

# ONEIDA NATION PUBLIC MEETING NOTICE

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

**Monday December 3, 2018, 12:15pm**

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

## WHISTLEBLOWER PROTECTION LAW

The purpose of this law is to give protection to employees who give information that is intended to protect the Nation from fraud, theft, or other detrimental effects.



This proposed Whistleblower Protection law will be replacing the Nation's Employee Protection Policy.

This proposed Whistleblower Protection law will:

1. Describe that whistleblowing occurs when an employee makes a disclosure of information that the employee reasonably believes provides evidence that protects the Nation from any adverse actions of its employees that may result in a detrimental effect to the Nation.
2. Provide that an employee shall be protected from retaliatory action that results from making a disclosure of information under this law.
3. Describe how to make a disclosures of information, as well as how a disclosure will be handled.
4. Provide a process for if an employee alleges that retaliatory action has been taken against him or her based on his or her disclosure of information.

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## PUBLIC COMMENTS PERIOD CLOSES MONDAY, DECEMBER 10, 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/Public Meetings** or contact Oneida Nation Legislative Reference Office located  
in the Norbert Hill Center, PO Box 365, Oneida, Wisconsin 54155  
Email: [LOC@oneidanation.org](mailto:LOC@oneidanation.org) Phone: 920-869-4376



# WHISTLEBLOWER PROTECTION LAW LEGISLATIVE ANALYSIS

## SECTION 1. EXECUTIVE SUMMARY

REQUESTER: LOC	SPONSOR: David P. Jordan	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To repeal the Employee Protection Policy and replace it with a Whistleblower Protection Law that incorporates the Nation's new anonymous Fraud Hotline; to ban retaliation against employees; to direct all whistleblower disclosures to the Fraud Hotline or Internal Audit Department; to provide a grievance and complaint process for employees who have been retaliated against; and to provide disciplinary actions and other consequences for employees and officials who retaliate against whistleblowers.		
Purpose	To give protection to employees who give information that is intended to protect the Nation from fraud, theft or other detrimental effects <i>[see 211.1-1]</i> .		
Affected Entities	All employees of the Nation. All elected and appointed officials of the Nation. Internal Audit Department, Audit Committee, Human Resources Department, Personnel Commission, Judiciary, Oneida Business Committee, Oneida Law Office, Oneida Police Commission, Oneida Nation School Board, Oneida Gaming Commission.		
Affected Legislation	Employee Protection Policy, Personnel Policies and Procedures (Blue Book), Boards, Committees and Commissions Law, Removal Law and Internal Audit Law.		
Enforcement/Due Process	Employees of the Nation who retaliate against an employee may be subject to disciplinary action, up to and including termination. Elected and appointed officials of the Nation who retaliate against an employee may be subject to sanctions and penalties, removal from office or termination of appointment <i>[see 211.5-3]</i> .		
Public Meeting	A public meeting has not yet been held.		

## SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Employee Protection Policy was first adopted by the Oneida Business Committee on April 20, 1995. The purpose of the law is to protect employees who give information that is intended to protect the Nation from fraud, theft or other detrimental effects. The current Employee Protection Policy provides a process for how employees make disclosures, a process to request "protected status" that allows protected employees to bypass the normal complaint and grievance process in the Personnel Policies and Procedures, and the ability of protected employees to receive a "protective order" from the Personnel Commission if they are retaliated against.
- B. Amendments to the Employee Protection Policy were added to the Legislative Operating Committee's Active Files List on December 20, 2017. Over the course of developing amendments, the LOC determined that the proposed changes to the law were substantial enough that the Whistleblower Protection Policy should be considered a new law that repeals and replaces the Employee Protection Policy.
- C. The proposed Whistleblower Protection Law is intended to work in conjunction with the Nation's new Fraud Hotline developed by the Internal Audit department. The anonymous Fraud Hotline is designed to be a centralized way for employees to report fraud, unlawful, unethical or other types of inappropriate behavior. The Fraud Hotline will be administered by a third party and will be available 24 hours per day, seven days per week. Reports from the Fraud Hotline will be sent to Internal Audit for investigation.

- D. This proposed law repeals the Employee Protection Policy and replaces it with a new Whistleblower Protection Law. The intent of the law is to ban retaliation against employees; to direct all whistleblower disclosures to the Fraud Hotline or Internal Audit Department; to provide a grievance and complaint process for employees who have been retaliated against; and to provide disciplinary actions and other consequences for employees and officials who retaliate against whistleblowers.

### SECTION 3. CONSULTATION AND OUTREACH

- A. The Legislative Operating Committee (LOC) held work meetings with Internal Audit, Human Resources Equal Employment Opportunity (EEO) and HRD Training and Development in the development of this law and analysis. In addition, representatives from the Gaming Commission, School Board and Police Commission were invited to attend a work meeting to provide input regarding the Employee Protection Policy. The LOC received data regarding historical Employee Protection Policy caseload from staff of the following entities: Oneida Personnel Commission, Oneida Nation School Board, Oneida Nation Gaming Commission, and Oneida Nation Police Commission.
- B. The following Oneida laws were reviewed in the drafting of this analysis: Personnel Policies and Procedures, Boards, Committees and Commissions Law, Removal Law, Internal Audit Law, and Code of Ethics. In addition, the following laws were reviewed in drafting this analysis:
- Ho Chunk Nation Employment Relations Act
  - Mashantucket Pequot Tribal Whistleblower Law
  - Little Traverse Band of Odawa Indians Whistleblower Protection
  - Seminole Nation Whistleblower Protection
  - Osage Nation Whistleblower Protection Law

### SECTION 4. PROCESS

- A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- B. The law was added to the Active Files List under Employee Protection Policy on 12/20/2017.
- C. At the time this legislative analysis was developed, the following work meetings were held/scheduled regarding the development of this law and legislative analysis:
- April 18, 2018: LOC Work Meeting.
  - May 16, 2018: LOC Work Meeting.
  - June 15, 2018: Work Meeting with HRD EEO.
  - June 22, 2018: LOC Work Meeting.
  - July 11, 2018: LOC Work Meeting.
  - August 23, 2018: Work Meeting with HRD EEO and HRD Training and Development. Representatives from the Gaming Commission, Police Commission and School Board were also invited to this meeting.
  - August 23, 2018: Work Meeting with Internal Audit Department.
  - September 27, 2018: LOC Work Meeting.
  - October 9, 2018: Work Meeting with Internal Audit Department.
  - October 17, 2018: LOC Work Meeting.

### SECTION 5. CONTENTS OF THE LEGISLATION

- A. *Repeal of Employee Protection Policy.* Adoption of the proposed Whistleblower Protection Law will repeal and replace the current Employee Protection Policy [see 211.2-4(a)]. This analysis provides comparisons between the current Employee Protection Policy and the proposed Whistleblower Protection Law.
- B. *What is “Whistleblowing”?* A whistleblower is an employee who shares evidence or provides information that protects the Oneida Nation from adverse actions of its employees.

- Examples in the law include: any dishonest or fraudulent act, deceptive business practices, theft, extortion, bribery, embezzlement, blackmail, tampering and or falsifying records, forgery, misappropriation or misuse of the Nation's funds, disclosure of confidential information, destruction, removal or inappropriate use of property of the Nation, unsafe working conditions, poor management, or unethical conduct or violation of a law or policy of the Nation [see 211.4-1].

**C. *Ban on Retaliation.*** Employees who make whistleblower disclosures under this law are protected from retaliation [see 211.4-2]. Examples of retaliation listed in this law include:

- *Disciplinary Actions* such as dismissal, demotion, transfer, removal of duty, refusal to restore, layoff, furlough, suspension, and/or reprimand.
- *Non-Disciplinary Actions* such as loss of hours, rescheduling shifts outside of normal shift changes, change of job requirements without notice, verbal or physical harassment, reduction of pay, denial of educational benefits, reassignment, and/or failure to increase base pay.

**D. *Where to Submit Whistleblower Disclosures.*** Employees will now submit all whistleblower disclosures using the Fraud Hotline or by submitting in writing to the Internal Audit Department [see 211.4-3]. Previously, employees also had the option of submitting their disclosures to the Personnel Commission, Oneida Nation School Board, Oneida Police Commission, or Oneida Gaming Commission, or to a supervisor, law enforcement official, attorney, or employee advocate. Now, all employees will submit whistleblower disclosures to one centralized location.

**Chart 1. Comparison of Where to Submit Whistleblower Disclosures.**

<b>Employee Protection Policy (current)</b>	<b>Whistleblower Protection Law (proposed)</b>
<p><i>Employee Submits to one of the following:</i></p> <ul style="list-style-type: none"> <li>▪ Internal Audit,</li> <li>▪ Gaming Commission,</li> <li>▪ School Board,</li> <li>▪ Police Commission,</li> <li>▪ Personnel Commission, or</li> <li>▪ Supervisor, Law Enforcement Agency, Attorney retained by employee, or Employee Advocate, who will direct the disclosure to one of the “appropriate agencies” listed above.</li> </ul>	<p><i>Employee Submits to one of the following:</i></p> <ul style="list-style-type: none"> <li>▪ Anonymous Fraud Hotline</li> <li>▪ Internal Audit</li> </ul>

- ***Anonymous Fraud Hotline.*** An Anonymous Fraud Hotline has been developed by the Internal Audit Department. The hotline will be operated by a third-party vendor and will be available 24 hours per day, seven days per week. The purpose of the hotline is to provide a centralized and anonymous way to report fraud, unlawful, unethical and other types of improper behavior. For more details regarding the hotline, see Section 9 “Other Considerations.”
  - ***Contents of Disclosure.*** The proposed Whistleblower Protection Law does not describe any specific information that must be included in the disclosure. In comparison, the current Employee Protection Policy requires employees to submit a written, dated, signed disclosure that is hand carried, mail certified or delivered by law enforcement. The current Employee Protection Policy also requires employees to identify themselves in the disclosure and identify the person and persons against whom the claim is made, and provide date, times and summary of the misconduct.
- E. *Receipt of Disclosure.*** After submitting their disclosure, employees will receive an incident number. This incident number confirms that the employee's disclosure was received. This will allow employees

to provide evidence of their disclosure should they be retaliated against and need to file a complaint or grievance in the future [see 211.4-4].

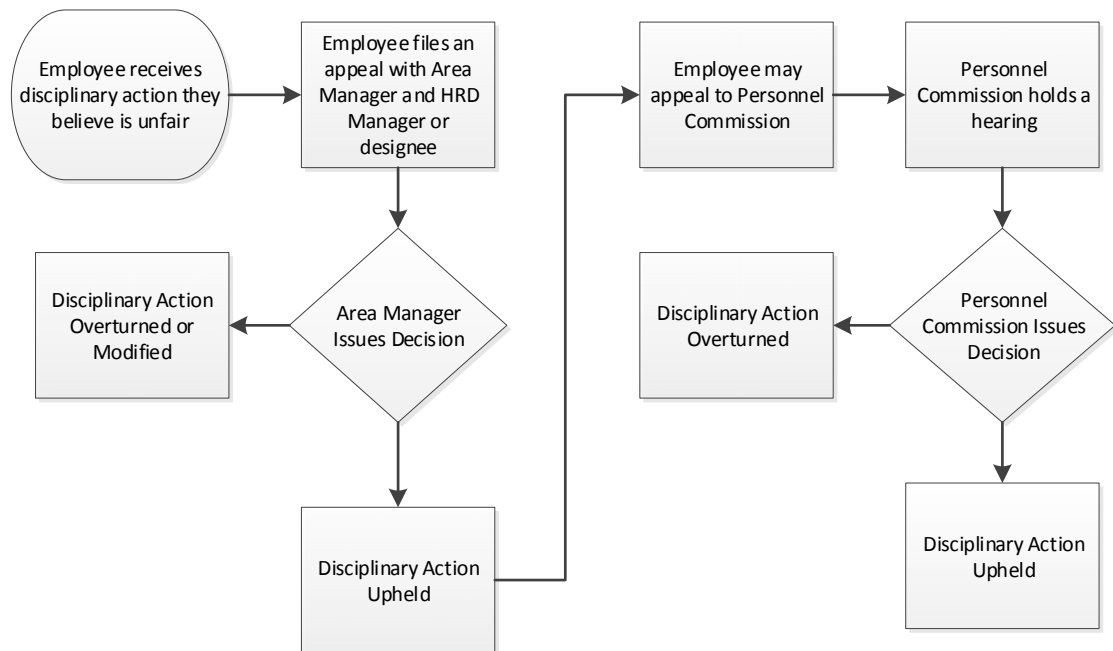
- **Comparison to Employee Protection Policy.** The current Employee Protection Policy requires the agency to provide a signed and dated receipt to the employee when they submit their disclosure. In contrast, the proposed Whistleblower Protection Law requires the employee be provided with an incident number.

**F. Investigation.** After receiving a disclosure from the Fraud Hotline or directly from the employee, Internal Audit has the authority to review and conduct an investigation and/or an audit. Once Internal Audit's investigation is complete, they will report their findings to the appropriate entity for further action, if necessary. For example, the findings could be reported to the Oneida Business Committee, Oneida Law Office, Human Resources Department, Oneida Police Department or other law enforcement agency, the Audit Committee, or any other entity of the Nation [see 211.4-5].

**G. Protection from Retaliation.** If an employee feels they have been retaliated against, they can file a complaint using the complaint and grievance processes in the Nation's Personnel Policies and Procedures, also known as "the Blue Book" [see 211.5-1].

- **Disciplinary Actions.** Chart 2 illustrates the grievance process in the Personnel Policies and Procedures for disciplinary actions, such as suspensions or termination of employment. If a disciplinary action is overturned, the employee can be reinstated with back pay. [See *Personnel Policies and Procedures - Section V Employee Relations, 5. Complaints, Disciplinary Actions and Grievances*].

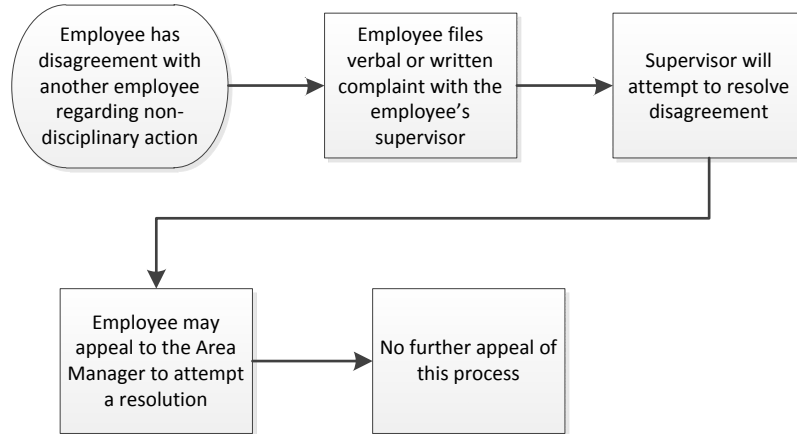
**Chart 2. Grievance Process for Disciplinary Actions in Personnel Policies and Procedures**



- **Comparison to Employee Protection Policy.** The current Employee Protection Policy allows employees who have been granted protection to skip a step in the grievance process and go straight to the Personnel Commission if they feel they have been retaliated against. This ability to skip a step in the grievance process is removed in the proposed Whistleblower law [see *current Employee Protection Policy, 2 O.C. 211.5-2(b)*].
- **Non-Disciplinary Actions.** Chart 3 depicts the complaint process in the Personnel Policies and Procedures for non-disciplinary complaints, such as loss of hours or change of schedule. [See

*Personnel Policies and Procedures - Section V Employee Relations, 5. Complaints, Disciplinary Actions and Grievances].*

**Chart 3. Complaint Process for Non-Disciplinary Actions in Personnel Policies and Procedures**



- **Comparison to Employee Protection Policy.** The current Employee Protection Policy allows employees who have been granted protection to skip the Complaint Process in the Personnel Policies and Procedures and go straight to their Division Director if they have received a non-disciplinary action that is retaliatory. This ability to skip the complaint process and go to the division director is removed in the proposed Whistleblower Protection law [see current Employee Protection Policy, 2 O.C. 211.5-2(a)].

**H. Requirements for Protection:** In order to be protected from retaliation under this law, the employee must have made a whistleblower disclosure and provide proof of the disclosure in the form of the incident number provided by the Fraud Hotline or Internal Audit. In addition, the individual who retaliated against the whistleblower must have been aware the whistleblower disclosed information. Finally, the action taken against the whistleblower must be retaliatory as a result of the disclosure [see 211.5-2].

**I. Punishment for Retaliation.** Individuals who retaliate against employees of the Nation in violation of this law will be subject to the following consequences [see 211.5-3].

- **Employees of the Nation.** Employees who retaliate against another employee for making a whistleblower disclosure will be subject to disciplinary action, up to and including termination, in accordance with the Personnel Policies and Procedures.
- **Appointed officials.** May have their appointment terminated, in accordance with the Nation's Boards, Committees and Commissions Law, or may receive sanctions and penalties in accordance with the Nation's laws.
- **Elected officials.** May be subject to removal from office in accordance with the Nation's Removal Law. Elected officials may also be subject to sanctions and penalties in accordance with the Nation's laws.

## SECTION 6. EFFECT ON EXISTING LEGISLATION

**A. Employee Protection Policy.** This law repeals the current Employee Protection Policy and replaces it with a new Whistleblower Protection Law.

**B. References to Other Laws.** The following laws of the Nation are referenced in this law. This law does not conflict with any of the referenced laws.

- **Personnel Policies and Procedure.** The proposed amendments refer to the Nation's grievance procedure [see 211.5-1] and disciplinary process [see 211.5-3(a)] in the Personnel Policies and Procedures.

- *Boards, Committees and Commissions Law.* The proposed amendments refer to the termination of appointed officials in the Boards, Committees and Commissions Law [see 211.5-3(d)].
- *Removal Law.* These amendments refer to the removal process for elected officials in the Removal Law [see 211.5-3(c)].
- *Internal Audit Law.* The proposed amendments refer to the duties and responsibilities of the Internal Audit department, which is governed by the Internal Audit Law.

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

- A. *Elimination of “Protected Status” and Ability to Skip a Step in the Complaint and Grievance Process.*** Under the current Employee Protection Policy, employees can receive a formal “protected status” upon making their disclosure to one of the five appropriate agencies. Once an employee is granted protected status, it allows the employee to skip a step in the complaint and grievance process and go directly to the Personnel Commission or their Division Director if they are retaliated against [see current *Employee Protection Policy*, 2 O.C. 211.5-2]. The proposed Whistleblower Protection Law eliminates this formal “protected status” and the right to skip a step in the complaint and grievance process. If an employee is retaliated against, they must file a complaint or grievance using the normal complaint and grievance process in the Personnel Policies and Procedures. At the time this analysis was developed, the LOC determined that the process in the Personnel Policies and Procedures is sufficient for whistleblower protection.
- B. *Elimination of Protective Orders to Human Resources Department.*** Under the current Employee Protection Policy, a protected employee who has been retaliated against may request a “protective order” from the Personnel Commission. This protective order directs the Human Resources Department to monitor the actions of that employee’s supervisor. Under the proposed Whistleblower Protection Law, employees will no longer be able to request protective orders from the Personnel Commission. If an employee is retaliated against, they must file a complaint or grievance using the normal complaint and grievance process in the Personnel Policies and Procedures. At the time this analysis was developed, the LOC determined the process in the Personnel Policies and Procedures is sufficient for whistleblower protection.
- C. *Impact on Boards, Committees, Commissions and Entities.*** Under this proposed Whistleblower Protection Law, the following entities listed in the Employee Protection Policy will no longer be responsible for receiving employee protection or whistleblower disclosures: Personnel Commission, Gaming Commission, School Board, and Police Commission. All whistleblower disclosures under this law will now be reported to the Fraud Hotline or Internal Audit department, which will investigate disclosures and forward findings to relevant entities for further action, if needed.

## SECTION 9. OTHER CONSIDERATIONS

*The following is provided for information:*

- A. *Data on Employee Protection Requests from Personnel Commission.*** The following information shows how often the current Employee Protection Policy has been used by employees over the last 5 years. Note that as of June 2018, the Oneida Nation employed approximately 2,880 people [Source: HRD 3<sup>rd</sup> Quarter Report].
- **Number of Disclosures.** Chart 4 depicts the number of employee protection disclosures made by employees to the Personnel Commission (OPC). In other words, the number of times employees shared information with the Personnel Commission and requested protection. Based on this data, the Personnel Commission received about two (2) employee protection requests per year, on average.

**Chart 4. Number of Employee Protection Disclosures Submitted to Personnel Commission**

YEAR	Number of Employee Protection Disclosures
2012	2
2013	1
2014	3
2015	0
2016	1
2017	4
2018 (January-April)	1
<b>TOTAL, 2012-2018</b>	<b>12</b>

○ *SOURCE: Personnel Commission, communication with staff via email 9/17/2018*

- **Number of Employees Granted Protection.** Of the twelve (12) requests for Employee Protection between 2012-2018, two (2) employees were granted employee protection. In addition, two (2) additional employees were granted “interim protection” at the time the OPC was dissolved in April 2018. “Interim protection” was granted during the Personnel Commission’s initial investigation.

**B. Data on Employee Protection Requests from Judiciary.** In April 2018, the Oneida Business Committee dissolved the Personnel Commission. The Personnel Commission’s responsibilities regarding Employee Protection were transferred to the Oneida Judiciary.

- According to data provided by the Oneida Law Office, two existing employee protection cases transferred to the Judiciary in April 2018. In addition, two new cases were filed with the Judiciary between April and August of 2018.

**C. Data on Employee Protection Requests from Other Entities.**

- **Internal Audit Department** estimates the department received a total of two or three requests for Employee Protection from employees of the Nation over the last five years. *[Source: Internal Audit staff.]*
- **Oneida Nation School Board** reports they have not received any Employee Protection requests from School System employees in recent years. *[Source: Oneida Nation School Board, communication with staff via email 10/9/18.]*
- **Oneida Police Commission** reports they received one (1) request for Employee Protection over the last two years. *[Source: Oneida Police Commission, communication with staff via email 10/31/18.]*
- **Oneida Gaming Commission** reports they have no record of receiving any Employee Protection requests in the last five years, and that Gaming employees likely submitted their requests to the Personnel Commission. *[Source: Oneida Gaming Commission, communication with staff via email 10/31/18.]*

**D. Data on Retaliation and Protective Orders from Personnel Commission.**

- **Number of Retaliation Grievances Filed by Employees with Protected Status.** One (1) retaliation grievance was filed by a protected employee between 2012 and April 2018. This means that of the employees who requested and received employee protection, one employee later alleged they were retaliated against.
- **Number of Protective Orders issued by Personnel Commission.** Two (2) protective orders were issued by the Personnel Commission between 2012 and April 2018. An employee may request a protective order if they have made a disclosure, have been granted protection, and later have been found to be retaliated against. A protective order directs the Nation’s Human Resources Department to monitor the actions of the employee’s supervisor.



- E. Comparison Between Employee Protection Policy and Whistleblower Policy.** This law repeals and replaces the Employee Protection Policy with a new Whistleblower Protection Law. Chart 5 illustrates some of the differences and similarities between the two laws:

**Chart 5. Comparison Between Employee Protection Policy and Whistleblower Policy.**

	<b>Employee Protection Policy (Current)</b>	<b>Whistleblower Protection Law (Proposed)</b>
<i>Defines and prohibits retaliation?</i>	Yes.	Yes.
<i>Directs employees where and how to make their disclosures?</i>	Yes, employees are directed to make their disclosures to one of several appropriate agencies.	Yes, employees are directed to make disclosures using the anonymous Fraud Hotline or to Internal Audit
<i>Allows employees to report anonymously?</i>	No, employees must disclose their identity in their written complaint.	Yes, employees can choose to remain anonymous using the Fraud Hotline.
<i>Provides employees with documentation (proof) that they made a disclosure?</i>	Yes, employees receive a signed and dated receipt.	Yes, employees will receive an incident number from the hotline or Internal Audit.
<i>Employees may be granted a formal “protected status” from the agency after submitting their disclosure?</i>	Yes, employees may be granted formal “protected status” from an agency.	No, employees do not receive a formal designation of “protected status” from the agency.
<i>Allows protected employees to skip a step in the complaint and grievance process if they are retaliated against?</i>	Yes, employees who have been granted protection may appeal directly to the Personnel Commission or Division Director if they feel they have been retaliated against.	No, if an employee feels they have been retaliated against, they must use the normal complaint and grievance process in the Personnel Policies and Procedures.
<i>Employees who have been retaliated against can request a “protective order” from the Personnel Commission?</i>	Yes, employees who have been granted protection and are later retaliated against may request a “protective order” directing HRD to monitor the actions of their supervisor.	No, employees cannot request a “protective order.” Employees will need to use the normal grievance process in the Personnel Policies and Procedures if they are retaliated against.

- F. Comparison to other Tribal Nations.** A review of whistleblower protection laws from other tribal nations indicates whistleblower laws are generally brief, one to two documents that include a few basic provisions. Some laws, such as those from the Ho Chunk Nation and Seminole Nation, are only one paragraph long. The Whistleblower laws reviewed typically include the following core components:
- Ban on retaliation against employees for whistleblowing.
  - Direct employees where to make whistleblower disclosures. (For example: Attorney General, Human Resources Department, Office of Inspector General).
    - In Oneida’s proposed Whistleblower Law, employees will report their disclosures to the anonymous Fraud Hotline or Internal Audit Department.

- 280 ■ In addition, some whistleblower laws describe remedies for employees that have been retaliated
- 281 against, such as job reinstatement, back pay for lost wages, and damages.
- 282 ○ Oneida's proposed Whistleblower Law directs employees to use the grievance process in
- 283 the Personnel Policies and Procedures, which allows the Area Manager or Personnel
- 284 Commission to overturn disciplinary actions, reinstate employees who have been
- 285 terminated, and award back pay.

286 **G. Grandfather Clause for Current Protected Employees & Pending Cases.** Based on data received from

287 the Judiciary and Personnel Commission, there are a small number of employees who currently have

288 protected status under the Employee Protection Policy. In addition, there may be at least one (1)

289 employee protection related case pending in the Judiciary. Therefore, the LOC intends to include a

290 grandfather clause in the adopting resolution to ensure the following:

- 291 ■ Employees who currently have protected status will still retain some form of protection upon
- 292 adoption of this law.
- 293 ■ Pending cases related to Employee Protection Policy will be allowed to proceed.
- 294 ■ The LOC must still determine the details of the grandfather clause. The LOC may want to consider
- 295 the following:
  - 296 ○ Will employees who have been granted protection be allowed to keep their protected status,
  - 297 and if so, for what length of time?
  - 298 ○ Will employees with protected status be allowed to use the grievance process in the
  - 299 Employee Protection Policy after it is repealed? Or will they instead be directed to follow
  - 300 the grievance process in the Whistleblower Protection Law for future retaliation
  - 301 grievances?
- 302 ■ **Recommendation:** The details of the grandfather clause in the adopting resolution is a policy
- 303 decision.

304 **H. Fraud Hotline.** A Fraud Hotline has been developed by the Internal Audit Department. The anonymous

305 Fraud Hotline will be administered by a third-party vendor and available 24 hours per day, seven days

306 per week. The purpose of the hotline is to provide a centralized, anonymous way to report issues of

307 fraud, unlawful, unethical and other types of improper behavior. Callers to the hotline have the option

308 to either remain anonymous or reveal their identity.

- 309 ■ **Hotline Process.** A report of the call will be generated by the third-party vendor, who will send the
- 310 report to Internal Audit. Internal Audit will review all hotline reports and determine whether an
- 311 investigation is needed. If necessary, Internal Audit will conduct a confidential investigation. Once
- 312 Internal Audit's investigation is complete, they will report their findings to the appropriate entity
- 313 for further action, if necessary. For example, the findings could be reported to the Oneida Business
- 314 Committee, Oneida Law Office, Human Resources Department, Oneida Police Department or other
- 315 law enforcement agency, the Audit Committee, or any other entity of the Nation
- 316 ■ **Hotline Implementation.** At the time this analysis was drafted, Internal Audit estimates the Fraud
- 317 Hotline will ready to go live by the end of October 2018. In addition, Internal Audit reports that
- 318 training will be conducted for all employees of the Nation followed by annual refresher trainings.
- 319 At the time this analysis was drafted, it is expected that this training will be held in December 2018.
- 320 ■ **Recommendation:** The LOC should consider consulting with HRD Training and Development and
- 321 Internal Audit regarding the implementation date for this law and any additional training that may
- 322 be necessary upon roll out.

323 **I. Whistleblower Law in Absence of Hotline.** This law has been drafted so that in the future, if the Fraud

324 Hotline is ever eliminated or malfunctions, the Whistleblower Protection Law and the protections it

325 provides will still function. For example, employees will still be able to submit their disclosures to

326 Internal Audit, but will submit them in writing instead of to the hotline.

327 **J. Reference to Sanctions and Penalties.** This law references sanctions and penalties. The Legislative

328 Operating Committee (LOC) is currently drafting a Sanctions and Penalties Law to increase

329 accountability among elected and appointed officials of the Nation. Currently, the only reprimand

330 available for appointed and elected officials is termination of appointment or removal from office.  
331 However, there may be instances of misconduct that do not rise to the level of removal. In these cases,  
332 other sanctions such as verbal warnings, written warnings, suspension or fines may be more  
333 appropriate. The proposed Sanctions and Penalties law will create a formal complaint process and allow  
334 for corrective actions against officials who violate laws, bylaws and SOPs of the Nation. At the time  
335 this analysis was drafted, the LOC intends to present a Sanctions and Penalties Law to GTC for  
336 consideration once the draft is complete and all legislative requirements are met.  
337

338 **K.** Please refer to the fiscal impact statement for any fiscal impacts.  
339  
340  
341

## **Title 2. Employment – Chapter 211 WHISTLEBLOWER PROTECTION**

211.1 Purpose and Policy

211.2 Adoption, Amendment, Repeal

211.3 Definitions

211.4 Disclosure of Information

211.5 Protection from Retaliation

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### **211.1. Purpose and Policy**

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

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

### **211.2. Adoption, Amendment, Repeal**

211.2-1. This law was adopted by the Oneida Business Committee by resolution BC-\_\_-\_\_-\_\_-\_\_.

211.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

211.2-3. 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.

211.2-4. 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, provided that this law repeals the following:

- (a) The Employee Protection Policy adopted by emergency pursuant to BC-04-20-95-B, permanently adopted pursuant to BC-12-06-95-B and subsequently amended pursuant to BC-01-20-99-B, BC-06-30-04-J, and BC-02-25-15-C.

211.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

### **211.3. Definitions**

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

- (a) "Employee" means any individual hired by the Nation and on the Nation's payroll and encompasses all forms of employment, including but not limited to: full-time, part-time, at-will, political appointees, and contracted persons.

- (b) "Entity" means a department, program, service, board, committee, or commission of the Nation.

- (c) "Nation" means the Oneida Nation.

- (d) "Official" means an individual elected or appointed to serve on a board, committee, or commission of the Nation, including the Oneida Business Committee.

### **211.4. Disclosure of Information**

211.4-1. Whistleblowing occurs when an employee discloses information that the employee reasonably believes provides evidence that protects the Nation from any adverse actions of its employees that may result in a detrimental effect to the Nation. Adverse action that may result in a detrimental effect to the Nation includes, but is not limited to:

- (a) Any dishonest or fraudulent act;
- (b) Deceptive business practices;
- (c) Theft;

- (d) Extortion;
- (e) Bribery;
- (f) Embezzlement;
- (g) Blackmail;
- (h) Tampering and/or falsifying records contracts, or reports;
- (i) Forgery;
- (j) Misappropriate and/or misuse of the Nation's funds;
- (k) Disclosure of confidential information;
- (l) Destruction, removal, or inappropriate use of property of the Nation;
- (m) Unsafe working conditions;
- (n) Poor management;
- (o) Unethical conduct and conduct that violates a law and/or policy of the Nation.

211.4-2. An employee shall be protected from retaliatory action that results from making a disclosure of information as directed within this law. Retaliatory action includes all action whether disciplinary or otherwise.

(a) Disciplinary action that may be retaliatory includes, but is not limited to:

- (1) dismissal;
- (2) demotion;
- (3) transfer;
- (4) removal of duty;
- (5) refusal to restore;
- (6) layoff;
- (7) furlough;
- (8) suspension; and/or
- (9) reprimand.

(b) Action other than disciplinary action that may be retaliatory may include, but is not limited to:

- (1) loss of hours;
- (2) rescheduling shifts outside of normal shift changes;
- (3) change of job requirements without notice;
- (4) verbal or physical harassment;
- (5) reduction of pay;
- (6) denial of educational benefits;
- (7) reassignment; and/or
- (8) failure to increase base pay.

(c) Any action that can be reasonably justified as taken in good faith based on documented employee performance shall be excluded from classification as retaliatory action.

211.4-3. An employee shall make a disclosure of information through the:

- (a) use of the anonymous Fraud hotline; or
- (b) submission of a written disclosure to the Nation's Internal Audit Department.

211.4-4. Once a disclosure of information is made, the disclosing employee shall be provided an incident number confirming receipt of the disclosure.

211.4-5. The Internal Audit Department shall then have the authority to review the disclosure and conduct an investigation and/or an internal audit into the disclosure, if deemed appropriate. Upon the conclusion of the investigation the Internal Audit Department shall, where necessary, report their findings to an appropriate entity for action to address the findings, including, but not limited to, the:

- (a) Oneida Business Committee;

- (b) Oneida Law Office or other legal prosecuting agency;
- (c) Human Resources Department;
- (d) Oneida Police Department or other law enforcement agency;
- (e) Audit Committee; and/or
- (f) any other entity of the Nation.

#### **211.5. Protection from Retaliation**

211.5-1. If an employee alleges retaliatory action has been threatened or taken based on the employee's disclosure of information under this law, the employee may file a complaint for the retaliatory action in accordance with the grievance procedures provided in the Nation's laws and policies governing employment.

211.5-2. The employee shall be protected from the retaliatory action if the following is found:

- (a) the employee made a disclosure of information;
  - (1) The confirmation of disclosure that is provided when information is disclosed, as well as any resulting findings by the Internal Audit Department, shall be used as a reference to prove a disclosure of information.
- (b) the individual alleged to have taken retaliatory action against the disclosing employee was aware or became aware the disclosing employee had disclosed information;
- (c) the action taken against the disclosing employee was retaliatory as a result of the disclosure of information.

211.5-3. An individual who is found to have retaliated against an employee who made a disclosure of information pursuant to this law shall be subject to:

- (a) disciplinary action, up to and including termination, pursuant to the Nation's laws and policies governing employees, if an employee of the Nation;
- (b) sanctions and penalties pursuant to the Nation's laws and policies governing sanctions and penalties, if an official of the Nation;
- (c) removal pursuant to the Nation's laws and policies governing removal, if an elected official; and/or
- (d) termination of appointment pursuant to the Nation's laws and policies governing boards, committees, and commissions, if an appointed official.

*End.*

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Adopted - BC-\_\_-\_\_-\_\_-\_\_