishment, 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				
<b>Enforcement &amp; Due Process</b>	Employee supervisors shall use the corrective action procedures in the Handbook to address employees' unacceptable work performance and/or behavior [see 201.11-1]. Employees who disagree with a corrective action or allege that a supervisor's actions amount to an adverse employment action, may contest a corrective action using the Handbook, and based on the following levels of review: internal review by the Nation [see 201.11-2(a)], appeal to the Trial Court (excluding temporary and probationary employees) [see 201.11-2(b)], and appeal to the Appellate Court (excluding temporary and probationary employees) [see 201.11-2(c)].				
<b>Public Meeting Status</b>	A public meeting was held on March 31, 2016. The LOC has reviewed the public comments received during the public comment period; and any changes made based on the public comments received have been incorporated into this draft.				

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### Overview

8 This is a new Law that will replace the current Personnel Policies and Procedures. The  
9 Law provides a fair, consistent and efficient structure to govern all employment matters. The  
10 Law streamlines current processes to reduce cost, time and resources. The Law contains the  
11 framework and much of the detailed content of the current Policies and Procedures have moved  
12 to the Handbook. The GTC retains authority to amend or repeal the law under the Legislative  
13 Procedures Act. Under the Administrative Rulemaking law, HRD, jointly with the Chief  
14 Executive Director of Administration, would be delegated the authority under the Employment  
15 Law to create and amend the Handbook [see 201.5-1(a)] with public input. HRD will report to  
16 the Chief Executive Director of Administration position [see 201.5-3]. 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 related to the hiring process to HRD.
- Oneida Judiciary will hear appeals.
- Temporary employees no longer receive holiday pay.
- Funeral Leave for immediate family has increased to five (5) days and is non-discretionary.

#### **Repealed Resolutions**

The following resolutions are being repealed and placed into the Law or Handbook.

<b>Repealed Resolution</b>	<b>Analysis</b>
(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;	The Employment Law and accompanying Handbook will replace the Tribal Management System, including the Personnel Policies and Procedures.
(b) BC Resolution BC-05-11-11-A entitled Establish Tuberculosis Control Program	The TB program is included in the Law <i>[see 201.6-4(a)]</i> .
(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;	Employee Protection is included in the Handbook <i>[see XIV 14-1 to 14-3]</i> .
(d) The GED Policy approved by the Oneida Business Committee on October 21, 1992;	GED Policy is included in the Law <i>[see 201.6-3]</i> and the Handbook <i>[see IV 4-3(b)]</i> .
(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;	Color Guard leave is included in the Handbook <i>[see IX 9-7]</i> .
(f) The Parent Leave Policy adopted pursuant to BC-03-02-94-A;	Parent leave is included in the Handbook <i>[see IX 9-6]</i> .
(g) BC Resolution 04-05-95-A regarding a paid break for donating blood at a blood drive coordinated by the Nation;	Paid blood donation break is included in the Handbook <i>[see VIII 8-1(d)]</i> .
(h) BC Resolution 05-12-93-J regarding HRD's role in the interpretation, implementation and enforcement of the Personnel, Policies and Procedures;	HRD's role and responsibilities are included in the law <i>[see 201.5]</i> .
(i) GTC Resolution 05-23-11-A entitled Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring.	Some of the content of this resolution appears in the Law <i>[see 201.1-1 and 201.6-2]</i> and Handbook <i>[see IV 4-4]</i> , some of the content has changed.

**Proposed Amendments**  
**Current Policies and Procedures Section II Recruiting**

- Repeal GTC Resolution 5-23-11-A
- Change policy regarding labor pools to improve efficiency in hiring
- Temporary employees will no longer have appeal rights or receive holiday pay

Current Policies and Procedures	Proposed Law	Analysis
<b>Section II Recruiting</b>		
1. Recruiting Strategy	Removed	This is an outdated HRD process that is being removed.

Current Policies and Procedures	Proposed Law	Resolutions	Analysis
<b>Section II B Labor Pools</b> 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.	<b>Handbook 5.7(d)</b> (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 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.	<b>GTC Resolution 5-23-11-A Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring:</b> "...requiring that all Labor Pool Positions will be considered based, first on Indian Preference and second, on the date the application was received would also increase the number of Tribal members who are employed by the Tribe".	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.  The reasoning behind this change is that it is creating inefficiency within hiring.

Current Policies and Procedures	Proposed Law	Analysis
<b>Emergency Temporary Positions</b> 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.	<b>Handbook V 5-17. Temporary Employees.</b> (i) Temporary employees may be terminated at any time the supervisor determines that the employee commits a prohibited behavior meriting corrective action and do not require accumulated corrective actions pursuant to article 12-6(c)(1)(A). In addition, temporary employees do not have appeal rights beyond those provided in article 13-1.	Temporary employees do not have access to appeal process.
<b>4. Benefits</b>	<b>Handbook XII</b>	Temporary employees

Emergency Temporary...eligible for benefits as defined in this section of the Personnel Policies and Procedures as Mandatory Benefits and Holiday pay.	<b>7-12. Paid Holidays.</b> (e) The following employees are not eligible for paid holidays: (4) Temporary employees;	no longer receive holiday pay.
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### Current Policies and Procedures Section III Selection Policy

- Oneida and Indian Preference changed for descendants per GTC resolution 5-23-11-A and BC action.
- Step relationships added to the immediate family definition for purposes of determining nepotism and conflict of interest.
- Electronic submission of applications added.
- Initial posting for Oneida applicants only has been removed; Oneida's are still given preference in the interview process and Oneida and Indian Preference still apply to all hiring decisions.
- Selection has changed from the top two to the top three candidates.
- Change in the transfer process.
- Employees separated or terminated during probationary period no longer receive credit for accrued personal time off.

Current Policies and Procedures	Proposed Law	Resolution	Analysis
<b>Priorities of Indian Preference</b> 1. Enrolled Oneida Tribal member; 2. Oneida Indians eligible for enrollment in the Oneida Tribe; 3. Documented first generation Oneida descendant; 4. Other Native American Indian; 5. Other (non-Indian).	<b>201.6-2. Oneida and Indian Preference.</b> The Nation shall apply Oneida and Indian Preference to all hiring practices. HRD shall provide a quarterly and annual report to the Oneida Business Committee regarding the trending data for Oneida and Indian preference in hiring and shall post such results on the Nation's website and newspaper. (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: (1) Persons who are tribal members. (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. (3) Persons enrolled in any federally recognized tribe other than this Nation. (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 201.6-2(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. If a position requires specific skills and/or licensing by the state or federal government and no Tribal members apply who are qualified and eligible and possess the necessary skills or licensing to assume the vacancy, only then may a non-tribal member be selected to fill the vacancy. In the event	GTC Resolution 5-23-11-A Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring	Added requirement for HRD to report on trends regarding Oneida and Indian preference published on the website and in the newspaper.  Change in preference for descendants per BC work meeting 10/8/15 and GTC Resolution 5-23-11-A.  Oneida preference was strengthened by requiring

	that a non-Tribal member is hired for a position originally designated as Oneida-only based on this provision, HRD shall hire the employee under contract so that the Nation may consider whether a Tribal member may be available to assume the position upon the expiration of the contract term.		contracts for non-Oneida candidates hired to fill an Oneida only position in the absence of a qualified Oneida candidate.
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Current Policies and Procedures	Proposed Law	Analysis
<b>B. HIRING PROCEDURE</b>		
<b>e. Conflict of Interest and Nepotism</b>	Step relationships added	

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<b>2. Hiring Procedures</b> <b>b. Personnel Commission</b>	Removed	The Personnel Commission will be dissolved with the passage of the Law.
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<b>d(3)</b> Application Deadline	Mailed application removed Electronic submission added	HRD does not receive mailed applications any longer.
<b>d(4)</b> All applications will be acknowledged.	Removed	This is an outdated HRD process that does not fit the current organization.

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Current Policies and Procedures	Proposed Law	Resolutions	Analysis
<b>2. Advertising</b> <b>2(e)(2)</b> 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.	<b>Handbook IV. 5-3. Posting Vacancies.</b> <b>(a) New Positions.</b> 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. <b>5-8. Interviews.</b> <b>(a) (1)</b> 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 to Article 5-10. <b>(2)</b> 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. <b>5-10. Selection.</b> <b>(b)</b> When all interviews have been conducted, if applicable, the supervisor shall select an applicant for	<b>GTC Resolution 5-23-11-A Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring:</b> “...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, which saves time in the hiring process; 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.

	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: ...		
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Current Policies and Procedures	Proposed Law	Analysis
<b>2(f)(2) Screening of Applicants</b> 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.	Removed	This is an outdated HRD process that does not fit the current organization.
<b>2(h)(1) Selection</b> The supervisor shall select one of the top two (2) candidates as ranked through the rating scale.	<b>Handbook V. 5-10. Selection.</b> All hiring decisions shall adhere to the Oneida and Indian preference policy as contained in the Employment Law. (a) When all interviews have been conducted, 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 shall be selected: (1) For single vacancies, the supervisor shall select one (1) of the top three (3) ranked applicants. (2) For multiple positions, the supervisor shall make a selection from the top three (3) ranked applicants for the first position and the hiring representative shall provide the next ranked applicant for each subsequent position to be filled so that the supervisor is picking from a pool of three (3) applicants for each position.	Selection has changed from the top two to the top three ranked applicants, unless only two qualified Oneida's apply, in which case one of the two will be selected. Oneida and Indian Preference apply.

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Current Policies and Procedures	Proposed Law	Analysis
<b>C. TRANSFERS AND PROMOTIONS POLICY</b> 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 HRD Office. a) The HRD Manager will inform all affected Area Managers of each transfer bid.	<b>Handbook V. 5-3(b) Existing Vacant Positions.</b> Existing vacant positions shall be posted internally for a minimum of seven (7) days. In addition to posting internally, a supervisor may also direct the hiring representative to post the position externally for a minimum of seven (7) days, during which time the position shall remain posted internally. The external posting may occur simultaneously with the internal posting or may be done after the internal posting deadline	The initial five (5) day posting for transfers has been removed. Under the proposed law, the supervisor must post internally for seven days, but also has discretion to open the position up to external applicants.  Transfers can be considered at any time in the posting and selection process. Positions can be posted internally first to consider

<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"> <li>i. Establish selection criteria; and</li> <li>ii. Review each bid.</li> </ul> <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>has closed. If a position is not filled through the initial internal and/or external posting based on the hiring procedures contained in this article, it may be reposted until filled.</p> <p><b>5-15. Employee Transfers.</b> Employee transfers shall be approved by HRD for procedural compliance and by the prospective transfer's employee supervisor and reviewing supervisor.</p> <p>(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. Temporary employees are not eligible for transfers.</p> <p>(c) Tranferring employees are subject to the eligibilty screening provided in article 5-6.</p> <p>(d) 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>	<p>transfers at the supervisor's discretion. Positions may also be posted both internally and 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
<p><b>D. Probation</b></p> <p>D. PROBATION</p> <p>1. The first three (3) months after an employee's starting date shall be considered a period of probation. At the end of six (6) weeks, the employee's performance shall be reviewed with him/her by the supervisor by completing an employee evaluation.</p> <p>a. At the end of the three-month probation period, a second performance evaluation will be conducted. This</p>	<p><b>Handbook V.</b></p> <p><b>5-13. Probationary Period.</b> All employees, excluding temporary employees, are subject to a probationary period lasting a minimum of ninety (90) days and a maximum of six (6) months. An employee supervisor that has timely performed an employee's evaluations as required in sub-article (d)(1) may request an extended probationary period for the employee, provided that the extension may not cause the probationary period to exceed six (6) months in duration and shall be approved by HRD for procedural compliance.</p> <p>(c) Employee supervisors shall provide each probationary employee with two entry evaluations:</p> <ul style="list-style-type: none"> <li>(1) The first occurring within the first six (6) weeks from the employee's start date; and</li> <li>(2) The second occuring within seventy-five (75) to ninety (90) days from the date the employee</li> </ul>	<p>The probationary period has been extended to a maximum of 6 months to accommodate those departments that have a training period before actual work begins. This allows supervisors to observe the employee during actual work performed which may not start until 30-90 days after employment, rather than just during their 30-90 day training period. Supervisors are still required to perform evaluations after the</p>

evaluation will recommend either the end of probation and regular status for the employee, an extension of probation, or termination for cause.	completed the position's training requirements. (d) If an employee supervisor extends an employee's probationary period, the supervisor shall provide the employee with an additional evaluation upon completion of the probationary period.	extended probationary period has expired.
<b>3. Completion of Probation Period</b> (b) Employees who are terminated during the probation period will receive credit for accrued vacation/personal days in their final paycheck.	<b>Handbook V.</b> <b>5-13. Probationary Period.</b> (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 on any paycheck.  Employees may not use accrued Paid Time Off until after their initial 90 day probationary period .

## Current Policies and Procedures Section IV Compensation and Benefits

- Change in notice to supervisor for PTO for unforeseen circumstances.
- 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 at supervisor discretion.
- A 12<sup>th</sup> floater holiday was added.
- 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.
- Change from meeting attendance to speaker responsibilities with a change in the amount of compensation an employee can keep.
- Additional funeral leave was added.
- Change in leaves of absence to personal leave.
- Change in maternity leave to include adoption and both men and women. This leave is covered under the family medical leave section of the Handbook.
- Change in accruals for military leave.

Current Policies and Procedures	Proposed Law	Analysis
<b>2. Workday</b> 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	<b>Handbook VII</b> <b>7-13. Paid Time Off (PTO).</b> (h) In the case of an illness or unforeseen circumstances, an employee shall 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 for a maximum of six (6) occurrence's in twelve (12) month period. In such circumstances, the employee supervisor's approval is not required, provided that the reduced notice requirement shall be satisfied. In circumstances where an employee is unable to provide any notice of an absence because the employee was medically incapacitated, as verified by a health care provider, supervisors shall allow	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.

jobs or failing to call in within the thirty (30) minute time allowed will be subject to disciplinary action.	PTO to be taken without fulfilling the notice requirements. (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) 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.	Employees are 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
<b>4. Holidays.</b> 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)	<b>Handbook VII</b> <b>7-12. Paid Holidays.</b> <b>(c). The Nation observes the following paid holidays:</b> (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. Floater Holidays for all Employees Working Outside of the Nation's Regular Business Day. The Nation offers floating holidays to employees working outside of the standard work day in order to recognize those employees for working evenings, weekends and holidays. Floating holidays provide employees alternate days to take the holiday pay offered by the Nation which would allow such employees the ability to spend "floating holiday" days at home with friends and family the same way employees working standard business days are able to spend the Nation's recognized holidays. Employees that work outside of the Nation's regular business day may take a floating holiday for any and/or all holiday(s) recognized by the Nation which would allow the employee to take the holiday pay provided on a different day (i.e. the employee's birthday or a holiday that is not recognized by the Nation, like Hanukah). (A) Wage earning employees taking a floating holiday that are required to work on a holiday recognized by the Nation will continue to receive holiday worked pay at one half the employee's regular rate. The holiday pay that the employee would normally also receive on that day is transferred to the day selected by the employee for the floating holiday. (a) If a wage earning employee did not take a floating holiday and was required to work	A 12 <sup>th</sup> floater holiday was added to the list of paid holidays.

	<p>an eight (8) hour shift on Christmas day, the employee would be compensated for twenty (20) hours, eight (8) of which are based on his normal rate of pay, four (4) of which are based on holiday worked pay and the remaining eight (8) of which are holiday pay.</p> <p>(ii) If a wage earning employee took a floating holiday to take holiday pay on the employee's birthday instead of Christmas day and worked eight (8) hours on Christmas day, the employee would be compensated for twelve (12) hours on his paycheck that covered his Christmas day shift and would receive his eight (8) hours of holiday pay on his paycheck that covered his birthday.</p> <p>(B) Salaried employees working for an entity that qualifies for floating holidays may also float the holiday pay offered, although the salaried employee is not eligible for holiday worked pay.</p> <p>(C) 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 shall be submitted to and approved by HRD for procedural compliance with this Handbook.</p>	
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Current Policies and Procedures	Proposed Law	Analysis
<p><b>5. Vacation/Personal Days</b></p> <p>c. Except as provided for in section g, the accrual of personal days shall be as follows:</p> <ol style="list-style-type: none"> <li>1) 0-3 years service - 6 days per year;</li> <li>2) 4-7 years service - 8 days per year;</li> <li>3) 8-14 years service - 10 days per year;</li> <li>4) 15 + years service - 12 days per year;</li> </ol> <p>d. Except as provided for in section g, the accrual of vacation days shall be as follows,:</p> <ol style="list-style-type: none"> <li>1) 0-3 years service - 12 days per year;</li> <li>2) 4-7 years service - 15 days per year;</li> <li>3) 8-14 years service - 20 days per year;</li> <li>4) 15 + years service - 25 days per year.</li> </ol>	<p><b>201.7-4. Time Off.</b> The Nation shall afford employees accumulated paid time off based on continuous service to the Nation. The Handbook shall provide the process required for requesting paid time off.</p> <p>(a) Employees accrue paid time off based on years of continuous service, provided that temporary employees are not eligible to accrue paid time off.</p> <ol style="list-style-type: none"> <li>(1) Paid time off accrual rates for full-time employees are as follows: <ol style="list-style-type: none"> <li>(A) 0-3 years of service – 144 hours annually</li> <li>(B) 4-7 years of service – 184 hours annually</li> <li>(C) 8-15 years of service – 240 hours annually</li> <li>(D) 16 + years of service – 296 hours annually</li> </ol> </li> <li>(2) Part-time employees accrue time off based on the hours worked as a ratio of full-time hours.</li> </ol> <p>(b) Once an employee reaches 280 hours of accrued PTO, he or she ceases to accrue paid</p>	<p>Personal and vacation combined into paid time off. Accruals remain the same. Days have been calculated at 8 hours each.</p>

	time off. Employee supervisors shall notify employees in danger of reaching the accrual cap when the employee reaches 200 hours of accrued PTO.	
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Current Policies and Procedures	Proposed Law	Analysis
1) Employees who have used the Tribally-sponsored loan program will be required to honor the terms of the loan agreement.	Removed	The Nation does not currently offer a loan program.

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Current Policies and Procedures	Proposed Law	Analysis
<b>D. Leaves</b> <b>1. Meeting Attendance</b> 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> 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. 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.	<b>Handbook VII</b> <b>7-9. Speaker and/or Presenter Compensation.</b> 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 shall either: (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 (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 Accounting Department to be added to the employee's entity's budget as income. (c) Employees receiving compensation, including gifts and gift cards, equal or less than fifty dollars (\$50.00) in value are exempt from this requirement.	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.

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Current Policies and Procedures	Proposed Law	Analysis
<b>2. Funeral Leave</b> 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, 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.	<b>Handbook IX</b> <b>9-4. Funeral/Bereavement Leave.</b> (a) An employee may take up to forty (40) hours 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 forty (40) hours of paid funeral/bereavement leave, provided that such leave is at the discretion of his or her employee supervisor. (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. (2) The forty (40) hours of paid funeral/bereavement	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.  Immediate family has been extended to include step-relationships [see 201.3-1(j)].  Twenty-four (24) additional hours of funeral unpaid

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>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. In addition, the full forty (40) hours of funeral is not required to be taken.</p> <p>(b) An employee, excluding temporary employees, may, at the employee supervisor's discretion, take up to twenty-four (24) additional hours of unpaid funeral/bereavement leave if the employee is assisting with funeral arrangements, which may 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 shall approve such leave.</p>	<p>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 outside of the immediate family.</p>
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Current Policies and Procedures	Proposed Law	Analysis
<b>3. Leave of Absence</b> 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. 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.	<b>Handbook IX</b> <b>9-2. Personal Leaves.</b> (e) So long as an employee is able to return to work following a personal leave, his or her job shall be made available upon return, unless a business need of the Nation has eliminated the position, in which case the employee shall be placed within the closest comparable and available position for which the employee is eligible. (f) If an employee is not able to return to work following a personal leave, he or she shall be separated.	<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
<b>4. Maternity Leave</b> a. Maternity leave will be granted for a period of six (6) weeks without pay. 1) An employee may elect to cover any portion of this time by using accumulated sick days. 2) Any maternity-related	<b>Handbook XI</b> <b>9-1. Family Medical Leave.</b> (a) Employees are entitled to up to ninety (90) calendar days of FML in a rolling twelve (12) month period based on a qualifying event. (1) Qualifying events are limited to the following: (A) The birth of a child or placement of a child with the employee for adoption or foster care; (B) To care for an immediate family member who a	<p>Family medical leave is new under this Handbook and applies to both men and women.</p> <p>Adoption was added to this leave.</p>

absences for longer than six (6) weeks must be taken as a medical leave of absence.	<p>serious health condition;</p> <p>(C) For a serious health condition that makes the employee unable to perform the essential functions of their job; or</p> <p>(D) For qualifying situations arising from the military deployment of an employee's immediate family member, where qualifying situations arising from military deployment are limited to the following:</p> <ul style="list-style-type: none"> <li>(i) Making alternative child care arrangements;</li> <li>(ii) Attending military ceremonies;</li> <li>(iii) Taking a leave to spend time with a military member on Rest and Recuperation; or</li> <li>(iv) Making financial or legal arrangements to address a military member's absence.</li> </ul>	
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Current Policies and Procedures	Proposed Law	Analysis
<b>5. Military Leave</b> Time off for inactive duty training, examinations to determine fitness for duty and funeral honors duty shall be afforded to 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.	<b>HANDBOOK IX</b> <b>9-3. Military Leave.</b> (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 provide documentation from the military of such training dates.	Personal time off has changed for military leave. Employees on leave for inactive duty will accumulate personal time off and holiday pay.

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## Current Policies and Procedures Section V Employee Relations

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- Employees will no longer be placed on probation for unsatisfactory evaluations.

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- The formal complaint process has been eliminated.

Current Policies and Procedures	Proposed Law	Analysis
<b>Evaluations</b> 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. 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	<b>Handbook VI</b> <b>6-1. Annual Performance Evaluations.</b>  (a) Employee supervisors shall evaluate each of their employees annually in the same month as the employee's date of hire for his or her current position and shall meet with each employee to discuss the contents of the annual performance evaluation.  (e) Employees who disagree with their annual performance evaluation may seek mediation with their employee supervisor at HRD. (f) All employees receiving an overall	Employees will now be evaluated on the annual date of hire.  Regular status employees will no longer be placed on probation for unsatisfactory evaluations.  Merit based increases are included in the Tribal Compensation

<p>three (3) months after the unsatisfactory evaluation. This second evaluation will result in the employee:</p> <ol style="list-style-type: none"> <li>1) Being removed from probation and receiving a salary increase if the second evaluation results in an overall satisfactory rating; or</li> <li>2) Receiving appropriate disciplinary actions if the second evaluation also results in an unsatisfactory rating.</li> </ol>	<p>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.</p> <ol style="list-style-type: none"> <li>(1) During the re-evaluation, the employee supervisor shall follow up on and reassess the employee development plan with the employee.</li> <li>(2) Employee's receiving a re-evaluation based on an initial unsatisfactory evaluation, shall receive an annual evaluation score that is an average of the initial evaluation score and the re-evaluation score.</li> </ol> <p><b>7-1. Tribal Compensation Plan.</b></p> <p>(f) Merit Based Increases. Employees having one (1) or more years of continuous service with the Nation and who receive at least a satisfactory score on their annual evaluation are eligible to receive merit based increases. Merit based increases shall be awarded in conjunction with an employee's annual evaluation, provided that no merit based increases may be awarded until the Nation's annual budget is approved by the General Tribal Council. Employees at the top of their position's grade may not be awarded a merit based increase, but may be offered a lump sum of money as a performance reward in lieu of a merit based increased. Performance rewards may not exceed the annual value of the merit based increase the employee would have been eligible for if the employee was not at the top of the position's grade.</p> <ol style="list-style-type: none"> <li>(1) Merit based increases may be directed to be provided organization-wide based on the compensation plan. In such circumstances, the compensation plan shall provide the dollar amount of the entity's budget that shall be allocated to merit based increases based on the number of employees working for the entity. Entities shall then award the merit based increases in accordance with each entity's standard operation procedure, which shall provide for merit based increases fairly for all levels of employment. Such standard operating procedure shall be submitted to HRD along with the actual implementation of the merit based increases in order for HRD to ensure procedural compliance with the standard operating procedure.</li> <li>(2) Entities may also independently initiate merit based increases through their annual</li> </ol>	<p>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>budgets. Entities shall develop and submit to HRD a standard operation procedure for awarding merit based increases fairly to all levels of employment. Prior to implementation, merit based increases shall be approved by HRD for procedural compliance with the standard operating procedure.</p> <p>(3) 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;</p> <p>(4) 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>	
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Current Policies and Procedures	Proposed Law	Analysis
<b>C. CAREER DEVELOPMENT</b> 1. Tribal employees are encouraged to develop their skills and abilities by pursuing education at a local educational institution.	<b>Removed</b>	Employees can no longer take classes during work time and the Nation will no longer fund employee education.

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Current Policies and Procedures	Proposed Law	Analysis
<b>D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES</b> <b>1.COMPLAINTS</b> 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. b. The supervisor will investigate the complaint and attempt to resolve the disagreement. c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she may ask the Area Manager to attempt a resolution. d. There is no further appeal of this process.	Complaint process removed	The formal complaint process has been removed. Employees can still submit written complaints but there is no process or timelines attached.

<p><b>5. Disciplinary Procedure</b> The following procedure shall be adhered to whenever disciplinary action is taken:</p> <ul style="list-style-type: none"> <li>a. Supervisor becomes aware of unsatisfactory work performance or violation. <ul style="list-style-type: none"> <li>1) Supervisor investigates through a meeting with the employees and determines whether disciplinary action is warranted.</li> </ul> </li> <li>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.</li> </ul> <p><b>3. Accumulated Disciplinary Actions Warranting Termination</b></p> <ul style="list-style-type: none"> <li>a. The accumulation of three (3) upheld warning notices within any twelve (12) month period. (T)</li> <li>b. The accumulation of two (2) upheld suspensions within any twelve (12) month period.(T)</li> <li>c. The accumulation of three (3) of any combination of upheld warning , notices and/or upheld suspensions within any twelve (12) month period. (T)</li> </ul>	<p><b>Handbook XII. Corrective Actions 12-3(b)</b> Within ten (10) business days of the date the employee supervisor learns of prohibited behavior meriting corrective action, the employee supervisor shall:</p> <ul style="list-style-type: none"> <li>(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.</li> <li>(A) An investigation is not required if the supervisor personally witnessed the prohibited behavior meriting corrective action.</li> </ul> <p><b>Handbook XII 12-6. Progressive Corrective Actions.</b></p> <ul style="list-style-type: none"> <li>(c) Termination. A termination is the release of an employee from employment against the employee's will. <ul style="list-style-type: none"> <li>(1) Termination shall be used as the corrective action under the following circumstances: <ul style="list-style-type: none"> <li>(A) The employee accumulates any three (3) corrective actions provided under article 12-6 within any twelve (12) month period where the termination itself constitutes the third corrective action; or</li> <li>(B) The employee has engaged in a prohibited action that rises to the level of a criminal or otherwise illegal act.</li> </ul> </li> <li>(2) Temporary and probationary employees may be terminated at any time the supervisor determines that the employee commits a prohibited behavior meriting corrective action and do not require accumulated corrective actions pursuant to article 12-6(c)(1)(A).</li> <li>(3) If the employee supervisor determines that the terminated employee is likely to create a potentially hostile and/or dangerous</li> </ul> </li> </ul>	<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 <i>[see Handbook 12-4]</i>.</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>
<p><b>6. Grievance</b></p>		<p>The first level of review for</p>

<p>(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>situation, he or she shall contact the Internal Security Director or the Oneida Police Department for assistance prior to terminating the employee.</p> <p><b>Handbook XIII</b> <b>13-1. Requesting Reconsideration of a Corrective Action and/or Adverse Employment Action.</b> 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 shall be made within ten (10) business days from the date of the employee supervisor's action.</p> <p><b>Law 201.11</b> <b>Employee Discipline and Appeals</b> 201.11-2(a) <i>Internal Review by the Nation – Reconsideration by the Reviewing Supervisor.</i> An employee may request reconsideration of any corrective action or other action which may amount to an adverse employment action taken by his or her employee supervisor to his or her reviewing supervisor. The reviewing supervisor may affirm, modify or overturn the decision of the employee supervisor.</p> <p>(b) <i>First Level of Appeal.</i> Any employee, excluding temporary and probationary employees, alleging a wrongful suspension or termination or that a supervisor's actions amount to an adverse employment action may contest the action to the Trial Court so long as the employee has requested reconsideration from his or her reviewing supervisor according to 201.11-2(a).</p> <p>(1) An employee supervisor may not initiate a first level appeal in the event that the reviewing supervisor overturns the employee supervisor's action.</p> <p>(2) In considering an appeal of a corrective</p>	<p>grievances is conducted by the Reviewing Supervisor and extensions are no longer available. This level is now called a request for reconsideration rather than a formal appeal. This level of review must be requested in order for any actions taken to be brought before the Trial Court in subsequent corrective actions. The first level of appeal is now heard by the Oneida Trial Court. Appeals to the Trial Court decision are made to the Oneida Appeals Court.</p> <p>The Personnel Commission has been removed and formal appeals moved to the Oneida Judiciary.</p> <p>Appeals of Personnel Commission decisions are currently heard by the Judiciary.</p>
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	<p>action, the Trial Court may consider previous corrective actions upon which the suspension or termination was based, provided that, the employee must demonstrate that he or she requested a reviewing supervisor's reconsideration of such prior corrective actions in accordance with Article 13-1. When reviewing prior corrective actions, the Trial Court shall only consider whether the corrective action was justified based on the employee's behavior; procedural compliance may not be considered.</p> <p>(c) <i>Second Level of Appeal.</i> Any party, excluding temporary and probationary employees, that is dissatisfied with the Trial Court's decision, may appeal the Trial Court's decision to the Oneida Judiciary's Appellate Court.</p>	
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**New to This Law**

- Applicability to Elected Officials *[see 201.4-1]*. The Law codifies the current practice of including Elected Officials with respect to compensation and benefits, general and employee responsibilities *[see 201.6 – 201.8]*. Elected officials are governed by a different set of laws with respect to discipline; therefore sections of this law related to discipline do not apply to elected officials.
- Suspension and terminations are now contested to the Trial Court appealable to the Appellate Court as long as the employee has requested reconsideration from his or her reviewing supervisor according to 201.11-2(a) *[see 201.11-2]*.
- The Oneida Judiciary may, at its discretion, waive any court filing fees that may be assessed against an employee appealing an employment matter *[see 201.11-4]*.

**Other**

Please refer to the fiscal impact statement for any financial impacts. Public comment regarding the Handbook can be directed to [bstevens@oneidanation.org](mailto:bstevens@oneidanation.org) or [kjohn4@oneidanation.org](mailto:kjohn4@oneidanation.org).

## Title 2. Employment – Chapter 201

### EMPLOYMENT

*Laotiy%t<hse> laotiyani^hsla>*

*Their work      their law*

201.1. Purpose and Policy  
201.2. Adoption, Amendment, Repeal  
201.3. Definitions  
201.4. Applicability  
201.5. Human Resources Department  
201.6. Hiring

201.7. Compensation and Benefits  
201.8. General  
201.9. Employee Responsibilities  
201.10. Layoffs and Furloughs  
201.11. Employee Discipline and Appeals  
201.12. Employment Actions

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#### **201.1. Purpose and Policy**

201.1-1. It is the purpose of this law to provide a fair, consistent and efficient structure to govern all employment matters and to provide employment preference to Tribal members and members of other federally recognized tribes.

201.1-2. 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.

#### **201.2. Adoption, Amendment, Repeal**

201.2-1. This law was adopted by the Oneida General Tribal Council by resolution \_\_\_\_\_.

201.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

201.2-3. 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.

201.2-4. 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 (also known as the Bluebook) adopted by the Oneida Business Committee on May 7, 1985 and any and all amendments made thereto;

(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 Policy Leave 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.

201.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

### **201.3. Definitions**

201.3-1. 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) “Adverse Employment Action” means a supervisor’s failure to comply with the Handbook that results in a significant change in an employee’s employment status that is more disruptive than a mere inconvenience or an alteration of job responsibilities and may include a deprivation of an equal employment opportunity.

(b) “Corrective Action” means any initiative taken by an employee supervisor with the goal of correcting an employee’s prohibited behavior as identified in the Handbook.

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

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

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

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

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

(h) “Handbook” means the Oneida Employee Handbook, which contains the set of requirements jointly enacted by HRD and the Chief Executive Director of Administration in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

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

(j) “Immediate Family Member” means an individual’s husband, wife, mother, father, step mother, step father, son, daughter, step son, step daughter, brother, sister, step brother, step sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-

law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained through legal adoption.

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

(l) “Nation” means the Oneida Nation.

(m) “Political Appointee” means an individual appointed as an executive assistant by an individual Oneida Business Committee member or as an assistant by an entity.

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

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

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

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

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

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

(q) “Temporary Employee” means an employee working for the Nation on a short term basis that is not hired through the standard hiring procedures, including, but not limited to, political appointees, part-time, seasonal, and volunteer workers.

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

#### **201.4. Applicability**

201.4-1. *Applicability to Elected Officials.* The provisions of sections 201.6 - 201.8 apply to the Nation’s elected officials that work full-time (30 hours or more per week) and receive salaries for their service, provided that, because other laws govern discipline of the elected officials, the Removal law for example, elected officials shall not be subjected to corrective action pursuant to this law or the Handbook.

201.4-2. *Oneida Nation School Board.* To the extent that the provisions of this law and Handbook conflict with the provisions of the memorandum of agreement between the Oneida Business Committee and the Oneida Nation School Board and any rules promulgated pursuant to authority delegated under said agreement, the memorandum and corresponding rules govern.

201.4-3. *Oneida Police Commission.* To the extent that any provisions of this law and Handbook conflict with the provisions of the Law Enforcement Ordinance and the Oneida Police Commission’s rulemaking authority as delegated under that law, the Law Enforcement Ordinance and corresponding rules govern.

#### **201.5. Human Resources Department**

201.5-1. *General Responsibilities.* The HRD shall:

(a) Together with the Chief Executive Director of Administration, develop and amend the Handbook as necessary to carry out the intent of this law.

(b) Implement, interpret and enforce this law and the associated Handbook.

(c) Provide all employees with a copy of this law and the Handbook and shall further

134 notify employees of how such materials and all other employment related laws and  
135 policies may be electronically accessed.

136 (d) Review and approve all entities' employment related standard operating procedures to  
137 ensure compliance with this law and the Handbook.

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

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

143 (1) HRD shall provide quarterly reports to the Oneida Business Committee, or its  
144 designee, in accordance with the schedule provided by the Nation's Secretary's  
145 office.

146 (2) The Oneida Business Committee may not have direct access to employee  
147 information and/or personnel files, especially information relating to individual  
148 compensation or corrective actions; provided that, Oneida Business Committee  
149 members that are also employee supervisors may access the employee records of  
150 any of his or her direct employees pursuant to 201.5-1(f)(3)(B).

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

154 (A) As applicable to employees and supervisors:

155 (i) A current or past employee may have access to his or her own  
156 employment record;

157 (ii) An employee supervisor may have access to his or her current  
158 employees' records;

159 (iii) When considering a transfer or a position for which all  
160 applicants are current or former employees of the Nation, a hiring  
161 supervisor may have access to the last twelve (12) months of a  
162 current or former employee's work history; and

163 (iv) HRD managers may have access to any employee's  
164 employment record.

165 (B) If required by law, the Nation shall release the information required to  
166 be released to the party the law designates as entitled to receive said  
167 information.

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

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

175 201.5-2. HRD shall uphold the Nation's sovereignty, laws and policies in its hiring and  
176 employment practices.

177 201.5-3. *HRD Oversight.* HRD shall report to the Chief Executive Director of Administration  
178 as directed by the Oneida Business Committee.

179  
180 **201.6. Hiring**

181 201.6-1. *Equal Employment Opportunities.* The Nation and HRD shall afford all applicants

and employees equal employment opportunities; however, the Nation shall follow the preferences outlined in 201.6-2 and such preferences may not be considered a violation of this law.

201.6-2. *Oneida and Indian Preference.* The Nation shall apply Oneida and Indian Preference to all hiring practices. HRD shall provide a quarterly and annual report to the Oneida Business Committee regarding the trending data for Oneida and Indian preference in hiring and shall post such results on the Nation's website and newspaper.

(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:

(1) Persons who are Tribal members.

(2) Persons who meet the membership 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.

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

(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 201.6-2(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.<sup>1</sup> If a position requires specific skills and/or licensing by the state or federal government and no Tribal members apply who are qualified and eligible and possess the necessary skills or licensing to assume the vacancy, only then may a non-Tribal member be selected to fill the vacancy. In the event that a non-Tribal member is hired for a position originally designated as Oneida-only based on this provision, HRD shall hire the employee under contract so that the Nation may consider whether a Tribal member may be available to assume the position upon the expiration of the contract term.

201.6-3. *Education.* Employees shall have or obtain a high school diploma, a high school equivalency diploma or a general equivalency diploma within one (1) year of being hired. Exceptions and/or extensions to this requirement may be included in the Handbook developed pursuant to 201.5-1(a).

201.6-4. *Workplace Safety.* The Handbook shall contain requirements and procedures as necessary to protect the safety, health and well-being of all employees and other individuals in the workplace.

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

201.6-5. *Conflicts.* An applicant is ineligible for positions for which he or she has a conflict of interest, as defined by the Nation's law and rules regarding conflicts of interest, and/or if he or she would be directly supervised by an immediate family member.

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<sup>1</sup> 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.

201.6-6. *Right to Work.* No person may be required to do any of the following in order to become or remain an employee of the Nation:

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

## **201.7. Compensation and Benefits**

201.7-1. *Compensation Plan.* HRD shall develop and institute an Employee Compensation Plan to assure equitable salary and wage levels and shall consider data from the Bureau of Labor Statistics for average earnings in the Green Bay area; the said plan shall be approved by the Oneida Business Committee prior to becoming effective.

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

201.7-2. *Designation of Employees.* The Nation shall use the standards created under the Fair Labor Standards Act to designate its employees as either nonexempt or exempt and to set minimum wage and maximum hour restrictions for employees receiving an hourly wage.

201.7-3. *Insurance and Retirement.* Any modification to the insurance and employment benefits offered by the Nation requires approval by Oneida Business Committee resolution.

201.7-4. *Time Off.* The Nation shall afford employees accumulated paid time off based on continuous service to the Nation. The Handbook shall provide the process required for requesting paid time off.

- (a) Employees accrue paid time off based on years of continuous service, provided that temporary employees are not eligible to accrue paid time off.

(1) Paid time off accrual rates for full-time employees are as follows:

- (A) 0-3 years of service – 144 hours annually
- (B) 4-7 years of service – 184 hours annually
- (C) 8-15 years of service – 240 hours annually
- (D) 16 + years of service – 296 hours annually

(2) Part-time employees accrue time off based on the hours worked as a ratio of full-time hours.

- (b) Once an employee reaches two hundred-eighty (280) hours of accrued PTO, he or she ceases to accrue paid time off. Employee supervisors shall notify employees in danger of reaching the accrual cap when the employee reaches two hundred (200) hours of accrued PTO.

201.7-5. *Leaves.* Employees of the Nation may be allowed leave as provided in the Handbook created pursuant to 201.5-1(a) and any other applicable laws and policies of the Nation.

## **201.8. General**

201.8-1. *Employee Development.* The Nation encourages the advancement and transfer of Employees in order to make the best possible use of human resources. Employees who wish to advance in the organization may work with the HRD to develop a career ladders plan.

201.8-2. *Entities.* Individual entities shall comply with this law and the Handbook promulgated under 201.5-1(a) and, if necessary, shall develop internal rules and standard operating procedures for the implementation of this law and Handbook.

201.8-3. *Safety and Fitness-for-Duty.* In order to create a safe and healthy work environment for employees and to keep the number of job-related illnesses and/or injuries to a minimum, the Nation shall maintain safety standards in accordance with the Nation's applicable laws and policies. The Nation shall also maintain standards requiring employees to perform their job duties in a safe, secure, productive and effective manner.

201.8-4. *Unemployment Insurance.* The Nation shall comply with the State of Wisconsin's unemployment insurance program; the Nation's employees may be eligible for unemployment benefits in accordance with the provisions of the laws of the State of Wisconsin.

## **201.9. Employee Responsibilities**

201.9-1. *Harassment and Ensuring Equal Employment Opportunities.* All employees are expressly prohibited from committing sexual harassment of another individual or engaging in any conduct that deprives another of an equal employment opportunity.

201.9-2. *Anonymous Information.* Employees who receive anonymous information of any type shall maintain the confidentiality of the said information and forward a summary of the information to the Chief of the Oneida Police Department expressly noting that the information was provided anonymously.

201.9-3. *Employee Protection.* The Nation may not retaliate against any employee who reports an employee's, political appointee's and/or any official of the Nation's violation(s) of laws, policies or rules of the Nation and shall protect any employees who report such violations from retaliatory actions.

(a) HRD shall include procedures in the Handbook designed to protect employees reporting others' violations of the Nation's laws, policies or rules from any and all forms of retaliation.

## **201.10. Layoffs and Furloughs**

201.10-1. Employees may be laid off and/or furloughed to the extent necessary for the Nation to operate effectively and efficiently in varying conditions pursuant to the Nation's laws, policies and rules.

201.10-2. Layoffs and furloughs may not be used for disciplinary reasons and may not under any circumstances be considered adverse employment actions.

201.10-3. The Nation's decision to layoff and/or furlough an employee is not subject to appeal.

## **201.11. Employee Discipline and Appeals**

201.11-1. Employee supervisors shall use the corrective action procedures in the Handbook to address employees' unacceptable work performance and/or behavior.

201.11-2. Employees who disagree with a corrective action or allege that a supervisor's actions amount to an adverse employment action may contest the action using the Handbook, and based on the following available levels of review:

(a) *Internal Review by the Nation – Reconsideration by the Reviewing Supervisor.* An employee may request reconsideration of any corrective action or other action which may amount to an adverse employment action taken by his or her employee supervisor to his or her reviewing supervisor. The reviewing supervisor may affirm, modify or overturn the decision of the employee supervisor.

(b) *First Level of Appeal.* Any employee, excluding temporary and probationary employees, alleging a wrongful suspension or termination or that a supervisor's actions amount to an adverse employment action may contest the action to the Trial Court so long as the employee has requested reconsideration from his or her reviewing supervisor according to 201.11-2(a).

(1) An employee supervisor may not initiate a first level appeal in the event that the reviewing supervisor overturns the employee supervisor's action.

(2) In considering an appeal of a corrective action, the Trial Court may consider previous corrective actions upon which the suspension or termination was based, provided that, the employee must demonstrate that he or she requested a reviewing supervisor's reconsideration of such prior corrective actions in accordance with article 13-1 of the Handbook. When reviewing prior corrective actions, the Trial Court shall only consider whether the corrective action was justified based on the employee's behavior; procedural compliance may not be considered.

(c) *Second Level of Appeal.* Any party, excluding temporary and probationary employees, that is dissatisfied with the Trial Court's decision, may appeal the Trial Court's decision to the Oneida Judiciary's Appellate Court.

201.11-3. *Compensatory Damages.* Should the Oneida Judiciary determine that there was an intentional deprivation of an equal employment opportunity, the Oneida Judiciary may award compensatory damages, including, but not limited to, attorney's or advocate's fees and court costs, as against the individual(s) found to have engaged in the intentional deprivation of an equal employment opportunity. Said compensatory damages may not be awarded against the Nation.

201.11-4. The Oneida Judiciary may, in its discretion, waive any court filing fees that may be assessed against an employee appealing an employment matter.

## **201.12. Employment Actions**

201.12-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law.

201.12-2. No administrative hearing body, including an entity, is authorized to hear a complaint regarding actions taken pursuant to this law.

201.12-3. Complaints filed with the Oneida Judiciary shall name the entity of the Nation that made the contested action.

*End.*

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# ONEIDA TRIBE OF INDIANS OF WISCONSIN



Oneidas 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 Oneida 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

DATE: June 1, 2016  
FROM: Rae Skenandore, Project Manger  
TO: Larry Barton, Chief Financial Officer  
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer  
RE: **Financial Impact of the Employment Law**

### I. Background

This is a proposed new law carried over into the current term of LOC. The original proposal is for the development of an Employment Law to replace the current Personnel Policies and Procedures that was originally introduced on April 13, 2012 and again activated on September 17, 2014. The purpose of this Law is to “provide a fair, consistent and efficient structure to govern all employment matters”. A public meeting was held on March 31, 2016. The following provide a summary of the elements of the law:

- Replace the current Personnel Policies and Procedures (Blue Book);
- 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 the Oneida Human Resources Department (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 operations; and
- Dissolve the Oneida 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.

The proposed Law contains the framework and much of the detailed content of the current Policies and Procedures have been revised to a Handbook which would follow the Administrative Rulemaking process.

## **II. Executive Summary of Findings**

“Fiscal impact statement” means an estimate of the total 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 individual or agency to comply with the Law after implementation.

### **Start Up Costs**

#### *Rulemaking*

The Employment Law delegates the Oneida Human Resources Department the authority to develop rules in the furtherance of the Law. The Administrative Rulemaking Law provides a process to promulgate rules. It is unclear if HRD has the existing resources to fulfill the requirements laid out in the rulemaking law. Quantifying the fiscal impact of implementing the rulemaking process for any agency is indeterminate.

#### *Oneida Personnel Commission*

Under the proposed new Law, the Oneida Personnel Commission will be dissolved and their hiring duties and responsibilities will be transferred to HRD and the Oneida Judiciary will be delegated as the hearing body authority. The Fiscal Year 2016 budget for the Personnel Commission is \$336,871. The transition process for existing cases of the Personnel Commission is unclear & it is indeterminate if the expenses for the Personnel Commission will overlap the expenses of implementing the proposed new Law. The conclusion of cases in progress requires a transition process with timelines.

### **Personnel**

#### *Staff*

Finance understands that personnel requests of HRD are not a requirement of this Law and therefore, will be given consideration under the Oneida Business Committee’s reorganization efforts and not included in this analysis.

#### *Training*

According to HRD’s Training & Development Staff, Supervisors will require approximately four hours of training on the Law and eight (8) hours of training on the new handbook. There are approximately 463 employees listed by HRD as Supervisors. It is estimated that employees will require approximately one (1) hour of training on the Law and two (2) hours of training on the handbook. There are approximately 2,253 non-supervisory employees. Training costs are estimated at \$325,682.49 to account for employee time. After year one, employees will transition to the “normal” process. New employees go thru 3.5 hours of policy training in orientation. New Supervisors are required to attend approximately forty (40) hours of training in addition to their orientation.

## Office

No additional space requirements or expenses were reported to Finance.

## Documentation

The expenses for the printing of the training documents are approximately \$4,009.82 (as quoted by Oneida Printing).

## Estimated Time to Comply

The Oneida Human Resource Department estimates that approximately six (6) months will be needed to comply with approved legislation.

## Summary

Agency Implementation (HRD)					Average Wage * Total Hours	Fringe	Indirect Costs	Total Cost
Employee Total	2716	Law Training	Handbook Training	Total Training Hours	\$ 18.89	40%	16.4%	
Supervisors	463	4	8	12	\$ 104,952.84	\$ 41,981.14	\$ 17,212.27	\$ 164,146.24
Employees (non-supervisor)	2253	1	2	3	\$ 127,677.51	\$ 51,071.00	\$ 20,939.11	\$ 199,687.63
<b>SubTotal</b>								<b>\$ 325,682.49</b>
<b>Printing</b>								
2,800 20 Pg Document		\$ 2,152.50						\$ 2,152.50
450 100 Pg Document			\$1,857.32					\$ 1,857.32
<b>Subtotal</b>								<b>\$ 4,009.82</b>
<b>Room Rental</b>								
\$2,416/day * 3				\$ 7,250.40				\$ 7,250.40
<b>Training Total</b>								<b>\$ 336,942.71</b>
Savings Due to the Elimination of Personnel Commission								\$ (336,871.00)
Net Cost to Implement Year One								\$ 71.71
<b>Net Savings over 10 years</b>								<b>\$ (3,031,767.29)</b>

## III. Financial Impact

Based on the information provided by HRD, Finance was able to identify training costs for personnel, printing, and the room rental of approximately \$336, 942.71. Any additional expenses of the rulemaking process and a transition plan for the Personnel Commission to the Judiciary are indeterminate. The 10 year projected savings is based on a static projection of the Oneida Personnel Commissions FY 2016 budget. The analysis is held constant with no inflation assumption. It should be understood that the savings of \$3,031,767.29 is proportionately offset by the direct costs at the Oneida Judiciary.

## III. 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 the Oneida Business Committee and General Tribal Council have the information with which to render a decision.

# ONEIDA EMPLOYEE HANDBOOK



Effective \_\_\_\_\_

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## I. PURPOSE, ADOPTION AND AUTHORITY

**1-1. Purpose.** It is the purpose of this Handbook to provide expectations and standards for implementing the Employment law. It is the policy of the Nation in its capacity as an employer to create and maintain a work environment in which all individuals are treated with respect and dignity and wherein the relationships among employees are professional, business-like and free of bias, prejudice and harassment.

**1-2. Delegation.** The Employment law delegated HRD and the Chief Executive Director of Administration rulemaking authority pursuant to the Administrative Rulemaking law.

**1-3. Adoption and Authority.** These rules in this Handbook were adopted by HRD and the Chief Executive Director of Administration in accordance with the procedures of the Administrative Rulemaking law.

**1-4. Amendments.** These rules in this Handbook may be amended or repealed by the approval of the HRD and the Chief Executive Director of Administration pursuant to the procedures set out in the Administrative Rulemaking law. For the purpose of future amendments to this Handbook, each article subsequent to article 1.7 is a separate rule and may be amended as such.

**1-5. Validity.** Should a provision of these rules or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of these rules which are considered to have legal force without the invalid portions.

**1-6. Conflicts.** In the event of a conflict between a provision of these rules and a provision of another rule, internal policy, procedure, or other regulation, the provisions of these rules control.

**1-7. Supersede.** These rules supersede all prior rules, regulations, internal policies or other requirements relating to the employment with the Nation.

## II. DEFINITIONS

**2-1. Definitions.** This article governs the definitions of words and phrases used within this Handbook. All words not defined herein are to be used in their ordinary and everyday sense.

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

(b) **“Advocate”** means an Oneida non-attorney representative who is admitted to practice law and is presented to the Oneida Judiciary as the representative or advisor to a party.

(c) **“Attorney”** means a person trained and licensed to represent another person in the Judiciary’s Trial Court and/or Appellate Court, to prepare documents and to give advice or counsel on matters of law.

(d) **“Bona-fide Occupational Qualifications”** or **“BFOQ”** means employment requirements the Nation may consider while making decisions related to the hiring and retention of Employees, which may include consideration of protected classes, including, but not limited to, race, sex and age if membership in a protected class directly relates to an Essential Requirement.

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

(f) **“Corrective Action”** means any initiative taken by an employee supervisor with the goal of remedying an employee’s undesirable behaviors such as law, Handbook, policy and rule infractions and/or performance related issues; the available corrective actions are provided in article 12-6.

(g) **“Court of Appeals”** means the Oneida Judiciary Court of Appeals.

(h) **“Employee”** means any individual who is hired by the Nation through the normal hiring process, works full-time (30 or more hours per week) or part-time (less than 30 hours per week) and is subject to the direction and control of the Nation with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. “Employee” includes, but is not limited to, any individual employed by any entity, but does not include temporary employees or individuals employed by a tribally chartered corporation. Throughout this Handbook all references to employee include both employees and temporary employees, unless the term temporary employee is used, in which case only temporary employees are intended.

(i) **“Employee Supervisor”** means the party responsible for directly overseeing the employee and who is responsible for taking corrective action should an employee fail to abide by the Nation’s laws and policies and any applicable rules or who may fail to fulfill the requirements of his or her position.

(j) “**EEO Officer**” or “**Equal Employment Opportunity Officer**” means a position within the EEO Department within HRD whose primary responsibility is to ensure that employees receive equal employment opportunities and that employee supervisors comply with the procedural requirements for issuing corrective actions.

(k) “**EEO Director**” or “**Equal Employment Opportunity Director**” means a position within the EEO Department within HRD responsible for the EEO Department to include all functions of the EEO Officer, EEO Mediator, and EEO Backgrounds Investigations.

(l) “**Entity**” means any division of the Nation having employees and may include, but is not limited to, divisions, departments, areas, programs, enterprises, boards, committees, commissions and the like.

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

(n) “**Essential Requirements**” means the minimum requirements an employee shall meet to hold a said position, which may include, but are not limited to, position duties, education and experience and in some circumstances may consider the table of equivalency provided in 5-6(b)(2).

(o) “**Flex Time**” means a system which allows supervisors the ability to provide employees with flexible work schedules by allowing various starting and finishing times, provided that the employee meets the required number of hours in his or her work week.

(p) “**Gaming**” means the conduct of all forms of any activity, operation, or game of chance that is considered Class II or Class III pursuant to the Oneida Nation Gaming Ordinance, provided that this definition does not include Class I activities, as defined by the Oneida Nation Gaming Ordinance, and related business activities in any location or structure, stationary or movable, wherein the said activities are permitted, performed, conducted, or operated, not including the site of a fair, carnival, exposition, or similar occasion, and areas where employees for the said activities are employed or assigned.

(q) “**Grade**” or “**Grading**” means the process used by HRD to rank a position based upon the wage or salary the position generally earns in the local and/or regional market.

(r) “**Hiring Representative**” means the Nation’s representative responsible for protecting the integrity of the hiring process by ensuring the hiring procedures contained in articles 4, 5 and 7 are complied with and that all questions asked of applicants are both employment related and legally appropriate.

(s) “**Holidays**” means days of celebration the Nation recognizes.

(t) “**HRD**” means the Nation’s Human Resources Department.

(u) “**Immediate Family**” means an individual’s husband, wife, mother, father, step mother, step father, son, daughter, step son, step daughter, brother, sister, step brother,

step sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained through legal adoption.. For purposes of this defintion, in-laws are considered immediate family only if there is a current legal marriage.

(v) “**Market**” means a geographic area or demographic segment considered as a place of demand for particular goods or services.

(w) “**Nepotism**” means preferential treatment given to a person due to his or her immediate family ties.

(x) “**Promotion**” means the Nation’s recognition of an employee’s achievement by advancing his or her position within the Nation to include additional responsibilities.

(y) “**Reviewing Supervisor**” means the party responsible for overseeing the employee supervisor.

(z) “**Salary**” means an agreed compensation for services, usally professional or semi-professional services, paid at regular intervals on a yearly basis. Positions receiving such compensation are exempt from the requirements of the Fair Labor Standards Act (regarding overtime and the like).

(aa) “**Separate**” or “**Separation**” means ending an employee’s employment with the Nation for reasons that are not related to disciplinary issues through the corrective action process.

(bb) “**Slotting**” means placing a position on the Nation’s wage or salary scale based upon the position’s responsibilities and qualifications when there is no similiar or identical position within the market.

(cc) “**Subject Matter Expert (SME)**” means an employee with the direct knowledge, skills, abilities and proficiency in his or her subject to provide accurate and reliable information and guidance as related to the subject.

(dd) “**Temporary Employee**” means an employee working for the Nation on a short term basis that is not hired through the standard hiring procedures, including, but not limited to, political appointees, seasonal and volunteer workers.

(ee) “**Transfer**” means the movement of an employee from one position within the Nation to another and includes reassignment of employees between entities at the request of a supervisor or employee.

(ff) “**Nation**” means the Oneida Nation.

(gg) “**Tribal Member**” means an enrolled member of the Nation.

(hh) “**Wage**” means a payment for labor or services based the number of hours worked. Positions receiving such compensation are subject to the requirements of the Fair Labor Standards Act (regarding overtime and the like).

(ii) “**Workforce Level**” means the number of positions approved for an entity based on the Nation’s budgeting process.

### III. GENERAL PROVISIONS

**3-1. Communication.** HRD shall provide notice to all employees of all rules contained in this Handbook created pursuant to the Employment law and shall provide updates as this Handbook may be amended from time to time.

(a) To ensure that all employees are aware of their roles and responsibilities and the rules that apply to their employment with the Nation, HRD shall:

(1) Ensure that all persons employed by the Nation are provided information on how to access this Handbook.

(2) Ensure that this Handbook and the Employment law are provided and noticed during the required employee orientation.

(3) Require that all employees sign an acknowledgment form, prior to beginning work, which minimally shall state:

(A) That he or she received notice of this Handbook; and

(B) That he or she agrees to abide by this Handbook, the Employment law and any other applicable laws and policies of the Nation.

**3-2. Employee Responsibilities.** Employees are responsible for being aware of and abiding by the rules contained in this Handbook and applicable laws and policies of the Nation and, further, shall at all times meet their position's essential requirements. In addition, if any actual or perceived conflicts of interest arise within the employee's course of employment that did not exist at their date of hire, the employee shall provide HRD with an updated conflict of interest disclosure form. HRD shall include the updated conflict of interest disclosure form in the employee's employee record and provide the form to the current and subsequent employee supervisors. Employees not fulfilling these responsibilities may be issued a corrective action in accordance with article 12.

**3-3. Equal Employment Opportunities.** It is the policy of the Nation to provide equal employment opportunities to all persons. Accordingly, the Nation and HRD may not utilize any employment practices that discriminate against any person on the basis of race, color, religion, sex (including pregnancy), national origin, age, disability, economic status or genetic information. Oneida and Indian Preference are allowable and are not considered a violation of this policy.

**3-4. Privacy and Confidentiality of Employee Records.** HRD shall keep all applicant and employee information with the upmost confidentiality and shall handle all employment based issues with respect for the confidential nature of such matters.

**3-5. Record Keeping.** HRD is responsible for creating and maintaining all employee records and further for keeping such records confidential as required in this article and the Employment law.

(a) Employee records shall contain the following, as applicable to the employee:

(1) Application for employment, including resumes, proof of satisfaction of essential requirements and any hiring paperwork required by HRD;

(2) Performance reviews;

- 200 (3) Transfer paperwork;
- 201 (4) Compensation history, including start dates and end dates, and, for wage
- 202 earning employees, a record of hours worked;
- 203 (5) Career development plans;
- 204 (6) Leave of absence information;
- 205 (7) Incidence reports of any nature;
- 206 (8) Corrective actions;
- 207 (9) Requests for reconsideration and appeal of a supervisor's action; and
- 208 (10) Unemployment information.
- 209 (b) HRD may not include the following in the official employee record maintained by
- 210 HRD:
- 211 (1) Department files, as provided in article 12-1; or
- 212 (2) Records of any non-corrective action tools used by supervisors outside of the
- 213 corrective action process.
- 214 (c) Employee records may be released under the following circumstances:
- 215 (1) A current or past employee may have access to his or her own employment
- 216 record;
- 217 (2) An employee supervisor may have access to his or her current employees'
- 218 records, provided that Supervisor's may not review records of terminated
- 219 employees unless employee consent to release information is provided or if the
- 220 employee is appealing a corrective action or seeking unemployment;
- 221 (3) When considering a transfer or a position for which all applicants are current
- 222 or former employees of the Nation, a hiring supervisor may have access to the last
- 223 twelve (12) months of a current or former employee's work history;
- 224 (4) HRD employees may have access to any employee's employment record
- 225 according to HRD's standard operating procedures approved by the HRD
- 226 manager;
- 227 (5) If required by law, HRD shall release the information required to be released
- 228 to the party the law designates as entitled to receive said information, which may
- 229 include, but is not limited to, an internal/external auditor or a party involved in a
- 230 child support, unemployment, or law enforcement dispute. When information is
- 231 released pursuant to this provision, approval from the HRD manager, or his or her
- 232 designee, is required;
- 233 (6) Should an employee committ an illegal act in the course of his or her
- 234 employment with the Nation against the Nation or its customers or employees, the
- 235 said employee's record may be released to law enforcement agencies; and
- 236 (7) A third party may access an employee's record if the employee provides
- 237 written consent to release his or her record to a designated third party. A party
- 238 seeking wage information shall receive writtten consent from the employee
- 239 pursuant to this sub-article.

**3-6. Contracted Positions.** In the event of a conflict between this Handbook and an employee's contract, the employee's contract governs.

**3-7. Open Door Policy.** The Nation's supervisors shall maintain an open door policy in which employees may, at any time, report concerns regarding the Nation's work environment and/or conditions and suggest feedback for improvement.

**3-8. Succession Planning for Critical Positions.** Within six (6) months of the date a new Oneida Business Committee is elected, HRD shall submit for the Oneida Business Committee's approval a list of positions that are critical to the Nation. In preparing such list, HRD shall work with the chief executive director of administration, division directors and supervisors. Within ninety (90) calendar days of the date the Oneida Business Committee approves the list of critical positions:

(a) Each division shall provide the Oneida Business Committee with the names of, at a minimum, two (2) employees trained and able to perform of the essential requirements of each critical position within the division.

(b) If the division does not currently have at least two (2) employees trained and able to perform the essential requirements of each critical position within the division, the division shall submit a succession plan to the Oneida Business Committee which provides information as to how the division plans to comply with the requirement moving forward.

**3-9. Employee Identification Badges.** At all times while working, employees are required to wear Oneida Nation employee identification badges containing the employee's name, photo and employee number. Upon request, an employee's commonly known as name or shortened name may be used on an identification badge, provided that the proposed commonly known as name or shortened name is reasonable and approved by HRD.

**3-10. Reimbursement Agreements for Outside Training Paid for by the Nation.** HRD and employee supervisors may require that employees enter into a reimbursement agreement for any training received as required for the employee to achieve a new position title where such training is paid for by the Nation and provided outside of the Nation's training programs. In such circumstances, the reimbursement agreement shall require the employee to reimburse the Nation for the full cost of the training in the event the employee resigns within two years of the date the employee completes the training program.

(a) Full cost of the training includes, but is not limited to, any wages paid while training, transportation, tuition and supplies.

(b) The agreement shall detail how the potential amount owed to the Nation is based on the total costs paid by the Nation and prorated over a twenty-four (24) month period wherein the employee owes for each of the twenty-four (24) months that he or she is not employed by the Nation in the capacity for which the training was received.

## IV. POSITION DEVELOPMENT AND MAINTENANCE

**4-1. Workforce Levels.** HRD shall record and verify workforce levels based on an annual workforce level report compiled by the Finance Division based on the approved budget, provided that, temporary positions are not reflected in the workforce levels report. HRD shall post and fill positions that are within approved workforce levels. In the event there is a need to fill a position for which a new workforce level shall be created, HRD shall notify the Finance Division of the added workforce levels and to which entity(s) the new workforce level belongs.

**4-2. Development of New Positions and Revisions to Existing Positions.** All new and existing positions require supervisors to work with HRD to develop and/or make revisions to the position description as may be necessary from time to time, provided that prior to working with HRD, the supervisor shall have his or her reviewing supervisor's approval to develop the new position.

(a) In order to maintain consistency with all departments and like positions throughout the organization, HRD shall make the final determination as to:

- (1) Position titles;
- (2) Grades;
- (3) Position description formats;
- (4) Classifying positions as earning based on a salary or a wage, which may or may not include tips;
- (5) Bona-fide occupational qualifications (BFOQs);
- (6) Which positions shall be contracted; and
- (7) Which positions are classified as Oneida only.

(b) Positions may be contracted positions under the following circumstances:

- (1) When the local market supports use of a contract for the position;
- (2) When the position is an executive level position which reports directly to the Oneida Business Committee; and/or
- (3) When the position is for an attorney, teacher or medical professional.

(c) An employee responsible for developing a position description or revising an existing position description may not be considered as a candidate for the position based on the initial hiring under the new position description.

**4-3. Essential Requirements, BFOQs and Other Requirements.** In each position description, HRD shall list the essential requirements, BFOQs, if any, and other applicable position requirements. In forming the requirements for each position, HRD shall research similar positions in the market to form a comparison on the basis of education, experience, licensing and certifications and any other applicable requirements imposed by the Nation.

(a) Market Analysis. Each time a position is created or substantially amended and a minimum of once every three (3) years, HRD shall perform a market analysis for each position description and implement any appropriate adjustments to future position postings. HRD shall publish the updated wage and salary charts based on the market analysis on the Nation's intranet.

- 317 (1) A market analysis shall minimally consider:
- 318 (A) Market indicators of appropriate wage/salary based on similar or
- 319 identical positions in the market;
- 320 (B) The wage/salary of similar or identical positions throughout the
- 321 Nation; and
- 322 (C) The market's requirements for the position based on education,
- 323 experience, licensing, certifications and other applicable requirements. If
- 324 similar positions do not exist within the market, HRD may use its
- 325 educated and informed discretion, in consultation with the proposed
- 326 supervisor, to determine the position's requirements.
- 327 (2) HRD may recommend slotting a new or amended position within a
- 328 determined grade if there is no comparable wage/salary for the position available
- 329 for comparison in the market. Examples of positions for which the market may
- 330 not have a comparable wage/salary may include, but are not limited to, positions
- 331 related to Oneida culture and language education.
- 332 (b) High School Diploma or its Equivalent. Pursuant to section 201.6-3 of the
- 333 Employment law, employees shall have or obtain a high school diploma, a high school
- 334 equivalency diploma or a general equivalency diploma within one (1) year of being hired.
- 335 (1) Employees that are over the age of fifty (50) on their date of hire are exempt
- 336 from this requirement. Employees under the age of fifty (50) at their date of hire
- 337 who transfer or are promoted remain responsible for obtaining a high school
- 338 diploma or its equivalent pursuant to section 201.6-3 of the Employment law.
- 339 (2) Employees that have been assessed by a licensed medical professional or a
- 340 vocational rehabilitation program to be mentally incapable of fulfilling the
- 341 education requirement are exempt from this requirement, provided that the
- 342 exemption is only available for physical labor based positions. HRD shall
- 343 provide exemptions based on this provision and shall provide notice of any
- 344 exemptions granted to the employee supervisor.
- 345 (3) Employee supervisors may grant extensions to the one (1) year period,
- 346 provided that, absent an exemption, the timeframe for obtaining a high school
- 347 diploma or its equivalent may not be extended beyond two (2) years of the
- 348 employee's date of hire.
- 349 (A) An employee supervisor may grant the said extensions only if the
- 350 employee is able to demonstrate that he or she has been regularly working
- 351 towards fulfilling the requirement.
- 352 (B) An employee supervisor shall separate employees that do not obtain a
- 353 high school diploma, a high school equivalency diploma or a general
- 354 equivalency diploma within the approved timeframe and shall provide
- 355 notice of the separation to the employee and HRD.

356 (C) An employee who is separated without having met the requirement is  
357 not eligible for re-hire until he or she has fulfilled requirements of this  
358 article.

359 **4-4. Determination of “Oneida Only” Positions.** In identifying which position shall be filled  
360 by a Tribal member pursuant to section 201.6-2(d) of the Employment law, HRD shall consider  
361 whether the position holder would:

- 362 (a) Supervise one (1) or more employees;
- 363 (b) Be granted key decision making responsibilities and authority;
- 364 (c) Be tasked with developing and/or interpreting policies and procedures;
- 365 (d) Have the authority to enter into agreements that financially bind the organization;
- 366 and/or
- 367 (e) Have financial management responsibility over a business unit.

368 **4-5. Compliance with the Nation’s Laws.** HRD shall follow any laws of the Nation which  
369 explicitly require a position to be designated as “filled by Oneida Tribal members only” and in  
370 such circumstances may not exercise its discretion based on the considerations provided in  
371 article 4-4.

372 **4-6. Position Descriptions.** HRD shall make all approved position descriptions public  
373 documents by providing copies to members of the public upon request, provided that all  
374 information relating to a position’s compensation shall be stricken prior to being released to the  
375 public.

## V. POSITION POSTING, SELECTION AND HIRING

**5-1. Training for the Hiring Process.** Supervisors, hiring representatives, and subject matter experts (SME's) who are approved to participate in the selection process, shall complete and maintain interview skills training prior to participating in the selection process.

**5-2. Approval Process for Posting Employment Vacancies.** Supervisors shall obtain approval from the reviewing supervisor, and, if the reviewing supervisor does not have budgeting authority, also a budget authorized supervisor, in order to post and/or fill any vacant or new position within their entity.

(a) It is the supervisor's responsibility to ensure that the position for which they intend to post and fill a vacancy is approved in their entity's fiscal year budget or is otherwise financially responsible, for example, based on budget savings or increased revenues. Any positions posted and/or filled that are not approved in the entity's fiscal year budget shall be noticed to the Finance Department for inclusion in the workforce level development.

(b) A position that may become vacant due to the termination of a current employee may not be posted as vacant until the terminated employee has exhausted all of his or her appeal rights.

(c) Absent a leave or any other circumstance that would require holding the position, vacant positions shall be posted prior to being filled on an interim basis.

(d) A supervisor is not required to post a position prior to selecting a temporary employee to fill the position.

**5-3. Posting Vacancies.** The supervisor and hiring representative shall work together to post available positions internally and/or externally as follows:

(a) New Positions. All new positions, excluding those intended to be filled with a temporary employee, shall simultaneously be posted internally and externally for a minimum of seven (7) days. For the purposes of this article, "new position" means a position having essential requirements that are not currently satisfied by any other position held by an employee of the Nation.

(b) Existing Vacant Positions. Existing vacant positions shall be posted internally for a minimum of seven (7) days. In addition to posting internally, a supervisor may also direct the hiring representative to post the position externally for a minimum of seven (7) days, during which time the position shall remain posted internally. The external posting may occur simultaneously with the internal posting or may be done after the internal posting deadline has closed. If a position is not filled through the initial internal and/or external posting based on the hiring procedures contained in this article, it may be reposted until filled.

(1) Entities transferring or promoting employees from one (1) position within their own entity to a different position within the same entity are not subject to these posting requirements.

(2) For the purposes of this section, entity may be defined to include any grouping of employees up to the divisional level.

(c) Internal Postings. HRD shall post all internal postings both on the Nation's website and at HRD.

(d) Soon to be Vacant Positions. Supervisors may post positions as soon as they learn of the upcoming vacancy in order to encourage succession planning; supervisors are not required to wait for the position to become vacant in order to post for the position. A supervisor may have two (2) employees in the same position for succession planning for a maximum of sixty (60) calendar days. This period may only be extended if justification is provided to HRD and the entity has available budget to cover the extended period.

**5-4. Advertising of Posted Positions.** All position advertising shall be completed by HRD, provided that an entity may be required to pay for its advertising out of its own budgets.

**5-5. Applications.** All applications for posted positions shall be submitted to HRD no later than the closing date listed on the position description by close of business, if applying in person, or by 11:59 p.m., if applying electronically.

**5-6. Screening of Applicants.** Hiring representatives shall perform all eligibility based screening and the hiring team shall screen all applicants to ensure that only those who are eligible for employment, meet the essential requirements and BFOQs, if any, and contain no conflict of interest or the appearance of a conflict of interest with the Nation are granted interviews. Further, hiring representatives shall ensure that no interviews are received or applicants selected based on nepotism. The hiring representative's determination as to whether a conflict of interest, perceived conflict of interest or nepotism exists is final and is not subject to appeal. When an entity is doing on-going employee recruitment, HRD shall screen the applicants a minimum of once every thirty (30) calendar days, but may screen at any time that there are three (3) or more applicants. If an applicant is not selected based on screening done as part of an on-going recruitment, HRD shall offer the applicant the opportunity to be placed back into the applicant group.

(a) Eligibility Based Screening. Applicants submitting incomplete or late applications are not eligible. HRD's Backgrounds Department shall conduct and approve or deny background checks for all non-gaming applicants/employees and will determine eligibility for employment based on criminal and non-criminal convictions, criminal reports and other documentations.

(1) HRD's Backgrounds Department will also conduct background checks for the following categories:

- (A) Volunteers;
- (B) Individuals requesting community service;
- (C) Adult work experience applicants;
- (D) Temporary Assistance for Needy Families (TANF);
- (E) Kinship care for children and families; and

455 (F) Foster parents.

456 (2) The Oneida Nation Gaming Commission shall approve background/gaming  
457 licenses for all applicants and/or employees working in the gaming division,  
458 which includes all non-gaming applicants and employees who work on the  
459 gaming premises.

460 (3) Employment eligibility is determined by the HRD's background manager, or  
461 designee. HRD's Backgrounds Department may impose restrictions upon or deny  
462 employment to an applicant or current employee based on the findings contained  
463 in a background investigation. Further, depending on the position, employees  
464 may be subject to continual background investigations throughout the course of  
465 their employment to ensure continued compliance with the position's eligibility  
466 requirements.

467 (A) Applicants and employees may review and contest the finding of a  
468 background investigation.

469 (B) If an applicant/employee is ineligible for employment based on the  
470 background investigation, the Backgrounds Department staff shall notify  
471 the applicant/employee and the employee supervisor of said ineligibility  
472 and the cause via telephone and first class mail. The Backgrounds  
473 Department staff shall advise the applicant/employee of how and where to  
474 access their background records, provided that, the applicant/employee  
475 shall sign a request to review form prior to reviewing their file.

476 (C) Applicants/employees alleging inaccuracies within their backgrounds  
477 report have ten (10) business days from the date of their notice of  
478 ineligibility to resolve any inaccuracies within their record to the  
479 acceptance of HRD.

480 (D) The hiring process may continue as scheduled and is not required to be  
481 placed on hold in order for an applicant to resolve the findings of a  
482 background investigation.

483 (E) When an employee has become ineligible for employment in their  
484 current position based on an updated background investigation, the  
485 employee supervisor shall immediately remove the employee from the  
486 position.

487 (i) The employee may request that HRD provide a list of the  
488 positions for which he or she remains eligible to work in and may  
489 request a transfer if one of the said positions is available, provided  
490 that the normal transfer process shall be followed.

491 (ii) If the employee is no longer eligible to remain employed with  
492 the Nation in his or her current position and there are no positions  
493 available for which the employee is eligible, the employee  
494 supervisor shall separate the employee.

495 (4) Ineligibility based on Previous Termination or Voluntary Resignation for  
496 Position Abandonment. Applicants previously terminated from employment with  
497 the Nation based on a violent act or theft in the course of the employee's  
498 employment are not eligible for re-hire, provided that, HRD shall recognize  
499 pardons and forgiveness in accordance with the Pardon and Forgiveness Law. All  
500 other previously terminated applicants and applicants that previously voluntarily  
501 resigned based on position abandonment are eligible for re-hire after the greater of  
502 either:

503 (A) One (1) year from the effective date of the termination or voluntary  
504 resignation; or

505 (B) One (1) year from the date the final action was taken regarding an  
506 appeal of a termination.

507 (5) Ineligibility based on Applicant's Behavior During the Hiring Process. An  
508 applicant's behavior during the hiring process that would amount to a violation of  
509 the Nation's laws, policies and/or rules if employed may make the said applicant  
510 ineligible for Employment. For the purposes of this article, the hiring process  
511 begins on the date of the applicant submits his or her application.

512 (b) Qualification Based Screening. The hiring team shall screen applicants based upon  
513 the required qualifications contained in the position description for which the applicant  
514 has applied.

515 (1) The hiring representative shall make the final determination of who may  
516 participate in the qualification based screening process, provided that, the  
517 supervisor(s) may participate in the screening process. If the position has  
518 multiple supervisors (i.e. multiple shifts, locations, etc.), all supervisors may  
519 participate in the screening process.

520 (2) The hiring representative shall work with the supervisor(s) to determine if a  
521 table of equivalency may be considered. The table of equivalency may be used  
522 on any position whose essential requirements are not regulated by law (i.e. nurses,  
523 doctors, lawyers), provided that, if three (3) or more applicants qualify without  
524 using the table of equivalency, the table of equivalency may not be considered.

525 (A) For the purposes of this article, a table of equivalency shows various  
526 combinations of post-secondary education credits earned from an  
527 accredited institution and experience that may be utilized instead of the  
528 education required in the essential requirements section of the position  
529 description. If it is determined that using a table of equivalency is  
530 appropriate, the hiring representative and the supervisor shall use the  
531 following:

**Employment Requirement Contained in Job Description**

<b>Master's Degree</b>	<b>Bachelor's Degree</b>	<b>Associate's Degree</b>
Bachelors degree with three (3) years of similar or identical experience.	Ninety (90) or more college credits* and two (2) years of similar or identical experience.	Thirty (30) or more college credits* and one (1) year of similar or identical experience.
Ninety (90) or more college credits* and four (4) years of similar or identical experience.	Associates degree and three (3) years of similar or identical experience.	Vocational degree in a related field to the position applied for and two (2) years of similar or identical experience.
Associates degree and five (5) years of similar or identical experience.	Vocational degree in a related field to the position applied for and four (4) years of similar or identical experience.	High School Diploma or HSED or GED and three (3) years of similar or identical experience.
Vocational degree in a related field to the position applied for and six (6) years of similar or identical experience.	High School Diploma or HSED or GED and five (5) years of similar or identical experience.	--
High School diploma, or HSED or GED and seven (7) years of similar or identical experience.	--	--

\* If a position description requires a specific degree, for example Business Administration, the college credits must be earned as part of a program that upon completion results in the participant obtaining the said degree.

(B) For positions requiring a degree and experience, the hiring representative and the supervisor shall consider the experience required in the table of equivalencies to reach the equivalent of the said degree. For example, a position description requiring applicants to have a bachelors degree and seven (7) years of similar or identical experience an applicant having any one (1) of the following combinations of education and experience would be eligible:

- (i) A masters degree and four (4) years of experience because a masters degree is the equivalent to a bachelor's degree and three (3) years experience;
- (ii) Ninety (90) or more college credits and nine (9) years experience because a bachelors degree is equivalent to ninety (90) or more college credits plus two (2) years experience;
- (iii) An associates degree and ten (10) years experience because a bachelor's degree is the equivalent to an associates degree and three (3) years experience;
- (iv) A vocational degree and eleven (11) years of experience because a bachelors degree is the equivalent to a vocational degree and four (4) years experience; or

(v) A high school diploma or HSED or GED and twelve (12) years of experience because a bachelors degree is the equivalent to a high school diploma or HSED or GED and five (5) years experience.

(C) Applicants that qualify using a table of equivalency are deemed to have met the minimum position requirements in regards to compensation negotiations, provided that an employee that qualifies based on the table of equivalency may be required to acquire the education for which the employee's experience was considered.

(3) Pre-Supervisor Certification. HRD shall develop a training and certification program for employees that do not have supervisory experience that wish to be considered for supervisory positions. In HRD's discretion, Supervisor Ready Certification, shall be deemed to satisfied a "prior supervisor experience" requirement contained in a position description based on the level of training received. The minimum amount of years of training experience a Supervisor Ready Certification may equate to is two (2) years of experience and the maximum is four (4) years of experience.

(4) For any employee transfers or in circumstances were all of the applicants being considered are former or current employees of the Nation, the hiring representative and any applicable supervisors participating in the screening process may consider the employment records, including, but not limited to, past performance evaluations and corrective actions that may have been issued for the last twelve (12) month period worked by any former or current employee.

(A) If the hiring team requests a copy of any applicant's last twelve (12) months of employment records from the hiring representative, the hiring representative shall also provide a copy of the record to the said applicant along with notice that his or her last twelve (12) months of employment records may be considered in the hiring process.

(B) If the employment record of one (1) previous employee is requested, HRD shall provide the employment record of all previous employees that may be in the applicant pool.

(5) The hiring representative shall complete all skills testing, background security check, drivers' license checks, as well as pre-employment drug screenings as may be required by the position description. Skills testing results are valid for a one (1) year period; all other screens required by this article shall be completed each time the applicant applies for a position.

(A) The hiring representative shall screen out all applicants who do not pass the skills testing, background security check, driver's license checks, pre-employments, etc.

(B) As appropriate, supervisors may allow applicants the opportunity to satisfy essential requirements within a reasonable time from the employee's date of hire, provided that entities shall develop standard operating procedures for ensuring compliance within a reasonable timeframe and separation procedures in the event an employee fails to comply.

(6) If the screening results in only one (1) qualified applicant, the hiring representative shall discuss with the supervisor(s) whether the selection should move forward with interviewing and hiring the qualified applicant or if the position should be reposted.

(c) Conflicts of Interest Screening. All applicants and parties involved in the screening and interview process, which may include but are not limited to, the hiring representative, supervisor(s) and subject matter experts, shall complete and sign the conflict of interest disclosure form which is designed to reveal any potential or perceived conflicts of interest. HRD shall include such conflict of interest disclosure forms in the employee's employee record.

(1) If the conflict of interest form discloses a potential or perceived conflict of interest, the conflicted person may not participate in the hiring process.

(2) The conflict of interest form shall ask whether he or she:

(A) Has a current or past relationship with an applicant which impairs his/her judgment with respect to the best interest of the Nation;

(B) May benefit, directly or indirectly, from the applicant's performance of duties contained in the position description based on his or her relationship with the applicant and/or the Nation;

(C) Currently has or has had personal relations and/or a domestic partnership relationship with an applicant which may impair his or her ability to objectively consider the applicant; or

(D) Is able to assert that, to the best of his or her knowledge, no potential or perceived conflict of interest exists.

(3) The hiring representative shall make the final determination as to whether a conflict of interest or a perceived conflict of interest exists.

(A) If the hiring representative determines that a conflict of interest exists with a member of the hiring team which would not likely remain a conflict of interest following the hiring process, he or she shall remove said persons having the conflict interest from the hiring team.

(B) If the hiring representative determines that an organizational conflict of interest exists with a member of the hiring team which would likely remain a conflict of interest should the applicant be selected (i.e. if the conflict of interest is with the applicant's prospective supervisor), the hiring representative shall attempt to work with the supervisor to create an

632 alternate reporting structure or other mechanism to avoid the said conflict  
633 of interest, unless the position is responsible for regulatory reporting  
634 and/or compliance. If an alternate reporting structure or mechanism is not  
635 possible or if the conflict of interest exists in positions responsible for  
636 regulatory reporting and/or compliance, the hiring representative shall  
637 disqualify the applicant from the position.

638 (4) If the hiring representative determines that a conflict of interest or perceived  
639 conflict of interest exists, HRD shall provide the employee's employee  
640 supervisor, and, in the event of a transfer or promotion, any subsequent employee  
641 supervisors, with the conflict of interest disclosure form.

642 (d) Nepotism Screening. The hiring representative shall screen applicants out of  
643 consideration for a position if nepotism exists. There is a presumption of nepotism if an  
644 applicant is the hiring supervisor's immediate family member. In circumstances where  
645 the employee may be required to work at multiple sites, the applicant may not be  
646 immediate family member of any of the reviewing supervisors.

647 **5-7. Labor Pool Positions.** Supervisors wishing to establish labor pool positions shall work  
648 collaboratively with HRD to create the position classification.

649 (a) HRD shall advertise each labor pool position as an on-going recruitment pool.

650 (b) Upon receipt of an application for a labor pool position, HRD shall:

651 (1) Perform the applicant screening based on essential requirements and any  
652 required skills based testing;

653 (A) HRD shall provide candidates for labor pool positions with  
654 opportunities for skills based trainings.

655 (B) If an applicant does not satisfy the skills based testing requirements,  
656 HRD shall refer the applicant to the relevant skills based trainings offered  
657 by the Nation.

658 (C) There is no limit on the number of times an applicant may apply for a  
659 labor pool position and/or may take the required skills based testing.

660 (2) If eligible and qualified, place the applicant into the labor pool; and

661 (3) Respond to applicant requests for status updates regarding their placement  
662 into a labor pool.

663 (c) HRD shall maintain a current list of eligible and qualified applicants for each labor  
664 pool position.

665 (d) Supervisors shall notify HRD when labor pool positions become vacant and shall take  
666 one (1) of the following actions:

667 (1) Work with a hiring representative to interview, pursuant to article 5-8, and  
668 rank, pursuant to article 5-9, each applicant in the labor pool. When all interviews  
669 and rankings of the labor pool are complete, the supervisor shall make a selection  
670 pursuant to article 5-10; or

(2) Request that a hiring 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 shall be selected.

(e) If an applicant in a labor pool is selected and refuses the position, HRD shall remove his or her name from the list of eligible and qualified applicants for the specific labor pool position.

**5-8. Interviews.** The purpose of the interview process is to verify applicants' qualifications in order to ensure that the applicants' experience aligns with the Nation's employment needs. If an applicant's interview reveals that his or her experience does not align with the Nation's needs, the applicant may be screened out of the applicant pool.

(a) The hiring representative may schedule interviews if there are one (1) or more qualified and eligible applicants and shall schedule interviews under the following circumstances:

(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 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.

(b) If there are not sufficient qualified and eligible applicants, the hiring representative shall discuss with the supervisor whether interviews should move forward or if the position should be reposted.

(c) The hiring representative and the supervisor shall work together to develop interview questions, provided that the hiring representative shall make the final determination of which interview questions may be asked.

(d) Each interviewing team shall minimally consist of an hiring representative and the supervisor(s), but may also include subject matter experts (SMEs). Further, each interviewing team shall include a minimum of two (2) persons eligible to score the applicant. If the position the applicant is applying for has only one (1) supervisor and there are not any subject matter experts participating in the interview, the supervisor shall request the reviewing supervisor or a lateral or higher ranking employee to the employee supervisor to be part of the interviewing team, provided that, all scoring members of the interviewing team shall be from the same entity.

(1) Supervisor(s) requesting that subject matter experts participate in the interview team shall provide the hiring representative with justification for the said inclusion.

(2) The hiring representative shall make the final determination of who may participate in the interview process.

(e) If the interviews result in only one (1) qualified applicant, the hiring representative shall discuss with the supervisor(s) whether the selection should move forward with hiring the qualified applicant or if the position should be reposted.

**5-9. Applicant Ranking.** The hiring representative shall score applicants based upon Oneida and Indian preference and veteran status only and the supervisor(s) and, if applicable, subject matter experts shall score applicants based on their interviews with an available score range of zero (0) to fifteen (15) for each interview question.

(a) Upon verification by Tribal identification card or with the Trust Enrollment Department, the hiring representative shall award applicants points for Oneida and Indian preference as follows:

(1) Persons who are Tribal members – Fifteen (15) Points;

(2) Persons who meet the membership 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 – Ten (10) Points;

(3) Persons enrolled in any federally recognized tribe other than this Nation – Five (5) Points;

(4) All other non-Indian persons – Zero (0) Points.

(b) Applicants who are veterans shall submit the relevant proof of service, which may include, but is not limited to, a DD214 Discharge Form, Reservist Identification Card, Veteran's Affairs Identification Card, or National Guard Identification Card, and will receive five (5) points so long as the applicant has one (1) of the following military discharges or statuses:

(1) Honorable discharge;

(2) General discharge under honorable conditions;

(3) Reservist; or

(4) National Guard.

(c) At the close of the interview process, the hiring representative shall calculate each applicant's total interview score including Oneida and Indian preference points, veteran points and interview question points and shall rank the applicants in order from highest score to lowest.

**5-10. Selection.** All hiring decisions shall adhere to the Oneida and Indian preference policy as contained in the Employment law.

(a) When interviews have been completed pursuant to article 5-8, the hiring representative shall:

(1) If there are two (2) or more qualified and eligible Oneida applicants when all pre-selection screening is complete, provide the supervisor(s) with the top three (3) ranked Oneida applicants pursuant to article 5-9, unless there are only two (2), in which case the top two (2) shall be provided.

(2) If there are not two (2) or more qualified and eligible Oneida applicants when all pre-selection screening is complete, provide the supervisor(s) with the top three (3) ranked applicants pursuant to article 5-9, provided that if there is one (1) qualified and eligible Oneida applicant, he or she shall be included in top three (3) regardless of rank.

(3) Schedule second interviews with the applicants provided to the supervisor(s) as may be requested by the supervisor(s).

(b) When all interviews have been conducted, 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 shall be selected:

(1) For single vacancies, the supervisor shall select one (1) of the top three (3) ranked applicants.

(2) For multiple positions, the supervisor shall make a selection from the top three (3) ranked applicants for the first position and the hiring representative shall provide the next ranked applicant for each subsequent position to be filled so that the supervisor is picking from a group of three (3) applicants for each position.

(3) Should a selected applicant withdraw his or her application or decline the position, the supervisor shall make another selection from the next top three (3) ranked applicants until a selected applicant accepts the position.

(4) If none of the initial top three (3) applicants accept the position, the supervisor may elect to repost the position instead of offering the position to one (1) of the next top three (3) applicants.

(c) If additional vacancies occur for a position for which the selection process has recently been completed, the supervisor may hire from the last interview packet for a period of three (3) months from the date the last applicant was hired for the same position, provided that the selection shall follow all requirements contained in this article.

**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 shall be approved by HRD to ensure procedural compliance with article 7-1(b). Supervisor's may use discretion as to where to place employees so long as the employee is placed in the correct third of the position's grade and the supervisor considers any advanced education or experience to compensate the employee above the bottom of the appropriate third of the grade. Should the supervisor seek to deviate from the standard grade placement, the supervisor shall provide justification to HRD, then HRD and the reviewing supervisor are required to approve the selected wage or salary.

(a) The hiring representative shall issue a conditional position offer to the selected applicant pending the applicant's successful completion of the pre-employment drug screening test.

(1) The conditional position offer shall include the wage/salary agreed upon by the applicant and the hiring representative based on their negotiations.

(2) An applicant may re-schedule a drug screening one (1) time, provided that it shall be re-scheduled within twenty-four (24) hours of the originally scheduled drug screening. Failure to show up for a scheduled (or re-scheduled) drug screening and/or refusal to sign the Pre-Employment Drug Screening Form is treated as a failed drug screening.

(3) Applicants who fail the pre-employment drug screening test are ineligible for employment for a period of 180 calendar days.

(4) Applicants that are current employees and fail the drug screening required for a transfer are not eligible for a promotion or transfer for a period of 180 calendar days from the date of a failed drug screen and Employee Health Nursing shall submit notice of the failure to the employee supervisor and HRD for reporting purposes.

(b) As part of the hiring negotiations, the hiring representative may negotiate to provide the employee with relocation assistance in accordance with the guidelines provided in the standard operating procedure that HRD shall develop.

**5-12. Employee Orientation.** At the close of the selection process, the hiring representative shall schedule the selected applicant for employee orientation.

(a) All employees shall complete all required stages of training and orientation, except those to be provided by the entity, within one (1) month of the employee's starting date, provided that it is recommended that employee orientation be completed prior to the employee beginning work.

(1) A former employee that is re-hired is not required to complete employee orientation upon re-hire unless a period of three (3) or more years has lapsed since the employee last completed orientation, except that employee orientation is required if the employee underwent employee orientation before the Employment law went into effect and benefit orientation is required if the employee is signing up for benefits.

(2) Transferring employees are not required to complete employee orientation.

(b) The employee orientation includes:

(1) An overview of the Nation;

(2) Organizational overview;

(3) Key employment laws and Handbook discussion;

(A) During orientation HRD shall require all employees to sign an acknowledgment stating that they have been made aware of the key

employment laws and this Handbook and that they are responsible for complying the said employment laws and this Handbook.

- (4) Insurance and benefits information;
- (5) Health and safety information;
- (6) Any additional training as may be necessary for various entities.

(c) Entities shall provide more in-depth orientation and/or training programs to assist employees with a successful introduction into the entity's expectations. The entity's orientation and/or training shall begin within one (1) week of the employee's start date.

(d) Employees holding positions identified as caregiver positions, which are those that work with children and/or vulnerable adults, shall complete separate training related to their position as determined by HRD. Any caregiver specific training shall be completed within the employee's probationary period.

(e) When HRD is administering training or orientation, HRD shall:

- (1) Correct any employee's poor behavior in order to maximize the benefit of training and orientation for all employees;
  - (A) HRD may excuse any employee found to be exhibiting poor behavior. Further, if it is suspected that the employee may be influenced by alcohol and/or an illegal substance, HRD shall refer the employee to Employee Health Nursing for a drug and alcohol screening.
  - (B) A new employee excused from training or orientation and/or referred to Employee Health Nursing pursuant to sub-article (A) may not return to work until the said training or orientation is complete.
  - (C) If at anytime HRD is required to address an employee's behavior while in training or orientation, HRD shall provide notice of the incident to the employee supervisor.
- (2) Determine whether the employee has successfully completed the required orientation and training.

(f) Supervisory Employees. Within six (6) months of a new employee assuming supervisory responsibilities, he or she shall successfully complete supervisor training, which includes training on this Handbook.

**5-13. Probationary Period.** All employees, excluding temporary employees, are subject to a probationary period lasting a minimum of ninety (90) days and a maximum of six (6) months. An employee supervisor that has timely performed an employee's evaluations as required in sub-article (d)(1) may request an extended probationary period for the employee, provided that the extension may not cause the probationary period to exceed six (6) months in duration and shall be approved by HRD for procedural compliance.

- (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 after the close of the initial ninety (90) probation period.

(b) Employees are eligible to receive all paid holidays while on probation.

(c) Employee supervisors shall provide each probationary employee with two (2) entry evaluations:

(1) The first occurring within the first six (6) weeks from the employee's start date; and

(2) The second occurring within seventy-five (75) to ninety (90) days from the date the employee completed the position's training requirements.

(d) If an employee supervisor extends an employee's probationary period, the supervisor shall provide the employee with an additional evaluation upon completion of the probationary period.

(e) HRD shall provide all employee supervisors and reviewing supervisors with a reminder notice to complete the required probationary evaluations at least five (5) business days prior to the evaluation becoming due.

(f) During the probationary period, employees may be terminated for any single behavior meriting corrective action as provided in article 12-2. In addition, employees on probation do not have appeal rights beyond those provided in article 13-1.

(g) Probationary employees may not use payroll deductions to make purchases from Tribal entities, except that payroll deductions are allowed for uniforms and other purchases required by the Nation for employment.

#### **5-14. Career Ladders: Student Internships, Pre-Supervisor Certification and Promotions.**

Supervisors are encouraged to work with employees to create career ladders to plan for employees' advancement within the Nation.

(a) Student Internships. The Nation encourages the use of student internships to recruit Tribal members enrolled in post-secondary education to work for the Nation upon completion of their education and to provide such students with work experience. Nothing in this article may be interpreted to prevent entities from utilizing interns from internship programs provided by parties other than the Nation.

(1) Interns are considered temporary employees and shall:

(A) Be at least seventeen (17) years of age;

(B) Be a Tribal member; and

(C) Be enrolled in a post-secondary educational institution.

(2) HRD shall manage and coordinate the student internship program.

(3) Student interns are subject to only the selection and hiring requirements contained in articles 5-6, 5-12 and 5-17. In addition, student intern applicants shall submit copy of either their unofficial transcript or an acceptance letter to a post-secondary educational institution to HRD.

(4) Entities participating in the student internship program shall provide each student intern with a mentor who shall:

- 906 (A) Instruct, mentor, guide and advise student interns in relation to their  
907 roles, responsibilities and functions within the entity;  
908 (B) Develop a meaningful career focused experience, tasks and  
909 responsibilities while working for the entity;  
910 (C) Provide student interns with meaningful feedback and assessments of  
911 their performances;  
912 (D) Work with student interns to establish learning objectives and goals;  
913 (E) Communicate with HRD on a bi-weekly basis regarding the student  
914 interns' performance; and  
915 (F) Complete a post-internship survey for each student intern.

916 (5) HRD shall:

- 917 (A) Review student internship applications and make placements based on  
918 education and/or interest;  
919 (B) Determine whether compensation is available for student interns, and,  
920 if it is, shall annually determine the wage that will be paid to all student  
921 interns for the duration of the fiscal year. The ability to pay student  
922 interns a wage is dependent on the Nation's budget and available funding.  
923 Student interns are not guaranteed to be compensated for participation in  
924 the student intern program.  
925 (C) Notify mentors of the student intern's placement, schedule, start and  
926 end dates and contact information;  
927 (D) Notify student interns of their placements, start and end dates,  
928 orientation and training dates and whether their internship includes  
929 compensation; and  
930 (E) Notify the Time and Attendance Department of the student intern's  
931 name, employee number and mentor's name.

932 (6) The mentor shall notify HRD of the student intern's last day and shall meet  
933 with the student intern to provide a written evaluation. The written evaluation shall  
934 include, but is not limited to, a summary of the student intern's work and  
935 accomplishments, an assessment of the student intern's performance strengths and  
936 weaknesses and review of the post-internship survey.

937 (7) Students participating in the student intern program may use their internship  
938 experience towards the experience requirements that may be required in the  
939 Nation's position descriptions and/or towards the requirements of the table of  
940 equivalency as provided in article 5-6(b)(2).

941 (b) Pre-Supervisor Certification. HRD shall develop a training and certification program  
942 for employees that do not have supervisory experience that wish to be considered for  
943 supervisory positions in the future. Additional information related to this program is  
944 provided in article 5-6(b)(3) and with HRD.

(c) Promotions. Supervisors may reward an employee's performance achievements by promoting the employee.

(1) Each entity, at the divisional level, shall develop a standard operating procedure establishing how employees will fairly and consistently be selected for promotions and shall submit the standard operating procedure to HRD. HRD shall review and approve or deny all promotions based on procedural compliance with the division's standard operating procedure.

(A) At a minimum, the entity and HRD shall ensure that the standard operating procedure requires that a minimum of two (2) employees are considered for each promotion.

(B) The entity shall require knowledge based testing be used to evaluate candidates for a promotion. HRD shall assist entities in developing such knowledge based testing.

(2) Supervisory Employees. Within six (6) months of a promoted employee assuming supervisory responsibilities, he or she shall successfully complete supervisor training, which includes training on this Handbook.

(3) The salary and wage negotiations requirements in article 5-11 apply to employee promotions.

(4) In order to be eligible for a promotion, the employee shall have attained six (6) months of continuous employment with the Nation and may not be a temporary employee.

**5-15. Employee Transfers.** Employee transfers shall 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 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 and to provide succession planning. Unless a shorter timeframe is agreed upon by the employee and the supervisors, all transfers shall be complete within sixty (60) days of the date notice of the transfer was provided to the employee's current employee supervisor.

(b) Employees become eligible to transfer within their entity after achieving six (6) months of continuous employment in the employee's current position with the Nation and are eligible to transfer organization-wide after achieving one (1) year of continuous employment with the Nation. Temporary employees are not eligible for transfers.

(c) Transferring employees are subject to the eligibility screening provided in article 5-6.

(d) 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).

(e) Within ten (10) business days of the effective date of the transfer, the employee supervisor accepting a transferring employee shall review the employee's last twelve (12)

months of employment record with the employee. At such time, the employee supervisor shall provide notice that the employee's record is required to transfer with the employee, which includes required terminations for accumulated corrective actions as provided in article 12-6(c)(1)(A).

(f) The salary and wage negotiations requirements in article 5-11 apply to employee transfers.

(g) If the supervisors within an entity wish to transfer employees internally within their division without posting subject to article 5-3(b)(1), the entity, at the division level, shall create a standard operating procedure establishing how employees will fairly and consistently be selected for internal transfers and shall submit the standard operating procedure to HRD.

**5-16. Interim Status Employees.** Employees, excluding temporary employees, may be assigned into a vacant position on an interim basis until the vacant position is filled, provided that such assignments shall be approved by the current employee supervisor, the prospective employee supervisor and prospective reviewing supervisor and, for procedural compliance, also by the hiring representative. The current employee supervisor shall keep the interim status employee's position available for the maximum interim period provide in 5-16(b) below and, for that reason, unlike a normal transfer, the current employee supervisor may deny an interim transfer of his or her employee.

(a) Absent a leave or any other circumstance that would require holding the position, vacant positions shall be posted prior to being filled on an interim basis.

(b) Interim transfers may be requested in six (6) months increments, provided that an interim transfer may not exceed a period of one (1) year.

(c) Supervisors shall complete the interim assignment paperwork as may be required by HRD.

(d) When making interim transfers, supervisors may waive any hiring requirements except the following, as applicable:

(1) Tribal member only;

(2) Certifications;

(3) Licensing;

(4) Background and security checks; and

(5) Pre-employment drug screenings.

(e) The employee supervisor may start the employee in the interim position only after all approvals have been obtained as noticed to him or her by HRD.

(f) The salary and wage negotiations pursuant to article 5-11 apply to employee interim reassignments.

(g) An interim transfer employee may not be transferred into the position he or she holds on an interim basis as a regular status employee.

(1) The only exception to this restriction is that an employee placed into an interim position that is required to be held open (i.e. pending an appeal or a family

medical leave) in the same entity (based on divisional level) he or she is currently employed in, may be transferred or promoted into the position when the position is formally vacant (i.e. when the termination is upheld or the employee is separated because he or she cannot return from family medical leave). This exception is available because the transfer or promotion may not be completed until the position is vacant.

(2) In order to qualify for the exception, the interim employee shall have otherwise qualified for a transfer or promotion as provided in this Handbook.

**5-17. Temporary Employees.** Supervisors may request to hire temporary employees to fill an emergency or short term need or to employ youth workers, student interns or seasonal workers, provided that such hiring requires the approval of the employee supervisor, reviewing supervisor and, for procedural compliance, the hiring representative.

(a) An employee taking a temporary positions may not be employed for the Nation for a period exceeding six (6) months, with one (1) six (6) month extension available only in the event of a hiring freeze. The employee supervisor and HRD shall enforce end dates for temporary employees. Political appointees are exempt from these timeframes and may serve for the full term of the Oneida Business Committee member that appointed them.

(b) A supervisor is not required to post a position prior to selecting a temporary employee to fill the position.

(c) Supervisors may not schedule any temporary employee to begin work until all required approvals have been secured, all paperwork as may be required by HRD has been completed and the hiring representative has provided the supervisor with the earliest start date available.

(d) Supervisors may request a sub-relief pool position to fill in for employees on vacation.

(1) Examples of sub-relief positions include, but are not limited to, teachers, pharmacists, etc.

(2) Sub-relief employees are temporary employees.

(3) Supervisors shall review their list of sub-relief employees annually and shall notify HRD to remove any people who may have become regular status employees of the Nation.

(e) HRD shall maintain a list of applicants interested in temporary and sub-relief work.

(f) Hiring of temporary and sub-relief employees shall adhere to the Oneida and Indian preference policy as described in the Employment law and this Handbook.

(g) Temporary employees, excluding political appointees, may not use payroll deductions to make purchases from Tribal entities, except that payroll deductions are allowed for uniforms and other purchases required by the Nation for employment.

(h) Temporary employees may not appeal the end dates of their temporary contracts and/or temporary service.

(i) Temporary employees may be terminated at any time the supervisor determines that the employee commits a prohibited behavior meriting corrective action and do not require accumulated corrective actions pursuant to article 12-6(c)(1)(A). In addition, temporary employees do not have appeal rights beyond those provided in article 13-1.

(j) It is recommended that when severing temporary employment based on an employee's inability to perform the duties of the position for which the employee was hired, a prohibited behavior meriting corrective action in article 12-2(d)(8), that the employee is separated rather than terminated. This allows the employee to pursue a better fitting position within the Nation's available positions.

(k) The salary and wage negotiations pursuant to article 5-11 apply to temporary employees.

**5-18. Entity Re-organization.** The re-organization of an entity may not be considered to be an adverse employment action unless the entity fails to abide by its re-organization plan. An entity re-organization may include, but is not limited to, modifying job descriptions and moving employees to different/new positions within the entity. A supervisor may re-organize his or her entity, provided that:

(a) He or she shall work with HRD to develop a re-organization plan;

(b) He or she shall have the approval of the highest level supervisor in the chain of command;

(c) He or she shall complete the re-organization forms required by HRD and shall work with the Accounting Department to transfer the entity's budget as may be appropriate;

(d) The salary and wage negotiations pursuant to article 5-11 apply to employees subject to position changes based on an entity's re-organization; and

(e) The re-organization of the entity shall be in the best interest of the Nation.

**5-19. Organizational Wide Re-organization.** Any re-organization of the Nation's entire employment base shall be approved by the Oneida Business Committee. Such organizational wide re-organizations may not be considered to be an adverse employment action unless the Nation fails to abide by the re-organization plan developed and approved by the Oneida Business Committee. An organizational wide re-organization may include, but is not limited to, modifying job descriptions and moving employees to different/new positions, and combining, eliminating or creating entities.

(a) At the Oneida Business Committee's request, HRD shall work with the Oneida Business Committee to assist in creating an organizational wide re-organization plan.

(b) The salary and wage negotiations pursuant to article 5-11 apply to employees subject to position changes based on an organizational wide re-organization.

## VI. ANNUAL PERFORMANCE EVALUATIONS AND EMPLOYEE DEVELOPMENT

**6-1. Annual Performance Evaluations.** The purpose of the annual performance evaluation is to assess the employee's development in their current position and to provide goals that promote both the growth of the employee and the Nation.

(a) Employee supervisors shall evaluate each of their employees annually in the same month as the employee's date of hire for his or her current position and shall meet with each employee to discuss the contents of the annual performance evaluation.

(1) When evaluating employees having supervisory responsibilities, the employee supervisor shall request from HRD and consider the report of the supervisor's accumulated evaluations from employees received under article 6-2. The reviewing supervisor shall then provide ten percent (10%) of the employee supervisor's performance evaluation score based on such evaluations.

(A) For employee supervisors having three (3) or less employees, the reviewing supervisor performing the evaluation shall still request from HRD and review the report of the supervisor's accumulated evaluations from employees received under article 6-2. However, in such circumstances, the reviewing supervisor is not required to base any portion of the employee supervisor's performance evaluation score on such evaluations.

(2) HRD shall provide all employee supervisors with a monthly notice of all employees requiring evaluations in the coming month.

(3) HRD shall follow-up with all employee supervisors that have not turned in the required evaluations, including re-evaluations required under article 6-1(f), at the end of each month and shall include notice to the reviewing supervisor.

(4) Employee supervisors with an employee on leave, modified duty, or suspension whom is up for his or her annual performance evaluation shall complete the said evaluation within two (2) weeks of the employee's return.

(b) Each annual performance evaluation shall review the following:

(1) The employee's performance and competency strengths and weaknesses; and

(2) An employee development plan, including improvement and development goals for the next review period based on a collaboration of the employee and employee supervisor. If an employee's evaluation score results in an unsatisfactory evaluation, the employee development plan shall also include the following:

(A) Specific and critical performance deficiencies;

(B) Position performance standards;

(C) Any other items that may be appropriate to include in the performance improvement plan, which may include, but are not limited to, referral to an

Employee Assistance Program outside the corrective action process and required re-training.

(c) Both the employee and the employee supervisor shall sign and date the annual performance evaluation.

(d) The employee supervisor shall provide a copy of the signed annual performance evaluation to both the employee and HRD.

(e) Employees who disagree with their annual performance evaluation may seek mediation with their employee supervisor at HRD.

(f) All employees receiving an overall unsatisfactory score on their annual performance evaluation shall be re-evaluated by their employee supervisor within ninety (90) days of their signed annual performance evaluation.

(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, shall receive an annual evaluation score that is an average of the initial evaluation score and the re-evaluation score.

**6-2. Employee Evaluations of Supervisors.** All employees shall be given the opportunity to anonymously evaluate their employee supervisor through the Nation's supervisor evaluation program. When an employee supervisor provides an employee with his or her annual self-performance evaluation materials, the employee supervisor shall provide the employee with the supervisor evaluation forms created by HRD.

(a) The supervisor evaluation forms shall include:

(1) Instructions for completing the evaluation of his or her employee supervisor;

(2) Instructions for delivering the evaluation, either electronically or in hard copy form, to HRD; and

(3) The due date for completing the evaluation of his or her supervisor, which the employee supervisor shall enter.

(A) The supervisor evaluation due date shall be prior to the date the employee supervisor has scheduled for his or her evaluation of the employee and shall provide the employee a minimum of five (5) business days to complete the supervisor evaluation.

(b) HRD may not accept any supervisor evaluations received after the due date provided by the employee supervisor.

**6-3. Conflict of Interest Renewal Form.** Each year at the time of each employee's annual review, employee supervisors shall require that each employee complete an updated conflict of interest form. The employee supervisor shall collect all employees' updated conflict of interest forms and shall forward them to HRD to be placed in each employee's file.

## VII. COMPENSATION AND BENEFITS

**7-1. Tribal Compensation Plan.** Employees' compensation is based on the compensation plan created by HRD with required collaboration with entities, including, but not limited to, each entity's upper management. The compensation plan shall be approved by the Oneida Business Committee pursuant to Section 201.7-1 of the Employment law. Also, pursuant to Section 201.7-1(a) of the Employment law, wage and salary adjustments and benefits available to employees are dependent upon available funding allocations.

(a) In order to remain competitive with the local market in filling positions, HRD shall review, adjust and approve all wage and salary charts of the Nation as needed, but not less than once every three (3) years.

(b) HRD shall work with supervisors to create grading placements for each position within the Nation. To ensure earning equity within the Nation's same or similar positions, when negotiating Employee's wage/salary upon initial hire or transfer, employee supervisors shall place employees correctly in the bottom third, middle third or top third of the position's grade based upon the employee's education, experience, licensing and certification. The placement standards within each grade are as follows:

Grade Placement	Requirements
<b>Top Third: Master</b>	<ul style="list-style-type: none"><li>— Employees who have achieved all job requirements and have longevity in the position for ten (10) or more years.</li><li>— Reserved for employees who have made significant, ongoing contributions over time.</li><li>— Employees that may be considered subject matter experts.</li></ul>
<b>Middle Third: Proficient</b>	<ul style="list-style-type: none"><li>— Employees with additional experience and education than what is required by the position description, this is the hiring "sweet spot" for fully competent employees ready to hit the ground running.</li><li>— Current employees with longevity in the position for five (5) to nine (9) years that meet the minimum education and experience required to maintain the position, it is expected that all employees will reach this range position over time.</li></ul>
<b>Bottom Third: Developing</b>	<ul style="list-style-type: none"><li>— Employees with position longevity of less than five (5) years that meet the minimum education and experience requirements for the position, regardless of whether using the table of equivalency or not. Reserved for employees early in their learning curve.</li></ul>

(c) HRD, through the Nation's budgeting process, and by no later than February of each year, shall make recommendations for the organization-wide issuance of the following based upon market trends:

(1) Cost of living adjustments where a cost of living adjustment is an adjustment to employees' compensation in order to counteract the effect of inflation and shall

consider the Consumer Price Index from the Bureau of Labor Statistics for the nearest area in the state of Wisconsin, provided that HRD may also consider other tools it deems appropriate;

(2) Wage/salary adjustments where a wage/salary adjustment is a fluctuation in a position's and/or employee's compensation based on market trends or other employment driven policies such as retention;

(3) 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;

(4) Bonuses where a bonus is a lump sum of money given to an employee in excess of an employee's wage or salary requirements; and

(5) Incentives where incentives are measures taken by the Nation to encourage and/or recognize strong employee performance and/or years of service and may include, but are not limited to, gifts, gift cards and social functions.

(d) Cost of Living Adjustments. If offered, cost of living adjustments shall be offered organization-wide. When cost of living adjustments are provided, HRD shall adjust the grades developed under article 7-1(b) to reflect the adjustment.

(e) Wage/Salary Adjustments. All wage and salary adjustments, whether implemented organization-wide or initiated by individual entities shall remain within the grades and placements as developed in article 7-1(a) and (b).

(1) The Nation may institute wage and salary adjustments organization-wide based on the approved compensation plan. Wage and salary adjustment that increase a position's compensation shall go into effect for all current employees and new hires, whereas adjustments that decrease a position's compensation shall only go into effect for new hires.

(2) Entities may also independently initiate wage and salary adjustments for critical employees and/or positions. Entities shall develop and submit to HRD a standard operation procedure for implementing wage and salary adjustments for critical employees and/or positions prior to effectuating any such adjustments. Entity supervisors shall submit all such adjustments to HRD for approval indicating procedural compliance with the entity's standard operating procedure.

(3) At any time that wage and salary adjustments are made, supervisors shall evaluate each employee's placement within the position's grade and may request assistance from HRD in performing such evaluation.

(f) Merit Based Increases. Employees having one (1) or more years of continuous service with the Nation and who receive at least a satisfactory score on their annual evaluation are eligible to receive merit based increases. Merit based increases shall be awarded in conjunction with an employee's annual evaluation, provided that no merit based increases may be awarded until the Nation's annual budget is approved by the General Tribal Council. Employees at the top of their position's grade may not be

1238 awarded a merit based increase, but may be offered a lump sum of money as a  
1239 performance reward in lieu of a merit based increase. Performance rewards may not  
1240 exceed the annual value of the merit based increase the employee would have been  
1241 eligible for if the employee was not at the top of the position's grade.

1242 (1) Merit based increases may be directed to be provided organization-wide based  
1243 on the compensation plan. In such circumstances, the compensation plan shall  
1244 provide the dollar amount of the entity's budget that shall be allocated to merit  
1245 based increases based on the number of employees working for the entity.  
1246 Entities shall then award the merit based increases in accordance with each  
1247 entity's standard operation procedure, which shall provide for merit based  
1248 increases fairly for all levels of employment. Such standard operating procedure  
1249 shall be submitted to HRD along with the actual implementation of the merit  
1250 based increases in order for HRD to ensure procedural compliance with the  
1251 standard operating procedure.

1252 (2) Entities may also independently initiate merit based increases through their  
1253 annual budgets. Entities shall develop and submit to HRD a standard operation  
1254 procedure for awarding merit based increases fairly to all levels of employment.  
1255 Prior to implementation, merit based increases shall be approved by HRD for  
1256 procedural compliance with the standard operating procedure.

1257 (g) Bonuses and Incentives. Bonuses and incentives may be implemented organization-  
1258 wide or initiated by individual entities. Bonuses and incentives may not be implemented  
1259 until the annual budget is approved by the General Tribal Council. Supervisors shall  
1260 require employees receiving incentives, other than social functions and years of service  
1261 gifts, to sign an acknowledgment that the incentive is taxable income in accordance with  
1262 accounting guidelines.

1263 (1) Bonuses and/or incentives may be directed to be provided organization-wide  
1264 based on the compensation plan. In such circumstances, the compensation plan  
1265 shall provide the dollar amount of the entity's budget that shall be allocated to  
1266 bonuses and/or incentives based on the number of employees working for the  
1267 entity. Entities shall then award the bonuses and/or incentives in accordance with  
1268 each entity's standard operation procedure which shall fairly provide for bonus  
1269 and/or incentive distribution to all levels of employment. Such standard operating  
1270 procedures shall be submitted to HRD along with the actual implementation of the  
1271 bonuses and/or incentives in order for HRD to ensure procedural compliance with  
1272 the standard operating procedure.

1273 (2) Entities may also independently initiate bonuses and/or incentives through  
1274 their annual budgets. Entities shall develop and submit to HRD a standard  
1275 operation procedure for fairly implementing bonuses and/or incentives to all  
1276 levels of employment prior to implementation. Prior to implementation, bonuses

and incentives shall be approved by HRD for procedural compliance with the standard operating procedure.

(h) Direct reports to the Oneida Business Committee shall notify the Oneida Business Committee each time their entity implements any of the items contained in (e) through (g) of this sub-article, at which time the Oneida Business Committee shall consider implementing the same for the direct report based on the direct report's entity's standard operating procedure.

**7-2. Compensation for Additional Duties.** Employee supervisors shall negotiate additional duty compensation when assigning duties to an employee, excluding temporary employees. Additional duties compensation is available for duties that are of a different nature from those the employee is already responsible for and/or specialized duties of the same nature but in excess of those the employee is already responsible for. Further, such duties shall be required because the entity has a vacant position, has been assigned additional responsibilities but has not hired additional employees and/or is pursuing a special project that was not previously the entity's responsibility or related to its area. For the purpose of this article, specialized duties are those tasks that require the employee to have particular training or formal education. In order to be eligible to receive additional duty compensation, the employee shall retain responsibility for their original duties and assume additional responsibilities.

(a) Additional duties compensation may exceed the maximum wage or salary of the employee's grade.

(b) Additional duties compensation may be approved for additional duties if assumed for at least four (4) pay periods and for a maximum period of one (1) year. Additional duties compensation approvals shall include an effective date and an end date, provided that payment for additional duties may not begin until the fifth (5<sup>th</sup>) pay period following the effective date. HRD shall ensure that the employee receives retroactive payment for the initial four (4) pay periods of additional duties assignments and that additional duties compensation ceases effective upon the end date, provided that a supervisor may extend an end date within the one (1) year period.

(c) When assigning additional duties, an employee supervisor may waive any position requirements except the following, as applicable:

- (1) Tribal member only;
- (2) Certifications;
- (3) Licensing;
- (4) Background and security checks; and
- (5) Additional drug screenings.

(d) If an employee supervisor revises any position description following assignment of additional duties in order to incorporate the additional duties to the employee's existing duties, the employee shall meet all eligibility and qualification requirements.

(e) Supervisor's approving additional duties compensation shall create an additional duties performance agreement which shall be signed by the employee, the employee

supervisor and the reviewing supervisor. This agreement shall be forwarded to HRD and approved for procedural compliance with this Handbook, specifically to ensure that the duties assigned qualify for additional duties compensation. HRD has the final say as to which duties qualify for additional duties compensation. At a minimum, the additional duties performance agreement shall contain the following:

- (1) The specific responsibilities and duties that the employee is assuming;
- (2) The agreed upon percentage of additional duties compensation; and
- (3) The start and end dates of additional duties compensation.

(f) Unless an entity develops its own standard operating procedure for negotiating additional duties compensation, supervisors shall negotiate additional duties compensation based on the following:

Types of Additional Duties Assumed	Approved Additional Compensation Ranges
Assumption of three (3) to four (4) non-supervisory but specialized duties.	5%
Assumption of supervisory responsibilities for employees, kronos approvals, and short term planning.	6% - 9%
Assumption of supervisory responsibilities for supervisor/management level staff, kronos approvals, budget approval/sign-off, and short term planning.	10% - 14%
Assumption of supervisory responsibilities for upper management, kronos approvals, budget approval/sign-off, and short and long term planning.	15%

\*If more than one (1) employee is assuming one (1) position's duties, the additional duties percentages shall be divided between the employees, but may not exceed the maximum range according to this table.

**7-3. Compensation for Travel Time.** Time spent traveling on an airplane, train or car is compensable time if the said travel is part of the employee's position responsibilities.

- (a) Travel from home to work and work to home is considered portal to portal travel and is not compensable.
- (b) Employees required to drive as a part of the responsibilities of their position, shall be certified to drive a Tribal vehicle or their own personal vehicle.
- (c) Employees' time spent traveling from work site to work site is compensable. An example of work site to work site travel would be a casino employee whose normal work site is IMAC being asked to go to West Mason Street casino location to complete his or her shift.
- (d) Employees are eligible for workers compensation while on travel.

**7-4. On-Call Compensation.** Employees holding positions that are supported by on-call services may receive on-call compensation as approved by the employee supervisor. Prior to an entity's offering on-call compensation, the entity shall develop a standard operating procedure based on available industry standards which establishes the conditions under which such compensation may be offered and the compensation rate.

(a) Exempt (salaried) employees are not eligible for on-call compensation, but may, with the employee supervisor's approval, use flex time during the work week to accommodate for any time they are required to be on-call.

(b) If the employee is required to remain on site when the employee is on-call or so close to work site the employee cannot use their own personal time effectively, this is considered hours worked.

(c) Employees are required to be drug and alcohol free while on-call.

**7-5. Shift Differentials.** Entities that operate outside the Nation's normal business day may offer employees shift differentials in order to incentivize working shifts that are difficult to fill. A shift differential is an increased rate of compensation when working outside of the Nation's normal business day. If an entity chooses to offer a shift differential, the amount of increased compensation shall be the same for all employees and the entity shall develop a standard operating procedure establishing what rate is to be offered and for which shifts. The standard operating procedure shall be submitted to HRD for approval to ensure compliance with this Handbook.

**7-6. Lead Compensation.** Employee supervisors may approve lead compensation for wage earning employees that do not have current supervisory responsibilities and that the employee supervisor has designated to provide guidance to employees in his or her absence.

(a) Lead duties may not include disciplining, hiring employees or approving employees' work hours.

(b) Supervisors wishing to designate leads shall develop a standard operating procedure outlining lead responsibilities and lead compensation available, provided that it may not exceed two dollars (\$2.00) per hour; the said standard operating procedure shall be reviewed and approved by HRD for compliance with this Handbook.

**7-7. Positions Earning Tips.** Tips earned by an employee are considered to be part of his or her compensation. Entities with positions having tip earning capacity shall develop a standard operating procedure outlining how any tips earned will be dispersed to employees (i.e. whether each employee keeps all tips earned in his or her own capacity or whether there is a tip pool).

**7-8. Overtime Compensation.** Any and all overtime compensation shall be kept to a minimum and requires approval of the employee supervisor and reviewing supervisor prior to overtime hours being incurred. For the purposes of this article, overtime is classified as any hours worked by non-exempt (wage earning) employees in excess of forty (40) hours per week and is not inclusive of paid time off used.

(a) In case of overtime hours that may need to be incurred when a supervisor is not available for the required approvals, employees may incur overtime without supervisor approval in order to fulfill a business need.

(b) The Nation shall pay all employees eligible for overtime at a rate of 1.5 the employee's hourly pay. HRD shall maintain and make available to all supervisors, a list of each entity's salary earning employees, as salaried employees are not eligible for overtime compensation.

(c) If required to maintain efficiency of the Nation's business or to complete required regulatory functions, supervisors may require employees to work overtime hours.

(d) Employees shall report all overtime hours incurred to his or her employee supervisor.

**7-9. Speaker and/or Presenter Compensation.** 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 shall either:

(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

(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 Accounting Department to be added to the employee's entity's budget as income.

(c) Employees receiving compensation, including gifts and gift cards, equal or less than fifty dollars (\$50.00) in value are exempt from this requirement.

**7-10. Snow and Ice Removal Compensation and Work Week.** Employees engaged in snow and ice removal shall be compensated consistently as provided below.

(a) When snowstorms are forecasted within a work week, supervisors may send employees home on non-snow days to save on wages and so that the employees are able to prepare to shift from the normal work week schedule to perform snow and ice removal.

(1) Employees engaged in snow and ice removal shall be prepared to adjust their workweek schedule at any time that snow and/or ice removal becomes necessary.

(2) If a supervisor sends employees home and flexes their time in anticipation of a weather event, and the said weather event does not transpire, the supervisor shall allow employees to make up hours flexed outside of the employee's regularly scheduled times, including Saturdays, in order to minimize the likelihood that employees are unable to work a full work week because of weather event preparation.

(b) Non-salary employees that are called in and report for snow and/or ice removal and are dismissed before having worked one (1) hour are guaranteed to receive a minimum of one (1) hour of compensation at their regular rate of pay.

(c) Non-salary employees earn at their regular rate of pay for their regularly scheduled shift and earn at their regular rate of pay plus two dollars (\$2.00) for each hour worked outside of their regularly scheduled shift.

(1) For purposes of determining overtime compensation in accordance with article 7-7, the two dollar (\$2.00) per hour rate increase for non-salary employees working outside of their regularly scheduled shift shall be applied to the base rate of pay before increasing the rate by time and a half.

(d) Employees engaged in snow and/or ice removal shall comply with the Wisconsin Department of Transportation's rest requirements.

**7-11. Premium Pay.** The Nation shall pay non-salaried employees working during times of the year that are strong in traditions, but not recognized as official holidays premium pay, at a rate determined by HRD with collaboration with supervisors not to exceed four dollars (\$4.00) per hour. The said rate shall be added to the base hourly rate, inclusive of overtime pay.

(a) Premium pay is only available to non-salaried employees as follows:

(1) For Christmas Eve, a maximum of four (4) hours worked between 12:01 p.m. and 11:59 p.m.;

(2) For New Year's Eve Day from 5:00 p.m. to 11:59 p.m.; and

(3) For Easter Sunday from 12:00 a.m. to 11:59 p.m.

(b) Supervisors shall ensure that premium pay is included in their entity's budget through the budgeting process.

**7-12. Paid Holidays.** HRD shall distribute and post on Employee Self-Service a calendar of paid holidays observed by the Nation for the upcoming year no later than November 1<sup>st</sup> of the current year.

(a) Holiday Pay. Holiday pay is paid at the employee's regular rate of compensation. Full-time employees shall receive eight (8) hours of paid holiday time and part-time employees shall receive four (4) hours of paid holiday time. For positions earning tips, holiday pay shall be based on the position's average hourly earnings for the previous thirty (30) calendar day period.

(b) Holiday Worked Pay. In addition to holiday pay, non-salary employees working on holidays shall also receive holiday worked pay at the rate of one half of the employee's regular compensation rate.

(c) The Nation observes the following as 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) Floater Holidays for all Employees Working Outside of the Nation's Regular Business Day. The Nation offers floating holidays to employees working outside of the standard work day in order to recognize those employees for working evenings, weekends and holidays. Floating holidays provide employees alternate days to take the holiday pay offered by the Nation which would allow such employees the ability to spend "floating holiday" days at home with friends and

family the same way employees working standard business days are able to spend the Nation's recognized holidays. Employees that work outside of the Nation's regular business day may take a floating holiday for any and/or all holiday(s) recognized by the Nation which would allow the employee to take the holiday pay provided on a different day (i.e. the employee's birthday or a holiday that is not recognized by the Nation, like Hanukah).

(A) Wage earning employees taking a floating holiday that are required to work on a holiday recognized by the Nation will continue to receive holiday worked pay at one half the employee's regular rate. The holiday pay that the employee would normally also receive on that day is transferred to the day selected by the employee for the floating holiday.

(i) If a wage earning employee did not take a floating holiday and was required to work an eight (8) hour shift on Christmas day, the employee would be compensated for twenty (20) hours, eight (8) of which are based on his normal rate of pay, four (4) of which are based on holiday worked pay and the remaining eight (8) of which are holiday pay.

(ii) If a wage earning employee took a floating holiday to take holiday pay on the employee's birthday instead of Christmas day and worked eight (8) hours on Christmas day, the employee would be compensated for twelve (12) hours on his paycheck that covered his Christmas day shift and would receive his eight (8) hours of holiday pay on his paycheck that covered his birthday.

(B) Salaried employees working for an entity that qualifies for floating holidays may also float the holiday pay offered, although the salaried employee is not eligible for holiday worked pay.

(C) 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 shall be submitted to and approved by HRD for procedural compliance with this Handbook.

(D) If an employee elects to take a floating holiday in lieu of one (1) of the holidays recognized by the Nation, the employee is not eligible for holiday pay on the holiday recognized by the Nation that has been substituted for the floating holiday.

(d) Paid holidays falling on a Saturday will be observed the preceding Friday and paid holidays falling on a Sunday will be observed on the following Monday. Entities that do not operate under the Nation's standard business day and are open on the weekends shall observe the Holiday on the actual calendar day.

(e) The following employees are not eligible for paid holidays:

(1) Employees on a leave of absence;

- 1505 (2) Employees on investigative leave;  
1506 (3) Laid-off employees;  
1507 (4) Temporary employees; and  
1508 (5) Employees on suspension over the course of a holiday.  
1509 (f) In order to be eligible to receive compensation for the paid holiday, employees shall  
1510 work their scheduled days immediately preceding and following the paid holiday  
1511 recognized by the Nation, provided that approved paid time off meeting the notice  
1512 requirements in article 7-13(g)-(i) is not considered a scheduled day.

1513 **7-13. Paid Time Off (PTO).** Employees accrue PTO based on years of continuous service,  
1514 provided that temporary employees do not accrue PTO.

1515 (a) PTO accrual rates for full-time employees are as follows:

<b>Years of Service</b>	<b>Annual PTO Hours Accrued</b>
<b>0-3</b>	<b>144 Hours</b>
<b>4-7</b>	<b>184 Hours</b>
<b>8-15</b>	<b>240 Hours</b>
<b>16 +</b>	<b>296 Hours</b>

- 1516 (b) Part-time employees accrue PTO based on hours worked as a ratio of full-time hours.  
1517 (c) Once an employee reaches 280 hours of accrued PTO, he or she ceases to accrue  
1518 PTO. Employee supervisors shall notify employees in danger of reaching the accrual cap  
1519 when the employee reaches 200 hours of accrued PTO.  
1520 (d) Trade back of accrued PTO for cash is not permitted unless expressly authorized by  
1521 an Oneida Business Committee resolution, provided that, even if authorized by an Oneida  
1522 Business Committee resolution, employees may not trade in more than eighty (80) hours  
1523 of accrued PTO in one (1) year.  
1524 (e) Upon an employee's resignation, separation or termination, excluding temporary and  
1525 probationary employees, the Nation shall pay the employee out for any accrued and  
1526 unused PTO.  
1527 (f) PTO may be used for any reason, provided that the request for PTO shall be approved  
1528 by the employee supervisor. Employee supervisors shall approve all requests for PTO  
1529 unless the request would interfere with the business of the Nation. When an employee  
1530 supervisor denies a request for PTO, he or she shall provide justification supporting his or  
1531 her assertion that granting the request would have interfered with the business of the  
1532 Nation.  
1533 (g) Employees requesting PTO shall comply with the following timelines for submitting  
1534 the request to their employee supervisors:

<b>Days of PTO Requesting Off</b>	<b>Notice Required for the Request</b>
<b>1-2</b>	<b>1 day</b>
<b>3-5</b>	<b>1 week</b>
<b>6 +</b>	<b>2 weeks</b>

(h) In the case of an illness or unforeseen circumstance, an employee shall 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 for a maximum of six (6) occurrences in a rolling twelve (12) month period. In such circumstances, the employee supervisor's approval is not required, provided that the reduced notice requirement shall be satisfied. In circumstances where an employee is unable to provide any notice of an absence because the employee was medically incapacitated, as verified by a health care provider, supervisors shall allow PTO to be taken without fulfilling the notice requirements. For purposes of calculating the allowable six (6) occurrences:

(1) An employee may only use an occurrence without the potential of being subject to corrective action based on the entity's standards if the employee has available accrued PTO and meets the reduced notice requirements.

(2) Leaving work in the middle of a workday based on illness or unforeseen circumstances remains subject to employee supervisor approval and may not be considered an occurrence.

(3) Using multiple days of PTO for the same illness or unforeseen circumstance is considered one (1) occurrence so long as the employee:

(A) Notices his or her employee supervisor that he or she may need additional days off of work based on the illness or unforeseen circumstances on the first day he or she calls in to work; and

(B) Provides the employee supervisor with a note from health care provider or other verifiable written notice confirming that the employee required more than one (1) day off of work.

(4) The use of multiple days of PTO for the same illness or unforeseen circumstance may be considered a separate occurrence for each day if the employee does not meet the requirements contained in this article.

(i) Entities may develop their own standard operating procedures that deviate from the requirements contained in sub-articles (g) and (h). In regards to sub-article (h), unless excluded in subsection (1) below, entities may not provide employees with less than six (6) occurrences to use PTO with the reduced notice requirements in a rolling twelve (12) month period, and may not require greater than two (2) hours of notice for such call ins. 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.

(1) Entities that have service provider to service receiver ratios regulated by law (i.e. Oneida Airport Road Childcare Center or the Anna John Nursing Home), may develop separate standard operating procedures from those provided in sub-article (g) above for employees calling in with reduced notice based on illness or unforeseen circumstances. For these entities only, the entity's standard operating

procedure may provide less than six (6) occurrences to call in with reduced notice in a rolling twelve (12) month period and may require greater than two (2) hours of notice for such call ins if the entity determines such deviations are required in order to maintain the employee ratios required by law.

(j) Supervisors shall retain employee requests for PTO for a period of seven (7) years.

**7-14. Donation of PTO Hours.** An employee, excluding temporary employees, who accrue PTO, may donate such PTO to another employee, excluding temporary employees. In order to receive donated hours, the donee shall have a medical emergency requiring a prolonged absence from work, which may include intermittent absences related to the same illness or condition, for which the donee has insufficient accrued PTO (less than 20 hours). Employees may not receive donated hours in any circumstance outside of a medical emergency and HRD shall approve all donations of PTO for procedural compliance.

(a) In order to receive donated PTO, the donee shall provide his or her employee supervisor with documentation of the medical emergency from a health care provider. For the purposes of this article, a medical emergency is a major illness or medical condition; examples include, but are not limited to, cancer, heart attack, stroke and diabetes complications.

(b) Donated hours of PTO are paid at the donee's rate of compensation.

(c) Donated hours of PTO may only be used for the identified and documented medical emergency.

(d) Employees who receive donated PTO may not trade back these hours for cash under any circumstances.

(e) Employees may request donated PTO hours from individuals through the Nation's e-mail system, but may not include groups in such e-mail requests.

**7-15. Health Insurance.** HRD shall provide employees information related to health insurance benefits during the new employee orientation pursuant to article 5-12(b)(4) and shall provide notice to employees at reasonable timeframes and each time the benefits provided are subject to change.

**7-16. Retirement.** HRD shall provide employees information related to retirement benefits during the new employee orientation pursuant to article 5-12(b)(4) and shall provide notice to employees at reasonable timeframes and each time the benefits provided are subject to change.

**7-17. Full-time and Part-time Determination.** For the purpose of determining benefits, an employee's status as full-time or part-time is determined based on the average hours worked per week by the employee during the previous six (6) month period.

## VIII. WORK DAY STANDARDS

**8-1. Business Day.** The Nation's regular business day is from 8:00 a.m. to 4:30 p.m. with one (1) hour provided for lunch, of which thirty (30) minutes are paid and thirty (30) minutes are unpaid. Further, employees shall work a minimum of 5.25 hours to receive the one (1) hour lunch break.

(a) Entities may establish varying work day standards for the purposes of providing services that extend beyond the regular business day (i.e. Oneida Bingo and Casino's 24/7 operations or Oneida Retail Enterprises extended business hours), provided that such standards shall include appropriate break and/or lunch periods that promote efficiency and shall be submitted to HRD prior to becoming effective.

(b) All entities shall comply with applicable child labor laws regulating the employment of persons under the age of eighteen (18).

(c) All entities shall provide nursing mothers with lactation rooms and lactation breaks to express milk during their work day.

(1) Lactation rooms shall consist of a private, non-bathroom place, that is shielded from view and free from intrusion by employees or the public.

(2) Lactation breaks are not required to be paid, unless the employee is using part of an otherwise paid break to express milk, in which case she shall be compensated in the same way that other employees are compensated for normal break times.

(3) An employee may take a maximum of one (1) unpaid lactation break for each three (3) hours worked, provided that the employee supervisor shall record all unpaid lactation breaks taken by his or her employees in the timekeeping system with a note indicating "LB Lactation Break/unpaid time."

(d) Upon an entity's receipt of notice of a blood drive sponsored by the Nation, it shall notify employees of the said blood drive so they may schedule donation appointments. Supervisors may provide employees with a paid donation break so long as the employee has a pre-approved and scheduled donation appointment.

(e) Supervisors may provide employees with a paid voting break in order to participate in Oneida, state and national elections.

**8-2. Time Keeping Standards.** Wage earning employees shall correctly use the Nation's timekeeping system and follow all standard operating procedures established by their entity. Start and end times may be rounded to the nearest quarter of an hour. Further, employees shall clock in and out on their own behalf; it is strictly forbidden for employees to clock in or out on another employee's behalf.

(a) Regardless of salary status, salary positions shall work a full work week in order to receive full salary compensation. Salaried employees are eligible to request both full and partial days off using PTO. A salaried employee requesting hours off in excess of his or her accrued PTO shall either be denied the request and required to either flex time in

order to take those hours off or to take time off without pay, provided that unpaid time off is required to be taken in full workday increments.

(b) Employees who do not report to work because of inclement weather or unforeseen circumstances will not be compensated for such time missed unless the employee elects to use PTO to cover the missed time based on the requirements provided in article 7-13.

(c) Employee supervisors shall review, approve and correctly record in the Nation's timekeeping system all of their employees' time worked and time off. Should the employee supervisor suspect any errors in an employee's time keeping and/or compensation received based on time records, he or she shall report the suspected error to the Time and Attendance Department, which shall investigate the error and provide a response to the employee supervisor.

(d) Supervisors may allow an employee to use flex time for his or her work schedule, provided that hours may not be flexed outside of a single work week, defined as Sunday through Saturday.

(e) Supervisors shall report any change in an employee's status to HRD. Examples of such changes may include, but are not limited to:

- (1) A change from full-time status to part-time status or vice versa;
- (2) A salaried employee's modification of hours worked in a work week;
- (3) Any approved leaves of absence;
- (4) Modified duties; and
- (5) Any time off granted without pay for periods extending longer than two (2) weeks.

(f) The Time and Attendance Department shall retain all time and attendance records for a period of seven (7) years.

(g) The Time and Attendance Department may establish pay codes and comments required to be used by all entities in order for the Time and Attendance Department to monitor and achieve time and attendance procedural compliance, provided that such pay codes and comments shall be noticed to all entities in the form of a memorandum.

**8-3. Position Abandonment.** An employee that fails to show up for three (3) consecutive scheduled work days without making any communication with his or her supervisor is deemed to have abandoned his or her position, which amounts to a voluntary resignation.

(a) It is understood that circumstances may arise in which an employee is unable to provide notice to supervisor for more than three (3) scheduled work days due to extenuating circumstances, like a medical emergency, but does not wish to abandon his or her position. Accordingly, prior to asserting that an employee has abandoned his or her position, the employee supervisor shall attempt to contact the employee via e-mail if available, otherwise via telephone where a call log is required.

(b) If the employee supervisor is able to make contact with the employee and the employee is able to provide a note from a doctor confirming that a medical emergency prevented him or her from reporting to work and noticing his or her employee supervisor

of the absence, the employee supervisor may not find position abandonment has occurred.

(c) If the employee supervisor is unable to contact the employee, he or she shall document that the employee has abandoned his or her position by sending a letter to the employee's last known address via first class mail. The letter shall include the following:

(1) The dates the employee failed to show up to work and provide notice to his or her employee supervisor of the absence;

(2) The date the employee supervisor attempted and failed to contact the employee; and

(3) Notice that the Nation has accepted the employee's voluntarily resignation.

**8-4. Work Day Changes for Emergencies.** Tribal emergency, incident and state of emergency closures may be organization wide, at multiple locations or at a single location, and may be made by the Emergency Management/Homeland Security Agency and/or the Oneida Police Department.

(a) In the event of an emergency closure, the party effectuating the closure shall provide notice of the closure to the Oneida Communications Department, which shall provide notice to the appropriate parties, including HRD. Each entity, including HRD shall provide the Oneida Communications Department with two (2) points of contact for communication in the event of an emergency.

(b) Supervisors shall notify their employees in the event of a closing and shall develop a standard operating procedure for providing said notice.

(c) In the event of an emergency closure, any timelines provided in the Employment law and/or this Handbook shall be extended for the same period of time as the emergency closure.

(d) Critical entities may deviate from the closure requirements contained in this article so long as the entity has developed and submitted to HRD its own emergency closure standard operation procedure. The following is a list of the entities deemed to be critical:

(1) Oneida Anna John Resident Care Center Community;

(2) Oneida Child/Day Care – Departments;

(3) Oneida Department of Public Works;

(4) Emergency Management – Homeland Security Agency;

(5) Oneida Enterprise Division;

(6) Oneida Gaming Division;

(7) Oneida Internal Security Department;

(8) Oneida Police Department;

(9) Oneida Surveillance Department;

(10) Oneida Health Center; and

(11) Oneida Tribal School System.

## IX. LEAVES

**9-1. Family Medical Leave.** Family Medical Leave (FML) is an unpaid leave for qualifying events which protects the employee's position and is available for all employees (excluding temporary employees) and salaried elected officials of the Nation.

(a) Employees are entitled to up to ninety (90) calendar days of FML in a rolling twelve (12) month period based on a qualifying event.

(1) Qualifying events are limited to the following:

(A) The birth of a child or placement of a child with the employee for adoption or foster care;

(B) To care for an immediate family member who a serious health condition;

(C) For a serious health condition that makes the employee unable to perform the essential functions of their job; or

(D) For qualifying situations arising from the military deployment of an employee's immediate family member, where qualifying situations arising from military deployment are limited to the following:

(i) Making alternative child care arrangements;

(ii) Attending military ceremonies;

(iii) Taking a leave to spend time with a military member on Rest and Recuperation; or

(iv) Making financial or legal arrangements to address a military member's absence.

(2) An employee is entitled to extended FML up to 180 calendar days if the FML is to care for an immediate family member of the employee who is a military member with a serious health condition.

(3) For the purpose of this article, a serious health condition means an illness, injury, impairment, or physical or mental condition that involves:

(A) Any period of incapacity or treatment connected with inpatient care in a hospital, hospice, or residential medical care facility;

(B) A period of incapacity requiring the absence of more than three (3) calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider;

(C) Any period of incapacity due to pregnancy, or for prenatal care;

(D) Any period of incapacity that is permanent or long-term due to a chronic serious health condition (e.g. asthma, diabetes, epilepsy, etc.); and/or

(E) Any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three

1766 consecutive days if left untreated (e.g. chemotherapy, physical therapy,  
1767 dialysis, etc.).

1768 (c) Employees are not required to take all of the FML they are entitled to in a single  
1769 block of time; FML may be taken on an intermittent or reduced schedule basis when  
1770 medically necessary.

1771 (1) Employees shall provide documentation from a health care provider that  
1772 identifies the medical necessity of an intermittent or reduced scheduled FML.

1773 (2) Intermittent FML does not apply if the FML is for the birth, placement or  
1774 adoption of a child or if the FML is beyond the first 90 calendar days of FML the  
1775 Employee is entitled to.

1776 (d) Requests for FML employees require approval from the employee supervisor and  
1777 HRD. Such approvals are required only to verify that the request includes a valid  
1778 qualifying event; provided that if the request is based on a valid qualifying event, it may  
1779 not be denied.

1780 (e) Employees eligible for FML based on a serious health condition shall have the  
1781 serious health condition verified by a health care provider. For the purposes of this  
1782 section, a health care provider includes, but is not limited to, the following persons  
1783 practicing in accordance with state and federal laws:

1784 (1) Doctors of medicine or osteopathy;  
1785 (2) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors;  
1786 and  
1787 (3) Nurse practitioners, physician assistants, and clinical social workers.

1788 (f) If an employee partakes in the Nation's insurance benefits at the time FML is granted,  
1789 the Nation shall continue to pay for its contribution to the employees insurance for  
1790 medical, dental, vision and short and long term disability while the employee is on FML  
1791 for a maximum of 180 calendar days. While the employee is on FML, the Nation will  
1792 not pay individual benefits, including but not limited to, critical illness, whole life,  
1793 voluntary term life, accident, and individual short term disability. In addition,  
1794 employees' accrual of PTO is suspended while on FML.

1795 (g) If the FML was for an employee's own serious health condition, a release to return to  
1796 work from the employee's health care provider shall be provided to the employee  
1797 supervisor and HRD before the employee may return to work.

1798 (1) If an employee is not able to return to work following FML, HRD shall, upon  
1799 a supervisor's request, separate the employee from his or her employment with  
1800 the Nation.

1801 (2) So long as an employee is able to return to work following a FML, his or her  
1802 job shall be made available upon return, unless a business need of the Nation has  
1803 eliminated the position, in which case the employee shall be placed within the  
1804 closest comparable and available position for which the employee is eligible.

1805 (h) The following process shall be followed when employees request FML:

(1) The employee shall complete FML request form and shall submit it to his or her employee supervisor, along with supporting documentation from a health care provider.

(A) To the extent possible, the employee shall provide the request to his or her employee supervisor no later than ten (10) business days from the date the employee intends to begin his or her FML. If the employee is unable to complete the FML request form, the employee supervisor may complete it on behalf of the employee.

(B) Upon receipt of an employee's request for FML, the employee supervisor shall provide notice of the request to the reviewing supervisor and shall forward the request to HRD.

(2) HRD shall approve or deny all FML requests, provided that FML requests.

(A) If an FML request is denied, HRD shall provide written notice of the denial to the employee, the employee supervisor and the reviewing supervisor.

(B) If the FML request is approved, HRD shall process the FML and provide written notices to the employee, the employee supervisor and the reviewing supervisor.

(i) All written notices shall include the approved starting and end dates of the FML and any instructions helpful to both the employee and the employee's supervisors (i.e. instructions for tracking intermittent FML).

(ii) In addition, the notice to the employee shall also include any instructions for the employee only (i.e. instructions for making payments for voluntary benefits) and any other applicable benefits information.

**9-2. Personal Leaves.** Employees, excluding temporary employees, may request to take leave for personal reasons (i.e. educational leave), provided that personal leaves may not exceed one (1) year.

(a) An employee requesting personal leave shall submit his or her request to his or her employee supervisor who shall then forward the request to the employee's reviewing supervisor.

(b) All requests for personal leave are subject to the approval of the employee supervisor and reviewing supervisor; said approvals are subject to the supervisors' complete discretion based on the entity's needs. Employee supervisors shall notify the employee's reviewing supervisor of his or her decision regarding a request for personal leave.

(c) If the personal leave is approved by both the employee supervisor and the reviewing supervisor, the employee supervisor shall provide a copy of the approved leave request form to HRD for processing and record keeping.

(d) If an employee partakes in the Nation's insurance benefits at the time personal leave is granted, such coverage is suspended on the employee's last working day prior to taking leave and is re-instated on the first day the employee returns to work following leave. Employees' accrual of PTO is suspended while on personal leave.

(e) So long as an employee is able to return to work following a personal leave, his or her job shall be made available upon return, unless a business need of the Nation has eliminated the position, in which case the employee shall be placed within the closest comparable and available position for which the employee is eligible.

(f) If an employee is not able to return to work following a personal leave, he or she shall be separated.

**9-3. Military Leave.** The Military Service Protection Act governs all military leaves, the following provisions also apply.

(a) A military leave of absence is afforded to employees entering active duty without the accrual of holiday pay or PTO during the said leave. The Nation shall maintain any benefits accrued by the employee prior to such 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 provide documentation from the military of such training dates. The Nation shall deduct any pay an employee receives for partaking in reservist training from the employee's pay for work absences incurred for such training.

**9-4. Funeral/Bereavement Leave.**

(a) An employee may take up to forty (40) hours 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 forty (40) hours of paid funeral/bereavement leave, provided that such leave is at the discretion of his or her employee supervisor.

(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.

(2) The forty (40) hours 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. In addition, the full forty (40) hours of funeral is not required to be taken.

(b) An employee, excluding temporary employees, may, at the employee supervisor's discretion, take up to twenty-four (24) additional hours of unpaid funeral/bereavement leave if the employee is assisting with funeral arrangements, which may include but are

not limited to, being a fire-keeper, coordinating meals, or being a pall-bearer, speaker or singer.

(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 shall approve such leave.

**9-5. Jury Duty Leave.** The Nation shall pay employees for any work missed because of jury duty.

(a) In order to receive payment from the Nation for work missed because of jury duty, the employee shall remit any jury duty pay received to the Nation as well as the employee's notice to report for jury duty; the Nation may not pay an employee who fails to meet this requirement for work missed because of jury duty.

(b) The Nation may not consider overtime when determining an employee's pay while serving on jury duty.

**9-6. Parent Leave.** Employees, excluding temporary employees, who are parents, guardians, or an immediate family member of a child, may request to participate in such child's educationally sanctioned events for a maximum of four (4) hours per employee per month. Unused monthly parent leave hours do not accumulate.

(a) For the purposes of this article, educationally sanctioned events include, but are not limited to, school concerts, orientations, sporting events, field trips, parent-teacher conferences, open houses, science fairs and the like. Educationally sanctioned events exclude time children spend off of school for any reason, including but not limited to weather closings, normally scheduled days off school and student suspensions and/or expulsions.

(b) Employees seeking to use parent leave hours shall have the said leave approved by their employee supervisors and shall submit their request for approval no later than twenty-four (24) hours in advance of the requested parent leave.

(1) Employee supervisors considering approval of parent leave may request verification of the employee's qualifying relationship to child and/or attendance at the event for which he or she requested the parent leave.

(2) In order for an employee supervisor to deny an employee's request for parent leave, he or she shall justify that the denial was necessary to prevent an interference with the business of the Nation.

(3) When considering an employee's request for parent leave, employee supervisors may require the requesting employee to flex the hours used for parent leave by making up the said hours at a time the employee is not normally scheduled to work.

(c) Employees may not be paid overtime for any parent leave hours.

**9-7. Color Guard Leave.** Employees that are honorably served veterans and are officially selected by the Oneida Nation Veterans Affairs Committee to perform veteran related government-to-government services may participate in said services with pay without using

1924 PTO, provided that such leave may not exceed five (5) calendar days for any single color guard  
1925 leave.

1926 (a) Veteran related government-to-government services include, but are not limited to,  
1927 funeral honors, dedications, flag raisings, color guard duties and ceremonial events.

1928 (b) Employees seeking to use color guard leave shall have the said leave approved by  
1929 their employee supervisor and shall submit their request for approval as soon as possible,  
1930 but in no circumstances may the notice be less than twenty-four (24) hours in advance of  
1931 the requested color guard leave.

1932 (c) In order for an employee supervisor to deny an employee's request for color guard  
1933 leave, he or she shall justify that the denial was necessary to prevent an interference with  
1934 the business of the Nation.

## X. SAFETY AND HEALTH

**10-1. Safety and Health Policy.** The personal safety and health of each employee, customer and client of the Nation is of primary importance. The prevention of injuries and illness is of such importance that it will take precedence over operating productivity whenever necessary. An incident report shall be created for all employee injuries. Further, supervisors and employees shall comply with all applicable requirements of the Drug and Alcohol Policy and Workers Compensation law.

(a) Entities shall maintain a safety and health program conforming to the best practices available, based on the entity's industry.

(b) Entities' safety and health programs shall work to develop proper attitudes toward on-the-job injury and illness prevention on the part of all employees and supervisors and further shall strive to develop a high level of cooperation in safety and health matters between supervisors and employees and among fellow employees.

**10-2. Safety and Health Procedures.** All entities shall comply with the Oneida Safety Law.

**10-3. Clean Air Rules for Tribal Buildings.** The Nation strives to provide a healthy work environment within all buildings and vehicles of the Nation.

(a) Smoking, which includes use of e-cigarettes, is expressly prohibited in all buildings and vehicles of the Nation and within thirty (30) feet from all of the Nation's buildings except as follows:

(1) Smoking is permitted in all of the Nation's buildings housing gaming activities. The Nation shall have separate ventilation for the non-smoking break rooms. If separate break rooms are not available, employees may not smoke in the break room and shall instead smoke outside.

(2) Even if smoking is permitted in an employee's workplace, while working, he or she may not smoke in the building, other than during breaks in the break room, if a smoking break room is available.

(b) Receptacles for disposing of smoking materials shall be placed a minimum of thirty (30) feet from the main entrance of any of the Nation's buildings.

(c) For specific cultural uses tobacco, sage, cedar and/or sweetgrass may be reasonably burnt, provided that, employees working in shared work spaces may request that employees within the same work space refrain from cultural burning.

**10-4. Communicable Disease.** The Community/Public Health Department has the authority to require isolation/quarantine of an employee if the existence of any communicable disease is suspected or determined.

(a) Employees are not entitled to compensation for time off required in the event isolation, incubation, and/or quarantine is mandated by the Community/Public Health Department, but may utilize PTO.

(b) In the event isolation, incubation, and/or quarantine is mandated by the Community/Public Health Department, employees shall provide a doctor's note confirming that it is safe for them to return to the workplace.

(c) Each case involving a potential communicable disease shall be handled on an individual basis and the confidentiality of the employee(s) shall at all times be protected. Information about the personal health of an employee shall be made available only to persons specifically authorized to receive the said information, which may include, but is not limited to, employees performing any required medical reporting and monitoring recommended to protect employees' and customers' health and to avoid further exposure to communicable diseases.

**10.5. Reasonable Accommodations.** A reasonable accommodation is any adjustment to the work environment that will allow the employee to continue employment for reasons such as religion, disability, etc.

(a) There are many accommodations an applicant, as well as an employee may request, which include the following:

(1) Religious accommodations are any adjustments to the work environment that will allow the employee to practice his or her religion. Flexible scheduling, voluntary substitutions or job swaps, position reassignments or transfers are examples of accommodating an employee's religious beliefs. For purposes of this article, the term religion includes all aspects of religious observance and practice, as well as belief.

(2) Pregnancy accommodations are any adjustments to the work environment to accommodate women affected by pregnancy, childbirth, or related medical conditions and shall be treated the same for all employment related purposes, including hiring, transfer, position reassignments, receipt of benefits under fringe benefit programs, etc. as pregnancy is a temporary condition. For purposes of this article, the term pregnancy includes being pregnant, childbirth or other medical conditions related to pregnancy.

(3) Accommodations due to disability any adjustments to the work environment to accommodate an impairment that substantially limits one (1) or more major life activity where a record of such an impairment or being regarded as having a disability is required. For purposes of this article, disability includes, but is not limited to, physical, mental, cognitive, emotional, developmental impairments, etc. or some combination of these.

(b) It is the employee supervisor's responsibility to determine if they can reasonably accommodate the employee without causing the entity or the Nation undue hardship. Undue hardship exists if the accommodation:

- (1) Would require more than ordinary administrative costs be expended;
- (2) Diminishes efficiency in other jobs;
- (3) Infringes on other employees' job rights or benefits;
- (4) Impairs workplace safety;
- (5) Causes co-workers to carry the accommodated employee's share of work;
- and/or
- (6) Conflicts with another law, rule, resolution or policy of the Nation.

## **XI. ENTITIES' RULEMAKING AUTHORITY**

**11-1. Entities' Rulemaking Authority.** Entities may establish internal rules and standard operating procedures as they deem appropriate to effectively, safely and successfully complete their purpose, provided that:

(a) All internal rules and standard operating procedures shall include an effective date and be submitted to and approved by HRD for compliance with this Handbook;

(b) In the event that there is a conflict between this Handbook and the rules and/or standard operating procedures created under this article, this Handbook governs;

(c) Entities shall provide notice to their employees of the development and/or revision of any internal rules and/or standard operating procedures.

## **XII. CORRECTIVE ACTIONS**

**12-1. Department Employee Files.** Entities shall develop standard operating procedures for tracking and documenting employees' prohibited behavior for the purpose of determining when issuing a corrective action is appropriate. Supervisors are encouraged to keep department employee files in order to document employees' progression and any behaviors that may be considered for the issuance of corrective actions. Supervisors that keep department files shall make such files available to employees upon request. Supervisor's shall destroy department files when an employee transfers, resigns, or is terminated, provided that a terminated employee's department file may not be destroyed until the employee's timeframe to file any/all appeals has expired.

**12-2. Prohibited Behavior Meriting Corrective Action.** Employees committing any of the following prohibited behaviors are failing to fulfill their employee responsibilities and therefore merit corrective action:

(a) Attendance and Punctuality.

(1) An unexcused absence or excessive tardiness. The only absences that are excused are those for which the employee has received approval to take PTO based on article 7-13.

(2) Position abandonment, which is three (3) consecutive days of failing to both call in to work and show up for work; position abandonment amounts to voluntary resignation.

(3) Working unauthorized overtime.

(4) Misuse of the timekeeping system.

(b) Unacceptable Personnel Actions.

(1) Intentional acts of dishonesty or damage to property, including, but not limited to, arson, fraud, forgery, bribery, perjury, obstruction or interference with an administrative or criminal investigation and the like.

(2) Failure to immediately report an illegal activity to the appropriate chain of command and law enforcement agency.

(3) Threatening, attempting, or intentionally doing bodily harm to another person.

(4) Intimidating, interfering with and/or using abusive language towards employees and/or customers.

(5) Possession of dangerous and/or unauthorized materials, such as explosives or firearms, in the workplace.

(6) Bullying, creating a hostile work environment, discrimination, harassment, intimidation, retaliation, sexual harassment, and/or deprivation of an equal employment opportunity.

(7) Making false or malicious statements concerning other employees.

(8) Direct involvement in political campaigning during scheduled work hours.

(9) Failure to appropriately investigate/handle a corrective action, and/or appeal.

- (10) Failure to be courteous in dealing with fellow employees and/or the general public.
- (11) Failure to exercise proper judgment.
- (12) Failure to immediately report any work-related injuries to the employee supervisor.
- (13) Giving preferential treatment to any person or entity.
- (14) Inappropriate dress or personal hygiene and/or failure to wear a name badge.
- (15) Reporting for work under the influence of alcohol or illegal controlled substances pursuant to the Drug and Alcohol Free Workplace Policy.
- (16) Use of alcohol or illegal controlled substances during work hours pursuant to the Drug and Alcohol Free Workplace Policy.
- (17) Using any entity or position for private gain.
- (18) Acceptance of gifts or gratuities for personal gain in the course of official employment duties.
- (19) Failure to follow any internal rules and/or standard operating procedures created pursuant to article 11.
- (c) Misuse of Property.
- (1) Theft of property, which includes, but is not limit to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling or conspiracy to commit such actions.
- (2) Unauthorized entry onto the Nation's land pursuant to the Public Use of Tribal Land law and/or unauthorized access to the Nation's property or land pursuant to any entity's rules and based upon the employee's position description.
- (3) Unauthorized or improper use of the Nation's property or equipment.
- (4) Unauthorized possession, removal or willful destruction of the property of the Nation or an employee.
- (5) Unauthorized use, lending, borrowing or duplicating of Tribal keys.
- (d) Unsatisfactory Work Performance.
- (1) Failure or refusal to comply with health, safety and sanitation requirements.
- (2) Failure to provide accurate and complete information.
- (3) Falsifying records or giving false information.
- (4) Insubordination, which is the failure or refusal to carry out assignments or instructions.
- (5) Loafing, loitering, sleeping or engaging in personal business.
- (6) Negligence in the performance of assigned duties.
- (7) Unauthorized disclosure of confidential information or records.
- (8) Failure or refusal to satisfactorily perform the duties contained in the position description for which the employee was hired.
- 12-3. Employee Supervisor Responsibilities.** When an employee supervisor learns that one
- (1) of his or her employees have committed a prohibited behavior meriting corrective action

under article 12-2, he or she shall initiate the appropriate corrective action. In all circumstances employee supervisors shall approach all corrective actions in an objective, fair and consistent manner.

(a) An employee supervisor may learn of prohibited behavior by either:

(1) Personally observing/experiencing the employee committing the prohibited behavior meriting corrective action; or

(2) A report from an employee, customer or guest of the Nation that the employee has committed a prohibited behavior meriting corrective action, which the employee supervisor has considered and finds in his or her best discretion to be truthful.

(b) Within ten (10) business days of the date the employee supervisor learns of prohibited behavior meriting corrective action, the employee supervisor shall:

(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.

(A) An investigation is not required if the supervisor personally witnessed the prohibited behavior meriting corrective action.

(B) If the prohibited behavior meriting corrective action is related to work performance as provided under article 12-2(d), the investigation shall consider not only single incidents, but also patterns that may be indicative of an employee's overall poor performance, provided that the corrective action may only be issued if each of the following conditions has been met:

(i) The employee was issued proper instructions;

(ii) The employee received the required orientation;

(iii) The employee received appropriate training to allow them to succeed in the position the employee was hired for, provided that, the Nation is not required to provide training to employees for essential requirements included in the position description for which the employee was hired; and

(iv) The employee was aware of the essential requirements included in his or her position description, as may have been amended from time to time with notice to the affected employee.

(2) If the employee supervisor finds that corrective action is appropriate, the employee supervisor shall issue a corrective action based on the recommended progressive order provided in article 12-6 and using the corrective action form provided by HRD.

(A) An employee supervisor may deviate from the progressive corrective action order provided in article 12-6. In such circumstances he or she shall submit justification supporting that the deviation from the

recommended order was merited based on the severity of the employee's infraction.

(B) Prior to issuing a suspension or termination, employee supervisors shall consult with an EEO Officer and receive his or her written certification of procedural compliance with the corrective action process. The only exception to this requirement is for supervisors terminating an employee at a time outside of the Nation's normal business hours for criminal activity (i.e. theft), provided that, the supervisor still shall attempt to contact an EEO Officer/Director prior to terminating. Employee supervisors may consult with an EEO Officer at any time throughout the course of the issuance of any corrective action.

(C) The employee supervisor shall setup a meeting with the employee to discuss the corrective action to be issued with the employee. If the employee is unavailable for three (3) consecutive regularly scheduled shifts or if the ten (10) business day timeframe for the issuance of a corrective action will expire if not issued before a meeting can be scheduled, the employee supervisor shall:

(i) Indicate on the corrective action form that the employee was unavailable to sign the corrective action on said form; and

(ii) Deliver a copy of the corrective action to the employee via certified mail to the last available address provided in the employee's record.

(D) During the meeting with the employee, the employee supervisor shall read the employee his or his right to appeal and when he or she may have the right to representation by an attorney or advocate as provided in the Employment law and article 13 of this Handbook.

(E) The employee supervisor shall indicate on the corrective action form, before it is signed by the employee as required in this article, that the employee's due process rights were read to and acknowledged by the employee.

(F) The employee supervisor shall require the employee to sign the corrective action form acknowledging his or her receipt of the corrective action. If the employee refuses to sign the corrective action form, the employee supervisor shall indicate on the said form that the employee has refused to sign and shall provide a copy of the said form to both the employee and the EEO Officer.

(c) Employee supervisors shall submit record of all corrective actions issued to employees to an EEO Officer.

(d) If the prohibited behavior meriting corrective action rises to the level of a criminal action, in addition to issuing a corrective action, the employee supervisor shall also immediately report the behavior to local law enforcement.

**12-4. EEO Officer Responsibilities.** EEO Officers shall file, monitor, and report to employee records all corrective actions and further shall guide persons involved in the corrective actions process by:

(a) Advising employee supervisors as to the corrective action process generally, including but not limited to, when employee actions merit corrective action, which corrective actions are available, the normal progression of corrective actions, and whether a situation may merit a deviation from the normal progression of corrective actions;

(b) Making employees, employee supervisors and reviewing supervisors aware of their rights to appeal and when the employee may be entitled to representation of an attorney or advocate; and

(c) Reviewing all corrective actions submitted by supervisors.

(1) For suspensions and terminations, the EEO Officer shall ensure procedural compliance with the corrective action process prior to issuing the supervisor a written certification of procedural compliance, which allows the suspension or termination to be issued.

(2) Should the EEO Officer suspect procedural non-compliance in regards to any corrective action, he or she shall forward the matter to the EEO Director.

**12-5. EEO Director Responsibilities.** The EEO Director shall review EEO Officer's concerns of supervisor's non-compliance with corrective action requirements. If the EEO Director is not able to issue the written certificate of procedural compliance required for suspension and termination, he or she shall inform the supervisor that the suspension or termination may not be issued to the employee and shall provide the supervisor with the procedural requirements for issuing a suspension or termination and which corrective actions the supervisor has available in the given circumstance. If the EEO Director confirms procedural non-compliance as related to an issued written warning, he or she shall report the said non-compliance and/or negligence to the reviewing supervisor and may include a recommendation that the employee supervisor be issued a corrective action.

**12-6. Progressive Corrective Actions.** Corrective actions employ a range of actions that are applied based on the nature and history of the prohibited behavior meriting corrective action. The ultimate goal of corrective actions, as applied through this Handbook, is to help employees contribute fully to the Nation's mission and goals. HRD shall create a corrective action checklist, which supervisors shall use when considering a corrective action. The checklist shall encourage supervisors to use the other non-corrective action tools provided in article 12-7, to the extent applicable, prior to issuing a corrective action. The available corrective actions and the normal progression of issuance is as follows, provided that any employee who breaches his or her responsibility of trust and commits a crime of theft against the Nation while employed shall be disciplined to the full extent of law:

(a) Written Warning. A written warning records an employee's prohibited behavior meriting corrective action by defining the seriousness of the situation so that the behavior may be addressed and avoided in the future. Written warnings may not be utilized as a corrective action if the prohibited behavior meriting corrective action rises to the level of a criminal or illegal act, in which case immediate termination is required.

(b) Suspension. A suspension is the temporary removal of an employee from performing his or her work duties and from receiving pay. When suspension is utilized as a corrective action, the available suspension is limited to a maximum of forty (40) consecutive working hours, which shall be based upon the employee's normal work schedule.

(1) Suspensions may not be utilized as a corrective action if the prohibited behavior meriting corrective action rises to the level of a criminal or illegal act, in which case immediate termination is required.

(2) If suspending a salaried employee, the suspension shall be issued in full workday increments. A salaried employee may only be suspended for serious misconduct identified as the following prohibited behaviors meriting corrective action in article 12-2: (b)(1)-(6) and (15)-(18); (c)(2)-(5) (where (c)(1) is excluded because theft is criminal and requires termination pursuant to article 12-6(c)(1)(B)); and (d)(1), (3), and (6)-(7).

(c) Termination. A termination is the release of an employee from employment against the employee's will.

(1) Termination shall be used as the corrective action under the following circumstances:

(A) The employee accumulates any three (3) corrective actions provided under article 12-6 within any twelve (12) month period where the termination itself constitutes the third corrective action; or

(B) The employee has engaged in a prohibited action that rises to the level of a criminal or otherwise illegal act.

(2) Temporary and probationary employees may be terminated at any time the supervisor determines that the employee commits a prohibited behavior meriting corrective action and do not require accumulated corrective actions pursuant to article 12-6(c)(1)(A).

(3) If the employee supervisor determines that the terminated employee 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 prior to terminating the employee.

**12-7. Other Non-Corrective Action Tools Available.** Supervisors may use these tools outside of the corrective action process by requesting an employee to participate in the employee assistance and/or alternative dispute resolution programs. Supervisors may also use these tools as a required component of a corrective action. If used as a required component of a corrective

2264 action and the employee does not satisfy the requirement, an additional corrective action may be  
2265 issued against the employee.

2266 (a) Referral to the Employee Assistance Program. If there appear to be signs of personal  
2267 problems during the work day that may have contributed to an employee's undesirable  
2268 behavior, an employee supervisor may refer the employee to the Employee Assistance  
2269 Program. If there is a conflict of interest between the employee and the counselors at the  
2270 Employee Assistance Program or if the employee would prefer to use the Employee  
2271 Resource Center, HRD may work with the employee and his or her employee supervisor  
2272 to see if the employee is eligible to seek assistance from the Employee Resource Center  
2273 as an alternative.

2274 (b) Alternate Dispute Resolution (ADR). ADR includes a variety of conflict intervention  
2275 processes and is facilitated by a neutral third party, the Continuous Improvement  
2276 Mediation Specialist (CIMS). The policy of ADR is to provide an alternative to normal  
2277 disciplinary actions which corrects undesired behaviors, improves employee performance  
2278 and develops a mutual understanding of expectations among employee supervisors and  
2279 employees. ADR may be a useful tool in situations where there appear to be signs of  
2280 conflict based problems during the work day that may have contributed to the undesired  
2281 behavior.

2282 (1) The types of ADR include, but are not limited to, the following:

2283 (A) Conflict resolution, which is process that assists two (2) or more  
2284 parties find peaceful solutions to a disagreement through collective  
2285 negotiation.

2286 (B) Consensus building, which is a process used to settle complex, multi-  
2287 party disputes in which members develop and agree to support a decision  
2288 in the best interest of the whole.

2289 (C) Mediation/peacekeeping, which is a process using a mediator or  
2290 peacemaker to assist two (2) or more parties resolve disputes through  
2291 working out their own solutions to problems.

2292 (D) Employee/supervisor expectations documentation, which is a clear  
2293 documented understanding of what is expected of an employee (e.g.  
2294 reliability, leadership, professionalism, safe working conditions, fair and  
2295 constructive feedback, etc.).

2296 (E) Win-win agreements, which are negotiations used to help supervisors  
2297 and employees clarify expectations and mutually commit themselves to  
2298 getting desired results.

2299 (F) Environmental assessment, which is a process of estimating and  
2300 evaluating significant short-term and long-term effects of a program or  
2301 project on the quality of its location's environment.

2302 (2) Parties to ADR may select any mediator, provided that the parties shall agree  
2303 upon the mediator selected. HRD shall provide all parties referenced to ADR

2304 with a list of available mediators in the area, provided that the parties are not  
2305 required to select a mediator from HRD's list. The parties are jointly responsible  
2306 for all costs associated with selection of a mediator, provided that the Nation shall  
2307 provide employees with mediators at no cost to employees should the parties  
2308 agree to use a mediator provided by the Nation. If choosing a mediator provided  
2309 by the Nation, the parties may request the services be provided by any of the  
2310 employee or management advocates.

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### **XIII. RECONSIDERATION AND APPEAL OF CORRECTIVE ACTIONS AND ADVERSE EMPLOYMENT ACTIONS**

**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 shall be made within ten (10) business days from the date of the employee supervisor's action.

(a) Upon receipt of a request for reconsideration of an employee supervisor's action, the reviewing supervisor, or designee, shall investigate the matter and issue a decision to the employee, with a copy to the employee supervisor and HRD's EEO Department within ten (10) business days from the date of the employee's request for reconsideration.

(b) In making a decision regarding a request for reconsideration, the reviewing supervisor, or designee, shall take one (1) of the following actions and notify the employee and employee supervisor of their decision in writing delivered in person and/or by first class mail:

- (1) Uphold the employee supervisor's action;
- (2) Modify the employee supervisor's action; or
- (3) Overturn the employee supervisor's action.

(c) In the event the reviewing supervisor, or designee, determines that reversal or modification of the employee supervisor's action is required, he or she shall include an explanation of the reversal or modification to the employee supervisor. In addition, the reviewing supervisor, or designee, may issue the employee supervisor a corrective action and/or require the employee supervisor to complete updated supervisor training.

**13-2. Right to Appeal.** All employees, excluding temporary and probationary employees, who were subject to discipline and disagree with the corrective action or allege that a supervisor's actions amount to an adverse employment action, may appeal the action to the Judiciary's Trial Court. Any party disagreeing with the decision of the Trial Court may appeal to the decision to the Judiciary's Appellate Court.

**13-3. Appeal Authority.** Appeals of corrective actions are subject to the following levels of appeal:

(a) **First Level of Appeal.** The Trial Court shall hear employees', excluding temporary and probationary employees', appeals of alleged adverse employment actions and the following corrective actions: suspensions and terminations. If the employee claims that the adverse employment action or corrective action also amounted to a deprivation of an equal employment opportunity, it shall be included in this appeal as well.

(1) An employee supervisor may not initiate a first level appeal in the event that the reviewing supervisor overturns the employee supervisor's action.

(2) In considering an appeal of a corrective action, the Trial Court may consider previous corrective actions upon which the suspension or termination was based,

provided that, the employee shall demonstrate that he or she requested a reviewing supervisor's reconsideration of such prior corrective actions in accordance with article 13-1. When reviewing prior corrective actions, the Trial Court shall only consider whether the corrective action was justified based on the employee's behavior; procedural compliance may not be considered.

(b) Second Level of Appeal. The Court of Appeals may hear any party's appeal of the Trial Court's decision.

**13-4. Attorneys and Advocates.** Employees appealing a supervisor's action who are being heard by the Trial Court and/or the Appellate Court, have a right, but not a guarantee, to be represented by an attorney or advocate. All representation costs are the employee's responsibility, unless included in the award as compensatory damages pursuant to section 201.11-3 of the Employment law. Employees subject to corrective action and/or potential adverse employment actions or deprivation of an equal employment opportunity may contact an employee representative for full explanation of the employee's and the Nation's rights and responsibilities under the Employment law and this Handbook.

**13-5. Employee's Responsibilities.** When appealing a supervisor's action, the employee is responsible for timely filing the appeal and providing accurate and truthful information to all parties involved in the appeal process.

(a) Timely Filing a First Level Appeal. Any employee who wishes to appeal a supervisor's action shall file his or her appeal, in writing, to the Trial Court within ten (10) business days from the date the employee received the reviewing supervisor's response in regards to the employee's request for reconsideration in accordance with article 13-1.

(b) Timely Filing a Second Level Appeal. If an employee wishes to file an appeal of the Trial Court's decision, he or she shall file their appeal with the Appellate Court in accordance with the Rules of Appellate Procedure.

**13-6. Holding Employee's Positions Pending Appeal.** A terminated employee's employee supervisor shall hold the terminated employee's position vacant until the timeframes for allowable appeals have lapsed. In order to address the vacancy, the employee supervisor may:

(a) Fill the vacancy on an interim basis pursuant to article 5-16;

(b) Hire a temporary employee pursuant to article 5-17; or

(c) Distribute the terminated employee's duties to existing employees, which may trigger an obligation to negotiate additional duties compensation pursuant to article 7-2.

#### **XIV. EMPLOYEE PROTECTION AND REPORTING A DEPRIVATION OF AN EEO AND/OR HARASSMENT**

**14-1. Employee Protection.** The Nation shall protect employees providing information to guard the Nation from employees committing fraud, theft, or other criminal acts and to protect the Nation from other financial loss and unauthorized disclosure of confidential information from any and all employment related retaliations. The Nation and its employees receiving information pursuant to this article shall keep all employees' requests for protection confidential.

**14-2. Providing Information Subject to a Request for Employee Protection.** Employees sharing or receiving information based on this article, are subject to the following requirements.

(a) An employee providing information subject to a request for employee protection shall report such information to one (1) of the following authorized parties:

- (1) The employee's employee supervisor;
- (2) The employee's reviewing supervisor;
- (3) The Oneida Police Department;
- (4) The Nation's internal security department; or
- (5) HRD's EEO Department.

(b) An employee providing information subject to a request for employee protection shall provide the authorized party with the following:

- (1) His or her employee number;
- (2) The name of the employee(s) that are the subject of the information disclosure;
- (3) A full written account of the employee's information, including dates and times and any supporting documentation that may be available.

(c) Upon receipt of information provided pursuant to this article, the authorized party shall inform the employee that the information will be used to conduct an investigation and that the information will only be shared with entities' management/employees essential to conducting the investigation.

(1) The authorized party receiving the information shall then share the employee's information, without sharing the identity of the employee subject to protection with entities' management/employees essential to conducting the investigation. The authorized party shall notify said entities that the investigation results shall be returned to the authorized party within thirty (30) business days from the date the information is provided to the entity.

(2) The entities provided with the information shall take appropriate action to conduct a thorough investigation and shall take any appropriate actions to address the findings of said investigation, which may include, but are not limited to:

- (A) Report of the conduct and investigation to the Oneida Business Committee, which shall be presented in closed executive session, to request direction regarding appropriate action moving forward; and

(B) Consultation with the Oneida Law Office to determine whether initiating a civil and/or criminal action is appropriate.

(3) If HRD's EEO Department was not the authorized party the information was initially shared with, the authorized party shall provide the EEO Department with all of the information related to the shared information and the investigation upon completion of the investigation.

**14-3. Reporting and Preventing Retaliation.** The EEO Department may conduct any investigations it deems necessary in order to assess whether an action amounts to retaliation.

(a) The EEO Department shall review all actions taken and suspension and terminations proposed to be taken against an employee protected pursuant to this article for the duration of the employee's employment with the Nation. The EEO Department shall make a determination as to whether retaliation occurred within ten (10) business days of receipt of any of the following:

(1) A protected employee's report of to the EEO Department of an action taken against him or her as retaliatory;

(2) A request for a written certificate of procedural compliance required in order to issue a suspension or termination pursuant to article 12-3(b)(2)(B) regarding a protected employee; or

(3) Notice of issuance of a written warning regarding a protected employee.

(b) If the EEO Department determines that a suspension or termination amounts to retaliation, EEO Department shall deny supervisors of the written certificate of procedural compliance required in order to issue a suspension or termination pursuant to article 12-3(b)(2)(B) and shall provide an explanation of why the certificate was denied.

(c) If the EEO Department determines that any supervisor's action amounts to retaliation, the EEO Officer shall issue a corrective action to all parties responsible for the retaliation in accordance with article 12.

(1) In such circumstances, the EEO Officer assumes the responsibilities of the employee supervisor; the EEO Director assumes the responsibilities of the reviewing supervisor; the review and approval of the EEO Department is not applicable since an EEO Officer is issuing the corrective action.

(2) The EEO Officer shall provide notice of the corrective action issued to the retaliating employee's employee supervisor.

**14-4. Reporting and Preventing Deprivation of EEOs and/or Harassment.** Employees that believe that they have been subject to or have witnessed another employee being subject to a deprivation of an EEO and/or harassment may report the incident to HRD, provided that the report shall be in writing and shall be delivered either in person or by first class mail. The EEO Department may conduct any investigations it deems necessary in order to assess whether an action amounts to a deprivation of an EEO and/or harassment.

(a) For the purposes of this article, harassment means overt or covert emotional, psychological, spiritual, and/or physical mistreatment of another person, and includes

sexual harassment. Sexual harassment is further defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature where:

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

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

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

(b) The EEO Officer shall notify the employee supervisor of the employee that is the subject to the investigation that his or her employee is the subject of an on-going investigation. In addition, The EEO Officer shall notify the employee's employee supervisor of the results of the investigation and any corrective actions issued.

(c) If the EEO Department determines that any supervisor's action amounts to a deprivation of an EEO or harassment, the EEO Officer shall issue a corrective action to all parties responsible and, if appropriate, shall notify the relevant law enforcement agency(s). Where an EEO Officer issues a corrective action in relation to harassment, the EEO Officer shall include in the corrective action a requirement to consult with the Employee Assistance Program or the Employee Resource Center. In such circumstances, the findings of the investigation shall be provided to the Employee Assistance Program and/or the Employee Resource Center.

(1) In such circumstances, the EEO Officer assumes the responsibilities of the employee supervisor; the EEO Director assumes the responsibilities of the reviewing supervisor; and the review and approval of the EEO Department is not applicable since an EEO Officer is issuing the corrective action.

(2) The EEO Officer shall provide notice of the corrective action issued to the employee's employee supervisor.

(d) The EEO Officer shall notify the reporting employee when his or her investigation is complete. The EEO Officer shall keep actions taken confidential and may not disclose them to the reporting employee.

(1) In the event the EEO Department determined that there is not a deprivation of an EEO or harassment, it shall forward the report and collected information to the reporting employee's employee supervisor so that the employee supervisor may assess whether a corrective action is merited outside of an EEO or harassment violation.

(2) In all circumstances when notifying a reporting employee of the conclusion of the investigation, the EEO Department shall include in such notice to the employee the available of the Employee Assistance Program and Employee Resource Center.

## **XV. EMPLOYEES ON HUBER**

**15-1. Employees on Huber.** Employees on Huber shall report their Huber privileges to their employee supervisor.

(a) Upon notice, the employee supervisor shall contact HRD for the completion of an updated background check to determine if the employee's conviction affects his or her eligibility to remain employed with the Nation in their current position.

(b) HRD shall notify the employee supervisor of the results of the background check as related to the employee's eligibility to remain employed with the Nation. If employment eligibility is affected the employee supervisor shall notify the employee.

(1) If the employee is no longer eligible to remain employed with the Nation in his or her current position, he or she may request that HRD provide a list of the positions for which he or she remains eligible to work in and may request a transfer if one of the said positions is available, provided that the normal transfer process shall be followed.

(2) If the employee is no longer eligible to remain employed with the Nation in his or her current position and there are no positions available for which the employee is eligible, the employee supervisor shall separate the employee.

## XVI. EXITING EMPLOYEES

**16-1. Mechanisms for Ending Tribal Employment.** Employees may cease to be employed by the Nation through resignation, separation or termination.

(a) Submitting a Resignation. Employees wishing to resign from employment with the Nation shall submit a written resignation and/or communicate a verbal resignation to their employee supervisor, provided that a voluntary resignation may also occur via position abandonment as explained in article 8-3.

(1) Employee Supervisors. Upon receipt of an employee's resignation, employee supervisors shall notify HRD of the employee's resignation.

(A) Employee supervisors may not approve employees resigning to use PTO after the employee's physical last day of work in her or her position.

(B) The resigning employee's employee supervisor shall collect all property belonging to the Nation from the employee, which may include, but is not limited to, removing computer access, building access and document access.

(2) HRD shall terminate the employee's benefits on the effective date of the resignation.

(b) Rescinding Resignations. An employee may submit a request to rescind his or her resignation in writing prior to the effective date of the resignation. It is within the employee supervisor's discretion whether to approve or deny an employee's request to rescind a resignation, provided that, a resignation may not be rescinded if an employee has been hired as part of a succession plan under article 5-3(d) or 5-15(a).

(c) Rejecting Resignations. Employee supervisors may not accept an employee's resignation if the employee is under investigation or currently involved in the corrective action process. If an employee voluntarily resigns based on position abandonment in the course of a pending investigation or while in the process of being issued a corrective action, the relevant parties shall continue to investigation to the best of their ability and any required corrective actions shall be issued to the employee as provided in article 12.

**16-2. Collection of the Nation's Property.** On or before an employee's last day of work, it is the employee's responsibility to return any and all of the Nation's property in the employee's possession to his or her employee supervisor. If the employee is not forthcoming in returning the Nation's property, the employee supervisor shall request the employee return any and all of the Nation's property in the employee's possession. If the employee refuses to return any of the Nation's property in his or her possession, the employee supervisor shall contact the Oneida Police Department to enforce the return of such property. Examples of the Nation's property include, but are not limited to, name badges, keys, laptops, equipment, tools, and documents and/or data containing confidential and/or proprietary information.

(a) As applicable to the employee's position, the employee supervisor shall:

(1) Contact MIS to have the employee's computer access and login stripped;

2557 (2) Contact the Accounting Department to have the employee removed from all  
2558 budgetary sign offs;  
2559 (3) Contact the building coordinator to remove the employee's access to the  
2560 building;  
2561 (4) Collect the employee's name badge;  
2562 (5) Contact the Kronos administrator to have the employee removed from  
2563 Kronos; and  
2564 (6) Allow the employee to collect his or her personal property, provided that in  
2565 the event of a termination, the employee supervisor shall arrange for the employee  
2566 to be escorted by a security guard or Oneida Police Officer.  
2567 (b) Entities shall develop their own standard operating procedures for addressing exiting  
2568 employees and shall either develop their own checklist for supervisors to use as a tool or  
2569 shall direct their supervisors to use the exiting employee checklist available with HRD.  
2570 **16-3. Exit Interviews.** To the extent possible, employee supervisor(s) shall conduct exit  
2571 interviews with exiting employees using the exit interview form available with HRD. In the  
2572 event the employee had more than one (1) employee supervisor, the exit interview team shall  
2573 include all of employee's available employee supervisors.