

Title 2. Employment – Chapter 223

WORKPLACE VIOLENCE

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223.1. Purpose and Policy

223.1-1. *Purpose.* The purpose of this law is to provide all Oneida Nation employees and visitors an environment that is free of violence and the threat of violence.

223.1-2. *Policy.* It is the policy of the Nation to provide a safe and secure environment for employees to work and for conducting business by establishing the procedures by which incidents of workplace violence shall be addressed.

223.2. Adoption, Amendment, Repeal

223.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-E.

223.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

223.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

223.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

223.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

223.3. Definitions

223.3-1. This section shall govern the definitions of words and phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Area Manager” means the person two (2) levels of supervision in the chain of command above an employee, or an individual designated to be the Area Manager by the Division Director.

(b) “EEO Department” means the Equal Employment Opportunity Department within the Nation’s Human Resource Department.

(c) “Employee” means anyone employed by the Oneida Nation in one of the following employed capacities: full-time, part-time, emergency temporary, limited term or on a contractual basis.

(d) “Intimidation” means making others feel afraid or fearful through threatening behavior.

(e) “Nation” means the Oneida Nation.

(f) “Stalking” means unwanted or obsessive attention by an individual or group toward another person. Stalking includes a course of conduct directed at a specific person that involves repeated visual or physical proximity, nonconsensual communication, or verbal,

written, or implied threats, or a combination thereof, that would cause a reasonable person fear.

(g) "Supervisor" means the person or entity responsible for directly overseeing the employee.

(h) "Threat" means the implication or expression of intent to inflict physical harm or actions that a reasonable person would interpret as a threat to physical safety or property.

(i) "Weapon" means a firearm, knife, electric weapon, club, or any other object intended to cause harm to oneself or others.

(j) "Workplace" means any location owned and operated by the Nation, and any location where an employee represents the Nation, including over-the-road travel in the Nation's owned or rented vehicles and circumstances where the employee is being reimbursed for expenses.

(k) "Workplace Violence" means any intentional act committed by an employee in a workplace that:

(1) inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person; or

(2) inflicts, attempts to inflict, or threatens to inflict, damage to property.

223.4. Applicability

223.4-1. This law applies to all employees in any of the Nation's workplaces, whether or not the employee is operating within the course of his or her employment at the time the incident of workplace violence occurs.

223.5. Prohibited Behavior

223.5-1. *Prohibited Behaviors.* Examples of workplace violence include, but are not limited to, the following prohibited behaviors:

(a) intentionally causing physical injury to another person;

(b) hitting or shoving;

(c) fighting or "horseplay" that may be dangerous to others;

(d) direct threats or physical intimidation;

(e) implications or suggestions of violence;

(f) stalking;

(g) possession or use of weapons of any kind on property of the Nation, including parking lots, other exterior premises or while engaged in activities for the Nation;

(h) physical restraint, confinement;

(i) loud, disruptive, angry or abusive language or behavior;

(j) sending of threatening, harassing or abusive e-mails, letters, faxes, phone calls, text messages or other form of electronic media;

(k) using the workplace to violate protective orders;

(l) intentionally damaging property of the Nation or property of another;

(m) throwing an object at an individual; and

(n) any other act that a reasonable person would perceive as constituting a threat of violence.

223.5-2. *Exceptions to Prohibited Behavior.* The following shall be exempt from this law:

(a) Law enforcement officials and security staff are not considered to be in violation of this law when acting in their official capacity;

- (b) Employees required to use knives or other tools owned by the Nation that could potentially be used as weapons are not considered to be in violation of this law as long as the tools are used within the normal scope of employment and not used in a way to intimidate, threaten or otherwise harm another person within the workplace; and
- (c) Any other action that is consistent with laws of the Nation.

223.6. Reporting Workplace Violence

223.6-1. *Reporting by a Non-Employee.* Any non-employee is encouraged to report threats of or observed workplace violence that occurs in the Nation's facilities and workplaces. A report of workplace violence given to an employee from a non-employee shall be promptly reported in writing to the employee's supervisor. The supervisor shall perform the initial assessment of the information pursuant to section 223.8.

223.6-2. *Permissive Reporting by an Employee.* An employee may report workplace violence to his or her supervisor where the employee:

- (a) is the victim of workplace violence; or
- (b) believes he or she has been threatened with workplace violence.

223.6-3. *Mandatory Reporting by an Employee.* An employee shall report workplace violence where the employee witnesses an act or threat of workplace violence towards anyone else.

(a) *Emergency Situation.* If an emergency exists or the situation is one of immediate danger to the life and safety of a person, the employee shall, if possible without causing themselves to be in danger, contact the Oneida Police Department or local law enforcement, and facility security if determined appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself from immediate harm. The employee shall report the incident in writing to the appropriate supervisor as soon as possible.

(b) *Non-Emergency Situation.* If a non-emergency situation exists the employee shall report the incident in writing to the appropriate supervisor as soon as possible if the situation is not one of immediate danger to life and safety.

223.6-4. *Reporting the Behavior of a Supervisor.* If the incident of alleged workplace violence involves the supervisor, the employee shall report the incident to the supervisor's supervisor, or if none exists, to the area manager.

223.6-5. *Reporting Restraining Orders.* An employee who possesses a current restraining order against another employee, shall immediately supply a copy of the signed order to his or her supervisor.

- (a) The supervisor shall provide copies of the restraining order to the area manager and the EEO Department Director or designee.

223.7. Future Workplace Violence

223.7-1. Where an employee has reason to believe that he, she or others, may be victimized sometime in the future, either at the workplace or as a direct result of their employment with the Nation, he or she is encouraged to provide this information in writing to his or her supervisor for an initial assessment pursuant to section 223.8-1.

- (a) If an employee reports a possibility of future workplace violence to his or her supervisor the supervisor shall inform the EEO Department Director or designee.
- (b) The EEO Department Director or designee shall inform the Oneida Police Department or local law enforcement and/or facility security if determined appropriate.

223.7-2. *Anonymous threats or letters.* In the event that an employee receives anonymous threats or letters, the employee shall immediately forward a summary of such information in a confidential manner to the Chief of the Oneida Police Department in accordance with the Nation's laws, policies and rules governing anonymous letters. The employee shall then immediately notify his or her supervisor. The supervisor shall notify the target of the threat, take measures to ensure safety, and ensure that the Oneida Police Department is notified, and notify local law enforcement and/or facility security if determined appropriate.

223.8. Supervisor Responsibilities

223.8-1. Upon receiving a report of workplace violence or otherwise becoming aware of a threat of workplace violence or a workplace violence episode, a supervisor shall immediately conduct an assessment of the situation and determine if an emergency exists or if the situation is one of immediate danger.

223.8-2. *Emergency Situation.* If an emergency situation exists and if possible without causing themselves to be in danger, a supervisor shall immediately contact the Oneida Police Department or local law enforcement, and facility security if appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself, employees and others from immediate harm.

223.8-3. *Non-Emergency Situation.* If the situation is not creating immediate danger to life and safety, the supervisor shall speak to the person reporting the incident and assess the situation.

(a) If the supervisor deems the episode is not a workplace violence problem then the investigation as a workplace violence matter ends.

(b) Where the supervisor deems the episode as a workplace violence matter, he or she shall prepare a written Workplace Violence Incident Report detailing the complaint. The supervisor shall then forward this report to the EEO Department Director or designee.

223.8-4. *Investigative Leave.* A supervisor may place an employee alleged to be involved in a workplace violence incident on investigative leave, if the supervisor deems the investigative leave necessary and appropriate, in accordance with the Nation's laws, policies and rules governing investigative leave except for the EEO Department Director or designee, not the employee's supervisor, shall conduct the investigation of the alleged workplace violence incident.

223.8-5. A supervisor shall consider the recommendation for disciplinary action provided by the EEO Department Director or designee pursuant to section 223.9-4(b) when carrying out a disciplinary action of an employee. The supervisor shall carry out any disciplinary action of an employee within five (5) days of receiving the recommendation. If the supervisor does not follow the disciplinary action recommendation provided by the EEO Department Director or designee, the supervisor shall provide justification for the deviation from the recommendation to the EEO Department Director and the supervisor's Area Manager.

223.9. Equal Employment Opportunity Department Responsibilities

223.9-1. The EEO Department Director, or an individual assigned as designee by the EEO Department Director, shall be responsible for investigating alleged workplace violence.

223.9-2. Upon receipt of a completed Workplace Violence Incident Report, or other acceptable written notice of an allegation of workplace violence, the EEO Department Director or designee shall coordinate with all involved agencies or departments and immediately conduct an investigation which may include the following duties:

(a) Personally visit the scene of an incident as soon as possible;

- (b) Interview employees and other witnesses;
- (c) Examine the workplace for security risk factors associated with the incident, including examination of any reports of inappropriate behavior by the perpetrator;
- (d) Determine the cause of the incident;
- (e) Determine what mitigating action could prevent the incident from recurring;
- (f) Record the findings and recommended mitigating actions; and
- (g) Contact the Oneida Police Department and/or any other appropriate law enforcement agency when necessary;
- (h) Review relevant video surveillance footage if available, in accordance with standard operating procedures on the subject; and
- (i) Any other investigative methods necessary for a thorough investigation.

223.9-3. In performing these investigative duties, the EEO Department Director or designee shall not interfere in the investigation of any law enforcement agencies. If at any time criminal charges are brought against an employee as a result of an incident of workplace violence, then the employee shall be placed on investigative leave in accordance with the Nation's laws, policies and rules governing investigative leave, except for the EEO Department Director or designee, not the employee's supervisor, shall conduct the investigation of the alleged workplace violence incident.

223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:

- (a) implement any preventive factors within the Nation's Human Resources Department's authority;
- (b) provide a written report of the investigation and recommendation for disciplinary action, if any, to the supervisor of the employee;
- (c) notify the Oneida Police Department or local law enforcement when a potential criminal act has occurred; and
- (d) refer employees to post-event trauma counseling for those employees desiring such assistance.

223.9-5. *Employee Resignation.* An employee who resigns from their position when there is an ongoing investigation or in lieu of a termination shall not be eligible for hiring consideration in a different position within the Nation for three (3) years from the date of the resignation. The EEO Department Director or designee shall remain responsible for completing the investigation in the event an employee resigns during an investigation.

223.9-6. In appropriate circumstances, the EEO Department Director or designee shall inform the reporting individual of the results of the investigation which would not compromise the legally-protected confidentiality of any other person.

223.10. Fraudulent Report

223.10-1. If at any time the EEO Department Director or designee, or supervisor is made aware that an employee or supervisor has made a report other than in good faith, the employee or supervisor may be disciplined according to the Nation's laws, policies and rules governing employment, up to and including termination.

223.11. Confidentiality

223.11-1. To the extent possible, the Nation shall maintain the confidentiality of employees and the investigation. However, the Nation may need to disclose results in appropriate circumstances; for example, in order to protect individual safety.

223.11-2. Information related to the application of this law is strictly confidential. Information shall not be disclosed to third parties unless:

- (a) the prior written consent of the alleged victim is obtained;
- (b) the release of information is in compliance with a court order; and/or
- (c) the release of information is pursuant to applicable laws and/or policies.

223.12. Enforcement

223.12-1. An employee or supervisor who violates this law may be subject to disciplinary action under the Nation's laws, policies and rules governing employment, up to and including termination.

223.12-2. An employee who violates this law may be subject to removal from a workplace of the Nation.

End

Adopted – BC-06-28-17-E