

ONEIDA NATION PUBLIC MEETING NOTICE

LEGISLATIVE OPERATING COMMITTEE
WWW.ONEIDA-NSN.GOV/GOVERNMENT

Thursday, August 16, 2018, 12:15pm

Norbert Hill Center-Business Committee Conference Room
N7210 Seminary Rd., Oneida, Wisconsin

AMENDMENTS TO MILITARY SERVICE EMPLOYEE PROTECTION LAW



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.

Some of the proposed amendments will:

1. Permanently adopt the emergency amendments to the Law, adopted through Oneida Business Committee resolution BC-04-25-18-D, which replace any reference to the Oneida Personnel Commission with a reference to the Judiciary's Trial Court.
2. Remove unnecessary internal citations throughout the Law.
3. Clarify and update language throughout the Law.

PUBLIC COMMENTS PERIOD CLOSSES THURSDAY, AUGUST 23, 2018

During the Public Comment Period, all interested persons may submit written comments. Comments may be submitted to the Oneida Nation Secretary's Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, or e-mail.



-PUBLIC MEETING PACKETS ARE AVAILABLE AT-

www.oneida-nsn.gov/Register/PublicMeetings or contact Oneida Nation Legislative Reference Office located in the Norbert Hill Center, PO Box 365, Oneida, Wisconsin 54155
Email: LOC@oneidanation.org Phone: 920-869-4376



AMENDMENTS TO MILITARY SERVICE EMPLOYEE PROTECTION ACT LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: OBC	SPONSOR: David P. Jordan	DRAFTER: Clorissa N. 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, 2 O.C. 213.1-1</i>].		
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, 2 O.C. 213.11</i>]		
Public Meeting	A public meeting has not yet been held.		

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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.

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SECTION 4. PROCESS

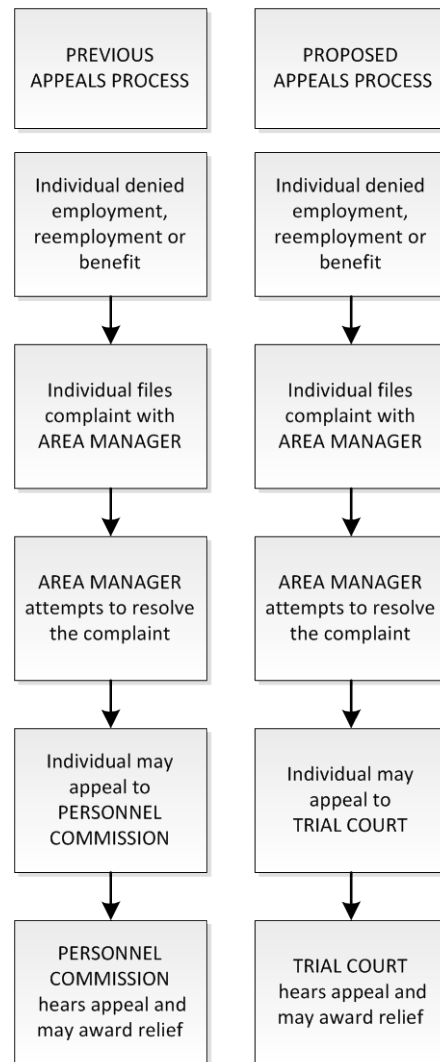
- A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- B. This law was originally added to the Active Files List as emergency amendments on 4/18/2018. Emergency amendments were adopted by the BC on 4/25/2018. The emergency amendments expire on 10/25/18 and 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(1)*].
- 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. 213.11-4(B)*].
- 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. 213.11-5*].
- 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. 213.11-5*].
- 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*



64 *Protection Act, 2 O.C. 213.11-6].*

65 **B. Replacement of Citations to Improve Readability.** This law originally included over twenty-five
66 (25) citations referencing other sections of the same law. For example: “Except as provided under
67 213.6-6, an employee referred to in 213.6-1 shall notify...” [*see Military Service Employee*
68 *Protection Act, 2 O.C. 213.6-5].* The extensive use of citations made this law difficult to read.
69 Since this law was originally adopted in 2007, the Nation’s drafting style has evolved to avoid
70 extensive use of citations. Therefore, many of the citations throughout the law have been replaced
71 with plain language or removed where unnecessarily repetitive. These revisions do not change the
72 meaning of the law. See example below:

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74

Chart 2. Example of Revision to Improve Readability:

Current Law (With Citations)	Proposed Law (Citations Removed)
<p>213.6-8. A person who has notified the Tribe 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 Tribe, provide documentation to establish that:</p> <ul style="list-style-type: none"> (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. 	<p>213.6-4(b) <i>Required Documentation of Intent to Return.</i> A person who has notified the Nation of the person’s intent to return to a position of employment shall, upon the request of the Nation, provide documentation to establish that:</p> <ul style="list-style-type: none"> (1) the notification is timely; (2) the time limits for notification have not been exceeded, except as permitted for cases involving injury and/or illness; and (3) the person’s entitlement to benefits has not been terminated due to character of service.

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

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79 **SECTION 6. EFFECT ON EXISTING LEGISLATION**

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

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

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

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

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

94 **B. *Pending Cases***. At the time the emergency amendments were adopted on 4/25/18, five cases were
95 pending before the Personnel Commission. These cases, and any associated timelines, were placed on
96 hold until emergency amendments to this and related laws were adopted. At the time this analysis
97 was drafted, it is not known if any of the five pending cases involved the Military Service Employee
98 Protection Act.
99

100 **SECTION 8. ENFORCEMENT AND ACCOUNTABILITY**

101 **A.** If an individual is denied employment, reemployment or benefits under this law, they may appeal to
102 the Area Manager and Trial Court. The Area Manager or Trial Court may award relief, including:
103 compensating the individual for lost wages or benefits and requiring compliance with this law [*see*
104 *Military Service Employee Protection Act, 2 O.C. 213.11-5*].
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106 **SECTION 9. OTHER CONSIDERATIONS**

107 **A.** Please refer to the fiscal impact statement for any fiscal impacts.
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Title 2. Employment – Chapter 213
MILITARY SERVICE EMPLOYEE PROTECTION ACT
Sot@H Laotilihwa>@tsla>

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

213.1. Purpose and Policy

213.1-1. ~~—Purpose. The purposes of this law are:~~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.

~~(a) to minimize the disruption to the lives of Tribal employees serving in the military as well as to the Tribe 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 the provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law~~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 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

38 | Manager by the Division Director ~~(or, in divisions where there is no director, the General~~
39 | ~~Manager)~~ and approved by the Human Resources Department Manager ~~(, or designee).~~

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

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

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

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

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

56 | ~~(g)~~ “Nation” means the Oneida Nation.

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

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

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

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

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

73 | ~~(m)~~ “Trial Court” means the Court of the Oneida Judiciary where evidence and
74 | testimony are first introduced, received, and considered. The Oneida Judiciary was
75 | established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer
76 | the judicial authorities and responsibilities of the Nation.

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

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

80 | (2) the overall financial resources of the department involved in the provision of
81 | the action; the number of persons employed within the department; the effect on

82 expenses and resources, or the overall impact of such action upon the operation of
83 the department;

84 (3) the financial resources of the TribeNation; the size of the TribeNation with
85 respect to how many employees and departments it has; and

86 (4) the type of operation(s) of the TribeNation, including the composition,
87 structure, and functions of the work force of its departments.
88

89 **213.4. Character of Service**

90 213.4-1. Those who serve in the military are ineligible to receive benefits under this law if they:

91 (a) receive a dishonorable discharge or a bad conduct discharge; ~~or~~

92 (b) receive a dismissal from a general court-martial, or by order of the President; or

93 (c) are dropped from the unit rolls because they have been:

94 (1) absent without authority for at least three months; ~~or~~

95 (2) sentenced by a court-martial to confinement for more than six (6) months and
96 have served at least six (6) months; or

97 (3) sentenced to confinement in a penitentiary or correctional institution after
98 having been found guilty of an offense by a court other than a court-martial or
99 other military court, and whose sentence has become final.

101 **213.5. Prohibition of Discrimination Against Persons Who Serve in the Military-~~Prohibited~~**

102 213.5-1. ~~The TribeNation shall not deny employment, reemployment, retention in employment,~~
103 ~~promotion, or any benefit of employment on the basis of a person's membership, application for~~
104 ~~membership, performance of service, application for service, or obligation to perform service in~~
105 ~~the military.~~

106 213.5-2. ~~The TribeNation may not discriminate in employment against or take any adverse~~
107 ~~employment action against anyone because such person has ~~exercised a right or taken an action~~~~
108 ~~to enforce a protection afforded under this law, has testified or otherwise made a statement in or~~
109 ~~in connection with any proceeding under this law, or has participated in an investigation under~~
110 ~~this law.:~~

111 (a) exercised a right or taken an action to enforce a protection afforded under this law;

112 (b) has testified or otherwise made a statement in or in connection with any proceeding
113 under this law; or

114 (c) has participated in an investigation under this law.

115 213.5-3. ~~The TribeNation shall not be considered to have engaged in a prohibited action if the~~
116 ~~same action would have been taken regardless of an employee's military status.~~

117 213.5-4. ~~Sections 213.5-1 and 213.5-2~~ The prohibition of discrimination against persons who
118 serve in the military or have exercised a right under this law, shall apply to any position of
119 employment, including a seasonal, temporary, or a limited term position ~~that is described in~~
120 213.6-4(e).

122 **213.6. Reemployment Rights of Persons Who Serve in the Military**

123 213.6-1. ~~—~~ Reemployment Rights. Any person who takes a leave of absence from an
124 employment position to serve in the military shall be entitled to the reemployment benefits and
125 other employment benefits of this law if the following conditions are met:

126 | (a) the ~~Tribe~~Nation receives advance written notice of such service as soon as practicable
127 | after the employee receives notice;

128 | ~~(b) the cumulative length of the absence and of all previous absences with the Tribe by~~
129 | ~~reason of service in the military does not exceed five (5) years; and~~

130 | ~~(c) except as provided in 213.6-6, the person reports to the Tribe in accordance with 213.6-~~
131 | ~~5.~~

132 | ~~213.6-2. No notice is required under 213.6-1(a)(1)~~ Advance written notice
133 | shall not be required if it is precluded by military necessity or, under all of the
134 | relevant circumstances, the giving of ~~—~~notice is otherwise impossible or
135 | unreasonable.

136 | (b) the cumulative length of the absence and of all previous absences with the Nation by
137 | reason of service in the military does not exceed five (5) years; and

138 | (c) the person reports to the Nation in accordance with this law.

139 | ~~213.6-3.~~ 2. Calculating the Cumulative Length of Absence. When calculating the length of
140 | absence ~~under 213.6-1(b)~~ the ~~Tribe~~Nation shall not include any service:

141 | (a) that is required, beyond five (5) years, to complete an initial period of obligated
142 | service;

143 | (b) during which such person was unable to obtain orders releasing such person from a
144 | period of service in the military before the expiration of such five (5) year period and
145 | such inability was through no fault of such person;

146 | (c) performed as required pursuant to training requirements for reservists and National
147 | Guard members;

148 | (d) performed by a member of the military service who is:

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

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

154 | (3) ordered to active duty in support of an “operational mission”², without his or
155 | her consent;

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

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

162 | ~~213.6-4. Tribe’s~~ 3. Nation’s Right to Not Reemploy. ~~The Tribe is~~ Certain circumstances exist in
163 | which the Nation shall not be required to reemploy a person under this law ~~if:~~

164 | ~~(a)~~ (a) The Nation is not required to reemploy a person under this law if one of the
165 | following circumstances are met:

166 | (1) circumstances have so changed as to make such reemployment impossible or
167 | unreasonable;

168 | ~~(b) in the case of a person entitled to reemployment under 213.7-1(c), (d), or~~
169 | ~~213.7-(2);~~ such employment would impose an undue hardship on the

TribeNation; or

(e3) the employment from which the person leaves is for a brief, nonrecurrentnon-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 Tribe~~(b) The Nation shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or nonrecurrentnon-recurrent nature of the employment.

213.6-5. ~~Except as provided under 213.6-6, an~~4. Notification of Intent to Return. An employee referred to in 213.6-1 ~~who has taken a leave of absence from their position of employment~~ 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) Exception for Injury and/or Illness. 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 exceed two (2) years, unless the minimum time required to accommodate the circumstances beyond such person's control is longer than two (2) years, making reporting within the period specified impossible or unreasonable.

213.6-7. ~~—~~(b) Required Documentation of Intent to Return. A person who has notified the Nation of the person's intent to return to a position of employment shall, upon the request of the Nation, provide documentation to establish that:

(1) the notification is timely;

(2) the cumulative length of absence requirements have not been exceeded, except as permitted under this law; and

(3) the person's entitlement to benefits has not been terminated due to character of service.

213.6-5. Failure to Report for Reemployment. A person who fails to report for reemployment within the appropriate period shall not automatically forfeit such person's entitlement to ~~the~~any employment benefits ~~referred to in section 213.6-1,~~ but shall be subject to the Tribe'sNation's policies and procedures pertaining to discipline with respect to absence from scheduled work.

213.6-8. ~~A person who has notified the Tribe 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 Tribe, 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. 213.6-6. 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~~

214 | ~~under section 213.6-3~~ for calculating a leave of absence, and the notice and notification
215 | requirements ~~established in this section~~ are met.

216 | 213.6-107. The Nation's Human Resources Department shall inform employees of their rights,
217 | benefits, and obligations under this law and shall provide assistance to employees with respect to
218 | the employment and reemployment benefits to which they are entitled under this law.
219 |

220 | **213.7. Reemployment Positions**

221 | 213.7-1. A person entitled to reemployment ~~under section 213.6~~ shall be promptly reemployed
222 | in a position of employment in accordance with the following order of priority:

223 | (a) In the case of a person whose period of service in the military was for less than
224 | ninety-one (91) days, the person is entitled to reemployment:

225 | (1) in the position which the person would have been employed if the continuous
226 | employment of such person had not been interrupted by such service, ~~the duties of~~
227 | ~~which~~ as long as the person is qualified to perform the duties of that position; or

228 | (2) in the position which the person was employed on the date of the
229 | commencement of the service in the military, only if the person is not qualified to
230 | perform the duties of the position ~~referred to under section 213.7-1(a)(1)~~ which the
231 | person would have been employed if the continuous employment of such person
232 | had not been interrupted by such service after reasonable efforts by the
233 | TribeNation are made to qualify the person for that position.

234 | (b) In the case of a person whose period of service in the military was for more than
235 | ninety (90) days, the person is entitled to reemployment:

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

240 | (2) in the position which the person was employed on the date of the
241 | commencement of the service, or a position of like seniority, status and pay, the
242 | duties of which the person is qualified to perform, only if the person is not
243 | qualified to perform the duties of the position ~~referred to under section 213.7-~~
244 | ~~1(b)(1)~~ the person would have been employed if the continuous employment of
245 | such person had not been interrupted by such service, after reasonable efforts by
246 | the TribeNation are made to qualify the person for that position.

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

253 | (1) in any other position which is equivalent in seniority, status, and pay, ~~the~~
254 | ~~duties of which~~ as long as the person is qualified to perform the duties of that
255 | position or can become qualified to perform with reasonable efforts by the
256 | TribeNation; or

257 | (2) in a position which is the nearest approximation to any other position

258 | ~~referred to~~ which is equivalent in ~~(1) in terms of~~ seniority, status, and pay
259 | consistent with such person's case.

260 | (d) In the case of a person who is not qualified to become reemployed ~~under 213.7-1(a)~~
261 | ~~(e)~~ and cannot become qualified, even with reasonable efforts by the TribeNation, ~~the~~
262 | person is entitled to reemployment in any other position which is the nearest
263 | approximation to a position which such person is qualified to perform, with full seniority.

264 | 213.7-2. If two or more persons are entitled to reemployment in the same position and more than
265 | one of them has reported for reemployment, the person who left the position first shall have the
266 | prior right to reemployment in that position.

267 | ~~213.7-3. A(a) The~~ person ~~entitled to reemployment~~ who is not reemployed, because of
268 | ~~section 213.7-2~~ the other person entitled to reemployment left the position first, shall be
269 | entitled to reemployment in any other position ~~referred to in~~ accordance with section
270 | 213.7-1, remaining consistent with the circumstances of such person's case, in the order
271 | of priority set out in the appropriate section, with full seniority.

272 |
273 | **213.8. Benefits of Persons Absent from Employment for Military Service**

274 | 213.8-1. Benefits and Seniority. A person who is reemployed under this law is entitled to the
275 | seniority and other benefits determined by seniority that the person had on the date of the
276 | commencement of service in the military, plus the additional seniority and benefits that such
277 | person would have attained if the person had remained continuously employed.

278 | (a) A person on leave of absence for military service shall not be entitled to any benefits
279 | to which the person would not otherwise be entitled if the person had remained
280 | continuously employed.

281 | 213.8-2. Leave of Absence. A person who is absent from a position of employment by reason of
282 | service in the military shall be:

- 283 | (a) deemed to be on a leave of absence while performing such service; and
284 | (b) entitled to other benefits not determined by seniority as are generally provided by the
285 | TribeNation to employees having similar seniority, status, and pay who are on leave of
286 | absence under a contract, agreement, policy, practice, or plan in effect at the
287 | commencement of such service or established while such person performs such service.

288 | 213.8-3. Intent Not to Return to Employment. A person who
289 | ~~(a)~~ is absent from an employment position because of service in the military; and
290 | ~~(b)~~ knowingly provides written notice of intent not to return to a position of employment
291 | after service in the military, is not entitled to benefits under this section.

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

295 | ~~213.8-4. A person on leave of absence for military service shall not be entitled to any benefits to~~
296 | ~~which the person would not otherwise be entitled if the person had remained continuously~~
297 | ~~employed.~~

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

300 | 213.8-5. Termination of Employment. ~~213.8-6.~~ A person who is reemployed under this law
301 | shall only be terminated in accordance with the Oneida Personnel PoliciesNation's laws and

302 | ~~Procedures~~policies governing employment.

303 | ~~213.8-7~~213.8-6. ~~Use of Vacation and Personal Accruals.~~ Any person whose employment is
304 | interrupted by military service shall be permitted to use, during such period of service, any
305 | vacation or personal time accrued by the person before the commencement of such service. The
306 | ~~Tribe may~~Nation shall not require any person to use vacation or personal time during such period
307 | of service.

308 | ~~213.8-8-7.~~ Funeral Honors Duty. The ~~Tribe~~Nation shall grant an employee who is a reserve
309 | member an unpaid temporary leave of absence in order to perform funeral honors duty.
310 | Employees may use vacation or personal time to perform funeral honors duty if eligible.

311 |
312 | **213.9. Health Plans**

313 | 213.9-1. Continuation of Health Plan Coverage. If a person, or a person's dependents, has
314 | coverage under a health plan through the ~~Tribe~~Nation and such person is on a leave of absence
315 | for military service, the plan shall provide that the coverage may be continued. ~~The maximum~~
316 | ~~period of coverage of a person and the person's dependents shall be the lesser of:~~

317 | ~~(a)~~ The maximum period of coverage of a person and the person's dependents shall be
318 | the lesser of:

319 | (1) the eighteen (18) month period beginning on the date on which the person's
320 | absence begins; or

321 | (b2) the day after the date on which the person fails to return to a position of
322 | employment, ~~as determined under section 213.6-5~~ in accordance with the
323 | notification requirements for the person's intent to return to a position of
324 | employment with the Nation.

325 | ~~213.9-2.~~ (b) A person who elects to continue health-plan coverage may be required to pay
326 | not more than the amount paid by other employees who take a leave of absence, except
327 | that in the case of a person who serves in the military for less than thirty-one (31) days,
328 | such person may not be required to pay more than the employee share, if any, for such
329 | coverage.

330 | ~~213.9-3~~2. If a person's health plan is terminated by reason of military service, an exclusion or
331 | waiting period may not be imposed in connection with the reinstatement of such coverage upon
332 | reemployment if an exclusion or waiting period would not have been imposed had coverage of
333 | such person not been terminated as a result of such service.

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

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

338 |
339 | **213.10. Retirement and Pension Plans**

340 | 213.10-1. Accrual Benefits under a Retirement or Pension Plan. Each period served by a person
341 | in the military shall, upon reemployment, be deemed to constitute service for the purpose of
342 | determining the ~~nonforfeitability~~non-forfeitability of the person's accrued benefits and for the
343 | purpose of determining the accrual of benefits under a retirement or pension plan.

344 | (a) When a person is absent from a position of employment for more than ninety (90)
345 | days and is reemployed, the ~~Tribe~~Nation may require documentation before treating the

346 person as not having incurred a break in service for retirement or pension plan purposes
347 under this section.

348 | 213.10-2. Employee Contributions to a Retirement or Pension Plan. A person reemployed
349 under this law shall be entitled to accrued benefits that are contingent on the making of, or
350 derived from, employee contributions or elective deferrals if the person makes payment to a
351 retirement or pension plan with respect to such contributions or deferrals.

352 | (a) If the employee makes up the contributions, the TribeNation shall make up any
353 required matching contributions.

354 | (b) No such payment may exceed the amount the person would have been permitted or
355 required to contribute had the person remained continuously employed by the
356 TribeNation throughout the period of service.

357 | (c) Any payment to a retirement or pension plan shall be made during the period
358 beginning with the date of reemployment and whose duration is three (3) times the period
359 of the person's service in the military, such payment period not to exceed five (5) years.

360 | 213.10-3. Calculation of Employee's Compensation During Period of Service. For purposes of
361 computing the TribeNation's liability or the employee's contributions, the employee's
362 compensation during the period of service shall be computed:

363 | (a) at the rate the employee would have received compensation but for the period of
364 service; or

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

369 | 213.10-4. Pension Plan. When a person who participates in a pension plan is reemployed after a
370 period of military service, the TribeNation shall be liable to the pension plan for funding any
371 obligation to provide the benefits the employee would have received had they not taken a leave
372 of absence.

373 | (a) The TribeNation shall allocate the amount of the TribalNation's contribution for the
374 person in the same manner and to the same extent the allocation occurred for other
375 employees eligible for the pension plan during the period of service.

376 | (b) For purposes of determining the amount of such liability and any obligation of the
377 pension plan, earnings and forfeitures shall not be included.

378
379 | **213.11. Enforcement of Employment or Reemployment Rights**

380 | 213.11.1. The ~~Tribe~~Notification of Denial. The Nation shall notify, in writing, any person who
381 has been denied employment, reemployment, or benefits under this law.

382 | 213.11-2. Basis for a Complaint. A person may file a complaint whenever such person claims
383 that:

384 | (a) he or she is entitled to employment or reemployment rights or benefits with respect to
385 employment by the TribeNation; or

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

387 | 213.11-3. Such Requirements for Filing a Complaint. A complaint shall:

388 | (a) be in writing;

389 | (b) contain a summary of the allegations that form the basis for the complaint; and

390 | (c) be filed with the person’s area manager and the OneidaNation’s Human Resources
391 | Manager ~~(, or designee)~~, within ten (10) workingbusiness days from the day the person
392 | received a denial of employment and/or benefits by the Tribe-Nation.

393 | ~~213.11-4.~~213.11-4. Investigation by the Area Manager. The area manager shall conduct an
394 | investigation of the basis of the complaint.

395 | (a) If the area manager determines that the action alleged in such complaint occurred, the
396 | area manager shall attempt to resolve the complaint by making reasonable efforts to
397 | ensure that the person or entity named in the complaint complies with the provisions of
398 | this law.

399 | ~~(b)213.11-5.~~ If the efforts of the area manager do not resolve the complaint within ten
400 | (10) workingbusiness days from the receipt of the employee’s complaint, the complainant
401 | shall be notified of the results of the area manager’s investigation and ~~the complainant’s~~
402 | entitlement to refer the complaint to the ~~Oneida Personnel Commission. One extension~~
403 | ~~of no more than five (5) working days may be requested of and granted by the Oneida~~
404 | ~~Human Resources Manager (or designee) at his or her discretion.~~Trial Court.

405 | (c) One extension of no more than five (5) business days may be requested of and
406 | granted by the Human Resources Manager, or designee, at his or her discretion, to the
407 | area manager for time to resolve the complaint.

408 | ~~213.11-5. Appeal of the Area Manager’s Decision.~~213.11-6. If an employee appeals the area
409 | manager’s decision, the appeal must be filed with the ~~Oneida Personnel Commission~~Trial Court
410 | within ten (10) workingbusiness days of the employee’s receipt of the Area Manager’s decision.
411 | The ~~Commission~~Trial Court shall notify the Human Resources Manager ~~(, or designee)~~, within
412 | one (1) business day when an employee files an appeal.

413 | ~~213.11-7.~~213.11-6. Remedies. In any action relating to this law, relief may be awarded as
414 | follows:

- 415 | (a) Require the TribeNation to comply with the provisions of this law; and/or
416 | (b) ~~Require the~~ TribeNation to compensate the person for any loss of wages or benefits
417 | suffered by reason of the Tribe’sNation’s failure to comply with the provisions of this
418 | law.

419 | ~~213.11-8.~~7. Any compensation awarded shall be in addition to, and shall not diminish, any of the
420 | other benefits provided for under this law.

421 | End.

422 |
423 |
424 |
425 | Adopted - BC-10-24-07-E
426 | Emergency Amended – BC-04-25-18-D
427 | Amended – BC- - - -

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

- 38 excluding
39 holidays recognized by the Nation.
40 (d) “Employee” means any person employed by the Oneida Nation.
41 (e) “Health plan” means an insurance policy or contract or other arrangement under
42 which health services for individuals are provided or the expenses of such services are
43 paid.
44 (f) “Military” means the Armed Forces, the Army National Guard and the Air National
45 Guard when engaged in active duty for training, inactive duty training, or full-time
46 National Guard duty, the commissioned corps of the Public Health Service, and any other
47 category of persons designated by the President in time of war or national emergency.
48 (g) “Nation” means the Oneida Nation.
49 (h) “Qualified,” with respect to an employment position, means having the ability to
50 perform the essential tasks of the position.
51 (i) “Reasonable efforts”, in the case of actions required of the Nation under this law,
52 means actions, including providing training, that do not place an undue hardship on the
53 Nation.
54 (j) “Seniority” means longevity in employment together with any benefits of employment
55 which accrue with, or are determined by, longevity in employment.
56 (k) “Service” or “service in the military” means the performance of duty on a voluntary
57 or involuntary basis in a branch of the military and includes active duty, active duty for
58 training, initial active duty for training, inactive duty training, full-time National Guard
59 duty, the time a person is absent from a position of employment for the purpose of an
60 examination to determine the fitness of the person to perform any such duty, and the
61 period for which a person is absent from employment for the purpose of performing
62 funeral honors duty.
63 (l) “Trial Court” means the Court of the Oneida Judiciary where evidence and testimony
64 are first introduced, received, and considered. The Oneida Judiciary was established by
65 Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial
66 authorities and responsibilities of the Nation.
67 (m) “Undue hardship”, in the case of actions taken by the Nation, means actions
68 requiring significant difficulty or expense, when considered in light of:
69 (1) the nature and cost of the action needed under this law;
70 (2) the overall financial resources of the department involved in the provision of
71 the action; the number of persons employed within the department; the effect on
72 expenses and resources, or the overall impact of such action upon the operation of
73 the department;
74 (3) the financial resources of the Nation; the size of the Nation with respect to
75 how many employees and departments it has; and
76 (4) the type of operation(s) of the Nation, including the composition, structure,
77 and functions of the work force of its departments.
78

213.4. Character of Service

- 80 213.4-1. Those who serve in the military are ineligible to receive benefits under this law if they:
81 (a) receive a dishonorable discharge or a bad conduct discharge;

- 82 (b) receive a dismissal from a general court-martial, or by order of the President; or
83 (c) are dropped from the unit rolls because they have been:
84 (1) absent without authority for at least three months;
85 (2) sentenced by a court-martial to confinement for more than six (6) months and
86 have served at least six (6) months; or
87 (3) sentenced to confinement in a penitentiary or correctional institution after
88 having been found guilty of an offense by a court other than a court-martial or
89 other military court, and whose sentence has become final.
90

91 **213.5. Prohibition of Discrimination Against Persons Who Serve in the Military**

92 213.5-1. The Nation shall not deny employment, reemployment, retention in employment,
93 promotion, or any benefit of employment on the basis of a person's membership, application for
94 membership, performance of service, application for service, or obligation to perform service in
95 the military.

96 213.5-2. The Nation may not discriminate in employment against or take any adverse
97 employment action against anyone because such person has:

- 98 (a) exercised a right or taken an action to enforce a protection afforded under this law;
99 (b) has testified or otherwise made a statement in or in connection with any proceeding
100 under this law; or
101 (c) has participated in an investigation under this law.

102 213.5-3. The Nation shall not be considered to have engaged in a prohibited action if the same
103 action would have been taken regardless of an employee's military status.

104 213.5-4. The prohibition of discrimination against persons who serve in the military or have
105 exercised a right under this law, shall apply to any position of employment, including a seasonal,
106 temporary, or a limited term position.
107

108 **213.6. Reemployment Rights of Persons Who Serve in the Military**

109 213.6-1. *Reemployment Rights.* Any person who takes a leave of absence from an
110 employment position to serve in the military shall be entitled to the reemployment benefits and
111 other employment benefits of this law if the following conditions are met:

- 112 (a) the Nation receives advance written notice of such service as soon as practicable after
113 the employee receives notice;
114 (1) Advance written notice shall not be required if it is precluded by military
115 necessity or, under all of the relevant circumstances, the giving of notice is
116 otherwise impossible or unreasonable.
117 (b) the cumulative length of the absence and of all previous absences with the Nation by
118 reason of service in the military does not exceed five (5) years; and
119 (c) the person reports to the Nation in accordance with this law.

120 213.6-2. *Calculating the Cumulative Length of Absence.* When calculating the length of
121 absence the Nation shall not include any service:

- 122 (a) that is required, beyond five (5) years, to complete an initial period of obligated
123 service;
124 (b) during which such person was unable to obtain orders releasing such person from a
125 period of service in the military before the expiration of such five (5) year period and

126 such inability was through no fault of such person;

127 (c) performed as required pursuant to training requirements for reservists and National
128 Guard members;

129 (d) performed by a member of the military service who is:

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

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

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

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

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

143 213.6-3. *Nation's Right to Not Reemploy.* Certain circumstances exist in which the Nation shall
144 not be required to reemploy a person under this law.

145 (a) The Nation is not required to reemploy a person under this law if one of the following
146 circumstances are met:

147 (1) circumstances have so changed as to make such reemployment impossible or
148 unreasonable;

149 (2) such employment would impose an undue hardship on the Nation; or

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

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

156 213.6-4. *Notification of Intent to Return.* An employee who has taken a leave of absence from
157 their position of employment shall notify the Nation of the person's intent to return to a position
158 of employment within ninety (90) days of separation of active duty service and within thirty-one
159 (31) days from completion of training for reservists. The Nation shall, as soon as practicable
160 after receiving notice, make arrangements with the employee for an employment return date.

161 (a) *Exception for Injury and/or Illness.* A person who is hospitalized for, or recovering
162 from, an illness or injury incurred in, or aggravated during, the performance of service in
163 the military shall, at the end of the period that is necessary for the person to recover from
164 such illness or injury notify the Nation of the person's intent to return to a position of
165 employment. Such period of recovery may not exceed two (2) years, unless the
166 minimum time required to accommodate the circumstances beyond such person's control
167 is longer than two (2) years, making reporting within the period specified impossible or
168 unreasonable.

169 (b) *Required Documentation of Intent to Return.* A person who has notified the Nation of

170 the person’s intent to return to a position of employment shall, upon the request of the
171 Nation, provide documentation to establish that:

- 172 (1) the notification is timely;
- 173 (2) the cumulative length of absence requirements have not been exceeded,
174 except as permitted under this law; and
- 175 (3) the person’s entitlement to benefits has not been terminated due to character
176 of service.

177 213.6-5. *Failure to Report for Reemployment.* A person who fails to report for reemployment
178 within the appropriate period shall not automatically forfeit such person’s entitlement to any
179 employment benefits, but shall be subject to the Nation’s policies and procedures pertaining to
180 discipline with respect to absence from scheduled work.

181 213.6-6. The timing, frequency, and duration of a person’s training or service, or the nature of
182 such training or service (including voluntary service) in the military, shall not be a basis for
183 denying protection of this law if the service does not exceed the limitations for calculating a
184 leave of absence, and the notice and notification requirements are met.

185 213.6-7. The Nation’s Human Resources Department shall inform employees of their rights,
186 benefits, and obligations under this law and shall provide assistance to employees with respect to
187 the employment and reemployment benefits to which they are entitled under this law.

188 **213.7. Reemployment Positions**

189 213.7-1. A person entitled to reemployment shall be promptly reemployed in a position of
190 employment in accordance with the following order of priority:

191 (a) In the case of a person whose period of service in the military was for less than
192 ninety-one (91) days, the person is entitled to reemployment:

- 193 (1) in the position which the person would have been employed if the continuous
194 employment of such person had not been interrupted by such service, as long as
195 the person is qualified to perform the duties of that position; or
- 196 (2) in the position which the person was employed on the date of the
197 commencement of the service in the military, only if the person is not qualified to
198 perform the duties of the position which the person would have been employed if
199 the continuous employment of such person had not been interrupted by such
200 service after reasonable efforts by the Nation are made to qualify the person for
201 that position.

202 (b) In the case of a person whose period of service in the military was for more than
203 ninety (90) days, the person is entitled to reemployment:

- 204 (1) in the position which the person would have been employed if the continuous
205 employment of such person had not been interrupted by such service, or a position
206 of like seniority, status and pay, as long as the person is qualified to perform the
207 duties of that position; or
- 208 (2) in the position which the person was employed on the date of the
209 commencement of the service, or a position of like seniority, status and pay, the
210 duties of which the person is qualified to perform, only if the person is not
211 qualified to perform the duties of the position the person would have been
212 employed if the continuous employment of such person had not been interrupted
213

214 by such service, after reasonable efforts by the Nation are made to qualify the
215 person for that position.

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

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

224 (2) in a position which is the nearest approximation to any other position which is
225 equivalent in seniority, status, and pay consistent with such person's case.

226 (d) In the case of a person who is not qualified to become reemployed and cannot
227 become qualified, even with reasonable efforts by the Nation, the person is entitled to
228 reemployment in any other position which is the nearest approximation to a position
229 which such person is qualified to perform, with full seniority.

230 213.7-2. If two or more persons are entitled to reemployment in the same position and more than
231 one of them has reported for reemployment, the person who left the position first shall have the
232 prior right to reemployment in that position.

233 (a) The person who is not reemployed, because the other person entitled to
234 reemployment left the position first, shall be entitled to reemployment in any other
235 position in accordance with section 213.7-1, remaining consistent with the circumstances
236 of such person's case, in the order of priority set out in the appropriate section, with full
237 seniority.

238
239 **213.8. Benefits of Persons Absent from Employment for Military Service**

240 213.8-1. *Benefits and Seniority.* A person who is reemployed under this law is entitled to the
241 seniority and other benefits determined by seniority that the person had on the date of the
242 commencement of service in the military, plus the additional seniority and benefits that such
243 person would have attained if the person had remained continuously employed.

244 (a) A person on leave of absence for military service shall not be entitled to any benefits
245 to which the person would not otherwise be entitled if the person had remained
246 continuously employed.

247 213.8-2. *Leave of Absence.* A person who is absent from a position of employment by reason of
248 service in the military shall be:

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

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

254 213.8-3. *Intent Not to Return to Employment.* A person who is absent from an employment
255 position because of service in the military and knowingly provides written notice of intent not to
256 return to a position of employment after service in the military, is not entitled to benefits under
257 this section. The Nation has the burden of proving that a person knowingly provided written

258 notice of intent not to return to a position after service in the military and was aware of the
259 specific benefits to be lost.

260 213.8-4. *Funded Benefits*. A person may be required to pay the Nation's cost, if any, of any
261 funded benefit continued to the extent other employees on leave of absence are so required.

262 213.8-5. *Termination of Employment*. A person who is reemployed under this law shall only be
263 terminated in accordance with the Nation's laws and policies governing employment.

264 213.8-6. *Use of Vacation and Personal Accruals*. Any person whose employment is interrupted
265 by military service shall be permitted to use, during such period of service, any vacation or
266 personal time accrued by the person before the commencement of such service. The Nation shall
267 not require any person to use vacation or personal time during such period of service.

268 213.8-7. *Funeral Honors Duty*. The Nation shall grant an employee who is a reserve member an
269 unpaid temporary leave of absence in order to perform funeral honors duty. Employees may use
270 vacation or personal time to perform funeral honors duty if eligible.

271

272 **213.9. Health Plans**

273 213.9-1. *Continuation of Health Plan Coverage*. If a person, or a person's dependents, has
274 coverage under a health plan through the Nation and such person is on a leave of absence for
275 military service, the plan shall provide that the coverage may be continued.

276 (a) The maximum period of coverage of a person and the person's dependents shall be
277 the lesser of:

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

280 (2) the day after the date on which the person fails to return to a position of
281 employment, in accordance with the notification requirements for the person's
282 intent to return to a position of employment with the Nation.

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

288 213.9-2. If a person's health plan is terminated by reason of military service, an exclusion or
289 waiting period may not be imposed in connection with the reinstatement of such coverage upon
290 reemployment if an exclusion or waiting period would not have been imposed had coverage of
291 such person not been terminated as a result of such service.

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

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

296

297 **213.10. Retirement and Pension Plans**

298 213.10-1. *Accrual Benefits under a Retirement or Pension Plan*. Each period served by a person
299 in the military shall, upon reemployment, be deemed to constitute service for the purpose of
300 determining the non-forfeitability of the person's accrued benefits and for the purpose of
301 determining the accrual of benefits under a retirement or pension plan.

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

306 213.10-2. *Employee Contributions to a Retirement or Pension Plan.* A person reemployed
307 under this law shall be entitled to accrued benefits that are contingent on the making of, or
308 derived from, employee contributions or elective deferrals if the person makes payment to a
309 retirement or pension plan with respect to such contributions or deferrals.

310 (a) If the employee makes up the contributions, the Nation shall make up any required
311 matching contributions.

312 (b) No such payment may exceed the amount the person would have been permitted or
313 required to contribute had the person remained continuously employed by the Nation
314 throughout the period of service.

315 (c) Any payment to a retirement or pension plan shall be made during the period
316 beginning with the date of reemployment and whose duration is three (3) times the period
317 of the person's service in the military, such payment period not to exceed five (5) years.

318 213.10-3. *Calculation of Employee's Compensation During Period of Service.* For purposes of
319 computing the Nation's liability or the employee's contributions, the employee's compensation
320 during the period of service shall be computed:

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

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

327 213.10-4. *Pension Plan.* When a person who participates in a pension plan is reemployed after a
328 period of military service, the Nation shall be liable to the pension plan for funding any
329 obligation to provide the benefits the employee would have received had they not taken a leave
330 of absence.

331 (a) The Nation shall allocate the amount of the Nation's contribution for the person in
332 the same manner and to the same extent the allocation occurred for other employees
333 eligible for the pension plan during the period of service.

334 (b) For purposes of determining the amount of such liability and any obligation of the
335 pension plan, earnings and forfeitures shall not be included.

336

337 **213.11. Enforcement of Employment or Reemployment Rights**

338 213.11.1. *Notification of Denial.* The Nation shall notify, in writing, any person who has been
339 denied employment, reemployment, or benefits under this law.

340 213.11-2. *Basis for a Complaint.* A person may file a complaint whenever such person claims
341 that:

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

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

345 213.11-3. *Requirements for Filing a Complaint.* A complaint shall:

- 346 (a) be in writing;
347 (b) contain a summary of the allegations that form the basis for the complaint; and
348 (c) be filed with the person's area manager and the Nation's Human Resources Manager,
349 or designee, within ten (10) business days from the day the person received a denial of
350 employment and/or benefits by the Nation.

351 213.11-4. *Investigation by the Area Manager.* The area manager shall conduct an investigation
352 of the basis of the complaint.

353 (a) If the area manager determines that the action alleged in such complaint occurred, the
354 area manager shall attempt to resolve the complaint by making reasonable efforts to
355 ensure that the person or entity named in the complaint complies with the provisions of
356 this law.

357 (b) If the efforts of the area manager do not resolve the complaint within ten (10)
358 business days from the receipt of the employee's complaint, the complainant shall be
359 notified of the results of the area manager's investigation and the complainant's
360 entitlement to refer the complaint to the Trial Court.

361 (c) One extension of no more than five (5) business days may be requested of and
362 granted by the Human Resources Manager, or designee, at his or her discretion, to the
363 area manager for time to resolve the complaint.

364 213.11-5. *Appeal of the Area Manager's Decision.* If an employee appeals the area manager's
365 decision, the appeal must be filed with the Trial Court within ten (10) business days of the
366 employee's receipt of the Area Manager's decision. The Trial Court shall notify the Human
367 Resources Manager, or designee, within one (1) business day when an employee files an appeal.

368 213.11-6. *Remedies.* In any action relating to this law, relief may be awarded as follows:

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

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

372 213.11-7. Any compensation awarded shall be in addition to, and shall not diminish, any of the
373 other benefits provided for under this law.

374
375 *End.*

376
377
378 Adopted - BC-10-24-07-E
379 Emergency Amended – BC-04-25-18-D
380 Amended – BC-__-__-__-__