Title 2. Employment – Chapter 211
EMPLOYEE PROTECTION POLICY

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211.1 Purpose and Policy

211.1-1. The purpose of this policy is to give protection to employees who give information that is intended to protect the Oneida Nation, or its agencies from fraud, theft or other detrimental effects.

211.1-2. It is the policy of the Oneida Nation to extend protection to employees who act within this policy to protect the Nation's interests.

211.2 Adoption, Amendment, Repeal

211.2-1. This policy shall become effective upon adoption.

211.2-2. This policy shall supersede, repeal, rescind any prior law or policy regarding employee protection. Provided, that the law or policy is in direct conflict or extends lesser protection than this Employee Protection Policy.

211.2-3. This policy may be amended or repealed by the Oneida Business Committee pursuant to the Oneida Administrative Procedures Act.

211.3 Definitions

211.3-1. This section shall govern the definitions of words as phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Abuse of authority" means using the authority, whether real or assumed, of any position, whether actual or assumed, to obtain information, goods or services to the detriment of the tribe, or using the authority as described above to directly or indirectly punish any person or employee for disclosing information as described below.

(b) "Appropriate agency" means a delegated person or officer to receive disclosures in the Internal Auditing, Gaming Commission, Tribal School Board, Police Commission and Trial Court.

(c) "Disciplinary action" means any action by an employer affecting an employee to their detriment, including, but not limited to - dismissal, demotion, transfer, removal of duty, refuse to restore, suspend, reprimand.

(d) "Disclosure" means to reveal otherwise non-public information or other information that would otherwise remain concealed during a period which it should be brought to light.

(e) "Employee" means any person working for the Oneida Nation in its programs, enterprises, and governmental functions, whether elected, appointed, or hired as a limited term employee, vendor, or contractor.

(f) "Information" means the specific time, date, who, when, where, what, how in any disclosure that would prevent detrimental actions being taken against the Oneida Nation.

(g) "Merit further investigation" means that point at which a person(s) hearing the information believes that it requires further action.

(h) "Mismanagement" means failure to use reasonable good sense in using the authority granted through the job description, delegated authority by any supervisor, and/or personal judgment to advance the economic, financial, and political value of the Oneida Nation by properly using employee time, equipment, funds, and their own time.

(i) "Retaliatory action" means any action, either disciplinary or otherwise, taken against any employee, whether supervisory or supervised, for that employee's disclosure of information as directed within this policy, excluding any action that can be reasonably justified as taken in good faith based on documented employee performance. Action other than disciplinary action that may be retaliatory, by way of example, could be loss of hours, rescheduling shifts outside of normal shift changes, change of job requirements without notice, verbal or physical harassment, reduction of pay, denial of educational benefits, reassignment, failure to increase base pay.

(j) "Substantial waste of public funds" means any use of funds in a manner not directed by policy, including any preference laws adopted by the Oneida Nation.

(k) "Trial Court" means the Court of the Oneida Judiciary where evidence and testimony are first introduced, received, and considered. The Oneida Judiciary was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

211.4 Disclosure

211.4-1. General. The Oneida Tribe recognizing the negative impact on the employee that may arise from presenting information that protects the Oneida Tribe from adverse actions of its elected officials, employees, contractual employees, and contractors and offers the processes in this Policy to protect employees against retaliation in the event information is presented. This Policy is effective after presentation of information and protects against retaliation. No identification of a protected status is necessary when information is properly presented. And no protection can be extended unless information is properly presented.

211.4-2. An employee is protected under this policy when the disclosure of the information is given, in confidence, in written form, dated, and signed, to the any of the following persons:

(a) Supervisor
(b) appropriate agency or entity
(c) law enforcement agency
(d) attorney retained by the employee.
(e) Employee Advocates

Provided that, disclosure, through circumstances other than in person, the employee shall fully identify themselves.

211.4-3. A protected disclosure includes the following elements:

(a) identity of person making the disclosure
(b) identity of person or persons against whom disclosure is being made
(c) to the best of the employees knowledge, the date and times at which the disclosed action occurred, and d. summary of the disclosed action.

211.4-4. All disclosures shall be kept confidential, until such time as action is being taken against the person or persons identified in the disclosed information.

211.4-5. Disclosures made in reference to section 211.4-1 of this policy shall be directed as soon as possible to the appropriate agency or entity, with the permission of the disclosing person/persons. The disclosed information will be in a sealed envelope, which may be hand carried, mailed certified or delivered by law enforcement. A receipt shall be required to be signed, and dated by the recipient.

211.4-6. Disclosures made in reference to 211.4-2(d) of this policy shall be with the understanding that no attorney shall be directed to act in a manner that the attorney finds to be in conflict with any professional responsibility or rule.

211.4-7. The appropriate agency shall send a written decision to the disclosing party that the disclosure has or does not have merit, along with any further action that will be taken within

twenty (20) business days. If a disclosure merits further action, the disclosing party will be notified that they may be called by the appropriate agency to give additional testimony at a closed meeting and on approximately what date. Further, appropriate agencies will follow the hearing procedures set out in the Administrative Procedures Act for a Hearing of Record. Appropriate agencies are authorized to use their full powers to take corrective measures where disclosures merit action, and to utilize all Tribal agencies to effectively correct any and all problems found. This includes, but is not limited to, the following action:

(a) Oneida Business Committee garnishment action to recover lost funds,

(b) Judiciary for appropriate disciplinary and civil actions,

(c) Criminal prosecutions, where indicated, in appropriate federal or state courts.

211.5 Protection

211.5-1. Any employee who discloses information in the manner described in this policy shall be protected from any and all employment related retaliation to the fullest extent of this section.

211.5-2. Any employee who believes that retaliatory action is being taken against them may follow procedures set out below:

(a) This policy supersedes those complaint procedures set out in the Personnel Policy and Procedures Manual and the employee may go directly to their Division Director and state, in person and in writing, or written only, the action that employee believes is retaliatory, or

(b) If a disciplinary action, that employee may go directly to the Trial Court with their grievance.

211.5-3. The Trial Court is authorized through this policy to proceed immediately with any alleged retaliation grievance placed before them by any employee. Any resolution of a retaliation grievance must be written and placed in all parties files. All parties include, but are not limited to, persons actively involved with knowingly implementing any retaliation action and named by the grieving party.

211.5-4. Any person acting under the authority of another, who has a good faith belief of the correctness of their actions, is a legal defense against any retaliation grievance and, if accepted by the Trial Court, bars placement of the results of the action in that employee's file. Provided that, the person was not found to be actively involved in an retaliatory action. Provided further, that the employee acting in good faith has not asked that the results of any retaliation hearing be placed in their file.

211.5-5. If a disclosing employee files a grievance alleging a protected status as a result of a disclosure and that retaliation has occurred, the disclosing employee may request a protective order which may be as follows:

The Trial Court hereby orders that the Human Resources Department shall monitor (name of supervisor/job title)'s actions in regard to (name of disclosing employee/job title). This employee has alleged a protected status under the Employee Protection Policy which the Trial Court has determined that sufficient evidence exists to prove that such a status exists.

This protective order shall remain in place until such time as a final decision is issued by this Trial Court.

End.

Emergency Adopted - BC-4-20-95-B
Permanently Adopted - BC-12-6-95-B
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