



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room-2nd Floor Norbert Hill Center
June 20, 2018 9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be approved**
 - 1. June 6, 2018 LOC Meeting Minutes (pg. 2)
- III. Current Business**
 - 1. Children's Code (pg. 4)
 - 2. Military Service Employee Protection Act Emergency Amendments (pg.12)
- IV. New Submissions**
- V. Additions**
- VI. Administrative Updates**
 - 1. July 4, 2018 LOC Meeting Cancellation (pg. 34)
- VII. Executive Session**
- VIII. Recess/Adjourn**



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center

June 06, 2018

9:00 a.m.

Present: David P. Jordan, Ernest Stevens III, Jennifer Webster

Excused: Kirby Metoxen, Daniel Guzman King

Others Present: Brandon Wisneski, Clorissa Santiago, Jennifer Falck, Rae Skenandore, Lee Cornelius, Bonnie Pigman, Ed Delgado

I. Call to Order and Approval of the Agenda

David P. Jordan called the June 06, 2018 Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Ernest Stevens III to adopt the agenda; seconded by Jennifer Webster. Motion carried unanimously.

II. Minutes to be Approved (0:46-1:04)

May 16, 2018 LOC minutes

Motions by Ernest Stevens III to approve the May 16, 2018 LOC minutes and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

III. Current Business

1. Sanctions and Penalties (1:05-2:38)

Motion by Jennifer Webster to accept the draft of the Sanctions and Penalties law and direct that a legislative analysis be completed; seconded by Ernest Stevens III. Motion carried unanimously.

2. Military Service Employee Protection Act Emergency Amendments (2:01-4:22)

Motion by Ernest Stevens III to accept the draft of the Military Service Employee Protection Act with the addition of the word “unit” in front of roll on line 90 and direct that a legislative analysis be completed; seconded by Jennifer Webster. Motion carried unanimously.

3. Oneida Personnel, Policies, and Procedures Emergency Amendments (4:34-15:43)

Motion by Jennifer Webster to accept the draft of the Oneida Personnel, Policies, and Procedures amendments and direct that a legislative analysis be completed; seconded by Ernest Stevens III. Motion carried unanimously.

4. Petition: G. Dallas \$5,000 Per Capita Payment (15:44-19:06)



Motion by Jennifer Webster to approve the Petition: G. Dallas \$5,000 Per Capita Payment legislative analysis and forward to the Oneida Business Committee; seconded by Ernest Stevens III. Motion carried unanimously.

5. Personnel Selection Committee By-laws (19:07-19:42)

Motion by Ernest Stevens III to enter the Personnel Selection Committee E-poll results into the record; seconded by Jennifer Webster. Motion carried unanimously.

IV. New Submissions

1. Petition: Metivier- 2019 Hourly Wage Increase (19:50 – 21:34)

Motion by Jennifer Webster to add the Petition: Metivier- 2019 Wage Increase to the active files list with a high priority and David P. Jordan as the sponsor; seconded by Ernest Stevens III. Motion carried unanimously.

2. Petition: G. Powless-Oneida Personnel Commission Dissolution (21:43-22:47)

Motion by Jennifer Webster to add the Petition: G. Powless-Oneida Personnel Commission Dissolution to the active files list with David P. Jordan as the sponsor and a high priority; seconded by Ernest Stevens III. Motion carried unanimously.

3. Harvest Law (22:50-30:20)

Motion by Jennifer Webster to add Harvest Law into the active files list as a medium priority and Ernest Stevens III as the sponsor; seconded by Ernest Stevens III. Motion carried unanimously.

V. Additions

VI. Administrative Updates

VII. Executive Session

VIII. Adjourn

Motion by Ernest Stevens III to adjourn the June 06, 2018 Legislative Operating Committee meeting at 9:30 a.m.; seconded by Jennifer Webster. Motion carried unanimously.



Legislative Operating Committee June 20, 2018

Children's Code

Submission Date: 9/17/14	Public Meeting: 5/4/17
LOC Sponsor: Kirby Metoxen	Adopted: 7/26/17

Summary: *The OBC adopted the Children's Code pursuant to BC Resolution 07-26-17-J and directed that the LOC 1) provide a final implementation plan to the OBC on 9/13/17; 2) provide the OBC with quarterly reports starting after 9/13/17; and 3) conduct a review 1 year after implementation. The Code will become effective 15 months after the adoption of the FY2018 Budget.*

9/6/17 LOC: Motion by Jennifer Webster to add Children's Code to the active files list with Kirby Metoxen as the sponsor; seconded by Ernest Stevens III. Motion carried unanimously.

Motion by Daniel Guzman King to accept the Children's Code Implementation Plan as information and forward to the Oneida Business Committee as information; seconded by Ernest Stevens III. Motion carried unanimously.

9/7/17: *Work Meeting.* Present: Clorissa Santiago, Candice Skenandore, Michelle Gordon, Jennifer Berg-Hargrove, Heather Lee, Tsyoshaht Delgado, George Skenandore, Veronica Bruesch. The purpose of this meeting was to continue drafting a proposed memorandum of understanding.

9/12/17 OBC: *Executive Session.* Children's Code Implementation Plan was discussed with the OBC during Executive Session.

9/13/17 OBC: Motion by Lisa Summers to accept the Children's Code Implementation Plan as information, seconded by Ernest Stevens III. Motion carried unanimously.

EXECUTIVE SESSION: Motion by Trish King to accept the update and changes as information, seconded by Ernest Stevens III. Motion carried unanimously.

EXECUTIVE SESSION: Motion by Lisa Summers to direct the negotiating team, composed of representatives from the Law Office, Governmental Services, and Intergovernmental Affairs & Communications, to begin negotiations with Outagamie County, seconded by Kirby Metoxen. Motion carried unanimously.

9/19/17: *Presentation and Meeting with Wisconsin Department of Children and Families Secretary Eloise Anderson.* Present: Eloise Anderson (Secretary of DCF), Brad Wassink (Assistant Deputy Secretary of DCF), Stephanie Lozano (DCF Tribal Liaison), Tehassi Hill, Patricia King, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Tana D. Aguirre, Nate King, Jennifer Falck, Candice Skenandore, Clorissa Santiago, Jennifer Berg-Hargrove, Heather Lee, George Skenandore, Tsyoshaht Delgado, Jennifer Hill-Kelly, Melinda Danforth, Jessica Wallenfang. Presentation of the Children's Code was given, followed by discussion.

9/25/17: *Work Meeting with OBC.* Present: Clorissa Santiago, Candice Skenandore, Jennifer Falck, David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Brandon Stevens, Tehassi Hill,

Melinda J. Danforth, Rosa Laster, Lisa Liggins, Laura Laitinen-Warren. Discussion was held regarding talking points regarding the Children's Code in relation to the FY 2018 Budget meeting.

11/1/17 LOC: Motion by Kirby Metoxen approve the 60 day active files list update and continue development of all the items on the active files list; seconded by Ernie Stevens III. Motion carried unanimously.

12/20/17LOC: Motion by Kirby Metoxen to approve the Children's Code Quarterly Update and forward to the Oneida Business Committee; seconded by Daniel Guzman King. Motion carried unanimously.

12/27/17OBC: Motion by David P. Jordan to accept the 1st quarter update regarding Children's Code, seconded by Jennifer Webster. Motion carried unanimously.

1/2/18: *Work Meeting.* Present: Clorissa Santiago, George Skenandore, Jennifer Berg-Hargrove, Tana D. Aguirre, Nate King, Michelle Gordon. The 161 Subcommittee met to discuss how to move the 161 agreement negotiations forward. Michelle has made contact with individuals from Brown County and is waiting for a reply, George has made contact with individuals from Outagamie County and is waiting for a reply. George and Michelle have decided on a date of January 15, 2018, to wait for replies, before Nate and Tana will step in and assist with contacting the counties. Michelle and Jennifer will work on further developing the MOA this week. 161 Subcommittee will meet again on February 6, 2018.

2/6/18: *Work Meeting.* Present: Clorissa Santiago, George Skenandore, Jennifer Berg-Hargrove, Tana D. Aguirre, Nate King, Michelle Gordon. The 161 Subcommittee met to provide updates on the progress of the 161s. A draft memorandum of understanding has been completed. An initial negotiation meeting has been scheduled with Outagamie County for February 7, 2018. The group is still waiting to hear back from Brown County, but will take more official action to set up a meeting with Brown County if we do not hear back from Brown County within the next 30 days. 161 group discussed the possibility of designing a transition plan with the counties to better outline the relationship for the first year of implementation. The next implementation goal will be to work on the memorandum of understanding with OPD.

2/7/18: 161 Subcommittee members, Michelle Gordon, George Skenandore, Jennifer Berg-Hargrove, met with representatives from Outagamie County to begin negotiations on the 161 Agreement and memorandum of understanding.

3/16/18: *Work Meeting:* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Ernest Stevens III, Clorissa Santiago, Brandon Wisneski, Cathy Bachhuber, Rosa Laster. LOC discussed the upcoming Children's Code quarterly update and some pressing concerns.

3/21/18: EPOLL Conducted for Children's Code Implementation Quarterly Update.

3/28/18 OBC: Motion by Jennifer Webster to accept the Children's Code Implementation quarterly update, seconded by David P. Jordan. Motion carried unanimously.


4/2/18 LOC: Motion by Daniel Guzman King to enter into the record [Children's Code Implementation quarterly update E-Poll]; seconded by Jennifer Webster. Motion carried unanimously.

5/1/18: *Work Meeting.* Present: Clorissa Santiago, George Skenandore, Jennifer Berg-Hargrove, Nate King. The 161 Subcommittee met to provide updates on the progress of the 161s and discuss the various challenges in the implementation of this law.

Next Steps:

- Accept the Children's Code Implementation Quarterly Update and forward to the Oneida Business Committee.



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson 
DATE: June 27, 2018
RE: Children's Code Implementation Quarterly Update

The Children's Code was adopted by the Oneida Business Committee (OBC) through resolution BC-07-26-17-J with the purpose of providing for the welfare, care, and protection of Oneida children through the preservation of the family unit, by assisting parents in fulfilling their responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the Nation, and acknowledging the customs and traditions of the Nation when raising an Oneida child. Oneida Business Committee resolution BC-07-26-17-J requires the Children's Code to become effective fifteen (15) months after the adoption of the Fiscal Year 2018 budget.

On July 26, 2017, the OBC directed that a full implementation plan be submitted to the OBC, with quarterly reports submitted thereafter, and a one (1) year review of the Children's Code itself as it relates to the full implementation.

On September 13, 2017, the OBC reviewed and accepted the Children's Code Implementation plan. This implementation plan is to be used as a guideline for the affected entities to prepare for the successful implementation of the Children's Code. This implementation plan is not exhaustive, and the OBC can modify the effective date of the Children's Code and implementation plan as it deems necessary to successfully implement the Children's Code.

On October 8, 2017, the General Tribal Council adopted the Fiscal Year 2018 budget through resolution GTC-10-08-17-A. In accordance with Oneida Business Committee resolution BC-07-26-17-J the Children's Code will become effective on January 8, 2019.

The Oneida Business Committee reviewed and accepted the first Children's Code Implementation Quarterly Update on December 27, 2017, and the second Children's Code Implementation Quarterly Update on March 28, 2018.

This memorandum serves as the third quarterly update to the OBC on the implementation of the Children's Code.

ONEIDA FAMILY COURT

Accomplishments

In accordance with the approved implementation plan, the Oneida Family Court (OFC) was able to complete the following by the time of this third quarterly report:

- *Appointment of the Oneida Family Court Judge.*
 - The new Family Court Judge was sworn into office on June 13, 2018, and will begin working at the OFC on June 15, 2018.
- *Hiring of the Family Court Clerk.*

- The Family Court Clerk has been hired, and is set to begin working at the OFC within the next couple of weeks.
- *Development of Forms and Guides.*
 - Over thirty (30) various forms and guides that will be necessary for the implementation of the Children's Code at the OFC have been developed.
- *Technology.*
 - The OFC has acquired and installed video conferencing equipment in the court rooms. Training on this equipment is currently underway.

Goals

In accordance with the approved implementation plan, the OFC has the following goals for the next quarter:

- *Training of the Newly Hired OFC Clerk.*
 - The newly hired Judge will begin providing law by law training to the new OFC Clerk.
 - The new OFC Clerk will be able to immediately begin observing Family Court hearings, and learning skills and procedures from the current OFC Clerk.
- *Begin OFC Training.*
 - Now that the OFC is fully staffed, the OFC Judges will begin developing and providing training on the Children's Code.
 - The OFC Judges will begin developing training materials for guardians ad litem (GALs) of the OFC who wish to work on Children's Code cases.
- *Recruitment of Guardians ad Litem (GALs).*
 - The OFC will continue recruitment of GALs. The OFC's existing caseload is making full use of current GALs. OFC has begun to receive contact information from individuals who are interested in serving as GALs, but many more are needed.
 - The OFC will develop and schedule GAL trainings for the community.

Requests of the Oneida Business Committee

The OFC requests the following assistance from the Oneida Business Committee in regards to the implementation of the Children's Code:

- *Recruitment of Guardians ad Litem (GALs).*
 - OFC requests that the Oneida Business Committee assist with the recruitment of GALs by communicating the need for individuals to serve in this capacity.

ONEIDA INDIAN CHILD WELFARE DEPARTMENT

Accomplishments

In accordance with the approved implementation plan, the Indian Child Welfare Department (ICW) was able to complete the following in time for the third quarterly report:

- *Hiring of Additional Staff.*
 - All ICW Social Workers/Case Managers have been hired.
 - The paralegal position was drafted and sent to the Human Resource Department for review and approval. The job description has been approved, and was posted on June 13, 2018.
 - ICW reviewed and offered input on Indigenous Healer Practitioner job description.
- *Training.*

- Training for current and new staff is under way, both internally through a newly developed orientation and through our partnership with Wisconsin Child Welfare Professional Development System (WCWPDS).
- *Memorandums of Understanding.*
 - *Outagamie County.* There have been ongoing meetings towards finalizing the memorandum of understanding (MOU) and 161 Agreement negotiations with Outagamie County.
 - *Oneida Police Department.* In collaboration with the Oneida Police Department (OPD), ICW has drafted an MOU for the departments, and is awaiting final legal references prior to sending to OPD for their final review.
- *Miscellaneous.*
 - Acquired an Intake phone line to be used for emergency contacts with the County and OPD.

Goals

In accordance with the approved implementation plan, ICW has the following goals for the next quarter:

- *Hiring of Additional Staff.*
 - ICW would like to have the paralegal position hired.
- *Memorandum of Agreement.*
 - ICW and OPD hope to finalize an MOU that will detail the relationship, roles, communication, and responsibilities of the two departments.
 - ICW would like to have the MOU and 161 Agreement finalized with Outagamie County.
 - ICW would like to begin negotiations with Brown County regarding an MOU and 161 Agreement.
- *Training and Development of Standards.*
 - ICW would like to continue training all ICW staff, and also develop the necessary internal policies, procedures, and standards to address issues related to the implementation of the Children's Code.
 - Standards need to be reviewed and adopted for matters such as initial assessments, on-going assessments, and safety.
 - Once the paralegal position is filled, ICW would like to move forward with the development of legal documents that will be necessary.
- *Kinship Care.*
 - ICW would like to review the Kinship Care program to move towards being inclusive of kinship care that is ordered by the Court in Fiscal Year 2019.
- *Database Access.*
 - ICW needs to determine whether Wisconsin's Statewide Automated Child Welfare Information System (eWISACWIS), or another database will be utilized, and what ICW will be responsible for in terms of case management.

Challenges and Barriers to Implementation

The following matters have served as a challenge or barrier for ICW in their efforts to implement the Children's Code:

- *Delays in the Hiring Process.*

- There were unexpected delays in both the posting and hiring of various ICW positions. It was originally estimated that most of the hiring could be completed within the first three (3) months of implementation, but this timeline was not met.
- *Delays in Training and Development.*
 - Due to the delays in the hiring of all additional staff that is necessary for the implementation of the Children's Code, there have been delays in the training of staff, the development of standards and policies, and the drafting of legal documents. Additionally, many of the new staff do not possess prior experience with child welfare issues, so more in depth training will be critical.
- *Delays in 161 Agreement and MOU Negotiations.*
 - ICW has been involved with the negotiations with Outagamie County for a 161 Agreement and MOU. Although negotiation meetings have been occurring, the process has been slower than anticipated due to process on both the Nation's and the County's side. Negotiation meetings with Brown County have not yet begun.
- *eWISACWIS.*
 - ICW is facing challenges with determining if ICW will have use of Wisconsin's Statewide Automated Child Welfare Information System (eWISACWIS), or if an alternative database will have to be developed and used.
- *The Unknown.*
 - Throughout the implementation process, a barrier that has challenged the ICW are the unknown matters that needed to be addressed that were not planned for during the development of the implementation plan, such as additional processes and documentation that will need to be developed, and technical assistance.

Concerns

ICW has the following concerns for the implementation of the Children's Code:

- *Effective Date of the Children's Code.*
 - The Oneida Business Committee adopted the Children's Code through resolution BC-07-26-17-J, which required the law to become effective fifteen (15) months after the adoption of the Fiscal Year 2018 budget. The Fiscal Year 2018 budget was adopted by the General Tribal Council through resolution GTC-10-08-17-A. This means the Children's Code will become effective on January 8, 2019.
 - ICW is concerned that because of the delays in hiring, delays in training and development, and the delays in the negotiations of the various memorandums of agreement and 161 Agreements, ICW will not be prepared to implement the Children's Code by January 8, 2019.

Requests of the Oneida Business Committee

ICW requests the following assistance from the Oneida Business Committee in regards to the implementation of the Children's Code:

- *eWISACWIS.*
 - If the Nation's ICW Department is granted full eWISACWIS access by Wisconsin, then the Oneida Business Committee will have to determine if this is a system the Nation wants to utilize for child welfare matters.
- *Approval of Various Standards.*

- ICW is currently working on the development of various standards and policies. The Oneida Business Committee can assist the implementation of the Children's Code by approving the standards to be utilized once the Children's Code is fully implemented and the Nation is assuming jurisdiction over these matters.
- *Supportive Services.*
 - Once the Children's Code is fully implemented and ICW is operating independently, there may be a future need for supportive services if it is determined there was a loss of resources.
- *Understanding.*
 - ICW asks the Oneida Business Committee for support and understanding that the implementation of the Children's Code is a very involved and complicated process, and although it is taking time to complete, ICW is approaching the implementation of this law with great care and thoughtfulness in order to ensure the successful implementation.

161 AGREEMENT NEGOTIATION TEAM

The OBC reviewed the draft 161 Agreement and on September 13, 2017, the OBC made a motion to accept the update and changes to the draft 161 agreement as information, and directed the negotiating team composed of representatives from the Law Office, Governmental Services, and Intergovernmental Affairs & Communications, to begin negotiations with Outagamie County followed by Brown County.

Accomplishments

The 161 Agreement Negotiation Team has completed the following in time for the third quarterly report:

- *Outagamie County Negotiations.*
 - Negotiations with Outagamie Court for an MOU and a 161 Agreement have been finalized and returned to Outagamie Court for final approval.
 - The MOU and 161 Agreement will be ready for formal signature.
- *Brown County Negotiations.*
 - A copy of the proposed 161 Agreement and memorandum of understanding has been provided to Brown County.
 - Discussions and negotiations regarding the matters will be scheduled for the near future.

Goals

In accordance with the approved implementation plan, the 161 Agreement Negotiation Team has the following goals for the next quarter:

- *Outagamie County Negotiations.*
 - Schedule a meeting between leadership in the Nation and leadership in Outagamie County for the final approval and signing of the agreements.
 - The 161 Agreement Negotiation Team is interested in pursuing a formal signing ceremony between the two governments to formally recognize the agreement and the importance of providing support and caring for children and families.
- *Brown County Negotiations.*
 - Successfully negotiate and secure a 161 Agreement and memorandum of understanding with Brown County.

Challenges and Barriers to Implementation

The 161 Agreement Negotiation Team has the following concerns for the implementation of the Children's Code:

- Scheduling Conflicts.
 - The largest challenge the 161 Agreement Negotiation Team has faced thus far in the implementation of the Children's Code has been coordinating schedules with officials from Brown County and Outagamie County.

Requests of the Oneida Business Committee

The 161 Agreement Negotiation Team requests the following assistance from the Oneida Business Committee in regards to the implementation of the Children's Code:

- *Formal Signing Ceremony.*
 - The 161 Agreement Negotiation Team requests the all members of the Oneida Business Committee make themselves available for a formal signing ceremony with leadership from Outagamie County to formally recognize the 161 Agreement and MOU between the two governments.

Requested Action

Accept the Children's Code Quarterly Update.



Legislative Operating Committee
June 20, 2018

Military Service Employee Protection Act Emergency Amendments

Submission Date: 4/18/18	Public Meeting: n/a
LOC Sponsor: David P. Jordan	Emergency Enacted: 4/25/18

Summary: *Request to amend this law on an emergency basis was due to action taken through resolution BC-04-11-18-A by the Oneida Business Committee which dissolved the Personnel Commission and directed the Legislative Operating Committee to develop and present emergency legislative amendments to fully address the impact of this resolution by the April 25, 2018, Oneida Business Committee meeting for consideration of adoption.*

4/18/18 LOC: Motion by Kirby Metoxen to add to the Active Files list as a high priority with David P. Jordan as the Sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

4/18/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Jo Anne House, Tani Thurner, Laura Laitinen-Warren. The purpose of this work meeting was to discuss an update and plan for the emergency amendments.

4/20/18: E-Poll conducted.

4/25/18 OBC: Motion by David P. Jordan to adopt resolution 04-25-18-D Military Service Employee Protection Act Emergency Amendments, seconded by Ernie Stevens III. Motion carried unanimously.

5/2/18/ LOC: Motion by Ernest Stevens III to enter the Military Service Employee Protection Act Emergency Amendments E-poll into the record; seconded by Kirby Metoxen. Motion carried unanimously.

5/16/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Laura Laitinen-Warren. The purpose of this work meeting was to review and discuss the drafted permanent amendments. Drafting attorney will update the draft.

6/6/18 LOC: Motion by Ernest Stevens III to accept the draft of the Military Service Employee Protection Act with the addition of the word “unit” in front of roll on line 90 and direct that a legislative analysis be completed; seconded by Jennifer Webster. Motion carried unanimously.

Next Steps:

- Accept the legislative analysis for the Military Service Employee Protection Act amendments and defer to a work meeting.



AMENDMENTS TO MILITARY SERVICE EMPLOYEE PROTECTION ACT LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: OBC	SPONSOR: David Jordan	DRAFTER: Clorissa Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To permanently transfer the Personnel Commission's responsibilities under this law regarding appeals to the Oneida Judiciary Trial Court.		
Purpose	The purpose of the Military Service Employee Protection Act is to minimize disruption of the lives of Tribal employees serving in the military, to provide for prompt reemployment of these individuals upon completion of their service, and to prevent discrimination against people who serve in the military [see <i>Military Service Employee Protection Act</i> , 2 O.C. 213.1-1].		
Affected Entities	Oneida Judiciary, Oneida Human Resources Department, Oneida Personnel Commission, all Oneida Nation employees and job applicants who serve in the military.		
Affected Legislation	Military Service Employee Protection Act.		
Enforcement/Due Process	Individuals denied employment or reemployment under this law may file a complaint with their area manager and appeal the area manager's decision to the Trial Court [see <i>Military Service Employee Protection Act</i> , 2 O.C. 213.11]		
Public Meeting	A public meeting has not yet been held.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. On April 11, 2018, the Oneida Business Committee (OBC) dissolved the Oneida Personnel Commission and directed that the Commission's hearing authority be transferred to the Oneida Judiciary [see *BC Resolution 04-11-18-A*].
- B. The Oneida Personnel Commission is included in the appeals process of this law. Now that the Personnel Commission is dissolved, amendments are needed to transfer the Personnel Commission's responsibilities under this law to the Oneida Judiciary.
- C. On April 25, 2018, the Oneida Business Committee adopted emergency amendments to transfer the Personnel Commission's hearing authority under this law to the Oneida Judiciary Trial Court. The emergency amendments expire on October, 25, 2018 and may be renewed for one additional six-month period [see *BC Resolution 04-25-18-D*].
- D. Permanent adoption of these amendments will ensure that the Nation's employees and job applicants who serve in the military will continue to have a venue to appeal denial of employment, reemployment or benefits under this law.

SECTION 3. CONSULTATION AND OUTREACH

- A. The Judiciary Law, Personnel Policies and Procedures, Employee Protection Policy, and Military Service Employee Protection Act were reviewed in drafting this analysis.
- B. Personnel Commission staff were consulted regarding the number of pending cases and filing fees.

SECTION 4. PROCESS

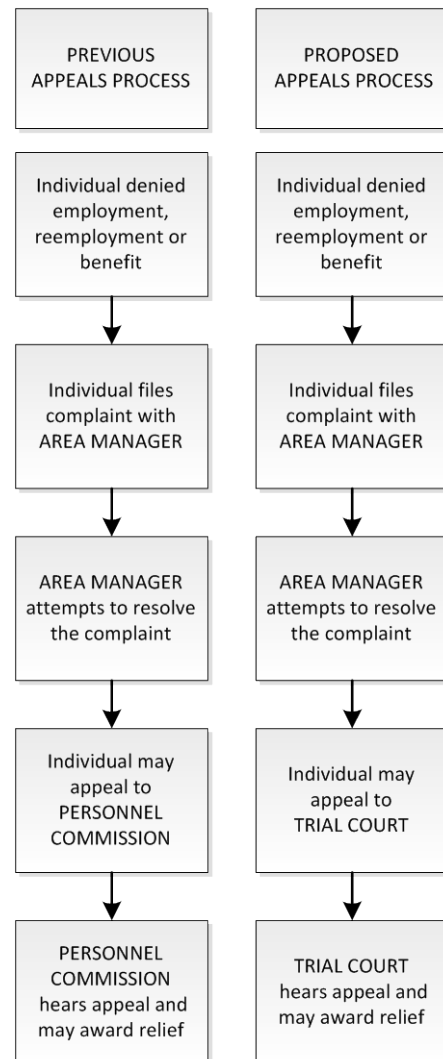
- A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- B. This law was originally added to the Active Files List on 12/20/2017 and reclassified as emergency amendments on 4/18/2018. Emergency amendments were adopted by the BC on 4/25/2018. The emergency amendments expire on 10/25/18 and may be renewed for one additional six-month period.
- C. A public meeting and fiscal impact statement was not required for the adoption of emergency legislation. However, a public a meeting and fiscal impact statement is now required to consider this law for permanent adoption.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. ***Replace Personnel Commission with Trial Court in Appeals Process.*** If a member of the military feels they have been wrongly denied employment, reemployment, or benefit under this law, they can file a complaint with the Area Manager who oversees that department. If they are unsatisfied with the Area Manager's decision, they can file an appeal. Originally, ***Chart 1. Appeals Process***

these appeals were filed with the Personnel Commission. Instead, appeals will now be filed with the Judiciary Trial Court. The appeals process in this law has been revised to remove references to the Oneida Personnel Commission and replace them with the Trial Court:

- i. ***Definitions.*** A definition for "Trial Court" has been added [see *Military Service Employee Protection Act*, 2 O.C. 213.3(l)].
- ii. If the area manager does not resolve a complaint within ten (10) business days, an individual may now take their complaint to the Trial Court, rather than the Personnel Commission [see *Military Service Employee Protection Act*, 2 O.C. 213.11-5].
- iii. If an employee appeals the area manager's decision under this law, the appeal must now be filed with the Trial Court instead of the Personnel Commission [see *Military Service Employee Protection Act*, 2 O.C. 213.11-6].
- iv. The Trial Court, rather than the Personnel Commission, must notify the Human Resources Department within one (1) business day when an employee files an appeal [see *Military Service Employee Protection Act*, 2 O.C. 213.11-6].
- v. The Trial Court, rather than the Personnel Commission, may award relief by requiring the Nation to comply with the provisions of this law or by requiring the Nation to compensate for any back pay or loss of benefits [see *Military Service Employee*



Protection Act, 2 O.C. 213.11-7].

- B. Minor Formatting Revisions.** Minor revisions were made to reflect current drafting and formatting standards. For example, “Tribe” has been replaced with “Nation.”

SECTION 6. EFFECT ON EXISTING LEGISLATION

- A.** As a result of the dissolution of the Personnel Commission and creation of the Personnel Selection Committee, the following laws were also amended on an emergency basis to replace references to the Personnel Commission:

- i. Oneida Personnel Policies and Procedures [*see BC Resolution 04-25-18-E*].
- ii. Oneida Judiciary Rules of Civil Procedure [*see BC Resolution 04-15-18-F*].
- iii. Oneida Employee Protection Policy [*see BC Resolution 04-15-18-G*].

SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

- A. Trial Court Filing Fees.** The Personnel Commission did not charge a fee to file appeals relating to this law. The Trial Court, however, charges a \$50 filing fee for general civil cases. Therefore, individuals may now be required to pay filing fees in order to have their cases heard under this law.

- i. *Fee Waiver.* If individuals are unable to pay the filing fee, they may request a fee waiver from the court for the following reasons: Unemployed, Health/Medical, Indigent (below poverty level), or other reasons.

- B. Pending Cases.** At the time the emergency amendments were adopted on 4/25/18, five cases were pending before the Personnel Commission. These cases, and any associated timelines, were placed on hold until emergency amendments to this and related laws were adopted. At the time this analysis was drafted, it is not known if any of the five pending cases involved the Military Service Employee Protection Act.

SECTION 8. ENFORCEMENT AND ACCOUNTABILITY

- A.** If an individual is denied employment, reemployment or benefits under this law, they may appeal to the Area Manager and Trial Court. The Area Manager or Trial Court may award relief, including: compensating the individual for lost wages or benefits and requiring compliance with this law [*see Military Service Employee Protection Act, 2 O.C. 213.11-5*].

SECTION 9. OTHER CONSIDERATIONS

- A. Use of Citations.** This law includes over twenty-five (25) citations referencing other sections of the same law. For example: “Except as provided under 213.6-6, an employee referred to in 213.6-1 shall notify...” [*see Military Service Employee Protection Act, 2 O.C. 213.6-5*]. The extensive use of citations makes provisions of this law difficult to read. Since this law was adopted in 2007, the Nation’s drafting style has evolved to avoid extensive use of citations. The LOC may want to revise provisions of this law to replace citations and improve readability.

- B.** Please refer to the fiscal impact statement for any fiscal impacts.

Draft 1
2018 06 06

Title 2. Employment – Chapter 213 MILITARY SERVICE EMPLOYEE PROTECTION ACT

213-1. Purpose and Policy	213-7. Reemployment Positions
213-2. Adoption, Amendment, Repeal	213-8. Benefits of Persons Absent from Employment for Military Service
213-3. Definitions	213-9. Health Plans
213-4. Character of Service	213-10. Retirement Plans
213-5. Discrimination Against Persons Who Serve in the Military Prohibited	213-11. Enforcement of Employment or Reemployment Rights
213-6. Reemployment Rights of Persons who Serve in the Military	

213.1. Purpose and Policy

213.1-1. *Purpose.* The ~~purposes~~purpose of this law ~~are:~~
(a) ~~is~~ to minimize the disruption to the lives of ~~Tribal~~of the Nation employees serving in the military as well as to the ~~Tribe~~Nation by providing for the prompt reemployment of such persons upon completion of such service; and

(b) ~~to~~ prohibit discrimination against people because they serve in the military.

213.1-2. *Policy.* It is the policy of the ~~Oneida Tribe~~Nation to reemploy persons who return from military service in the same position, or a substantially similar position, of employment the person held prior to leaving for military service.

213.2. Adoption, Amendment, Repeal

213.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-24-07-E- ~~and amended by BC- - - -~~.

213.2-2. This law may be amended ~~pursuant to the procedures set out in the Oneida Administrative Procedures Act~~or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

213.2-3. 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.

213.2-4. ~~Any law, policy, regulation, rule, resolution, or motion, or portion thereof, which directly conflicts with~~ In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law ~~is hereby repealed to the extent that it is inconsistent with or is contrary to this law~~shall control.

213.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

213.3. Definitions

213.3-1. 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) "Area Manager" means the supervisor of the supervisor of an employee who is protected under this law, or, in other words, two levels of supervision in the chain of command above the protected employee, or an individual designated to be the Area Manager by the Division Director (or, in divisions where there is no director, the General Manager) and approved by the Human Resources Department Manager (or designee).

(b) "Benefit" means any advantage, profit, privilege, gain, or interest (other than wages or salary) that accrues by reason of an employment agreement or an employer policy, plan, or

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practice and includes rights and benefits under a retirement plan, a health plan, insurance coverage, incentives, unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

~~(e)~~(c) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(d) “Employee” means any person employed by the Oneida ~~Tribe~~Nation.

~~(e)~~(d) “Health plan” means an insurance policy or contract or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

~~(e)~~(f) “Military” means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

~~(f)~~(g) “Nation” means the Oneida Nation, as employer through its divisions, departments, programs, enterprises or other subdivisions of the Nation.

(h) “Qualified,” with respect to an employment position, means having the ability to perform the essential tasks of the position.

~~(g)~~(i) “Reasonable efforts”, in the case of actions required of the ~~Tribe~~Nation under this law, means actions, including providing training, that do not place an undue hardship on the ~~Tribe~~Nation.

~~(h)~~(j) “Seniority” means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

~~(i)~~(k) “Service” or “service in the military” means the performance of duty on a voluntary or involuntary basis in a branch of the military and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, the time a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and the period for which a person is absent from employment for the purpose of performing funeral honors duty.

~~(j)~~ “Tribe” means the Oneida Tribe of Indians of Wisconsin as employer through its divisions, departments, programs, enterprises or other subdivisions of the Tribe.

~~(k)~~(l) “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.

(m) “Undue hardship”, in the case of actions taken by the ~~Tribe~~Nation, means actions requiring significant difficulty or expense, when considered in light of:

(1) the nature and cost of the action needed under this ~~Law~~law;

(2) the overall financial resources of the department involved in the provision of the action; the number of persons employed within the department; the effect on expenses and resources, or the overall impact of such action upon the operation of the department;

(3) the financial resources of the ~~Tribe~~Nation; the size of the ~~Tribe~~Nation with respect to how many employees and departments it has; and

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(4) the type of operation(s) of the TribeNation, including the composition, structure, and functions of the work force of its departments.

213.4. Character of Service

213.4-1. Those who serve in the military are ineligible to receive benefits under this law if they:

- (a) receive a dishonorable discharge or a bad conduct discharge; or
- (b) receive a dismissal from a general court-martial, or by order of the President; or
- (c) are dropped from the unit rolls because they have been:
 - (1) absent without authority for at least three months; or
 - (2) sentenced by a court-martial to confinement for more than six (6) months and have served at least six (6) months; or
 - (3) sentenced to confinement in a penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

213.5. Discrimination Against Persons Who Serve in the Military Prohibited

213.5-1. The TribeNation shall not deny employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of a person's membership, application for membership, performance of service, application for service, or obligation to perform service in the military.

213.5-2. The TribeNation may not discriminate in employment against or take any adverse employment action against anyone because such person has exercised a right or taken an action to enforce a protection afforded under this law, has testified or otherwise made a statement in or in connection with any proceeding under this law, or has participated in an investigation under this law.

213.5-3. The TribeNation shall not be considered to have engaged in a prohibited action if the same action would have been taken regardless of an employee's military status.

213.5-4. SectionsSection 213.5-1 and section 213.5-2 shall apply to any position of employment, including a position that is described in section 213.6-4(c).

213.6. Reemployment Rights of Persons Who Serve in the Military

213.6-1. Any person who takes a leave of absence from an employment position to serve in the military shall be entitled to the reemployment benefits and other employment benefits of this law if:

- (a) the TribeNation receives advance written notice of such service as soon as practicable after the employee receives notice;
- (b) the cumulative length of the absence and of all previous absences with the TribeNation by reason of service in the military does not exceed five (5) years; and
- (c) except as provided in section 213.6-6, the person reports to the TribeNation in accordance with section 213.6-5.

213.6-2. No notice is required under section 213.6-1(a) if it is precluded by military necessity or, under all of the relevant circumstances, the giving of notice is otherwise impossible or unreasonable.

213.6-3. When calculating the length of absence under section 213.6-1(b) the TribeNation

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shall not include any service:

- (a) that is required, beyond five (5) years, to complete an initial period of obligated service;
- (b) during which such person was unable to obtain orders releasing such person from a period of service in the military before the expiration of such five (5) year period and such inability was through no fault of such person;
- (c) performed as required pursuant to training requirements for reservists and National Guard members;
- (d) performed by a member of the military service who is:
 - (1) ordered to or retained on active duty involuntarily during domestic emergency or national security related situations;
 - (2) ordered to or retained on active duty under any provision of law because of a war or national emergency declared by the President of the United States or the Congress;
 - (3) ordered to active duty in support of an "operational mission", without his or her consent;
 - (4) ordered to active duty in support of a "critical mission or requirement" in times other than war or national emergency and when no involuntary call up is in effect; or
 - (5) called into Federal service by the President as a member of the National Guard to suppress an insurrection, repel an invasion, or execute the laws of the United States.

213.6-4. TribeNation's Right to Not Reemploy. The TribeNation is not required to reemploy a person under this law if:

- (a) circumstances have so changed as to make such reemployment impossible or unreasonable;
- (b) in the case of a person entitled to reemployment under section 213.7-1(c), 2103.7-1(d), or section 213.7-2, such employment would impose an undue hardship on the TribeNation; or
- (c) the employment from which the person leaves is for a brief, ~~nonrecurrent~~non-recurrent period (i.e. seasonal, temporary, limited term) and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.
- (d) the TribeNation shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or ~~nonrecurrent~~non-recurrent nature of the employment.

213.6-5. Except as provided under section 213.6-6, an employee referred to in section 213.6-1 shall notify the TribeNation of the person's intent to return to a position of employment within ninety (90) days of separation of active duty service and within thirty-one (31) days from completion of training for reservists. The TribeNation shall, as soon as practicable after receiving notice, make arrangements with the employee for an employment return date.

213.6-6. A person who is hospitalized for, or recovering from, an illness or injury incurred in, or aggravated during, the performance of service in the military shall, at the end of the period that is necessary for the person to recover from such illness or injury notify the TribeNation of the person's intent to return to a position of employment. Such period of recovery may not

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exceed two (2) years, unless the minimum time required to accommodate the circumstances beyond such person's control is longer than two years, making reporting within the period specified impossible or unreasonable.

213.6-7. A person who fails to report for reemployment within the appropriate period shall not automatically forfeit such person's entitlement to the benefits referred to in section 213.6-1 but shall be subject to the [TribeNation](#)'s policies and procedures pertaining to discipline with respect to absence from scheduled work.

213.6-8. A person who has notified the [TribeNation](#) of the person's intent to return to a position of employment in accordance with section 213.6-5 shall, upon the request of the [TribeNation](#), provide documentation to establish that:

(a) the notification is timely;

(b) the time limits in section 213.6-1(b) have not been exceeded, except as permitted under section 213.6-3; and

(c) the person's entitlement to benefits has not been terminated pursuant to section 213.4.

213.6-9. The timing, frequency, and duration of a person's training or service, or the nature of such training or service (including voluntary service) in the military, shall not be a basis for denying protection of this law if the service does not exceed the limitations set forth under section 213.6-3 and the notice and notification requirements established in this section are met.

213.6-10. The Human Resources Department shall inform employees of their rights, benefits, and obligations under this law and shall provide assistance to employees with respect to the employment and reemployment benefits to which they are entitled under this law.

213.7. Reemployment Positions

213.7-1. A person entitled to reemployment under section 213.6 shall be promptly reemployed in a position of employment in accordance with the following order of priority:

(a) In the case of a person whose period of service in the military was for less than ninety-one (91) days:

(1) in the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service, the duties of which the person is qualified to perform; or

(2) in the position which the person was employed on the date of the commencement of the service in the military, only if the person is not qualified to perform the duties of the position referred to under section 213.7-1(a)(1) after reasonable efforts by the [TribeNation](#) to qualify the person.

(b) In the case of a person whose period of service in the military was for more than ninety (90) days:

(1) in the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or

(2) in the position which the person was employed on the date of the commencement of the service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of the position referred to under section 213.7-

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1(b)(1) after reasonable efforts by the [TribeNation](#) to qualify the person.

(c) In the case of a person who has a disability incurred in, or aggravated during, service, and after reasonable efforts by the [TribeNation](#) to accommodate the disability, is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the [TribeNation](#) had not been interrupted by such service:

(1) in any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or can become qualified to perform with reasonable efforts by the [TribeNation](#); or

(2) in a position which is the nearest approximation to a position referred to in (1) in terms of seniority, status, and pay consistent with such person's case.

(d) In the case of a person who is not qualified to become reemployed under [section 213.7-1\(a\) - \(c\)](#) and cannot become qualified, even with reasonable efforts by the [TribeNation](#), in any other position which is the nearest approximation to a position which such person is qualified to perform, with full seniority.

213.7-2. If two or more persons are entitled to reemployment in the same position and more than one of them has reported for reemployment, the person who left the position first shall have the prior right to reemployment in that position.

213.7-3. A person entitled to reemployment who is not reemployed because of [section 213.7-2](#) shall be entitled to reemployment in any other position referred to in [section 213.7-1](#), remaining consistent with the circumstances of such person's case, in the order of priority set out in the appropriate section, with full seniority.

213.8. Benefits of Persons Absent from Employment for Military Service

213.8-1. A person who is reemployed under this law is entitled to the seniority and other benefits determined by seniority that the person had on the date of the commencement of service in the military plus the additional seniority and benefits that such person would have attained if the person had remained continuously employed.

213.8-2. A person who is absent from a position of employment by reason of service in the military shall be:

(a) deemed to be on a leave of absence while performing such service; and

(b) entitled to other benefits not determined by seniority as are generally provided by the [TribeNation](#) to employees having similar seniority, status, and pay who are on leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.

213.8-3. A person who

(a) is absent from an employment position because of service in the military, and

(b) knowingly provides written notice of intent not to return to a position of employment after service in the military, is not entitled to benefits under this section.

The [TribeNation](#) has the burden of proving that a person knowingly provided written notice of intent not to return to a position after service in the military and was aware of the specific benefits to be lost.

213.8-4. A person on leave of absence for military service shall not be entitled to any benefits to which the person would not otherwise be entitled if the person had remained continuously

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employed.

213.8-5. A person may be required to pay the TribeNation's cost, if any, of any funded benefit continued to the extent other employees on leave of absence are so required.

213.8-6. A person who is reemployed under this law shall only be terminated in accordance with the ~~Oneida Personnel Policies and Procedures~~ Nation's laws and policies governing employment.

213.8-7. Any person whose employment is interrupted by military service shall be permitted to use, during such period of service, any vacation or personal time accrued by the person before the commencement of such service. The TribeNation may not require any person to use vacation or personal time during such period of service.

213.8-8. The TribeNation shall grant an employee who is a reserve member an unpaid temporary leave of absence in order to perform funeral honors duty. Employees may use vacation or personal time to perform funeral honors duty if eligible.

213.9. Health Plans

213.9-1. If a person, or a person's dependents, has coverage under a health plan through the TribeNation and such person is on a leave of absence for military service, the plan shall provide that the coverage may be continued. The maximum period of coverage of a person and the person's dependents shall be the lesser of:

(a) the eighteen (18) month period beginning on the date on which the person's absence begins; or

(b) the day after the date on which the person fails to return to a position of employment, as determined under section 213.6-5.

213.9-2. A person who elects to continue health-plan coverage may be required to pay not more than the amount paid by other employees who take a leave of absence, except that in the case of a person who serves in the military for less than thirty-one (31) days, such person may not be required to pay more than the employee share, if any, for such coverage.

213.9-3. If a person's health plan is terminated by reason of military service, an exclusion or waiting period may not be imposed in connection with the reinstatement of such coverage upon reemployment if an exclusion or waiting period would not have been imposed had coverage of such person not been terminated as a result of such service.

(a) This shall apply to the person who is reemployed and to his or her dependents who are covered under the plan with the reinstatement of coverage of such person.

(b) This shall not apply to the coverage of any illness or injury incurred in, or aggravated during, performance of service in the military.

213.10. Retirement and Pension Plans

213.10-1. Each period served by a person in the military shall, upon reemployment, be deemed to constitute service for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under a retirement or pension plan.

(a) When a person is absent from a position of employment for more than ninety (90) days and is reemployed, the TribeNation may require documentation before treating the person as not having incurred a break in service for retirement or pension plan purposes under this section.

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213.10-2. A person reemployed under this law shall be entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals if the person makes payment to a retirement or pension plan with respect to such contributions or deferrals. If the employee makes up the contributions, the TribeNation shall make up any required matching contributions. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the TribeNation throughout the period of service. Any payment to a retirement or pension plan shall be made during the period beginning with the date of reemployment and whose duration is three (3) times the period of the person's service in the military, such payment period not to exceed five (5) years.

213.10-3. For purposes of computing the TribeNation's liability or the employee's contributions, the employee's compensation during the period of service shall be computed:

- (a) at the rate the employee would have received but for the period of service;
- (b) in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the twelve (12) month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

213.10-4. *Pension Plan.* When a person who participates in a pension plan is reemployed after a period of military service, the TribeNation shall be liable to the pension plan for funding any obligation to provide the benefits the employee would have received had they not taken a leave of absence. The TribeNation shall allocate the amount of the ~~TribeNation's~~ contribution for the person in the same manner and to the same extent the allocation occurred for other employees eligible for the pension plan during the period of service. For purposes of determining the amount of such liability and any obligation of the pension plan, earnings and forfeitures shall not be included.

213.11. Enforcement of Employment or Reemployment Rights

213.11.1. The TribeNation shall notify, in writing, any person who has been denied employment, reemployment, or benefits under this law.

213.11-2. A person may file a complaint whenever such person claims that:

- (a) he or she is entitled to employment or reemployment rights or benefits with respect to employment by the TribeNation; or
- (b) the TribeNation has failed or refused to comply with the provisions of this law.

213.11-3. Such complaint shall be in writing, contain a summary of the allegations that form the basis for the complaint and be filed with the person's area manager and the ~~Oneida~~ Human Resources Manager (or designee) within ten (10) workingbusiness days from the day the person received a denial of employment and/or benefits by the Tribe-Nation.

213.11-4. If the area manager determines that the action alleged in such complaint occurred, the area manager shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this law.

213.11-5. If the efforts of the area manager do not resolve the complaint within ten (10) workingbusiness days from the receipt of the employee's complaint, the complainant shall be notified of the results of the area manager's investigation and the complainant's entitlement to refer the complaint to the ~~Oneida Personnel Commission~~ Trial Court. One extension of no more

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than five (5) ~~working~~business days may be requested of and granted by the ~~Oneida~~ Human Resources Manager (or designee) at his or her discretion.

213.11-6. If an employee appeals the area manager's decision, the appeal must be filed with the ~~Oneida Personnel Commission~~Trial Court within ten (10) ~~working~~business days of the employee's receipt of the Area Manager's decision. The ~~Commission~~Trial Court shall notify the Human Resources Manager (or designee) within one (1) business day when an employee files an appeal.

213.11-7. *Remedies.* In any action relating to this law, relief may be awarded as follows:

(a) Require the ~~Tribe~~Nation to comply with the provisions of this law; and/or

(b) Require the ~~Tribe~~Nation to compensate the person for any loss of wages or benefits suffered by reason of the ~~Tribe~~Nation's failure to comply with the provisions of this law.

213.11-8. Any compensation awarded shall be in addition to, and shall not diminish, any of the other benefits provided for under this law.

End.

Adopted - BC-10-24-07-E

Emergency Amended – BC-04-25-18-D

Amended – BC- - - -

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Title 2. Employment – Chapter 213 MILITARY SERVICE EMPLOYEE PROTECTION

213-1. Purpose and Policy	213-7. Reemployment Positions
213-2. Adoption, Amendment, Repeal	213-8. Benefits of Persons Absent from Employment for Military Service
213-3. Definitions	213-9. Health Plans
213-4. Character of Service	213-10. Retirement Plans
213-5. Discrimination Against Persons Who Serve in the Military Prohibited	213-11. Enforcement of Employment or Reemployment Rights
213-6. Reemployment Rights of Persons who Serve in the Military	

213.1. Purpose and Policy

213.1-1. *Purpose.* The purpose of this law is to minimize the disruption to the lives of employees of the Nation serving in the military as well as to the Nation by providing for the prompt reemployment of such persons upon completion of such service; and to prohibit discrimination against people because they serve in the military.

213.1-2. *Policy.* It is the policy of the Nation to reemploy persons who return from military service in the same position, or a substantially similar position, of employment the person held prior to leaving for military service.

213.2. Adoption, Amendment, Repeal

213.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-24-07-E and amended by BC-__-__-__.

213.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

213.2-3. 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.

213.2-4. 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.

213.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

213.3. Definitions

213.3-1. 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) "Area Manager" means the supervisor of the supervisor of an employee who is protected under this law, or, in other words, two levels of supervision in the chain of command above the protected employee, or an individual designated to be the Area Manager by the Division Director (or, in divisions where there is no director, the General Manager) and approved by the Human Resources Department Manager (or designee).

(b) "Benefit" means any advantage, profit, privilege, gain, or interest (other than wages or salary) that accrues by reason of an employment agreement or an employer policy, plan, or practice and includes rights and benefits under a retirement plan, a health plan, insurance coverage, incentives, unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

(c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

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- (d) "Employee" means any person employed by the Oneida Nation.
- (e) "Health plan" means an insurance policy or contract or other arrangement under which health services for individuals are provided or the expenses of such services are paid.
- (f) "Military" means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.
- (g) "Nation" means the Oneida Nation, as employer through its divisions, departments, programs, enterprises or other subdivisions of the Nation.
- (h) "Qualified," with respect to an employment position, means having the ability to perform the essential tasks of the position.
- (i) "Reasonable efforts", in the case of actions required of the Nation under this law, means actions, including providing training, that do not place an undue hardship on the Nation.
- (j) "Seniority" means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.
- (k) "Service" or "service in the military" means the performance of duty on a voluntary or involuntary basis in a branch of the military and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, the time a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and the period for which a person is absent from employment for the purpose of performing funeral honors duty.
- (l) "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.
- (m) "Undue hardship", in the case of actions taken by the Nation, means actions requiring significant difficulty or expense, when considered in light of:
- (1) the nature and cost of the action needed under this law;
 - (2) the overall financial resources of the department involved in the provision of the action; the number of persons employed within the department; the effect on expenses and resources, or the overall impact of such action upon the operation of the department;
 - (3) the financial resources of the Nation; the size of the Nation with respect to how many employees and departments it has; and
 - (4) the type of operation(s) of the Nation, including the composition, structure, and functions of the work force of its departments.

213.4. Character of Service

213.4-1. Those who serve in the military are ineligible to receive benefits under this law if they:

- (a) receive a dishonorable discharge or a bad conduct discharge; or
- (b) receive a dismissal from a general court-martial, or by order of the President; or
- (c) are dropped from the unit rolls because they have been:
 - (1) absent without authority for at least three months; or

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- (2) sentenced by a court-martial to confinement for more than six (6) months and have served at least six (6) months; or
- (3) sentenced to confinement in a penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

213.5. Discrimination Against Persons Who Serve in the Military Prohibited

213.5-1. The Nation shall not deny employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of a person's membership, application for membership, performance of service, application for service, or obligation to perform service in the military.

213.5-2. The Nation may not discriminate in employment against or take any adverse employment action against anyone because such person has exercised a right or taken an action to enforce a protection afforded under this law, has testified or otherwise made a statement in or in connection with any proceeding under this law, or has participated in an investigation under this law.

213.5-3. The Nation shall not be considered to have engaged in a prohibited action if the same action would have been taken regardless of an employee's military status.

213.5-4. Section 213.5-1 and section 213.5-2 shall apply to any position of employment, including a position that is described in section 213.6-4(c).

213.6. Reemployment Rights of Persons Who Serve in the Military

213.6-1. Any person who takes a leave of absence from an employment position to serve in the military shall be entitled to the reemployment benefits and other employment benefits of this law if:

- (a) the Nation receives advance written notice of such service as soon as practicable after the employee receives notice;
- (b) the cumulative length of the absence and of all previous absences with the Nation by reason of service in the military does not exceed five (5) years; and
- (c) except as provided in section 213.6-6, the person reports to the Nation in accordance with section 213.6-5.

213.6-2. No notice is required under section 213.6-1(a) if it is precluded by military necessity or, under all of the relevant circumstances, the giving of notice is otherwise impossible or unreasonable.

213.6-3. When calculating the length of absence under section 213.6-1(b) the Nation shall not include any service:

- (a) that is required, beyond five (5) years, to complete an initial period of obligated service;
- (b) during which such person was unable to obtain orders releasing such person from a period of service in the military before the expiration of such five (5) year period and such inability was through no fault of such person;
- (c) performed as required pursuant to training requirements for reservists and National Guard members;
- (d) performed by a member of the military service who is:

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(1) ordered to or retained on active duty involuntarily during domestic emergency or national security related situations;

(2) ordered to or retained on active duty under any provision of law because of a war or national emergency declared by the President of the United States or the Congress;

(3) ordered to active duty in support of an "operational mission", without his or her consent;

(4) ordered to active duty in support of a "critical mission or requirement" in times other than war or national emergency and when no involuntary call up is in effect; or

(5) called into Federal service by the President as a member of the National Guard to suppress an insurrection, repel an invasion, or execute the laws of the United States.

213.6-4. *Nation's Right to Not Reemploy.* The Nation is not required to reemploy a person under this law if:

(a) circumstances have so changed as to make such reemployment impossible or unreasonable;

(b) in the case of a person entitled to reemployment under section 213.7-1(c), 2103.7-1(d), or section 213.7-2, such employment would impose an undue hardship on the Nation; or

(c) the employment from which the person leaves is for a brief, non-recurrent period (i.e. seasonal, temporary, limited term) and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

(d) the Nation shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or non-recurrent nature of the employment.

213.6-5. Except as provided under section 213.6-6, an employee referred to in section 213.6-1 shall notify the Nation of the person's intent to return to a position of employment within ninety (90) days of separation of active duty service and within thirty-one (31) days from completion of training for reservists. The Nation shall, as soon as practicable after receiving notice, make arrangements with the employee for an employment return date.

213.6-6. A person who is hospitalized for, or recovering from, an illness or injury incurred in, or aggravated during, the performance of service in the military shall, at the end of the period that is necessary for the person to recover from such illness or injury notify the Nation of the person's intent to return to a position of employment. Such period of recovery may not exceed two (2) years, unless the minimum time required to accommodate the circumstances beyond such person's control is longer than two years, making reporting within the period specified impossible or unreasonable.

213.6-7. A person who fails to report for reemployment within the appropriate period shall not automatically forfeit such person's entitlement to the benefits referred to in section 213.6-1 but shall be subject to the Nation's policies and procedures pertaining to discipline with respect to absence from scheduled work.

213.6-8. A person who has notified the Nation of the person's intent to return to a position of employment in accordance with section 213.6-5 shall, upon the request of the Nation, provide documentation to establish that:

(a) the notification is timely;

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(b) the time limits in section 213.6-1(b) have not been exceeded, except as permitted under section 213.6-3; and

(c) the person's entitlement to benefits has not been terminated pursuant to section 213.4. 213.6-9. The timing, frequency, and duration of a person's training or service, or the nature of such training or service (including voluntary service) in the military, shall not be a basis for denying protection of this law if the service does not exceed the limitations set forth under section 213.6-3 and the notice and notification requirements established in this section are met. 213.6-10. The Human Resources Department shall inform employees of their rights, benefits, and obligations under this law and shall provide assistance to employees with respect to the employment and reemployment benefits to which they are entitled under this law.

213.7. Reemployment Positions

213.7-1. A person entitled to reemployment under section 213.6 shall be promptly reemployed in a position of employment in accordance with the following order of priority:

(a) In the case of a person whose period of service in the military was for less than ninety-one (91) days:

(1) in the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service, the duties of which the person is qualified to perform; or

(2) in the position which the person was employed on the date of the commencement of the service in the military, only if the person is not qualified to perform the duties of the position referred to under section 213.7-1(a)(1) after reasonable efforts by the Nation to qualify the person.

(b) In the case of a person whose period of service in the military was for more than ninety (90) days:

(1) in the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or

(2) in the position which the person was employed on the date of the commencement of the service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of the position referred to under section 213.7-1(b)(1) after reasonable efforts by the Nation to qualify the person.

(c) In the case of a person who has a disability incurred in, or aggravated during, service, and after reasonable efforts by the Nation to accommodate the disability, is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the Nation had not been interrupted by such service:

(1) in any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or can become qualified to perform with reasonable efforts by the Nation; or

(2) in a position which is the nearest approximation to a position referred to in (1) in terms of seniority, status, and pay consistent with such person's case.

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(d) In the case of a person who is not qualified to become reemployed under section 213.7-1(a) - (c) and cannot become qualified, even with reasonable efforts by the Nation, in any other position which is the nearest approximation to a position which such person is qualified to perform, with full seniority.

213.7-2. If two or more persons are entitled to reemployment in the same position and more than one of them has reported for reemployment, the person who left the position first shall have the prior right to reemployment in that position.

213.7-3. A person entitled to reemployment who is not reemployed because of section 213.7-2 shall be entitled to reemployment in any other position referred to in section 213.7-1, remaining consistent with the circumstances of such person's case, in the order of priority set out in the appropriate section, with full seniority.

213.8. Benefits of Persons Absent from Employment for Military Service

213.8-1. A person who is reemployed under this law is entitled to the seniority and other benefits determined by seniority that the person had on the date of the commencement of service in the military plus the additional seniority and benefits that such person would have attained if the person had remained continuously employed.

213.8-2. A person who is absent from a position of employment by reason of service in the military shall be:

(a) deemed to be on a leave of absence while performing such service; and

(b) entitled to other benefits not determined by seniority as are generally provided by the Nation to employees having similar seniority, status, and pay who are on leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.

213.8-3. A person who

(a) is absent from an employment position because of service in the military, and

(b) knowingly provides written notice of intent not to return to a position of employment after service in the military, is not entitled to benefits under this section.

The Nation has the burden of proving that a person knowingly provided written notice of intent not to return to a position after service in the military and was aware of the specific benefits to be lost.

213.8-4. A person on leave of absence for military service shall not be entitled to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed.

213.8-5. A person may be required to pay the Nation's cost, if any, of any funded benefit continued to the extent other employees on leave of absence are so required.

213.8-6. A person who is reemployed under this law shall only be terminated in accordance with the Nation's laws and policies governing employment.

213.8-7. Any person whose employment is interrupted by military service shall be permitted to use, during such period of service, any vacation or personal time accrued by the person before the commencement of such service. The Nation may not require any person to use vacation or personal time during such period of service.

213.8-8. The Nation shall grant an employee who is a reserve member an unpaid temporary leave of absence in order to perform funeral honors duty. Employees may use vacation or

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personal time to perform funeral honors duty if eligible.

213.9. Health Plans

213.9-1. If a person, or a person's dependents, has coverage under a health plan through the Nation and such person is on a leave of absence for military service, the plan shall provide that the coverage may be continued. The maximum period of coverage of a person and the person's dependents shall be the lesser of:

(a) the eighteen (18) month period beginning on the date on which the person's absence begins; or

(b) the day after the date on which the person fails to return to a position of employment, as determined under section 213.6-5.

213.9-2. A person who elects to continue health-plan coverage may be required to pay not more than the amount paid by other employees who take a leave of absence, except that in the case of a person who serves in the military for less than thirty-one (31) days, such person may not be required to pay more than the employee share, if any, for such coverage.

213.9-3. If a person's health plan is terminated by reason of military service, an exclusion or waiting period may not be imposed in connection with the reinstatement of such coverage upon reemployment if an exclusion or waiting period would not have been imposed had coverage of such person not been terminated as a result of such service.

(a) This shall apply to the person who is reemployed and to his or her dependents who are covered under the plan with the reinstatement of coverage of such person.

(b) This shall not apply to the coverage of any illness or injury incurred in, or aggravated during, performance of service in the military.

213.10. Retirement and Pension Plans

213.10-1. Each period served by a person in the military shall, upon reemployment, be deemed to constitute service for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under a retirement or pension plan.

(a) When a person is absent from a position of employment for more than ninety (90) days and is reemployed, the Nation may require documentation before treating the person as not having incurred a break in service for retirement or pension plan purposes under this section.

213.10-2. A person reemployed under this law shall be entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals if the person makes payment to a retirement or pension plan with respect to such contributions or deferrals. If the employee makes up the contributions, the Nation shall make up any required matching contributions. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the Nation throughout the period of service. Any payment to a retirement or pension plan shall be made during the period beginning with the date of reemployment and whose duration is three (3) times the period of the person's service in the military, such payment period not to exceed five (5) years.

213.10-3. For purposes of computing the Nation's liability or the employee's contributions, the

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employee's compensation during the period of service shall be computed:

(a) at the rate the employee would have received but for the period of service;

(b) in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the twelve (12) month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

213.10-4. *Pension Plan.* When a person who participates in a pension plan is reemployed after a period of military service, the Nation shall be liable to the pension plan for funding any obligation to provide the benefits the employee would have received had they not taken a leave of absence. The Nation shall allocate the amount of the Nation's contribution for the person in the same manner and to the same extent the allocation occurred for other employees eligible for the pension plan during the period of service. For purposes of determining the amount of such liability and any obligation of the pension plan, earnings and forfeitures shall not be included.

213.11. Enforcement of Employment or Reemployment Rights

213.11.1. The Nation shall notify, in writing, any person who has been denied employment, reemployment, or benefits under this law.

213.11-2. A person may file a complaint whenever such person claims that:

(a) he or she is entitled to employment or reemployment rights or benefits with respect to employment by the Nation; or

(b) the Nation has failed or refused to comply with the provisions of this law.

213.11-3. Such complaint shall be in writing, contain a summary of the allegations that form the basis for the complaint and be filed with the person's area manager and the Human Resources Manager (or designee) within ten (10) business days from the day the person received a denial of employment and/or benefits by the Nation.

213.11-4. If the area manager determines that the action alleged in such complaint occurred, the area manager shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this law.

213.11-5. If the efforts of the area manager do not resolve the complaint within ten (10) business days from the receipt of the employee's complaint, the complainant shall be notified of the results of the area manager's investigation and the complainant's entitlement to refer the complaint to the Trial Court. One extension of no more than five (5) business days may be requested of and granted by the Human Resources Manager (or designee) at his or her discretion.

213.11-6. If an employee appeals the area manager's decision, the appeal must be filed with the Trial Court within ten (10) business days of the employee's receipt of the Area Manager's decision. The Trial Court shall notify the Human Resources Manager (or designee) within one (1) business day when an employee files an appeal.

213.11-7. *Remedies.* In any action relating to this law, relief may be awarded as follows:

(a) Require the Nation to comply with the provisions of this law; and/or

(b) Require the Nation to compensate the person for any loss of wages or benefits suffered by reason of the Nation's failure to comply with the provisions of this law.

213.11-8. Any compensation awarded shall be in addition to, and shall not diminish, any of the other benefits provided for under this law.

End.


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350 Adopted - BC-10-24-07-E
351 Emergency Amended – BC-04-25-18-D
352 Amended – BC-__-__-__-__



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



TO: Legislative Operating Committee
FROM: Jennifer Falck, LRO Director 
DATE: June 20, 2018
RE: Cancel July 4, 2018 LOC Meeting

The next regularly scheduled LOC meeting would be on July 4, 2018. Due to the holiday, I am requesting that the meeting be cancelled, making the next LOC meeting on July 18, 2018.

The cancellation will be communicated through the daily Update Oneida email message and Facebook.

REQUESTED ACTION

Cancel the July 4, 2018 LOC meeting due to the Independence Day holiday.

June 2018

June 2018							July 2018						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
						1 2	1	2	3	4	5	6	7
3	4	5	6	7	8	9	8	9	10	11	12	13	14
10	11	12	13	14	15	16	15	16	17	18	19	20	21
17	18	19	20	21	22	23	22	23	24	25	26	27	28
24	25	26	27	28	29	30	29	30	31				

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
	May 27	28	29	30	31	Jun 1	2
May 27 - Jun 2							
Jun 3 - 9	3	4	5	6	7	8	9
		8:30am 9:00am Special BC meeting (BC_Conf_Ro om) - TribalSecretar y		9:00am 3:00pm LOC (BC_Conf_Ro om) - LOC			
	10	11	12	13	14	15	16
Jun 10 - 16				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
	17	18	19	20	21	22	23
		11:30am 12:15p m GTC Meeting Prep: Employment Law Update (6:00pm 10:00p m GTC (Radisson)	3:00pm 4:30pm LOC Prep (BC_Conf_Ro om) - LOC 3:00pm 4:30pm LOC Prep (BC_Exec_Con f_Room) - LOC	9:00am 3:00pm LOC (BC_Conf_Ro om) - LOC	12:15pm 2:15p m PUBLIC MEETING: Comprehensi ve Policy Governing Boards, Committees, and Commiss	10:00am 12:00p m LOC Work Session (BC_Exec_Con f_Room) - Clorissa N. Santiago	
Jun 17 - 23	24	25	26	27	28	29	30
				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)	1:00pm 2:00pm FW: LOC Work Session (BC_Exec_Con f_Room) - Clorissa N. Santiago		
Jun 24 - 30							

July 2018

July 2018						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

August 2018						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
Jul 1 - 7	Jul 1	2	3	4	5	6	7
	10:00am 2:00pm GTC (Radisson)			9:00am 3:00pm LOC (BC_Conf_Room) - LOC			
Jul 8 - 14	8	9	10	11	12	13	14
			6:00pm 10:00pm GTC (Radisson)		1:00pm 2:00pm LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago		
Jul 15 - 21	15	16	17	18	19	20	21
			3:00pm 4:30pm LOC Prep (BC_Exec_Conf_Room) - LOC	9:00am 3:00pm LOC (BC_Conf_Room) - LOC			
Jul 22 - 28	22	23	24	25	26	27	28
				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
Jul 29 - Aug 4	29	30	31	Aug 1	2	3	4
		6:00pm 10:00pm GTC (Radisson)					