



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room - 2nd Floor Norbert Hill Center
May 19, 2021
9:00 a.m.

This Legislative Operating Committee meeting will be closed to the public due to the Public Health State of Emergency. This is a preventative measure as a result of the COVID-19 pandemic. An audio recording of the meeting will be made available on the Nation's website.

I. Call to Order and Approval of the Agenda

II. Minutes to be Approved

1. May 5, 2021 LOC Meeting Minutes (pg. 2)

III. Current Business

IV. New Submissions

V. Additions

VI. Administrative Updates

1. Legislative Operating Committee Fiscal Year 2021 Second Quarter Report (pg. 4)
2. E-Poll Results: Approval of the Oneida Worker's Compensation Law Emergency Amendments Adoption Packet (pg. 11)
3. E-Poll Results: Approval of the Early Return to Work Law Emergency Amendments Adoption Packet (pg. 61)

VII. Executive Session

VIII. Recess/Adjourn



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
May 5, 2021
3:00 p.m.

Present: Kirby Metoxen Jennifer Webster, Marie Summers, Daniel Guzman King

Excused: David P. Jordan

Others Present: Clorissa N. Santiago, Kristen Hooker, Aliskwet Ellis, Justin Nishimoto

I. Call to Order and Approval of the Agenda

Kirby Metoxen called the May 5, 2021, Legislative Operating Committee meeting to order at 3:00 p.m.

Motion by Jennifer Webster to adopt the agenda; seconded by Marie Summers. Motion carried unanimously.

II. Minutes to be Approved

1. April 21, 2021 LOC Meeting Minutes

Motion by Jennifer Webster to approve the minutes; seconded by Daniel Guzman King. Motion carried unanimously.

III. Current Business

1. Public Peace Law

Motion by Jennifer Webster to approve the Public Peace law public comment period packet and forward the Public Peace law to a public comment period to be held open until June 9, 2021; seconded by Marie Summers. Motion carried unanimously.

2. Oneida General Welfare Law Amendments

Motion by Jennifer Webster to approve the Oneida General Welfare law amendments public comment period notice for the question, “*Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?*” and forward this question to a public comment period to be held open until June 9, 2021; seconded by Marie Summers. Motion carried unanimously.

3. Budget Management and Control Law Emergency Amendments

Motion by Jennifer Webster to approve the Budget Management and Control law emergency adoption packet and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Marie Summers abstained. Motion carried.

4. Oneida Nation Gaming Ordinance Emergency Amendments

Motion by Marie Summers to approve the Oneida Nation Gaming Ordinance emergency amendments and legislative analysis and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.



IV. New Submissions

1. Budget Management and Control Law Emergency Repeal

Motion by Jennifer Webster to deny the request to bring forward an emergency repeal of the Budget Management and Control law; seconded by Daniel Guzman King. Marie Summers abstained. Motion carried.

V. Additions

VI. Administrative Items

VII. Executive Session

VIII. Adjourn

Motion by Marie Summers to adjourn at 3:27 p.m.; seconded by Daniel Guzman King. Motion carried unanimously.



Legislative Operating Committee FY2021 Second Quarter Report

Active Files List As of 3/31/2021

Work completed January 1, 2021 – March 31, 2021

Name of Legislation	Development	Public Input	GTC/OBC Consideration or Adoption
Audit Committee Bylaws Amendments	●		
Budget Management and Control Law Amendments	●		
Business Corporations Law	●		
Children's Code Amendments	●		
Code of Ethics Law Amendments	●		
Community Support Fund Law Amendments	●		●
Credit Collections Law Amendments	●		
Drug and Alcohol Free Law for Elected and Appointed Officials	●		
Emergency Management and Homeland Security Law Amendments	●		●
Endowments Law	●		
Environmental Review Law	●		
Furlough Law Amendments	●		
GTC Meeting Stipends Payment Policy Amendments	●		
Industrial Hemp Law	●		●
Investigative Leave Policy Amendments	●		
Law Enforcement Ordinance Amendments	●		
Layoff Policy Amendments	●		
Marijuana Law	●		
Misappropriations of Funds Law	●		
Oneida General Welfare Law Emergency Amendments <i>Emerg. Expires 8/10/21</i>	●		●
Oneida Higher Education Pandemic Relief Fund Law Emergency Amendments <i>Emerg. Expires 8/24/21</i>	●		●
Oneida Land Trust Law	●		
Oneida Nation Emergency Planning Committee Bylaws	●		●
Oneida Nation Gaming Ordinance Amendments	●		
Oneida Personnel Policies and Procedures Amendments	●		
Oneida Trust Enrollment Committee Bylaws	●		●
Pandemic Relief Assistance Law <i>Emerg. Expires 5/24/21</i>	●		
Public Peace Law	●		
Real Property Law Amendments	●		
Recycling and Solid Waste Disposal Law Amendments	●		
Sanctions and Penalties Law	●		●
Taxation Law	●		
Traffic Law	●		
Wellness Court Law	●		
Workplace Violence Law Amendments	●		

Legislative Operating Committee Action on Legislative Requests

During the FY21 Second Quarter the Legislative Operating Committee added one (1) legislative item to its Active Files List and denied the request for one (1) legislative item.

Items Added to the Active Files List by the Legislative Operating Committee

On February 3, 2021, the Legislative Operating Committee added the Audit Committee bylaws amendments to its Active Files List.

Items Denied by the Legislative Operating Committee

On March 3, 2021, the Legislative Operating Committee denied a request for emergency amendments to be made to the Children's Code due to the standard for emergency legislation provided by the Legislative Procedures Act not being met.

FY21 Second Quarter Legislative Accomplishments

The Legislative Operating Committee brought forward the following legislation for adoption or amendment during the FY21 Second Quarter:

Oneida General Welfare Law Emergency Amendments

The purpose of the Oneida General Welfare law is to provide assistance on a non-taxable basis, to eligible Tribal members through approved programs that promote the general welfare of the Nation. [10 O.C. 1001.1-1, 1001.1-3]. Emergency amendments to the Oneida General Welfare law were sought to better address how an approved program is adopted by the Oneida Business Committee in an effort to allow for more flexibility and efficiency in addressing the needs of the Nation. The emergency amendments to the Oneida General Welfare law:

- Revised the definition of approved program to allow an approved program to be adopted by the Oneida Business Committee through resolution or law of the Nation. [10 O.C. 1001.3-1(a)].

The Oneida Business Committee adopted the emergency amendments to this law on February 10, 2021, through resolution BC-02-10-21-B. The adoption of emergency amendments to this law will expire on August 10, 2021, with one (1) opportunity for a six (6) month extension.

Oneida Higher Education Pandemic Relief Fund Law Emergency Amendments

The purpose of the Oneida General Welfare law is to create the Oneida Higher Education Pandemic Relief Fund to assist eligible Tribal members enrolled as students in higher education institutions for the 2020 Fall Term. [10 O.C. 1003.1-1]. Emergency amendments to the Oneida Higher Education Pandemic Relief Fund were sought to allow the Oneida Higher Education Pandemic Relief Fund to continue to be utilized in the event additional Coronavirus Aid, Relief, and Economic Security (CARES) Act Coronavirus Relief Funds were received by the Nation. The emergency amendments to the Oneida Higher Education Pandemic Relief law:

- Removed references to the 2020 Fall Term [10 O.C. 1003.1-1]; and
- Eliminated references to the December 15, 2020 deadline to provide proof of expenditures and instead provide that proof of expenditures or expenses must be provided by the appropriate deadline provided for in the Oneida Higher Education Pandemic Relief Fund standard operating procedure. [10 O.C. 1003.4-2(c), 1003.4-4(a)].

The Oneida Business Committee adopted the emergency amendments to this law on February 24, 2021, through resolution BC-02-24-21-B. The adoption of emergency amendments to this law will expire on August 24, 2021, with one (1) opportunity for a six (6) month extension.

Emergency Management and Homeland Security Law Amendments

The purpose of the Emergency Management law, formally known as the Emergency Management and Homeland Security law, is to provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; provide for the direction of emergency management, response, and recovery on the Reservation, as well as coordination with other agencies, victims, businesses, and organizations; establish the use of the National Incident Management System; and designate authority and responsibilities for public health preparedness. [3 O.C. 302.1-1]. The amendments to the Emergency Management law:

- Amended the title from Emergency Management and Homeland Security law to the Emergency Management law;
- Revised references to Oneida Community Health Services to Comprehensive Health Division [3 O.C. 302.3-1(d)];
- Revised the title of the Emergency Management and Homeland Security Agency to Emergency Management Department [3 O.C. 302.4];
- Removed a provision regarding the Public Safety Officers' Benefits Program from the law because it is provided for in federal law;
- Clarified that the Nation may implement more strict policies or requirements than those issued by the Community/Public Health Officer [3 O.C. 302.6-2];
- Clarified that it is within the authority of the Community/Public Health Officer to issue any mandate, order, and/or require restrictions which may limit the spread of any communicable disease to any individual, business, or the general population of the Reservation [3 O.C. 302.7-4(c)];
- Removed a provision that required the Oneida Community Health Services to be responsible for certain expenses of an infected individual;
- Addressed the authority of the Community/Public Health Officer to organize the vaccinations of individuals during the Public Health Emergency [3 O.C. 302.7-6(a)];
- Clarified exemptions to the requirements for vaccines [3 O.C. 302.7-6(a)(1)(A)-(B)];
- Extended the time period for a proclamation of an emergency from thirty (30) days to sixty (60) days [3 O.C. 302.8-2];
- Clarified that the Conservation Department may contract with an agency to cover their responsibility for the care, disposal, and sheltering of all abandoned domestic animals and livestock during a proclaimed emergency [3 O.C. 302.8-5];
- Delegated authority to the Oneida Business Committee to establish an Emergency Core Decision Making Team upon the declaration of an emergency and determine which positions of the Nation will compose the Emergency Core Decision Making Team [3 O.C. 302.9-1];
- Delegated authority to the Emergency Core Decision Making Team to declare exceptions to any law, policy, procedure, regulation, or standard operating procedure of the Nation [3 O.C. 302.9-2];
- Provided how the Emergency Core Decision Making Team will make declarations, and the duration of authority for those declarations [3 O.C. 302.9-3, 302.9-4];

- Required that notification of any declaration be provided to the Oneida Business Committee within twenty-four (24) hours of a declaration being made [3 O.C. 302.9-5];
- Clarified the authority of the Oneida Business Committee to modify, extend, or repeal any declaration or emergency action taken by the Emergency Core Decision Making Team [3 O.C. 302.9-6];
- Provided that citations issued for violations of this Law shall be processed in accordance with the procedure contained in the Nation’s laws and policies governing citations [3 O.C. 302.10-2(a)];
- Provided that the Oneida Business Committee shall adopt through resolution a citation schedule which sets forth specific fine amounts for violations of this Law [3 O.C. 302.10-2(b)]; and
- Made other minor drafting changes throughout the law for clarity.

The Oneida Business Committee adopted the amendments to the Emergency Management law on March 10, 2021, through resolution BC-03-10-21-A.

Community Support Fund Law Amendments

The purpose of the Community Support Fund law is to assist the greatest number of members of the Nation who apply for financial assistance to the Fund in times of a catastrophic event, catastrophic illness or injury, or emergency event when no other resources for assistance exist. [1 O.C. 125.1-1]. The amendments to the Community Support Fund law:

- Included a definition for Fund Operator, which is the Economic Support Services Department, or other department within the Governmental Services Division designated authority over the operation of the Fund [1 O.C. 125.3-1(i)];
- Revised the definition of “immediate family” to better reflect Oneida families [1 O.C. 125.3-1(j)];
- Included public health emergency as a catastrophic event, catastrophic illness or injury, or emergency event that qualifies an applicant for assistance from the Fund [1 O.C. 125.4-6(f)];
- Clarified that the Fund may only be used for the waiting period for a Social Security Disability Determination rent and utility assistance up to a maximum of twelve (12) months [1 O.C. 125.6-1(l)];
- Removed the requirement that security deposit assistance only be available to those members of the Nation who are Wisconsin residents [1 O.C. 125.6-2];
- Removed the requirement that the amount paid for a security deposit be paid back to the Fund before another security deposit is issued in the future [1 O.C. 125.6-2(b)];
- Clarified that an applicant must clarify that he or she applied to his or her local Emergency Assistance Program prior to applying for utility assistance from the Fund [1 O.C. 125.6-3];
- Removed the requirement that funeral travel expenses are only provided to arrange or attend a funeral for immediate family members outside the state where the applicant resides [1 O.C. 125.6-1(n), 125.6-4];
- Clarified that lodging assistance due to homelessness or for any other reason not related to a catastrophic event or emergency event, insurance deductibles, and home renovations not related to handicap accessibility are not covered by the Fund [1 O.C. 125.7-1(h)(l)(m)];

- Removed the requirement that an applicant provide all household income the last thirty (30) business days immediately prior to the submission of the application [*1 O.C. 125.8-2*];
- Expanded the time period for an applicant to submit an application from thirty (30) days to forty-five (45) days [*1 O.C. 125.8-5*];
- Adjusted the appeal process to reflect reorganization of the Governmental Services Division [*1 O.C. 125.9*]; and
- Made other minor drafting changes throughout the law for clarity.

The Oneida Business Committee adopted the amendments to the Community Support Fund law on March 10, 2021, through resolution BC-03-10-21-C.

Oneida Nation Emergency Planning Committee Bylaws Amendments

The Legislative Operating Committee worked with the Oneida Nation Emergency Planning Committee (ONEPC) on the development and adoption of amendments to the Oneida Nation Emergency Planning Committee bylaws. The amendments to the Oneida Nation Emergency Planning Committee bylaws addressed:

- The process for filling vacancies on the Oneida Nation Emergency Planning Committee;
- The qualifications necessary for membership on the ONEPC;
- The Officer positions on the ONEPC, as well as the process for selecting those Officers and the duties assigned to each specific Officer position;
- The behavioral expectations of those serving on the ONEPC;
- The process for calling, noticing, conducting and recording meetings of the ONEPC;
- The process for terminating the appointment of ONEPC members;
- The requisite training/conferences for members of the ONEPC;
- Stipend eligibility; and
- The process for further amendments to the ONEPC's bylaws.

The Oneida Business Committee adopted the amendments to the Oneida Nation Emergency Planning Committee bylaws on January 27, 2021.

Landlord-Tenant Law Rule No. 2 – Income Based Rental Program Eligibility, Selection, and Other Requirements

The Comprehensive Housing Division sought emergency amendments to the Landlord Tenant Law Rule No. 2 - Income Based Rental Program Eligibility, Selection and Other Requirements ("the Rule") to temporarily suspend eligibility requirements related to income and debt in response to the COVID-19 pandemic. The emergency amendments to the Rule

- temporarily suspended the requirement that an individual meet a minimum household income of seven thousand and eight hundred dollars (\$7,800) per year in recognition of the community hardships brought on by the COVID-19 pandemic [*Rule 2.4-3*]; and
- temporarily suspended the requirement that an individual not have a past due balance greater than two hundred dollars (\$200) owed to any utility provider or any prior debt owed to the Comprehensive Housing Division, provided that the health and safety safeguards will continue to require applicants to be eligible to have utilities turned on in their rental units. [*Rule 2.4-4*].

On January 20, 2021, the Legislative Operating Committee reviewed the proposed emergency amendments to the Rule as required by the Administrative Rulemaking law. [*1 O.C. 106.10-2*]. The Legislative Operating Committee certified that there is a valid basis for an emergency and

forwarded the emergency amendments to the Rule to the Oneida Business Committee for consideration. The Oneida Business Committee adopted the emergency amendments to the Rule on January 27, 2021. The emergency amendments to this Rule will expire on July 27, 2021.

FY21 First Quarter Legislative Highlights

The Legislative Operating Committee would like to highlight its work on the following legislative items during the FY21 Second Quarter:

Budget Management and Control Law Amendments

The Legislative Operating Committee held four (4) work meetings during the FY21 Second Quarter on the development of amendments to the Budget Management and Control law. Some of the work meetings were held in collaboration with the Treasurer, Finance Administration, Budget Analyst, and Strategic Planner.

Furlough Law Amendments

The Legislative Operating Committee held four (4) work meetings during the FY21 Second Quarter on the development of proposed amendments to the Furlough law. Some of the work meetings were held in collaboration with representatives from the Human Resources Department and Retail.

Oneida Nation Gaming Ordinance Emergency Amendments

The Legislative Operating Committee held five (5) work meetings during the FY21 Second Quarter on the development of emergency amendments to the Oneida Nation Gaming Ordinance. Some of the work meetings were held in collaboration with the Oneida Law Office, Oneida Gaming Commission, Oneida Police Department, Oneida Internal Security Department, Oneida Police Commission, and Gaming.

Public Peace Law

The Legislative Operating Committee held four (4) work meetings during the FY21 Second Quarter on the development a Public Peace law. Some of the work meetings were held in collaboration with the Oneida Business Committee, Oneida Law Office, Oneida Police Department, Tribal Action Plan (TAP), and the Comprehensive Housing Division.

Wellness Court Law

The Legislative Operating Committee held six (6) work meetings during the FY21 Second Quarter on the development of a Wellness Court law and its corresponding policies and procedures. Some of the work meetings were held in collaboration with the Oneida Judiciary, Wellness Court Coordinator, Oneida Police Department, General Manager, Oneida Behavioral Health, Legal Resource Center, Tribal Action Plan (TAP), and the Wisconsin Department of Corrections.

FY21 Second Quarter Legislative Operating Committee Meetings

Typically, all Legislative Operating Committee meetings are open to the public and held on the first and third Wednesday of each month, at 9:00 a.m. in the Norbert Hill Center's Business Committee Conference Room.

Due to the COVID-19 pandemic and the Nation's Public Health State of Emergency the

Legislative Operating Committee meetings have been closed to the public. An audio recording of the Legislative Operating Committee meeting is made available on the Nation’s website after the meeting concludes. Any individual who has comments or questions regarding open session items on a Legislative Operating Committee meeting agenda may submit the comments or questions to LOC@oneidanation.org no later than the close of business the day prior to an Legislative Operating Committee meeting. Any comments received are noticed to the Legislative Operating Committee.

The Legislative Operating Committee held the following meetings during the FY21 First Quarter:

- January 20, 2021 – Regular meeting;
- February 3, 2021 – Regular meeting;
- February 17, 2021 – Regular meeting; and
- March 3, 2021 – Regular meeting.

Goals for FY21 Third Quarter

During the FY21 Second Quarter the Legislative Operating Committee will focus its legislative efforts on the following matters:

1. Continued response to the COVID-19 pandemic;
2. Adopt amendments to the Audit Committee Bylaws;
3. Adopt emergency amendments to the Oneida Nation Gaming Ordinance;
4. Hold open a public comment period for the Public Peace law;
5. Develop a draft for the proposed amendments to the Furlough law; and
6. Develop a draft for the proposed amendments to the Budget Management and Control law.

Legislative Reference Office

The Legislative Reference Office’s mission is to provide support for the Legislative Operating Committee in developing clear and consistent legislation that reflects the Nation’s values, builds upon the Nation’s strong foundation, and reaffirms our inherent sovereignty. The Legislative Reference Office is currently staffed by a Senior Legislative Staff Attorney, Clorissa N. Santiago, and a Legislative Staff Attorney, Kristen Hooker.

Legislative Operating Committee Contact Information

Feel free to contact the LOC at LOC@oneidanation.org with any questions or comments, or individual LOC members at the following:

- David Jordan, LOC Chairman
djordan1@oneidanation.org
- Kirby Metoxen, LOC Vice-Chairman
kmetox@oneidanation.org
- Jennifer Webster, LOC Member
jwebste1@oneidanation.org
- Daniel Guzman King, LOC Member
dguzman@oneidanation.org
- Marie Summers, LOC Member
esummer1@oneidanation.org



May 11, 2021 Legislative Operating Committee E-Poll Approval of the Oneida Worker's Compensation Law Emergency Amendments Adoption Packet

E-POLL REQUEST: Approval of the Oneida Worker's Compensation Law Emergency Amendments Adoption Packet



LOC

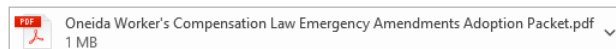
To Daniel P. Guzman; David P. Jordan; Ethel M. Summers; Jennifer A. Webster; Kirby W. Metoxen

Cc Kristal E. Hill; Clorissa N. Santiago; Rhiannon R. Metoxen; Kristen M. Hooker

Reply Reply All Forward

Tue 5/11/2021 11:04 AM

Vote by clicking Vote in the Respond group above.
This message was sent with High importance.



Good Morning Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Oneida Worker's Compensation law emergency amendments adoption packet.

EXECUTIVE SUMMARY

Emergency amendments to the Oneida Worker's Compensation law (the "Law") are being sought to address the effects of the May 1, 2021 shooting incident at the Radisson on employees of the Nation. The emergency amendments to the Law are being sought to ensure that employees of the Nation on duty at or around the main Oneida Casino, the Irene Moore Activity Center (IMAC), or on the grounds encompassing the Oneida Casino, IMAC, and the Radisson Hotel and Conference Center (Radisson) on the evening of May 1, 2021 have access to the necessary resources to address their mental health needs as a result of the May 1, 2021, shooting incident. The emergency amendments will:

- Revise the definition for "Injury or Personal Injury" to include mental harm to an employee caused by the May 1, 2021 shooting incident at the Radisson [2 O.C. 203.3-1(d)];
- Revise the definition for "Covered Injury/Accidents" to include mental harm to an employee caused by the May 1, 2021 shooting incident at the Radisson [2 O.C. 203.3-1(k)]; and
- Extend the timeframe for reporting an injury sustained on the evening of May 1, 2021 during the shooting incident at the Radisson for consideration for compensation under the Law from forty-eight (48) hours to sixty (60) days after the incident for mental harm, and from forty-eight (48) hours to thirty (30) days after the incident for physical harm. [2 O.C. 203.9-4].

The Oneida Business Committee is delegated the authority to temporarily enact emergency legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency amendments to a law of the Nation. [1 O.C. 109.9-5(a)].

The emergency amendments to this Law are necessary for the preservation of the health and safety of our Reservation population and the Nation's employees in order to address the mental health needs that resulted from the May 1, 2021 incident at the Radisson. Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this law would be contrary to public interest. The Nation must act expeditiously to assist the employees on duty at the main Oneida Casino, the IMAC, or on the grounds encompassing the Oneida Casino, IMAC, and the Radisson on the evening of May 1, 2021 to ensure their mental health needs are addressed through the Law.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months. There will be one (1) opportunity to extend the emergency amendments to this Law for an additional six (6) month period. [1 O.C. 109.9-5(b)].

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is not scheduled until May 19, 2021, and immediate action is required by Legislative Operating Committee to approve the materials for the Oneida Worker's Compensation law emergency amendments adoption packet so that the adoption of the emergency amendments to this law can be submitted to the Oneida Business Committee for consideration on the May 12, 2021, meeting agenda.

REQUESTED ACTION

Add the Oneida Worker's Compensation law emergency amendments to the Active Files List with David P. Jordan as the sponsor, and approve the Oneida Worker's Compensation law emergency amendments adoption packet and forward to the Oneida Business Committee.

DEADLINE FOR RESPONSE

May 11, 2021 at 2:00 p.m.

All supporting documentation has been attached to this email for your convenience.



A good mind. A good heart. A strong fire.

E-POLL RESULTS:

The e-poll was approved by Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Marie Summers, and David P. Jordan.

RE: E-POLL REQUEST: Approval of the Oneida Worker's Compensation Law Emergency Amendments Adoption Packet



Jennifer A. Webster

To: LOC; Daniel P. Guzman; David P. Jordan; Ethel M. Summers; Kirby W. Metoxen
Cc: Kristal E. Hill; Clorissa N. Santiago; Rhiannon R. Metoxen; Kristen M. Hooker

Reply Reply All Forward ...

Tue 5/11/2021 11:06 AM

Approve,
Jenny

Sent from my Galaxy

RE: E-POLL REQUEST: Approval of the Oneida Worker's Compensation Law Emergency Amendments Adoption Packet



Daniel P. Guzman

To: LOC; David P. Jordan; Ethel M. Summers; Jennifer A. Webster; Kirby W. Metoxen
Cc: Kristal E. Hill; Clorissa N. Santiago; Rhiannon R. Metoxen; Kristen M. Hooker

Reply Reply All Forward ...

Tue 5/11/2021 11:12 AM

Support

Re: E-POLL REQUEST: Approval of the Oneida Worker's Compensation Law Emergency Amendments Adoption Packet



Kirby W. Metoxen

To Daniel P. Guzman; LOC; David P. Jordan; Ethel M. Summers; Jennifer A. Webster
Cc Kristal E. Hill; Clorissa N. Santiago; Rhiannon R. Metoxen; Kristen M. Hooker

Reply Reply All Forward ...

Tue 5/11/2021 11:15 AM

If there are problems with how this message is displayed, click here to view it in a web browser.

Approve

RE: E-POLL REQUEST: Approval of the Oneida Worker's Compensation Law Emergency Amendments Adoption Packet



Ethel M. Summers

To LOC; Daniel P. Guzman; David P. Jordan; Jennifer A. Webster; Kirby W. Metoxen
Cc Kristal E. Hill; Clorissa N. Santiago; Rhiannon R. Metoxen; Kristen M. Hooker

Reply Reply All Forward ...

Tue 5/11/2021 11:16 AM

Approve.

Yaw'ko,
Marie Summers
Councilwoman
Oneida Business Committee



A good mind. A good heart. A strong Fire.

RE: E-POLL REQUEST: Approval of the Oneida Worker's Compensation Law Emergency Amendments Adoption Packet



David P. Jordan

To LOC; Daniel P. Guzman; Ethel M. Summers; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan
Cc Kristal E. Hill; Clorissa N. Santiago; Rhiannon R. Metoxen; Kristen M. Hooker

Reply Reply All Forward ...

Tue 5/11/2021 11:23 AM

Approve



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



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson 
DATE: May 12, 2021
RE: Oneida Worker's Compensation Law Emergency Amendments

Please find the following attached backup documentation for your consideration of the Oneida Worker's Compensation Law Emergency Amendments:

1. Resolution: Emergency Amendments to the Oneida Worker's Compensation Law
2. Statement of Effect: Emergency Amendments to the Oneida Worker's Compensation Law
3. Oneida Worker's Compensation Law Emergency Amendments Legislative Analysis
4. Oneida Worker's Compensation Law (Redline)
5. Oneida Worker's Compensation Law (Clean)

Overview

Emergency amendments to the Oneida Worker's Compensation law (the "Law") are being sought to address the effects of the May 1, 2021 shooting incident at the Radisson on employees of the Nation. The emergency amendments to the Law are being sought to ensure that employees of the Nation on duty at or around the main Oneida Casino, the Irene Moore Activity Center (IMAC), or on the grounds encompassing the Oneida Casino, IMAC, and the Radisson Hotel and Conference Center (Radisson) on the evening of May 1, 2021 have access to the necessary resources to address their mental health needs as a result of the May 1, 2021, shooting incident. The emergency amendments will:

- Revise the definition for "Injury or Personal Injury" to include mental harm to an employee caused by the May 1, 2021 shooting incident at the Radisson [2 O.C. 203.3-1(d)];
- Revise the definition for "Covered Injury/Accidents" to include mental harm to an employee caused by the May 1, 2021 shooting incident at the Radisson [2 O.C. 203.3-1(k)]; and
- Extend the time frame for reporting an injury sustained on the evening of May 1, 2021 during the shooting incident at the Radisson for consideration for compensation under the Law from forty-eight (48) hours to sixty (60) days after the incident for mental harm, and from forty-eight (48) hours to thirty (30) days after the incident for physical harm. [2 O.C. 203.9-4].

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendments to this Law are necessary for the preservation of the health and safety of our Reservation population and the Nation's employees in order to address the mental health needs that resulted from the May 1, 2021 incident at the Radisson.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this law would be contrary to public interest. The Nation must act expeditiously to assist the employees on duty at the main Oneida Casino, the IMAC, or on the grounds encompassing the Oneida Casino, IMAC, and the Radisson on the evening of May 1, 2021 to ensure their mental health needs are addressed through the Law.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months. There will be one (1) opportunity to extend the emergency amendments for an additional six (6) months. [1 O.C. 109.9-5(b)].

Requested Action

Adopt the Resolution: Emergency Amendments to the Oneida Worker's Compensation Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # Emergency Amendments to the Oneida Worker’s Compensation Law

- 1 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
- 2 recognized by the laws of the United States of America; and
- 3
- 4 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- 5
- 6 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
- 7 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- 8
- 9 **WHEREAS,** the Oneida Worker’s Compensation law (“the Law”) was adopted by the Oneida Business
- 10 Committee through resolution BC-07-07-99-B, and amended through resolution BC-06-25-
- 11 14-B; and
- 12
- 13 **WHEREAS,** the Law sets forth a system of compensation and medical benefits for employees of the
- 14 Nation who suffer compensable injuries in the employment of the Nation; and
- 15
- 16 **WHEREAS,** the Nation, its members, employees, guests, and neighbors became the latest victims in
- 17 the onslaught of mass shootings in the United States on May 1, 2021; and
- 18
- 19 **WHEREAS,** the Nation and its neighboring communities lost two souls, another suffered serious
- 20 wounds, and more endured the trauma of a mass shooting in their community and their
- 21 place of work; and
- 22
- 23 **WHEREAS,** the Oneida Business Committee seeks to ensure its employees have access to the
- 24 necessary resources to address their mental health needs as a result of the May 1, 2021,
- 25 shooting incident; and
- 26
- 27 **WHEREAS,** the Oneida Business Committee is seeking emergency amendments to the Law to ensure
- 28 employees on duty at or around the main Oneida Casino, the Irene Moore Activity Center
- 29 (IMAC), or on the grounds encompassing the Oneida Casino, IMAC, and the Radisson
- 30 Hotel and Conference Center (Radisson) on the evening of May 1, 2021 during the
- 31 shooting incident may receive necessary mental health assistance; and
- 32
- 33 **WHEREAS,** the emergency amendments to the Law revise the definition of “Injury or Personal Injury”
- 34 to include mental harm to an employee caused by the May 1, 2021 shooting incident at the
- 35 Radisson; and
- 36
- 37 **WHEREAS,** the emergency amendments to the Law revise the definition of “Covered Injury/Accidents”
- 38 to include mental harm to an employee caused by the May 1, 2021 shooting incident at the
- 39 Radisson; and
- 40
- 41 **WHEREAS,** the emergency amendments to the Law extend the timeframe for reporting an injury
- 42 sustained on the evening of May 1, 2021 during the shooting incident at the Radisson for
- 43 consideration for compensation under the Law from forty-eight (48) hours to sixty (60)

44 days after the incident for mental harm, and from forty-eight (48) hours to thirty (30) days
45 after the incident for physical harm; and
46

47 **WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact
48 legislation on an emergency basis when legislation is necessary for the immediate
49 preservation of the public health, safety, or general welfare of the Reservation population,
50 and the amendment of the legislation is required sooner than would be possible under the
51 Legislative Procedures Act; and
52

53 **WHEREAS,** emergency amendments to this Law are necessary for the preservation of the health and
54 safety of our Reservation population and the Nation's employees in order to address the
55 mental health needs that resulted from the May 1, 2021 incident at the Radisson; and
56

57 **WHEREAS,** observance of the requirements under the Legislative Procedures Act for adoption of these
58 amendments would be contrary to public interest since the Nation must act expeditiously
59 to assist the employees on duty at the main Oneida Casino, the IMAC, or on the grounds
60 encompassing the Oneida Casino, IMAC, and the Radisson on the evening of May 1, 2021
61 to ensure their mental health needs are addressed through the Law; and
62

63 **WHEREAS,** adoption of emergency amendments to this Law would remain in effect for a period of six
64 (6) months, renewable by the Oneida Business Committee for an additional six (6) month
65 term; and
66

67 **WHEREAS,** the Legislative Procedures Act does not require a public meeting or fiscal impact statement
68 when considering emergency legislation; and
69

70 **NOW THEREFORE BE IT RESOLVED,** the Oneida Business Committee hereby adopts the emergency
71 amendments to the Oneida Worker's Compensation law, effective immediately.
72

73 **BE IT FINALLY RESOLVED,** an employee may request consideration for compensable injuries under the
74 Oneida Worker's Compensation law if he or she was on duty at the main Oneida Casino or IMAC and were
75 on the grounds encompassing the Oneida Casino, IMAC, and the Radisson on the evening of May 1, 2021
76 during the shooting incident at the Radisson.
77
78



Statement of Effect

Emergency Amendments to the Oneida Worker's Compensation Law

Summary

This resolution adopts emergency amendments to the Oneida Worker's Compensation law which.

Submitted by: Clorissa N. Santiago, Senior Staff Attorney, Legislative Reference Office

Date: May 11, 2021

Analysis by the Legislative Reference Office

This resolution adopts emergency amendments to the Oneida Worker's Compensation law ("the Law"). The purpose of the Law is to set forth a system of compensation and medical benefits for employees of the Nation who suffer compensable injuries in the employment of the Nation. [2 O.C. 203.1-1]. Emergency amendments to the Law are being sought to ensure that employees of the Nation on duty at or around the main Oneida Casino, the Irene Moore Activity Center (IMAC), or on the grounds encompassing the Oneida Casino, IMAC, and the Radisson Hotel and Conference Center (Radisson) on the evening of May 1, 2021 during the mass shooting have access to the necessary resources to address their mental health needs as a result of the May 1, 2021, shooting incident. The emergency amendments will:

- Revise the definition for "Injury or Personal Injury" to include mental harm to an employee caused by the May 1, 2021 shooting incident at the Radisson [2 O.C. 203.3-1(d)];
- Revise the definition for "Covered Injury/Accidents" to include mental harm to an employee caused by the May 1, 2021 shooting incident at the Radisson [2 O.C. 203.3-1(k)]; and
- Extend the timeframe for reporting an injury sustained on the evening of May 1, 2021 during the shooting incident at the Radisson for consideration for compensation under the Law from forty-eight (48) hours to sixty (60) days after the incident for mental harm, and from forty-eight (48) hours to thirty (30) days after the incident for physical harm. [2 O.C. 203.9-4].

The Legislative Procedures Act ("the LPA") was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The LPA allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5]. A public meeting and fiscal impact statement are not required for emergency legislation. [1 O.C. 109.8-1(b) and 109.9-5(a)].

The resolution provides that the emergency amendments to this Law are necessary for the for the preservation of the health and safety of our Reservation population and the Nation's employees in order to address the mental harms that resulted from the May 1, 2021 incident at the Radisson.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this law would be contrary to public interest. The Nation must act expeditiously to assist the employees on duty at the main Oneida Casino, the IMAC, or on the grounds encompassing the Oneida Casino, IMAC, and the Radisson on the evening of May 1, 2021 to ensure their mental health needs are addressed through the Law.

The adoption of emergency amendments to this Law will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendments to the Law will remain effective for six (6) months. The LPA provides the possibility to extend the emergency amendments for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws



EMERGENCY AMENDMENTS TO THE ONEIDA WORKER’S COMPENSATION LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Amendments	<ul style="list-style-type: none"> ▪ Revise the definition for “Injury or Personal Injury” to include mental harm to an employee caused by the May 1, 2021 shooting incident at the Radisson [2 O.C. 203.3-1(d)]; ▪ Revise the definition for “Covered Injury/Accidents” to include mental harm to an employee caused by the May 1, 2021 shooting incident at the Radisson [2 O.C. 203.3-1(k)]; ▪ Extend the timeframe for reporting an injury sustained on the evening of May 1, 2021 during the shooting incident at the Radisson for consideration for compensation under the Law from forty-eight (48) hours to sixty (60) days after the incident for mental harm, and from forty-eight (48) hours to thirty (30) days after the incident for physical harm [2 O.C. 203.9-4].
Purpose	Set forth a system of compensation and medical benefits for employees of the Nation who suffer compensable injuries in the employment of the Nation. [2 O.C. 203.1-1].
Affected Entities	Employees of the Nation, Risk Management Office, Human Resources Department
Public Meeting	A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b) and 109.9-5(a)].
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C. 109.9-5(a)].
Expiration of Emergency Legislation	Emergency legislation expires six (6) months after adoption and may be renewed for an additional six (6) month period.

SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A. Background.** The Oneida Worker’s Compensation law (“the Law”) was adopted by the Oneida
- 3 Business Committee through resolution BC-07-07-99-B and amended through resolution BC-06-25-
- 4 14-B. The purpose of the Law is to set forth a system of compensation and medical benefits for
- 5 employees of the Oneida Nation who suffer compensable injuries in the employment of the Oneida
- 6 Nation. [2 O.C. 203.1-1].
- 7 **B. Request for Emergency Amendments.** On May 1, 2021, the Nation, its members, employees, guests,
- 8 and neighbors became the latest victims in the onslaught of mass shootings in the United States when
- 9 a mass shooting occurred at the Radisson Hotel and Conference Center. Two (2) souls were lost, another
- 10 suffered serious wounds, and more endured the trauma of a mass shooting in their community and their
- 11 place of work. The Oneida Business Committee seeks to ensure its employees have access to the
- 12 necessary resources to address their mental health needs as a result of the May 1, 2021, shooting
- 13 incident, and is thereby seeking emergency amendments to the Law to ensure employees on duty at or
- 14 around the main Oneida Casino, the Irene Moore Activity Center (IMAC), or on the grounds
- 15 encompassing the Oneida Casino, IMAC, and the Radisson Hotel and Conference Center (Radisson)

16 on the evening of May 1, 2021 during the shooting incident may receive necessary mental health
17 assistance.
18

19 **SECTION 3. CONSULTATION AND OUTREACH**

- 20 A. Representatives from the following departments or entities participated in the development of this Law
21 and legislative analysis:
- 22 ▪ Oneida Law Office;
 - 23 ▪ Human Resources Department;
 - 24 ▪ Risk Management Department; and
 - 25 ▪ Gaming Employee Services.
- 26 B. The Legislative Operating Committee has held the following work meetings specific to the proposed
27 emergency amendments to this Law:
- 28 ▪ May 11, 2021: LOC work meeting with the Oneida Law Office.
- 29

30 **SECTION 4. PROCESS**

- 31 A. These amendments are being considered on an emergency basis. The Oneida Business Committee may
32 temporarily enact an emergency law where legislation is necessary for the immediate preservation of
33 public health, safety, or general welfare of the Reservation population and enactment or amendment of
34 legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].
- 35 ▪ Emergency amendments to this Law are being pursued for the preservation of the of the health and
36 safety of our Reservation population and the Nation’s employees in order to address the mental
37 health needs that resulted from the May 1, 2021 incident at the Radisson.
 - 38 ▪ Observance of the requirements under the Legislative Procedures Act for the adoption of
39 amendments to this Law would be contrary to public interest. The Nation must act expeditiously to
40 assist the employees on duty at the main Oneida Casino, the IMAC, or on the grounds
41 encompassing the Oneida Casino, IMAC, and the Radisson on the evening of May 1, 2021 to ensure
42 their mental health needs are addressed through the Law.
- 43 B. Emergency legislation typically expires six (6) months after adoption, with one (1) opportunity for a
44 six (6) month extension of the emergency legislation. [1 O.C. 109.9-5(b)].
- 45 C. The Legislative Procedures Act does not require a public meeting or fiscal impact statement when
46 considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact
47 statement will eventually be required when considering permanent adoption of this Law.
48

49 **SECTION 5. CONTENTS OF THE LEGISLATION**

- 50 A. *Revision of the Definition for “Injury or Personal Injury.”* The proposed emergency amendments to
51 the Law revise the definition of “*Injury or Personal Injury*” to include mental harm to an employee
52 caused by the May 1, 2021 shooting incident at the Radisson. [2 O.C. 203.3-1(d)]. Previously, the Law
53 defined “*Injury or Personal Injury*” as physical or mental harm to an employee caused by an accident
54 or disease which arises from exposure to conditions or circumstances beyond those common to
55 occupational and/or non-occupational life and is predominantly work related. [2 O.C. 203.3-1(d)]. The
56 definition for “*Injury or Personal Injury*” now reads as physical or mental harm to an employee caused
57 by an accident or disease which arises from exposure to conditions or circumstances beyond those

58 common to occupational and/or non-occupational life and is predominantly work related, or mental
59 harm caused by the May 1, 2021 shooting incident at the Radisson. *Id.*

60 ■ *Effect.* The proposed emergency amendments to the Law clarify that mental harm caused by the
61 May 1, 2021 shooting incident at the Radisson also constitutes an injury.

62 **B. Revision of the Definition for “Covered Injury/Accident.”** The proposed emergency amendments to
63 the Law revise the definition of “Covered Injury/Accidents” to include mental harm to an employee
64 caused by the May 1, 2021 shooting incident at the Radisson. [2 O.C. 203.3-1(d)]. Previously, the Law
65 defined “Covered Injury/Accident” as mental or physical harm to an employee caused by an accident
66 or disease and arising out of and in the course of employment. [2 O.C. 203.3-1(d)]. The definition for
67 “Covered Injury/Accident” now reads as means mental or physical harm to an employee caused by an
68 accident or disease and arising out of and in the course of employment, or mental harm caused by the
69 May 1, 2021 shooting incident at the Radisson. *Id.* The definition for “Covered Injury/Accident” then
70 goes on to provide that injury includes mental harm or emotional stress or strain without physical
71 trauma, which arises from exposure to conditions or circumstances beyond those common to
72 occupational and/or non-occupational life and is predominantly work related, extraordinary and
73 unusual.

74 ■ *Effect.* The proposed emergency amendments to the Law clarify that mental harm caused by the
75 May 1, 2021 shooting incident at the Radisson also constitutes a covered injury or accident.

76 **C. Extension of the Reporting Timeframe.** The proposed emergency amendments to the Law include a
77 new section which addresses notice of injury pursuant to the May 1, 2021 incident. The emergency
78 amendments to the Law provide that an employee requesting consideration for compensable injuries
79 under the Oneida Worker’s Compensation law for mental harm sustained on the evening of May 1,
80 2021 during the shooting incident at the Radisson, shall report the mental harm to the employee’s
81 supervisor, manager, or employer’s designated representative within sixty (60) days of the incident. [2
82 O.C. 203.9-4]. An employee requesting consideration for compensable injuries under the Oneida
83 Worker’s Compensation Law for physical harm sustained on the evening of May 1, 2021 during the
84 shooting incident at the Radisson, shall report the physical harm to the employee’s supervisor, manager,
85 or employer’s designated representative within thirty (30) days of the incident. [2 O.C. 203.9-4]. The
86 emergency amendments then clarify that the deadline within this subsection preempts the forty-eight
87 (48) hour time limit to report injuries within section 203.9-1, and that the time limit within section
88 203.9-1 does not apply to injuries sustained pursuant to the May 1, 2021 shooting incident at the
89 Radisson. [2 O.C. 203.9-4]. Previously, notice of injury was governed solely by section 203.9-1 of the
90 Law which provided that no compensation shall be due under this Law unless, the employee, or another
91 on behalf of the employee, reports the injury to the employee's supervisor, manager or the employers
92 designated representative within forty-eight (48) hours of the accident causing the injury. [2 O.C.
93 203.9-1].

94 ■ *Effect.* The proposed emergency amendments to the Law extend the timeframe for reporting an
95 injury sustained on the evening of May 1, 2021 during the shooting incident at the Radisson for
96 consideration for compensation under the Law from forty-eight (48) hours to sixty (60) days after
97 the incident for mental harm, and from forty-eight (48) hours to thirty (30) days after the incident
98 for physical harm in recognition that some mental injuries and trauma may take more time to
99 materialize.

100
101 **SECTION 6. EXISTING LEGISLATION**

- 102 **A. *Related Legislation.*** The following laws of the Nation are related to this Law:
- 103 ▪ *Legislative Procedures Act.* The Legislative Procedures Act was adopted by the General Tribal
104 Council for the purpose of providing a standard process for the adoption of laws of the Nation
105 which includes taking into account comments from members of the Nation and input from agencies
106 of the Nation. [1 O.C. 109.1-1, 109.1-2].
- 107 ▪ The Legislative Procedures Act provides a process for the adoption of emergency legislation
108 when the legislation is necessary for the immediate preservation of the public health, safety,
109 or general welfare of the Reservation population and the enactment or amendment of
110 legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].
- 111 ▪ The Legislative Operating Committee is responsible for first reviewing the
112 emergency legislation and for forwarding the legislation to the Oneida
113 Business Committee for consideration. [1 O.C. 109.9-5(a)].
- 114 ▪ The proposed emergency legislation is required to have a legislative analysis
115 completed and attached prior to being sent to the Oneida Business Committee
116 for consideration. [1 O.C. 109.9-5(a)].
- 117 a. A legislative analysis is a plain language analysis describing the
118 important features of the legislation being considered and factual
119 information to enable the Legislative Operating Committee to make
120 informed decisions regarding legislation. A legislative analysis
121 includes a statement of the legislation's terms and substance; intent of
122 the legislation; a description of the subject(s) involved, including any
123 conflicts with Oneida or other law, key issues, potential impacts of the
124 legislation and policy considerations. [1 O.C. 109.3-1(g)].
- 125 ▪ Emergency legislation does not require a fiscal impact statement to be
126 completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
- 127 ▪ Upon the determination that an emergency exists the Oneida Business
128 Committee can adopt emergency legislation. The emergency legislation
129 becomes effective immediately upon its approval by the Oneida Business
130 Committee. [1 O.C. 109.9-5(b)].
- 131 ▪ Emergency legislation remains in effect for a period of up to six (6) months,
132 with an opportunity for a one-time emergency law extension of up to six (6)
133 months. [1 O.C. 109.9-5(b)].
- 134 ▪ Adoption of the emergency amendments to this Law would conform with the requirements
135 of the Legislative Procedures Act.
- 136 ▪ *Early Return to Work Law.* The purpose of the Early Return to Work law is to assist an employee
137 in returning to work with temporary activities, restrictions and/or other recommendations
138 prescribed by a healthcare provider; place an employee with temporary activities, restrictions
139 and/or other recommendations in a job with responsibilities that reflect his or her capabilities; assist
140 an employee with temporary activities, restrictions and/or other recommendations during the
141 transition from a modified duty position to his or her original job; provide a capable work force for
142 areas which are understaffed or have a need for short term, temporary employees; and include all
143 employees of the Oneida Nation.
- 144 ▪ The Early Return to Work law provides that failure to cooperate with this law may result in
145 disciplinary action according to Tribal policies and procedures, suspension of worker's

- 146 compensation benefits, and/or removal from a modified duty position. [2 O.C. 209.1-2(b),
147 209.5-1(d)(1)].
- 148 ■ Under the Early Return to Work law modified duty is required for the duration of the
149 employee's period of recovery and return to original full duty, or up to ninety (90) days,
150 whichever comes first, but modified duty may be allowed for a total of one hundred eighty
151 (180) days within a three hundred sixty-five (365) day period. [2 O.C. 209.4-2]. If one
152 hundred eighty (180) days have passed and an employee with a work-related injury or illness
153 remains unable to return to his or her regular work duties, the employee is required to contact
154 the Employee Benefits department regarding Worker's Compensation benefits. [2 O.C.
155 209.4-2(e)]. An exception may be granted for a different illness or injury covered under the
156 Oneida Worker's Compensation Law. [2 O.C. 209.4-2(f)].
 - 157 ■ An employee is required to comply with the requirements of the Early Return to Work law,
158 or his or her worker's compensation benefits could be suspended.
- 159

160 **SECTION 7. OTHER CONSIDERATIONS**

- 161 **A. *Deadline for Permanent Adoption of Legislation.*** The adoption of emergency amendments to this Law
162 will expire six (6) months after adoption. The emergency legislation may be renewed for an additional
163 six (6) month period.
- 164 ■ *Conclusion:* The Legislative Operating Committee will need to determine if the adoption of these
165 amendments is necessary on a permanent basis, and if so, develop the permanent amendments to
166 this Law within the next six (6) to twelve (12) months.
- 167 **B. *Fiscal Impact.*** A fiscal impact statement is not required for emergency legislation.
- 168 ■ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except
169 emergency legislation [1 O.C. 109.6-1].

170

Title 2. Employment – Chapter 203
ONEIDA WORKER’S COMPENSATION LAW
Latiyótashe Kayanlǎhsla
where they work their laws

203.1. Purpose and Policy
 203.2. Adoption, Amendment, Repeal
 203.3. Definitions.
 203.4. General Provisions
 203.5. Disability
 203.6. Workers Compensation Benefits
 203.7. Termination of Benefits

203.8. Medical and Surgical Aid
 203.9. Notices, Reports and Limitations
 203.10. Administration and Claims Procedures
 203.11. Hearing Body and Authority
 203.12. Accident Reports Required
 203.13. Occupational Diseases

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203.1. Purpose and Policy

203.1-1. Purpose. The purpose of this law is to set up a system of compensation and medical benefits for employees of the Oneida ~~Tribe~~Nation who suffer compensable injuries in the employment of the Oneida ~~Tribe~~Nation. The law is not remedial in any sense and is not to be given a broad liberal construction in favor of any claimant or employee. The Oneida ~~Tribe~~Nation will compile and apply its own benefit schedule which will mandate the benefit levels applied to applicable injuries. The Oneida ~~Tribe~~Nation will mandate employee responsibilities and supply literature to employees explaining such. The Oneida ~~Tribe~~Nation will develop a timely appeals process whereby an employee may seek a third party for a final decision.

1-2. Policy. It is the policy of the Oneida ~~Tribe~~Nation to protect the employees of the Oneida ~~Tribe~~Nation and over which the Oneida ~~Tribe~~Nation extends its jurisdiction.

203.2. Adoption, Amendment, Repeal

203.2-1. This law ~~is~~was adopted by the Oneida Business Committee by resolution ~~#BC-07-07-99B and 99-B,~~ amended by resolution BC-06-25-14-B-, and emergency amended by resolution BC- - - -.

203.2-2. This law may be amended ~~pursuant to the procedures set out in the Oneida Administrative Procedures Act~~or repealed by the Oneida Business Committee and/or ~~Oneida~~ General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

203.2-3. 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.

~~203.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this law are hereby repealed unless specifically re-enacted after adoption of this law.~~

~~203.2-5.~~309.2-4. 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.

309.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

203.2-6. Nothing in this law, including any assertion of right or privilege, shall waive or be construed to work as a constructive waiver of the ~~Oneida Tribe's~~Nation's sovereign immunity from suit by any party.

203.3. Definitions.

36 203.3-1. This section shall govern the definitions of words or phrases as used herein. All words
37 not defined herein shall be used in their ordinary and everyday sense.

38 (a) ~~“Employee.—Every”~~ means every person, including all officials and minors, in the
39 service of the ~~Oneida Tribe~~Nation, therein whether elected or under any appointment or
40 contract to hire, express or implied, or written, injured within or outside of the ~~Oneida~~
41 ~~Tribe~~Nation. The ~~Oneida Tribe~~Nation may require a bond from a contractor to protect it
42 against compensation to employees of such contractor or employees of a subcontractor
43 under him. Any peace officer shall be considered an employee while engaged in the
44 enforcement of peace or in the pursuit and capture of those charged with crime.

45 (b) ~~“Employer.—The Oneida Tribe”~~ means the Nation its divisions, departments, programs,
46 enterprises of other subdivisions of the ~~Oneida Tribe~~Nation.

47 (c) ~~Oneida Tribe.~~ “Nation” The Oneida ~~Tribe of Indians of Wisconsin~~Nation, a federally
48 recognized Indian ~~tribe~~Nation and acting at all times pursuant to its Constitution and
49 Bylaws in a governmental capacity.

50 (d) ~~“Injury or personal injury.—Physical”~~ means physical or mental harm to an employee
51 caused by an accident or disease which arises from exposure to conditions or circumstances
52 beyond those common to occupational and/or non-occupational life and is predominantly
53 work related, or mental harm caused by the May 1, 2021 shooting incident at the Radisson.

54 (e) ~~“Physical Harm.—Anyharm”~~ means any injury arising out of and in the course of
55 employment, unusual or peculiar to work, including specific injury, repetitive traumatic
56 injury, or occupational disease, which arises from exposure to conditions or circumstances
57 beyond those common to occupational and/or non-occupational life and is predominantly
58 work related.

59 (f) ~~“Accidental Injury.—Anyinjury”~~ means any injury, not expected and not deemed to be
60 willful.

61 (g) ~~“Mental Harm.—Anyharm”~~ means any injury arising out of and in the course of
62 employment which includes mental harm or emotional stress or strain without physical
63 trauma, which arises from exposure to conditions or circumstances beyond those common
64 to occupational and/or non-occupational life and is predominantly work related. Common
65 occupational life includes, but is not limited to, transfers, promotions, termination,
66 disciplinary action and activities identified within a job description or business unit general
67 activities.

68 (h) ~~“Burden and Standardstandard of Proof.—Exceptproof”~~ means except where explicitly
69 stated otherwise, the burden of proof is on the party advancing a particular claim or defense,
70 and the standard of proof is by a preponderance or greater weight of the evidence.

71 (i) ~~“Waiver of Privilege.—Applicationprivilege”~~ means application for or acceptance of
72 any benefits under this law shall constitute a waiver of privilege by the employee or the
73 employee's dependents.

74 (j) ~~“Administrator.—The”~~ means the person or entity designated and charged with the day-
75 to-day administration of this law.

76 (k) ~~“Covered Injury/Accidents.—Mentalinjury/accidents”~~ means mental or physical harm
77 to an employee caused by an accident or disease and arising out of and in the course of
78 employment, or mental harm caused by the May 1, 2021 shooting incident at the Radisson.
79 Injury includes mental harm or emotional stress or strain without physical trauma, which
80 arises from exposure to conditions or circumstances beyond those common to occupational
81 and/or non-occupational life and is predominantly work related, extraordinary and unusual.

82 (l) ~~“Not Covered Injury/Accidents.—No”~~ means no compensation is allowed for:

- (1) an injury or death due to the employee's knowingly self-inflicted injury, including suicide, or commission of a criminal offense,
- (2) any injury, occupational disease or death when the proximate cause is the employee's intoxication from alcohol, or impairment by a non-prescribed controlled drug or abuse of a prescription drug, except where the employee is an innocent victim,
- (3) refusal or non-cooperation of the employee of a blood alcohol or drug test when it is requested for reasonable cause,
- (4) any injury caused by or contributed to by an illegal or non-prescribed controlled substance confirmed by a positive confirmation or blood alcohol test.
- ~~(e)~~ ~~ccs1~~ 5 gross negligence of the injured employee, including horseplay or other willful behavior,
- ~~(f)~~ disobedience by the injured employee of instructions, whether verbal or written, from the employer with instruction, which if followed, would reasonably prevent or significantly reduce the likelihood of the injury or death,
- ~~(g)~~ work performed by or as an independent contractor,
- ~~(h)~~ injury or death of an employee of a subcontractor or independent contractor whether insured or uninsured for workers' compensation liability even though the injury may occur on the Reservation,
- ~~(i)~~ activities of the employee during meal/lunch/dinner breaks while off employer's premises,
- ~~(j)~~ the employee's failure, prior to commencement of employment, to disclose a physical condition which prevented the employee from safely performing the work for which the employee was hired and which was a substantial contributing factor to the injury,
- ~~(k)~~ environmental illness, or chemical sensitivity caused by agents to which the general public at the employer's premises are exposed,
- ~~(l)~~ idiopathic injury, meaning an injury or condition arising from an obscure or unknown cause,
- ~~(m)~~ an injury or illness secondary to a psychiatric condition,
- ~~(n)~~ the natural deterioration of tissue, organ, or other body part,
- ~~(o)~~ voluntary participation in an employer-sponsored recreation or fitness activity,
- ~~(p)~~ injuries caused by the act of a third person intended to injure the employee because of reasons personal to the employee that are not directed against the employee as an employee or because of the employment.

The burden of proof to meet this definition of “not covered injury/accident” under this section shall be on the employer.

~~203.3 14.~~ ~~(m)~~ “Decrease in *Benefits*.*benefits*” means:

- ~~a.~~ ~~ccs2~~ (1) If an employee fails to use a safety device, or obey a reasonable written or printed rule of the employer that has been placed in a conspicuous position in the workplace or in the employee handbook, compensation will be decreased by fifteen percent (15%) for the first injury, and twenty-five percent (25%) for each subsequent injury.
- ~~b.~~ (2) If an employee fails to utilize providers or network providers designated by the employer, reimbursement for expenses will be decreased by a minimum of 50%, fifty percent (50%), except in the case of a medical emergency.

130 ~~203.3-15.-(n)~~ “Maximum ~~Medical Improvement.~~ The medical improvement” means the
131 date after which no significant recovery from or significant lasting improvement to a
132 personal injury can reasonably be anticipated, based upon reasonable medical probability.

133 ~~203.3-16.-(o)~~ “Average ~~Daily Wage.~~ The daily wage” means the indemnity benefit paid
134 as a result of a fractional week of disability.

135 ~~203.3-17.-(p)~~ “Judiciary. ~~The~~” means the Judicial system that was established by Oneida
136 General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities
137 and responsibilities of the ~~Tribe~~Nation.

138 139 **203.4. General Provisions**

140 203.4-1. The ~~Oneida-Tribe~~Nation hereby authorizes the Risk Management Office of the Finance
141 Division to enter into agreements to create a self-funded, self-insurance program for the ~~Oneida~~
142 ~~Tribe~~Nation operated solely for the benefit of the employees of the ~~Oneida-Tribe~~Nation. The
143 ~~Oneida-Tribe~~Nation may retain the option of insuring its liability in some corporation, association
144 or organization authorized to transact the business of workers' compensation insurance in the State
145 of Wisconsin. The ~~Oneida-Tribe~~Nation may self-insure at its discretion and administer its program
146 of self insurance or may contract with any private agency, business firm, or corporation to
147 administer any part of the program. The Oneida Workers Compensation program will consist of:

148 (a) Definition of terms

149 (b) Benefit explanation

150 (1) Benefits available - Medical and Disability

151 (2) Benefit schedule

152 (3) Benefit calculation

153 (4) Employee responsibilities, reporting, early return to work, medical network use
154 etc.

155 (c) Appeals process

156 203.4-2. The Risk Management Office in conjunction with the Oneida Human Resources Benefits
157 Office is hereby delegated responsibility for development of regulations to implement this
158 program. All regulations shall conform to the requirements of the insurer of the program, or this
159 law. Conflicts between the insurer and this law shall be resolved in favor of this law where
160 minimum and/or maximum limits are prescribed regarding benefit levels.

161 203.4-3. A claim against the Oneida Worker Compensation program shall be the exclusive remedy
162 against the ~~Oneida-Tribe, a Tribal~~Nation, an entity of the Nation, or ~~Tribal~~an employee of the
163 Nation for any claim of loss covered by the program.- An individual who has made a claim against
164 the program shall be precluded from bringing any other claim, civil action or proceeding for
165 damages arising from the same occurrence against the ~~Oneida-Tribe, a Tribal~~Nation, an entity of
166 the Nation, or ~~a Tribal~~an employee of the Nation.

167 168 **203.5. Disability**

169 203.5-1. *Preexisting Disabilities.* If an employee suffers a compensable injury while receiving or
170 entitled to receive compensation for a previous injury in the same employment, the employee is
171 not entitled to compensation for both injuries at the same time unless the subsequent injury is
172 permanent. If an employee receives a permanent schedule injury after having sustained another
173 permanent injury in the same employment, the employee is entitled to compensation for both
174 injuries, but compensation will be paid by extending the period, not by increasing weekly
175 compensation payments. When previous and subsequent permanent injuries result in total
176 permanent disability, compensation is payable, but payments made for the previous injury are to

177 be deducted from the total compensation payments due. However, if the permanent injury for
178 which compensation is claimed results only in the aggravation or increase of a previously sustained
179 permanent injury or physical condition, regardless of the source or cause of the previously
180 sustained injury of physical condition, the Administrator will determine the extent of the
181 previously sustained permanent injury or physical condition, as well as the extent of the
182 aggravation or increase resulting from the subsequent permanent injury and will award
183 compensation only for that part of the injury, or physical condition resulting from the subsequent
184 permanent injury. Awards and compensation will deduct uncompensated permanency in their
185 calculation.

186 203.5-2. *Third Party Liabilities.* An employee or the employee's dependents may bring a third-
187 party action to recover damages, notwithstanding the employer's or insurer's payment of or
188 liability to pay compensation. If a third-party action is settled, the employer or insurer will receive
189 reimbursement for workers' compensation and medical benefits, supplies, and funeral expenses
190 paid to the employee or dependents. Liability of the employer or insurer for payment of further
191 benefits or expenses is terminated. Liability is terminated even if the employee or the dependents
192 have not received any compensation, medical benefits, supplies, or expenses. In the event that the
193 judgment against a third party is less than the employer's liability, the employee or dependents can
194 collect the judgment and repay the employer or insurer for benefits previously received. Nothing
195 in this section shall prevent an employee from taking the compensation he or she may be entitled
196 to under it and also maintaining a civil action against any physician, chiropractor, psychologist or
197 podiatrist for malpractice.

198 203.5-3. *Assumption of Risk.* Employees will not be held to have assumed the risks of the
199 employment in any case where the violation by the employer, agents, or employees of any rule,
200 direction, or regulation made by any public officer or commission contributed to the injury or death
201 of an employee. The employee will not be held to have assumed the risk of any defect in the place
202 of work furnished to the employee, or in the tool, implement or appliance furnished by the
203 employer, when the defect was, prior to injury, known to the employer, or by the exercise of
204 ordinary care might have been known by the employer in time to have repaired the same or to have
205 discontinued the use of the defective working place, tool, implement, or appliance. The burden of
206 proving that the employer was not knowledgeable of such defects is upon the employer.

207 203.5-4. *Employee Requirements.* No compensation is allowed for an injury or death due to the
208 employee's knowingly self inflicted injury, intoxication, or commission of a criminal offense. A
209 fifteen percent (15%) reduction in compensation is allowed for the knowing failure to use a
210 safety appliance, obey a reasonable written or printed rule of the employer that has been placed in
211 a conspicuous position in the workplace or in the employee handbook.

212

213 **203.6. Workers Compensation Benefits**

214 203.6-1. *Employer's Liabilities: Exclusivity.* With respect to any employee who sustains injury
215 or death arising out of and in the course of employment with the employer, such employer shall
216 be liable for the payment of compensation to such employee, the employee's surviving spouse or
217 children, or personal representative, as provided in this law. The liability of an employer to an
218 employee, *the employee's surviving spouse or children*, or the personal representative of an
219 employee for personal injury or death sustained by the employee in the course of employment is
220 prescribed by this law and is exclusive. This law replaces any and all rights and remedies an
221 employee, *the employee's surviving spouse or children*, or an employee's personal representative
222 may have under federal, tribal or state law, common law or the workers' compensation statutes of

223 any state against any employer for personal injury or death arising out of and in the course of
224 employment.

225 203.6-2. *Total Disability.* An employee is totally disabled if the employee is unable to perform
226 any available work activities, due to an injury sustained during the course of employment with the
227 employer. The amount of benefits for total disability shall be determined and published by rule
228 promulgated hereunder.

229 203.6-3. *Partial Disability.* An employee is partially disabled if, as a result of an injury sustained
230 during the course of employment with the employer, the employee is unable to earn the equivalent
231 of the employee's average weekly wage. The amount of benefits for partial disability shall be
232 determined and published by rule promulgated in accordance with levels set forth in ~~see-~~section
233 203.6-10.

234 203.6-4. *Waiting Period.* Compensation, other than payment of medical benefits, will be allowed
235 for temporary disabilities beginning with the third day of disability. Compensation will be allowed
236 for the first seven calendar days only if the disability continues for longer than fourteen (14) days
237 after the date of injury.

238 203.6-5. *Timing of Payments.* The first weekly installment of compensation for temporary
239 disability is due fourteen (14) days after the disability begins and the injured employee notifies the
240 employer that he/she is disabled with medical proof of the disability. Not later than fifteen (15)
241 days from the date that the first installment of compensation is due, the employer or insurer must
242 tender to the employee or dependents all compensation due.

243 203.6-6. *Employee's Average Wage.*

244 (a) *Employees Average Weekly Wage.* Earnings of the injured employee in the
245 employment in which the employee working at the time of the injury during the fifty-two
246 (52) week-period immediately preceding the date of the injury, divided by the number of
247 weeks worked. Whenever allowances of any character made to an employee in lieu of
248 wages are a specified part of the wage contract, those allowances will be considered as part
249 of the employee's earnings as well as any compensation to the employee which is subject
250 to Federal income tax:

251 (1) If the injured employee lost seven or more days during this period although not
252 in the same week, the earnings for the remainder of the fifty-two (52) weeks will
253 be divided by the number of weeks and parts thereof remaining after the time lost
254 have been deducted.

255 (2) If the employment prior to the injury extended over a period of less than fifty-
256 two (52) weeks, the aforementioned method of computation will apply if the results
257 are just and fair to both parties.

258 (3) If the employee has worked for the employer a short period of time or if the
259 employment is of a casual nature, average weekly wage will be determined by using
260 the average weekly amount during the fifty-two (52) weeks prior to the injury that
261 was being earned by a person in the same grade employed at the same work by the
262 same employer.

263 (b) *Employee's Average Daily Wage.* If the disability period involves a fractional week,
264 the indemnity shall be paid for each day of such week at the rate of one-sixth of the weekly
265 indemnity.

266 203.6-7. *Death Benefits.*

267 (a) Compensation varies according to the employees' wage up to the maximum wage in
268 effect at the time of injury. The maximum death benefit is four times the average annual
269 earnings to a maximum of one hundred twenty five thousand dollars (\$125,000.00). The

270 benefits are payable monthly the benefits are payable monthly and decreased by the amount
271 of indemnity benefit previously paid.

272 (b) *Benefits to the Surviving Spouse.* Fifty percent (50%) of the weekly wage will be
273 paid to the dependent spouse who is the sole dependent of the deceased. The spouse must
274 have lived with the deceased at the time of death and excludes common law spouse.

275 (c) *Benefits to a Surviving Spouse and One or More Dependent Children.* ~~66 $\frac{2}{3}$ %~~Sixty-six
276 and two-thirds percent (66 $\frac{2}{3}$ %) of weekly wage.

277 (d) *Benefits to Unmarried Children under Age 21.* Sixty-six and two-thirds percent
278 (66 $\frac{2}{3}$ %) of weekly wage if the unmarried child is dependent upon the parent and living
279 with the deceased parent at the time of death or upon whom state laws impose the obligation
280 to support the child. Dependency terminates when the child attains the age of twenty-one
281 (21).

282 (e) *Benefits to Unmarried Children over Age 21.* Sixty-six and two-thirds percent
283 (66 $\frac{2}{3}$ %) of weekly wage if the child has never married and is physically or mentally
284 incapacitated from earning his or her own support until the disability ends or the maximum
285 is paid whichever occurs first.

286 203.6-8. *Dependency Terminates.* Upon the marriage of the dependent or upon maximum benefit
287 payout whichever comes first. Dependency will not be reinstated due to divorce. Benefits will
288 continue to be paid for children if the dependent spouse remarries until the dependent children's
289 dependency ceases or the maximum benefit is paid, whichever occurs first. Child includes
290 stepchildren, legally adopted children, posthumous children and acknowledged children born out
291 of wedlock when there has been obligation support legally imposed by the state.

292 203.6-9. *Miscellaneous Benefits.* Burial expenses payable by the employer are not to exceed
293 ~~\$5000~~five thousand dollars (\$5,000) and paid upon the submission of proof of expense.

294 203.6-10. *Weekly Indemnity.* The weekly indemnity will be as follows:

295 (a) *Permanent Total Disability.* For injuries resulting in permanent total disability,
296 compensation equals ~~66 $\frac{2}{3}$ %~~sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the employee's
297 average weekly wage, benefits computed on the basis of the employee's wage subject to
298 weekly maximums and minimums appropriate to the time of injury.

299 (b) *Permanent Partial Disability - Impairment.* Sixty percent (60%) of wages for specified
300 periods up to ~~\$175~~one hundred and seventy-five dollars (\$175) per week, or if the injury
301 is not scheduled, a period proportionate to the degree of disability but not over five hundred
302 (500) weeks or ~~\$~~one hundred and fifty thousand dollars (\$150,000) whichever occurs first.

303 (c) *Temporary Disability.* Compensation will be allowed for injuries producing only
304 temporary total disability to work or temporary partial disability to work beginning with
305 the eighth day of disability, except for medical benefits. Compensation will be allowed for
306 the first three calendar days only if the disability continues for longer than fourteen (14)
307 days after the date of injury *and results in* twenty-one (21) *consecutive days off work or*
308 *employment.* The first weekly installment of compensation for temporary disability is due
309 fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date
310 that the first installment of compensation is due, the employer or insurer must tender to the
311 employee or dependents all compensation due. The maximum compensation will be *based*
312 *on* fifty (50) weeks of average weekly wage or one year's salary whichever occurs first *as*
313 *further identified in subsections (d) and (e) of this section.*

314 (d) *Temporary Total Disability.* The employee will receive temporary total disability
315 compensation benefits equal to ~~60~~sixty percent (60%) of the average weekly wage not to
316 exceed two hundred (200) weeks.

317 (g) *Temporary Partial Disability*. The employee may receive temporary partial disability
 318 benefits equal to ~~60~~sixty percent (60%) of the difference between the average weekly wage
 319 and actual weekly wage, not to exceed fifty (50) weeks or one (1) years average weekly
 320 wage, whichever occurs first.

321 (h) *Permanent Disabilities*. Minimum percentages of loss of use for amputation level,
 322 losses of motion, sensory losses and surgical procedures as set out herein. The percentages
 323 assume that the member, the back, etc., was previously without disability. Only
 324 percentages exceeding seven and one half percent (7½%) will be deemed compensable.

325 203.6-11. *Permanent Partial Disability Schedule*. In cases included in the following schedule of
 326 permanent partial disabilities indemnity shall be paid for the healing period and in addition, for the
 327 period specified, at the rate of two-thirds of the average weekly earnings of the employee, to be
 328 computed as provided in section 203.6-6:

DISABILITY	BENEFIT
Loss of arm at shoulder	500 weeks
Loss of arm at elbow	450 weeks
Loss of a non-dominant hand	400 weeks
Loss of the dominant hand	450 weeks
Loss of a palm where the thumb remains	325 weeks
Loss of a thumb and the metacarpal bone thereof	160 weeks
Loss of a thumb at the proximal joint	120 weeks
Loss of a thumb at the distal joint	50 weeks
Loss of all fingers on one hand at their proximal joints	225 weeks
Loss of index finger and the metacarpal bone thereof	60 weeks
Loss of index finger at the proximal joint	50 weeks
Loss of index finger at the second joint	30 weeks
Loss of index finger at the distal joint	12 weeks
Loss of middle finger and the metacarpal bone thereof	45 weeks
Loss of middle finger at the proximal joint	35 weeks
Loss of middle finger at the second joint	20 weeks
Loss of middle finger at the distal joint	8 weeks
Loss of ring finger and the metacarpal bone thereof	26 weeks
Loss of ring finger at the proximal joint	20 weeks
Loss of ring finger at the second joint	15 weeks
Loss of ring finger at the distal joint	6 weeks
Loss of little finger and the metacarpal bone thereof	28 weeks
Loss of little finger at the proximal joint	22 weeks
Loss of little finger at the second joint	16 weeks
Loss of little finger at the distal joint	6 weeks
Loss of leg at the hip	500 weeks
Loss of leg at the knee	425 weeks
Loss of a foot at the ankle	250 weeks
Loss of great toe with the metatarsal bone thereof	84 weeks
Loss of great toe at the proximal joint	25 weeks
Loss of great toe at the distal joint	12 weeks
Loss of second toe with the metatarsal bone thereof	25 weeks
Loss of second toe at the proximal joint	8 weeks

Loss of second toe at the second joint	6 weeks
Loss of second toe at the distal joint	4 weeks
Loss of the third, fourth or little toe with the metatarsal bone thereof	20 weeks
Loss of the third, fourth or little toe at the proximal joint	6 weeks
Loss of the third, fourth or little toe at the second or distal joints	4 weeks
Loss of an eye by enucleation or evisceration	275 weeks
Total impairment of one eye for industrial use	250 weeks
Total deafness from accident or sudden trauma	330 weeks
Total deafness of one ear from accident of sudden trauma	55 weeks
Loss of movement due to injury to spine	500 weeks

329 203.6-12. *Denial of Liability.* If the employer denies liability, the employer must inform the
330 employee or dependents of the denial. Notice of the denial must be made in writing and mailed
331 not later than thirty (30) days after the employer's knowledge of the injury and the employee's
332 provision of medical proof.

333 203.6-13. *Apportionment.* If any portion of the permanent impairment rating is attributable to a
334 preexisting condition, whether previously rated or not, the employee shall receive permanent
335 impairment benefits only for that portion of the permanent injury attributable solely to the work
336 injury.

337 203.6-14. *Occupational Deafness.* This means permanent partial or permanent total loss of
338 hearing of one or both ears due to prolonged exposure to noise in employment. "Noise" means
339 sound capable of producing occupational deafness. "Noisy employment" means employment in a
340 circumstance of which an employee is subjected to noise beyond those common to occupational
341 and/or non-occupational life and is predominantly work related.

342 (a) No benefits shall be payable for temporary total or temporary partial disability under
343 this section for loss of hearing due to prolonged exposure to noise.

344 (b) No payment shall be made to an employee under this section unless the employee shall
345 have worked in the noisy employment for a total period of at least ~~180~~one hundred and
346 eighty (180) days for the employer from whom the employee claims compensation.

347 (c) The employer is liable for the entire occupational deafness to which his or her
348 employment has contributed; but if previous deafness is established by a hearing test or
349 other competent evidence, whether or not the employee was exposed to noise within the
350 two (2) months preceding such test, the employer is not liable for previous loss so
351 established nor is the employer liable for any loss for which compensation has previously
352 been paid.

353 (d) No compensation may be paid for tinnitus.

354 (e) Compensation for permanent partial disability due to occupation deafness may be paid
355 only if the loss of hearing exceeds ~~30%~~thirty percent (30%) of binaural hearing loss.

356 (f) Hearing impairment determinations will be made using the methods and Hearing
357 Impairment Tables identified in regulations.

358 203.6-15. *Vision Loss.* Vision loss determinations will be made using methods and Vision
359 Impairment Tables identified in regulations.

360

361 **203.7. Termination of Benefits**

362 203.7-1. Receipt of Social Security Retirement Benefits by the employee will be considered
363 conclusive evidence of retirement, and the liability of the employer for payment of further
364 disability benefits will cease.

365 203.7-2. Once begun, temporary total disability benefits may not be terminated by the employer
366 unless:

- 367 (a) the employee has returned to work, with any employer in a similar position;
- 368 (b) the employee has died;
- 369 (c) the employee has refused to undergo a medical examination as prescribed in section
370 203.8-5;
- 371 (d) the employee has received ~~250~~two hundred and fifty (250) weeks of benefits or has
372 been paid the maximum compensation allowed;
- 373 (e) the employee has refused modified, early return to work, light duty or transitional job
374 assignment;
- 375 (f) Employee receives Social Security Retirement Benefits;
- 376 (g) the employee is unable or unavailable to work for reasons unrelated to the compensable
377 injury;
- 378 (h) the employee is terminated for misconduct;
- 379 (i) the employee fails to cooperate with reasonable medical or vocational rehabilitation;
- 380 (j) the employee fails to maintain contact with the employer at least two times per month,
381 at reasonable intervals identified by the employer from the date of medical assessment.

382 This section shall not be construed to require the employee to undergo surgery nor to require the
383 employer to provide vocational rehabilitation.

384 203.7-3. *Maximum and Minimum Weekly Compensation Payments.* To be reviewed on a periodic
385 basis, payments for death, temporary and permanent total disability, and for temporary partial
386 disability are computed on the basis of the employee's average weekly wage, within the following
387 limits:

- 388 (a) *Maximum Weekly Wage for Temporary, Permanent, Total & Death Benefits:*
 - 389 (1) For injuries occurring after December 31, 1999, the average weekly benefit
390 must not be more than ~~\$five hundred dollars (\$500.00)~~ or less than ~~\$fifty dollars~~
391 ~~(\$50).~~
 - 392 (2) In no case will the weekly compensation payable exceed the average weekly
393 wages of the employee at the time of death.
- 394 (b) *Maximum Wage for Permanent Partial Only.* For injuries occurring after December
395 31, 1999, the maximum weekly benefit will be ~~\$175.00~~one hundred and seventy-five
396 dollars (\$175).

397 203.7-4. *Claims of Creditors.* Compensation awards are subject to child support income
398 withholding and other remedies available for the enforcement of a child support order. The
399 maximum amount that may be withheld is one-half of the compensation award.

400

401 **203.8. Medical and Surgical Aid**

402 203.8-1. *Choice of Provider.* The choice of a provider is generally made by the employer.
403 Provided that, the employee may select a physician, surgeon, or other provider and the employer
404 may be required to reimburse fifty percent (50%-%) of reasonable expenses.

405 203.8-2. *Benefits.* The employer must supply free of charge to the employee, all reasonable and
406 necessary first aid, medical, surgical and hospital services incurred by the employee as a direct
407 result of a compensable injury. Benefits payable under any policy of no-fault automobile insurance
408 will be primary to benefits payable by the employer. The employer may require the employee to
409 seek services, equipment and medicines at, or from, specified medical providers and facilities.
410 Non compliance with these requirements will reduce or relieve the employer of liability of medical
411 payments until such time compliance is met. Compensation will not be paid to an employee who

412 refuses medical treatment. Likewise, any permanent disability from this refusal is
 413 ~~noncompensable~~non-compensable. The employer will supply the employee with the group of
 414 physicians they can access. In cases of an emergency the employee can elect the physician of their
 415 choice. However when the emergency passes, the employee must seek follow up medical attention
 416 from the specified physicians supplied by the employer. If the employer requires the employee to
 417 submit to treatment outside the county of employment, and further than thirty (30) miles from the
 418 place of employment the employer must also pay reasonable travel expenses, not to exceed the
 419 limits of the employers travel policies. The employer must supply the following services and
 420 supplies:

- 421 (a) Medical
- 422 (b) Surgical
- 423 (c) Psychological
- 424 (d) Podiatric
- 425 (e) Dental
- 426 (f) Hospital treatment
- 427 (g) Prescription Medicines
- 428 (h) Medical and surgical supplies
- 429 (i) Crutches
- 430 (j) Artificial limbs (liability for repair and replacement is limited to the effects of normal
 431 wear and tear)
- 432 (i) Appliances
- 433 (k) Training in use of artificial limbs and appliances

434 203.8-3. *Utilization Review*. The employer liability for medical, surgical, hospital, and nursing
 435 care will be limited to those charges that prevail in the same community for similar services to
 436 injured persons of like standard of living when the service is paid for by the injured person.

437 203.8-4. *Fee Schedules*. Fee schedules may be followed as negotiated by the employer with any
 438 provider network or individual, or clinics but may not exceed the fee schedule of the state of the
 439 employment.

440 203.8-5. *Independent Medical Exams*. An employee must, if requested in writing by the employer
 441 submit to reasonable exams by medical practitioner, chiropractor, podiatrist, psychologists,
 442 dentists, or vocational experts, provided and paid for by the employer. Expenses will be paid by
 443 the employer, including transportation.

444 203.8-6. *Refusal to Submit*. If the employee refuses to submit to or in any way obstructs the
 445 examination, the responsibility of the employer for payment of medical expenses incurred after
 446 the scheduled date of the examination will cease. Likewise, the employer's responsibility for
 447 payment of all other benefits accruing ceases immediately upon the failure to appear.

448 203.8-7. *Rehabilitation*. "Physical rehabilitation" means the restoration of the seriously injured
 449 person as soon as possible to a condition of gainful employment. The Administrator or the
 450 employer may contract for the services of a rehabilitation consultant to assist the employee in
 451 rehabilitation and return-to-work efforts. Rehabilitation may be provided to the employee at the
 452 sole option of the administrator and the employer at the expense of the employer or insurer. It is
 453 administered by the Employee Benefits Department, who also may provide transportation. At the
 454 option of the Administrator and the employer, the employee may receive temporary total benefits
 455 while the employee is actively engaged in a program of rehabilitation which is reasonable and
 456 designed to restore the employee to gainful employment. Initial rehabilitation plan may not exceed
 457 26 weeks, and only the employer may extend the period of the plan for an additional 26 week
 458 period.

459 203.8-8. *Vocational Rehabilitation.* Vocational Rehabilitation may be provided to the employee
 460 at the sole option of the administrator and the employer at the expense of the employer or insurer.
 461 It is administered by the Employee Benefits department, who also may provide transportation. At
 462 the option of the Administrator and the employer, the employee may receive temporary total
 463 benefits while the employee is actively engaged in a program of rehabilitation which is reasonable
 464 and designed to restore the employee to gainful employment. Initial rehabilitation plan may not
 465 exceed 52 weeks, and only the employer may extend the period of the plan for an additional 26
 466 week period.

467 203.8-9. *Refusal to Undergo Rehabilitation.* Failure by the employee to cooperate in rehabilitation
 468 efforts will result in a ~~50% (fifty percent)~~ (50%) reduction in temporary total or temporary partial
 469 benefits. Refusal by the employee to undergo rehabilitation will terminate the responsibility of
 470 the employer for payment of all benefits and medical expenses thereafter.

471

472 **203.9. Notices, Reports and Limitations**

473 203.9-1. *Notice of the Injury.* No compensation shall be due under this law unless, the employee,
 474 or another on behalf of the employee, reports the injury to the employee's supervisor, manager or
 475 the employers designated representative within forty-eight (48) hours of the accident causing the
 476 injury. No compensation or medical benefits will be paid if a written notice of injury is not given
 477 to the employer within ten (10) calendar days of the date the employee first reports the injury. If
 478 the injury incapacitates the employee, the ten (10) day time limitation will not begin until the
 479 incapacity ends. A repetitive traumatic injury is deemed to have occurred when the employee
 480 knows or has reason to know that the injury caused the employee to be unable to work, whichever
 481 occurs first.

482 203.9-2. *First Report of Injury.* Upon actual knowledge of the occurrence of an injury or upon
 483 written or verbal notice from the employee or another on behalf of the employee, the employer
 484 will complete a report of injury and file it with the Administrator within forty-eight (48) hours.

485 203.9-3. *Limitations of Claims.* No compensation benefits shall be paid or awarded under this
 486 Law unless the written claim for benefits is made within ~~180~~ one hundred and eighty (180) days of
 487 the date of the claimed injury. In the case of mental or physical incapacity or minority, the period
 488 of limitation shall be extended for ~~180~~ one hundred and eighty (180) days from the date that the
 489 incapacity ceases.

490 203.9-4. *Notice of Injury Pursuant to May 1, 2021 Incident.* An employee requesting consideration
 491 for compensable injuries under the Oneida Worker's Compensation law for mental harm sustained
 492 on the evening of May 1, 2021 during the shooting incident at the Radisson, shall report the mental
 493 harm to the employee's supervisor, manager, or employer's designated representative within sixty
 494 (60) days of the incident. An employee requesting consideration for compensable injuries under
 495 the Oneida Worker's Compensation Law for physical harm sustained on the evening of May 1,
 496 2021 during the shooting incident at the Radisson, shall report the physical harm to the employee's
 497 supervisor, manager, or employer's designated representative within thirty (30) days of the
 498 incident. The deadlines within this subsection preempt the forty-eight (48) hour time limit to report
 499 injuries within section 203.9-1. The time limit within section 203.9-1 shall not apply to injuries
 500 sustained pursuant to the May 1, 2021 shooting incident at the Radisson.

501

502 **203.10. Administration and Claims Procedures**

503 203.10-1. *Administrator.* The Business Committee shall have the authority to designate an
 504 Administrator, enter into contracts for administrative services and expend such funds as is
 505 necessary to pay for all administrative costs incurred in furtherance of this law. The Administrator

506 will act on behalf of the Oneida ~~Tribe~~Nation in receiving and processing workers' compensation
507 claims. The Administrator is responsible for determinations and decisions not limited to the
508 following:

- 509 (a) Make determinations based on investigations and available medical information
510 regarding the liability of the employer and approve or deny the claim. The Administrator
511 will notify the employer and employee of its determination within the time constraints
512 listed previously.
- 513 (b) Determine amounts payable according to fee schedules, compliance with provider
514 arrangements, and disability schedule.
- 515 (c) Utilizing the appropriate guidelines the Administrator will determine the compensation
516 rate payable for temporary total disability, temporary partial disability, permanent partial
517 disability and dependency.
- 518 (d) The Administrator will determine the length of time during which temporary total
519 disability or temporary partial disability benefits are payable. The Administrator will also
520 determine the amount of permanent partial disability benefits payable.
- 521 (e) Determination of the eligibility of dependents and the term of any dependency benefits
522 payable.
- 523 (f) Determine the claims of creditor allocations,
- 524 (g) Notify the employee and employee in writing of the preexisting limitations when
525 applicable.

526 203.10-2. *Timing of Payments.*

- 527 (a) *Indemnity Payments.* The first weekly installment of compensation is due ~~fourteen~~
528 ~~(14)~~ days after the disability begins. Not later than ~~fifteen~~ (15) days from the date that the
529 first installment of compensation is due, the employer or insurer must tender to the
530 employee or dependents all compensation due. Once temporary or permanent total
531 disability benefits have begun, they must continue to be paid on a regular basis on the date
532 the employee would have received wages from the employer had the employee continued
533 working subject to discontinuance and the limitations otherwise provided for under this
534 law. Payment of temporary partial disability benefits is due ~~ten~~ (10) days following the
535 date the employer or employee sends wage verification to the Administrator.
- 536 (b) *Medical Expenses.* Payment or reimbursement of medical expenses are due within
537 ~~thirty~~ (30) days after receipt by the Administrator of itemized billing and medical records
538 or reports documenting the reasonableness and necessity of the medical service(s).

539 203.10-3. *Denial of Claim.* A denial of primary liability or a denial of a period of total or partial
540 disability, permanent impairment disability or medical benefits must:

- 541 ~~(a-)~~ be made in writing by the Administrator
- 542 ~~(b-)~~ contain the specific reason for the denial in language easily readable and
543 understandable to a person of average intelligence and education,
- 544 ~~(c-)~~ clearly state the facts forming the basis for the denial.

545 The denial must include information identifying the employee, the date of claimed injury, claim
546 number, the name and telephone number of the person making the decision, and instruction to the
547 employee of the rules and time limitations for challenging the denial.

548 203.10-4. *Discontinuance of Benefits.* The Administrator may discontinue weekly compensation
549 benefits by serving a written notice on the employee. The notice must identify the employee, the
550 date of claimed injury, claim number, the type of benefits being reduced or discontinued, the
551 effective date of the discontinuance and the reason for the discontinuance. The notice must be
552 written in language easily readable and understandable to a person of average intelligence and
553 education and contain sufficient detail to inform the employee of the factual basis for

554 discontinuance. The notice must also include an itemization of previous benefits paid, the name
555 and telephone number of the person making the decision and copies of any evidence, medical or
556 otherwise upon which the discontinuance is based. The Administrator shall enclose a claim
557 petition with instruction for completion and filing.

558 203.10-5. *Claim Petition.* The Administrator shall provide the employee with a claim petition
559 form with every notice of reduction, denial or discontinuance of benefits. If an employee objects
560 to the denial of a claim or to a reduction or discontinuance of benefits, the employee may file a
561 claim petition with the Hearing Body within twenty-one (21) days of the receipt by the employee
562 of the reduction, denial or discontinuance. The claim petition shall contain the name of the
563 employee, the date of injury, claim number, the type of benefits being sought, the basis of the claim
564 for benefits and any evidence, medical or otherwise, in support of the employee's claim. Failure
565 to file the claim petition within thirty (30) days will result in loss of right of the employee to pursue
566 those benefits affected by the reduction, denial or discontinuance.

567 203.10-6. *Settlements.* No lump sum settlement is allowed in any case of permanent total
568 disability on an estimated life expectancy, except on consent of all parties, after hearing and finding
569 by the appointed body that the interests of the injured employee will be conserved. Settlements
570 will not be paid for permanency of less than 7½seven and one-half percent (7½%).

571 203.10-7. *Method of Service.* All notices, decisions, or orders provided for in this law may be
572 served personally or by the United States mail. Time periods shall be calculated starting on the
573 day following the beginning of the period, and shall include weekends and holidays.

574 203.10-8. *Recoupment of Overpayment.* Payment of compensation made under a mistake of fact
575 or law by the employer or Administrator may be recouped from future payments of compensation
576 to the employee, whether for the same injury or not, or from the employee's wages with the
577 employer, if any. Overpayments may not be recouped against medical expenses due or payable.

578 203.10-9. *Fraud and Misrepresentation.* Intentional misrepresentation by an employee resulting
579 in benefits paid under this law shall allow the employer to bring an action at law in any court of
580 competent jurisdiction against the employee to collect benefits paid as a result of the intentional
581 misrepresentation.

582 203.10-10. In cases where it is determined that periodic benefits granted by the federal social
583 security act are paid to the employee because of disability, the benefits payable under this law shall
584 be reduced as set out in this section. This provides that any offset is taken on the compensation
585 benefits rather than the social security benefits. The injured worker is to receive the same total
586 amount from the continued benefits that he or she would have received before the offset was
587 figured on the worker's compensation benefits but not less than the benefits payable under this law.

588 Attorney fees and costs are not offset.

589 (a) For each dollar that the total monthly benefits under this law, excluding attorney fees
590 and costs, plus the monthly benefits payable under the social security act for disability
591 exceed 75%seventy-five percent (75%) of the employee's average current earnings as
592 determined by the social security administration, the benefits payable under this law shall
593 be reduced by the same amount so that the total benefits payable shall not exceed
594 75%seventy-five percent (75%) of the employee's average current earnings. However, no
595 total benefit payable under this law and under the federal social security act may be reduced
596 to an amount less than the benefit payable under this law.

597 (b) No reduction under this section shall be made because of an increase granted by the
598 social security administration as a cost of living adjustment.

599 (c) Failure of the employee, except for excusable neglect, to report social security disability
600 payments within thirty (30) days after written request shall allow the employer or insurance
601 carrier to reduce weekly compensation benefits payable under this law by seventy-five

602 ~~(75%-%)~~. Compensation benefits otherwise payable shall be satisfactory proof of the basis
603 for reduction.

604 (d) The reduction prescribed by this section shall be allowed only as to payments made on
605 or after July 1, 1980, and shall be computed on the basis of payments made for temporary
606 total, temporary partial, permanent total, and permanent partial disability.

607 (e) No reduction shall take into account payments made under the social security act to
608 dependents of an employee.

609 **203.11. Hearing Body and Authority**

610 203.11-1. *Designation of Hearing Body.* The Judiciary is delegated the responsibility to create an
611 original hearing body with the authority to hear, determine and review all claims for compensation
612 until such time as a determination can be made regarding the need for a permanent hearing body
613 to hear issues arising under this law. The hearing body also has the authority to require medical
614 services for injured employees, approve claims for medical services, attorney fees, and charges for
615 nurses and hospitals. Additionally, the hearing body has the power to approve agreements, modify
616 or change awards, make conclusions of facts and rulings of law, certify questions of law, and
617 approve deductions in the compensation made by employers for amounts paid in excess of the
618 amount required by law. The hearing body can also approve agreements between an employer
619 and an employee or the employee's dependents for the cash payment of compensation in a lump
620 sum or, in the case of a person under eighteen (18) years of age, to order cash payments. Physical
621 examination, administering oaths and witness subpoenas can also be ordered by the hearing body.
622 Lastly the hearing body is authorized to assess and collect any penalties.

623 203.11-2. *Appeals Process.* If the employer, injured employee, or dependents disagree in regard
624 to the Administrator's determination of compensation payable, extent of disability, the continuance
625 of payments under the agreement or the amount to be paid because of a change in condition, either
626 party may petition the hearing body for resolution of the dispute. The petition must be submitted
627 within twenty-one (21) days after the Administrator mails a copy of their determination regarding
628 compensation payable, extent of disability, the continuance of payments under the agreement or
629 the amount to be paid because of a change in condition. The hearing body will determine whether
630 to hear the appeal. If the hearing body decides to hear the appeal, the hearing body will notify the
631 parties and their respective representatives in writing of the time and place of the hearing. If the
632 hearing body determines not to hear the appeal, the hearing body will issue and order to that effect
633 and notify the parties and their representatives in writing of that order. Upon the filing of an
634 application, the hearing body will set a hearing date and notify the employer, employee, and
635 attorneys of record. The hearing body will consider evidence, hear witnesses, receive exhibits and
636 make its determination based on the preponderance of evidence and credibility of the evidence and
637 witnesses. The burden of proof in any hearing of the appeals process will be on the employee or
638 dependents. The cost of legal representation at any hearing of the appeals process will be the
639 responsibility of the employee or dependents. The hearing of all claims for compensation for
640 injuries will be held on the Reservation. All decisions of the hearing body are final. The decision
641 must be issued in writing, and copies must be mailed to all interested parties. The decision must
642 detail the final determination of the hearing body on all issues.

643 203.11-3. *Examination; Competent Witnesses.*

644 (a) Any physician, chiropractor, psychologist, podiatrist, or vocational expert who is
645 present at any examination may be required to testify as to the results thereof.

646 (b) Any physician, chiropractor, psychologist, podiatrist, or vocational expert who
647 attended a worker's compensation claimant for any condition or complaint reasonably
648

649 related to the condition for which the claimant claims compensation may be required to
650 testify before the hearing body when it so directs.

651 (c) The testimony of any physician, chiropractor, psychologist, or podiatrist who is
652 licensed to practice where he or she resides or practices in any state and the testimony of
653 any vocational expert may be received in evidence in compensation proceedings.

654 (d) Expert medical or vocational testimony may be provided by written report on a form
655 to be drafted by the employer so long as that expert is available for cross examination.

656 203.11-4. *Costs.* Costs for all proceedings before the hearing will be awarded and taxed as
657 provided by the law in ordinary Judiciary court actions and paid by the ~~Oneida Tribe~~Nation.
658 However, if the hearing body determines that any proceedings have been brought, prosecuted, or
659 defended without reasonable ground, it may assess the whole cost of the proceedings upon the
660 party who brought, prosecuted, or defended them.

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662 **203.12. Accident Reports Required**

663 203.12-1. Employer must keep a record of all accidents causing the death or disability of any
664 employee that occur while the employee is performing services during the course of employment.

665 The record must state:

- 666 (a) name, address, age and wages of the employee;
- 667 (b) time and cause of the accident
- 668 (c) nature and extent of the injury
- 669 (d) any other information that may be deemed necessary

670

671 **203.13. Occupational Diseases**

672 203.13-1. *Coverage.* “Occupational disease” means a disease arising out of and in the course of
673 employment. Ordinary diseases of life to which the general public is exposed outside of the
674 employment are not compensable.

675 Claims based on mental conditions or mental disabilities caused by stress do not fall within the
676 definition of “occupational disease.” No employee of any covered employer will have any right
677 to any other method, form or amount of compensation or damages for the contraction of an
678 occupational disease or for injury, disability, loss of service or death resulting from the disease,
679 arising out of and in the course of employment, or determination thereof, in any manner other than
680 as provided. Unless otherwise specifically provided, no employer and no officer, director, agent,
681 or employee of the employer will be held civilly liable for the contraction of an occupational
682 disease or for injury, disability, loss of service or death of any employee due to an occupational
683 disease.

684 203.13-2. *Nature of Employment.* The disease must have resulted from the nature of the
685 employment in which the employee was engaged and must have actually been contracted while so
686 employed. The nature of employment means:

- 687 (a) that it involves a particular hazard of such disease that distinguishes it from the usual
688 run of occupations; or
- 689 (b) the incidence of such disease is substantially higher in the occupation in which the
690 employee was so engaged than in the usual run of occupations; or
- 691 (c) in the case of death, unless death follows continuous disability from the disease and
692 results within 250 weeks after the last work related exposure.

693 No compensation is allowed for any condition of physical illness, mental illness or stress,
694 disability, disablement or death for which compensation is recoverable on account of an accidental

695 injury. Claims based on mental conditions or mental disabilities caused by stress do not fall within
696 the definition of “occupational disease”.

697 203.13-3. *Nature of Injury.* An employer will not be liable for any compensation for an
698 occupational disease unless such disease is due to the nature of an employment in which the
699 hazards of such disease actually exist, and which hazards are characteristic thereof and peculiar to
700 the trade, occupation, process, or employment, and such disease actually arises out of the
701 employment, and unless disablement or death results within three years in case of pneumoconiosis,
702 or within one year in case of any other occupational disease, after the last injurious exposure to
703 such disease in such employment, or in case of death, unless death follows continuous disability
704 from such disease commencing within the period above limited for which compensation has been
705 paid or awarded or timely claim made and results within six years after such exposure. In any case
706 where disablement or death was caused by latent or delayed pathological conditions, blood, or
707 other tissue changes or malignancies due to occupational exposure to x-rays, radium, radioactive
708 substances or machines, or ionizing radiation the employer will not be liable for any compensation
709 unless claim is filed within 30 days after disablement or death. “Disablement” means the event of
710 becoming disabled from earning full wages at the work in which the employee was engaged when
711 last exposed to the hazards of the occupational disease. “Disability” means the state of being
712 incapacitated.

713 203.13-4. *Statute of Limitations - Date of injury.* For occupational diseases other than
714 pneumoconiosis and radiation, date of injury is the date of the last exposure to the hazards of the
715 disease in the employment of the employer in whose employment the employee was last exposed
716 to the hazards of the disease. For purposes of pneumoconiosis and radiation, date of injury means
717 the date of the last exposure to the hazards of the disease in the employment of the employer in
718 whose employment the employee was last exposed to the hazards of the disease in each of at least
719 twelve (12) months, within a period of five (5) years prior to the date of the injury.

720 Written notice of the contraction of an occupational disease must be given to the employer
721 by the employee or by someone on such employee's behalf within thirty (30) days after the first
722 distinct manifestation, or in the event of death, within thirty (30) days after the death.

723 203.13-5. *Burden of Proof.* There is no presumption that disablement or death from any cause of
724 infirmity is the result of an occupational disease or that an occupational disease will result in
725 disablement or death. Anyone claiming compensation or other benefits has the burden of
726 establishing entitlement to the benefits.

727 203.13-6. *Time Limit on Filing Claims.* Claims will be denied unless an employee's claim for
728 compensation is filed within two (2) years after the date of disablement. Dependents must file
729 claim within two (2) years after the date of death. There is no limitation of time against any person
730 who is mentally incompetent or minor dependent, as long as there is in place a guardian or trustee.

731 203.13-7. *Lung Diseases - Emphysema.* Compensation will not be payable for pulmonary
732 emphysema or other types of emphysema unless it is proved by clear and convincing medical
733 evidence to a reasonable probability that the emphysema was caused solely by the employment.
734 If it is proved that the emphysema was aggravated and contributed to by the employment,
735 compensation will be payable for the resulting condition of the worker, but only to the extent that
736 the condition was so aggravated.

737 203.13-8. *Awards.*

738 (a) *Amount of Compensation.* Waiting periods will follow those listed in section 203.6.
739 The compensation and benefits provided for occupational diseases are paid in the same
740 manner as compensation and benefits for injuries as listed in section 203.6. Where an
741 employee claims to be suffering from both an injury and an occupational disease, the
742 administrator shall determine whether the disease or the injury or both, are related to the

743 disability and shall order compensation awarded for both injury and disease not to exceed
744 the amount payable for the total percentage of disability.
745 (b) *Aggravation*. Aggravation of an occupational disease by any other disease or infirmity
746 that is not of itself compensable reduces compensation to the proportion of the
747 compensation that would be payable if the occupational disease were the sole cause of the
748 disability or death as the occupational disease bears to all the causes of the disability or
749 death. The reduction is effected by reducing the number of weekly or monthly payments
750 or the amounts of the payments.

751
752 ~~end~~End.

754
755 Adopted- BC-07-07-99B
756 Amended – BC-06-25-14-B (effective 11/01/14)
757 Emergency Amended – BC- - - -

Title 2. Employment – Chapter 203
ONEIDA WORKER’S COMPENSATION LAW
Latiyótashe Kayanlǎhsla
where they work their laws

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|--------------------------------------|--|
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203.1. Purpose and Policy

203.1-1. *Purpose.* The purpose of this law is to set up a system of compensation and medical benefits for employees of the Oneida Nation who suffer compensable injuries in the employment of the Oneida Nation. The law is not remedial in any sense and is not to be given a broad liberal construction in favor of any claimant or employee. The Oneida Nation will compile and apply its own benefit schedule which will mandate the benefit levels applied to applicable injuries. The Oneida will mandate employee responsibilities and supply literature to employees explaining such. The Oneida Nation will develop a timely appeals process whereby an employee may seek a third party for a final decision.

1-2. *Policy.* It is the policy of the Oneida Nation to protect the employees of the Oneida Nation and over which the Oneida Nation extends its jurisdiction.

203.2. Adoption, Amendment, Repeal

203.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-07-99-B, amended by resolution BC-06-25-14-B, and emergency amended by resolution BC-__-__-__-__.

203.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

203.2-3. 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.

309.2-4. 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.

309.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

203.2-6. Nothing in this law, including any assertion of right or privilege, shall waive or be construed to work as a constructive waiver of the Nation’s sovereign immunity from suit by any party.

203.3. Definitions.

203.3-1. This section shall govern the definitions of words or phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Employee” means every person, including all officials and minors, in the service of the Nation, therein whether elected or under any appointment or contract to hire, express or implied, or written, injured within or outside of the Nation. The Nation may require a bond from a contractor to protect it against compensation to employees of such contractor

- 37 or employees of a subcontractor under him. Any peace officer shall be considered an
38 employee while engaged in the enforcement of peace or in the pursuit and capture of those
39 charged with crime.
- 40 (b) “Employer” means the Nation its divisions, departments, programs, enterprises of
41 other subdivisions of the Nation.
- 42 (c) “Nation” The Oneida Nation, a federally recognized Indian Nation and acting at all
43 times pursuant to its Constitution and Bylaws in a governmental capacity.
- 44 (d) “Injury or personal injury” means physical or mental harm to an employee caused by
45 an accident or disease which arises from exposure to conditions or circumstances beyond
46 those common to occupational and/or non-occupational life and is predominantly work
47 related, or mental harm caused by the May 1, 2021 shooting incident at the Radisson.
- 48 (e) “Physical harm” means any injury arising out of and in the course of employment,
49 unusual or peculiar to work, including specific injury, repetitive traumatic injury, or
50 occupational disease, which arises from exposure to conditions or circumstances beyond
51 those common to occupational and/or non-occupational life and is predominantly work
52 related.
- 53 (f) “Accidental injury” means any injury, not expected and not deemed to be willful.
- 54 (g) “Mental harm” means any injury arising out of and in the course of employment which
55 includes mental harm or emotional stress or strain without physical trauma, which arises
56 from exposure to conditions or circumstances beyond those common to occupational
57 and/or non-occupational life and is predominantly work related. Common occupational
58 life includes, but is not limited to, transfers, promotions, termination, disciplinary action
59 and activities identified within a job description or business unit general activities.
- 60 (h) “Burden and standard of proof” means except where explicitly stated otherwise, the
61 burden of proof is on the party advancing a particular claim or defense, and the standard of
62 proof is by a preponderance or greater weight of the evidence.
- 63 (i) “Waiver of privilege” means application for or acceptance of any benefits under this
64 law shall constitute a waiver of privilege by the employee or the employee's dependents.
- 65 (j) “Administrator” means the person or entity designated and charged with the day-to-
66 day administration of this law.
- 67 (k) “Covered injury/accidents” means mental or physical harm to an employee caused by
68 an accident or disease and arising out of and in the course of employment, or mental harm
69 caused by the May 1, 2021 shooting incident at the Radisson. Injury includes mental harm
70 or emotional stress or strain without physical trauma, which arises from exposure to
71 conditions or circumstances beyond those common to occupational and/or non-
72 occupational life and is predominantly work related, extraordinary and unusual.
- 73 (l) “Not Covered Injury/Accidents” means no compensation is allowed for:
- 74 (1) an injury or death due to the employee's knowingly self-inflicted injury,
75 including suicide, or commission of a criminal offense,
- 76 (2) any injury, occupational disease or death when the proximate cause is the
77 employee's intoxication from alcohol, or impairment by a non-prescribed controlled
78 drug or abuse of a prescription drug, except where the employee is an innocent
79 victim,
- 80 (3) refusal or non-cooperation of the employee of a blood alcohol or drug test when
81 it is requested for reasonable cause,
- 82 (4) any injury caused by or contributed to by an illegal or non-prescribed controlled
83 substance confirmed by a positive confirmation or blood alcohol test.

- 84 (5) gross negligence of the injured employee, including horseplay or other willful
- 85 behavior,
- 86 (6) disobedience by the injured employee of instructions, whether verbal or written,
- 87 from the employer with instruction, which if followed, would reasonably prevent
- 88 or significantly reduce the likelihood of the injury or death,
- 89 (7) work performed by or as an independent contractor,
- 90 (8) injury or death of an employee of a subcontractor or independent contractor
- 91 whether insured or uninsured for workers' compensation liability even though the
- 92 injury may occur on the Reservation,
- 93 (9) activities of the employee during meal/lunch/dinner breaks while off
- 94 employer's premises,
- 95 (10) the employee's failure, prior to commencement of employment, to disclose a
- 96 physical condition which prevented the employee from safely performing the work
- 97 for which the employee was hired and which was a substantial contributing factor
- 98 to the injury,
- 99 (11) environmental illness, or chemical sensitivity caused by agents to which the
- 100 general public at the employer's premises are exposed,
- 101 (12) idiopathic injury, meaning an injury or condition arising from an obscure or
- 102 unknown cause,
- 103 (13) an injury or illness secondary to a psychiatric condition,
- 104 (14) the natural deterioration of tissue, organ, or other body part,
- 105 (15) voluntary participation in an employer-sponsored recreation or fitness
- 106 activity,
- 107 (16) injuries caused by the act of a third person intended to injure the employee
- 108 because of reasons personal to the employee that are not directed against the
- 109 employee as an employee or because of the employment.

110 The burden of proof to meet this definition of “not covered injury/accident” under this
111 section shall be on the employer.

112 (m) “Decrease in benefits” means:

- 113 (1) If an employee fails to use a safety device, or obey a reasonable written or
- 114 printed rule of the employer that has been placed in a conspicuous position in the
- 115 workplace or in the employee handbook, compensation will be decreased by fifteen
- 116 percent (15%) for the first injury, and twenty-five percent (25%) for each
- 117 subsequent injury.
- 118 (2) If an employee fails to utilize providers or network providers designated by the
- 119 employer, reimbursement for expenses will be decreased by a minimum of fifty
- 120 percent (50%), except in the case of a medical emergency.

121 (n) “Maximum medical improvement” means the date after which no significant recovery
122 from or significant lasting improvement to a personal injury can reasonably be anticipated,
123 based upon reasonable medical probability.

124 (o) “Average daily wage” means the indemnity benefit paid as a result of a fractional week
125 of disability.

126 (p) “Judiciary” means the Judicial system that was established by Oneida General Tribal
127 Council resolution GTC-01-07-13-B to administer the judicial authorities and
128 responsibilities of the Nation.

129

130 **203.4. General Provisions**

131 203.4-1. The Nation hereby authorizes the Risk Management Office of the Finance Division to
132 enter into agreements to create a self-funded, self-insurance program for the Nation operated solely
133 for the benefit of the employees of the Nation. The Nation may retain the option of insuring its
134 liability in some corporation, association or organization authorized to transact the business of
135 workers' compensation insurance in the State of Wisconsin. The Nation may self-insure at its
136 discretion and administer its program of self insurance or may contract with any private agency,
137 business firm, or corporation to administer any part of the program. The Oneida Workers
138 Compensation program will consist of:

- 139 (a) Definition of terms
- 140 (b) Benefit explanation
 - 141 (1) Benefits available - Medical and Disability
 - 142 (2) Benefit schedule
 - 143 (3) Benefit calculation
 - 144 (4) Employee responsibilities, reporting, early return to work, medical network use
 - 145 etc.
- 146 (c) Appeals process

147 203.4-2. The Risk Management Office in conjunction with the Oneida Human Resources Benefits
148 Office is hereby delegated responsibility for development of regulations to implement this
149 program. All regulations shall conform to the requirements of the insurer of the program, or this
150 law. Conflicts between the insurer and this law shall be resolved in favor of this law where
151 minimum and/or maximum limits are prescribed regarding benefit levels.

152 203.4-3. A claim against the Oneida Worker Compensation program shall be the exclusive remedy
153 against the Nation, an entity of the Nation, or an employee of the Nation for any claim of loss
154 covered by the program. An individual who has made a claim against the program shall be
155 precluded from bringing any other claim, civil action or proceeding for damages arising from the
156 same occurrence against the Nation, an entity of the Nation, or an employee of the Nation.

157
158 **203.5. Disability**

159 203.5-1. *Preexisting Disabilities.* If an employee suffers a compensable injury while receiving or
160 entitled to receive compensation for a previous injury in the same employment, the employee is
161 not entitled to compensation for both injuries at the same time unless the subsequent injury is
162 permanent. If an employee receives a permanent schedule injury after having sustained another
163 permanent injury in the same employment, the employee is entitled to compensation for both
164 injuries, but compensation will be paid by extending the period, not by increasing weekly
165 compensation payments. When previous and subsequent permanent injuries result in total
166 permanent disability, compensation is payable, but payments made for the previous injury are to
167 be deducted from the total compensation payments due. However, if the permanent injury for
168 which compensation is claimed results only in the aggravation or increase of a previously sustained
169 permanent injury or physical condition, regardless of the source or cause of the previously
170 sustained injury of physical condition, the Administrator will determine the extent of the
171 previously sustained permanent injury or physical condition, as well as the extent of the
172 aggravation or increase resulting from the subsequent permanent injury and will award
173 compensation only for that part of the injury, or physical condition resulting from the subsequent
174 permanent injury. Awards and compensation will deduct uncompensated permanency in their
175 calculation.

176 203.5-2. *Third Party Liabilities.* An employee or the employee's dependents may bring a third-
177 party action to recover damages, notwithstanding the employer's or insurer's payment of or
178 liability to pay compensation. If a third-party action is settled, the employer or insurer will receive
179 reimbursement for workers' compensation and medical benefits, supplies, and funeral expenses
180 paid to the employee or dependents. Liability of the employer or insurer for payment of further
181 benefits or expenses is terminated. Liability is terminated even if the employee or the dependents
182 have not received any compensation, medical benefits, supplies, or expenses. In the event that the
183 judgment against a third party is less than the employer's liability, the employee or dependents can
184 collect the judgment and repay the employer or insurer for benefits previously received. Nothing
185 in this section shall prevent an employee from taking the compensation he or she may be entitled
186 to under it and also maintaining a civil action against any physician, chiropractor, psychologist or
187 podiatrist for malpractice.

188 203.5-3. *Assumption of Risk.* Employees will not be held to have assumed the risks of the
189 employment in any case where the violation by the employer, agents, or employees of any rule,
190 direction, or regulation made by any public officer or commission contributed to the injury or death
191 of an employee. The employee will not be held to have assumed the risk of any defect in the place
192 of work furnished to the employee, or in the tool, implement or appliance furnished by the
193 employer, when the defect was, prior to injury, known to the employer, or by the exercise of
194 ordinary care might have been known by the employer in time to have repaired the same or to have
195 discontinued the use of the defective working place, tool, implement, or appliance. The burden of
196 proving that the employer was not knowledgeable of such defects is upon the employer.

197 203.5-4. *Employee Requirements.* No compensation is allowed for an injury or death due to the
198 employee's knowingly self inflicted injury, intoxication, or commission of a criminal offense. A
199 fifteen percent (15%) reduction in compensation is allowed for the knowing failure to use a safety
200 appliance, obey a reasonable written or printed rule of the employer that has been placed in a
201 conspicuous position in the workplace or in the employee handbook.

202

203 **203.6. Workers Compensation Benefits**

204 203.6-1. *Employer's Liabilities: Exclusivity.* With respect to any employee who sustains injury
205 or death arising out of and in the course of employment with the employer, such employer shall
206 be liable for the payment of compensation to such employee, the employee's surviving spouse or
207 children, or personal representative, as provided in this law. The liability of an employer to an
208 employee, *the employee's surviving spouse or children*, or the personal representative of an
209 employee for personal injury or death sustained by the employee in the course of employment is
210 prescribed by this law and is exclusive. This law replaces any and all rights and remedies an
211 employee, *the employee's surviving spouse or children*, or an employee's personal representative
212 may have under federal, tribal or state law, common law or the workers' compensation statutes of
213 any state against any employer for personal injury or death arising out of and in the course of
214 employment.

215 203.6-2. *Total Disability.* An employee is totally disabled if the employee is unable to perform
216 any available work activities, due to an injury sustained during the course of employment with the
217 employer. The amount of benefits for total disability shall be determined and published by rule
218 promulgated hereunder.

219 203.6-3. *Partial Disability.* An employee is partially disabled if, as a result of an injury sustained
220 during the course of employment with the employer, the employee is unable to earn the equivalent
221 of the employee's average weekly wage. The amount of benefits for partial disability shall be

222 determined and published by rule promulgated in accordance with levels set forth in section 203.6-
223 10.

224 203.6-4. *Waiting Period.* Compensation, other than payment of medical benefits, will be allowed
225 for temporary disabilities beginning with the third day of disability. Compensation will be allowed
226 for the first seven calendar days only if the disability continues for longer than fourteen (14) days
227 after the date of injury.

228 203.6-5. *Timing of Payments.* The first weekly installment of compensation for temporary
229 disability is due fourteen (14) days after the disability begins and the injured employee notifies the
230 employer that he/she is disabled with medical proof of the disability. Not later than fifteen (15)
231 days from the date that the first installment of compensation is due, the employer or insurer must
232 tender to the employee or dependents all compensation due.

233 203.6-6. *Employee's Average Wage.*

234 (a) *Employees Average Weekly Wage.* Earnings of the injured employee in the
235 employment in which the employee working at the time of the injury during the fifty-two
236 (52) week-period immediately preceding the date of the injury, divided by the number of
237 weeks worked. Whenever allowances of any character made to an employee in lieu of
238 wages are a specified part of the wage contract, those allowances will be considered as part
239 of the employee's earnings as well as any compensation to the employee which is subject
240 to Federal income tax:

241 (1) If the injured employee lost seven or more days during this period although not
242 in the same week, the earnings for the remainder of the fifty-two (52) weeks will
243 be divided by the number of weeks and parts thereof remaining after the time lost
244 have been deducted.

245 (2) If the employment prior to the injury extended over a period of less than fifty-
246 two (52) weeks, the aforementioned method of computation will apply if the results
247 are just and fair to both parties.

248 (3) If the employee has worked for the employer a short period of time or if the
249 employment is of a casual nature, average weekly wage will be determined by using
250 the average weekly amount during the fifty-two (52) weeks prior to the injury that
251 was being earned by a person in the same grade employed at the same work by the
252 same employer.

253 (b) *Employee's Average Daily Wage.* If the disability period involves a fractional week,
254 the indemnity shall be paid for each day of such week at the rate of one-sixth of the weekly
255 indemnity.

256 203.6-7. *Death Benefits.*

257 (a) Compensation varies according to the employees' wage up to the maximum wage in
258 effect at the time of injury. The maximum death benefit is four times the average annual
259 earnings to a maximum of one hundred twenty five thousand dollars (\$125,000.00). The
260 benefits are payable monthly the benefits are payable monthly and decreased by the amount
261 of indemnity benefit previously paid.

262 (b) *Benefits to the Surviving Spouse.* Fifty percent (50%) of the weekly wage will be paid
263 to the dependent spouse who is the sole dependent of the deceased. The spouse must have
264 lived with the deceased at the time of death and excludes common law spouse.

265 (c) *Benefits to a Surviving Spouse and One or More Dependent Children.* Sixty-six and
266 two-thirds percent (66 $\frac{2}{3}$ %) of weekly wage.

267 (d) *Benefits to Unmarried Children under Age 21.* Sixty-six and two-thirds percent
268 (66 $\frac{2}{3}$ %) of weekly wage if the unmarried child is dependent upon the parent and living
269 with the deceased parent at the time of death or upon whom state laws impose the obligation

270 to support the child. Dependency terminates when the child attains the age of twenty-one
271 (21).

272 (e) *Benefits to Unmarried Children over Age 21.* Sixty-six and two-thirds percent ($66\frac{2}{3}\%$)
273 of weekly wage if the child has never married and is physically or mentally incapacitated
274 from earning his or her own support until the disability ends or the maximum is paid
275 whichever occurs first.

276 203.6-8. *Dependency Terminates.* Upon the marriage of the dependent or upon maximum benefit
277 payout whichever comes first. Dependency will not be reinstated due to divorce. Benefits will
278 continue to be paid for children if the dependent spouse remarries until the dependent children's
279 dependency ceases or the maximum benefit is paid, whichever occurs first. Child includes
280 stepchildren, legally adopted children, posthumous children and acknowledged children born out
281 of wedlock when there has been obligation support legally imposed by the state.

282 203.6-9. *Miscellaneous Benefits.* Burial expenses payable by the employer are not to exceed five
283 thousand dollars (\$5,000) and paid upon the submission of proof of expense.

284 203.6-10. *Weekly Indemnity.* The weekly indemnity will be as follows:

285 (a) *Permanent Total Disability.* For injuries resulting in permanent total disability,
286 compensation equals sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the employee's average
287 weekly wage, benefits computed on the basis of the employee's wage subject to weekly
288 maximums and minimums appropriate to the time of injury.

289 (b) *Permanent Partial Disability - Impairment.* Sixty percent (60%) of wages for specified
290 periods up to one hundred and seventy-five dollars (\$175) per week, or if the injury is not
291 scheduled, a period proportionate to the degree of disability but not over five hundred (500)
292 weeks or one hundred and fifty thousand dollars (\$150,000) whichever occurs first.

293 (c) *Temporary Disability.* Compensation will be allowed for injuries producing only
294 temporary total disability to work or temporary partial disability to work beginning with
295 the eighth day of disability, except for medical benefits. Compensation will be allowed for
296 the first three calendar days only if the disability continues for longer than fourteen (14)
297 days after the date of injury *and results in twenty-one (21) consecutive days off work or*
298 *employment.* The first weekly installment of compensation for temporary disability is due
299 fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date
300 that the first installment of compensation is due, the employer or insurer must tender to the
301 employee or dependents all compensation due. The maximum compensation will be *based*
302 *on* fifty (50) weeks of average weekly wage or one year's salary whichever occurs first *as*
303 *further identified in subsections (d) and (e) of this section.*

304 (d) *Temporary Total Disability.* The employee will receive temporary total disability
305 compensation benefits equal to sixty percent (60%) of the average weekly wage not to
306 exceed two hundred (200) weeks.

307 (g) *Temporary Partial Disability.* The employee may receive temporary partial disability
308 benefits equal to sixty percent (60%) of the difference between the average weekly wage
309 and actual weekly wage, not to exceed fifty (50) weeks or one (1) years average weekly
310 wage, whichever occurs first.

311 (h) *Permanent Disabilities.* Minimum percentages of loss of use for amputation level,
312 losses of motion, sensory losses and surgical procedures as set out herein. The percentages
313 assume that the member, the back, etc., was previously without disability. Only
314 percentages exceeding seven and one half percent ($7\frac{1}{2}\%$) will be deemed compensable.

315 203.6-11. *Permanent Partial Disability Schedule.* In cases included in the following schedule of
316 permanent partial disabilities indemnity shall be paid for the healing period and in addition, for the

317 period specified, at the rate of two-thirds of the average weekly earnings of the employee, to be
318 computed as provided in section 203.6-6:

DISABILITY	BENEFIT
Loss of arm at shoulder	500 weeks
Loss of arm at elbow	450 weeks
Loss of a non-dominant hand	400 weeks
Loss of the dominant hand	450 weeks
Loss of a palm where the thumb remains	325 weeks
Loss of a thumb and the metacarpal bone thereof	160 weeks
Loss of a thumb at the proximal joint	120 weeks
Loss of a thumb at the distal joint	50 weeks
Loss of all fingers on one hand at their proximal joints	225 weeks
Loss of index finger and the metacarpal bone thereof	60 weeks
Loss of index finger at the proximal joint	50 weeks
Loss of index finger at the second joint	30 weeks
Loss of index finger at the distal joint	12 weeks
Loss of middle finger and the metacarpal bone thereof	45 weeks
Loss of middle finger at the proximal joint	35 weeks
Loss of middle finger at the second joint	20 weeks
Loss of middle finger at the distal joint	8 weeks
Loss of ring finger and the metacarpal bone thereof	26 weeks
Loss of ring finger at the proximal joint	20 weeks
Loss of ring finger at the second joint	15 weeks
Loss of ring finger at the distal joint	6 weeks
Loss of little finger and the metacarpal bone thereof	28 weeks
Loss of little finger at the proximal joint	22 weeks
Loss of little finger at the second joint	16 weeks
Loss of little finger at the distal joint	6 weeks
Loss of leg at the hip	500 weeks
Loss of leg at the knee	425 weeks
Loss of a foot at the ankle	250 weeks
Loss of great toe with the metatarsal bone thereof	84 weeks
Loss of great toe at the proximal joint	25 weeks
Loss of great toe at the distal joint	12 weeks
Loss of second toe with the metatarsal bone thereof	25 weeks
Loss of second toe at the proximal joint	8 weeks
Loss of second toe at the second joint	6 weeks
Loss of second toe at the distal joint	4 weeks
Loss of the third, fourth or little toe with the metatarsal bone thereof	20 weeks
Loss of the third, fourth or little toe at the proximal joint	6 weeks
Loss of the third, fourth or little toe at the second or distal joints	4 weeks
Loss of an eye by enucleation or evisceration	275 weeks
Total impairment of one eye for industrial use	250 weeks
Total deafness from accident or sudden trauma	330 weeks
Total deafness of one ear from accident of sudden trauma	55 weeks
Loss of movement due to injury to spine	500 weeks

319 203.6-12. *Denial of Liability.* If the employer denies liability, the employer must inform the
320 employee or dependents of the denial. Notice of the denial must be made in writing and mailed
321 not later than thirty (30) days after the employer's knowledge of the injury and the employee's
322 provision of medical proof.

323 203.6-13. *Apportionment.* If any portion of the permanent impairment rating is attributable to a
324 preexisting condition, whether previously rated or not, the employee shall receive permanent
325 impairment benefits only for that portion of the permanent injury attributable solely to the work
326 injury.

327 203.6-14. *Occupational Deafness.* This means permanent partial or permanent total loss of
328 hearing of one or both ears due to prolonged exposure to noise in employment. "Noise" means
329 sound capable of producing occupational deafness. "Noisy employment" means employment in a
330 circumstance of which an employee is subjected to noise beyond those common to occupational
331 and/or non-occupational life and is predominantly work related.

332 (a) No benefits shall be payable for temporary total or temporary partial disability under
333 this section for loss of hearing due to prolonged exposure to noise.

334 (b) No payment shall be made to an employee under this section unless the employee shall
335 have worked in the noisy employment for a total period of at least one hundred and eighty
336 (180) days for the employer from whom the employee claims compensation.

337 (c) The employer is liable for the entire occupational deafness to which his or her
338 employment has contributed; but if previous deafness is established by a hearing test or
339 other competent evidence, whether or not the employee was exposed to noise within the
340 two (2) months preceding such test, the employer is not liable for previous loss so
341 established nor is the employer liable for any loss for which compensation has previously
342 been paid.

343 (d) No compensation may be paid for tinnitus.

344 (e) Compensation for permanent partial disability due to occupation deafness may be paid
345 only if the loss of hearing exceeds thirty percent (30%) of binaural hearing loss.

346 (f) Hearing impairment determinations will be made using the methods and Hearing
347 Impairment Tables identified in regulations.

348 203.6-15. *Vision Loss.* Vision loss determinations will be made using methods and Vision
349 Impairment Tables identified in regulations.

350

351 **203.7. Termination of Benefits**

352 203.7-1. Receipt of Social Security Retirement Benefits by the employee will be considered
353 conclusive evidence of retirement, and the liability of the employer for payment of further
354 disability benefits will cease.

355 203.7-2. Once begun, temporary total disability benefits may not be terminated by the employer
356 unless:

357 (a) the employee has returned to work, with any employer in a similar position;

358 (b) the employee has died;

359 (c) the employee has refused to undergo a medical examination as prescribed in section
360 203.8-5;

361 (d) the employee has received two hundred and fifty (250) weeks of benefits or has been
362 paid the maximum compensation allowed;

363 (e) the employee has refused modified, early return to work, light duty or transitional job
364 assignment;

365 (f) Employee receives Social Security Retirement Benefits;

- 366 (g) the employee is unable or unavailable to work for reasons unrelated to the compensable
367 injury;
368 (h) the employee is terminated for misconduct;
369 (i) the employee fails to cooperate with reasonable medical or vocational rehabilitation;
370 (j) the employee fails to maintain contact with the employer at least two times per month,
371 at reasonable intervals identified by the employer from the date of medical assessment.

372 This section shall not be construed to require the employee to undergo surgery nor to require the
373 employer to provide vocational rehabilitation.

374 203.7-3. *Maximum and Minimum Weekly Compensation Payments.* To be reviewed on a periodic
375 basis, payments for death, temporary and permanent total disability, and for temporary partial
376 disability are computed on the basis of the employee's average weekly wage, within the following
377 limits:

- 378 (a) *Maximum Weekly Wage for Temporary, Permanent, Total & Death Benefits:*
379 (1) For injuries occurring after December 31, 1999, the average weekly benefit
380 must not be more than five hundred dollars (\$500) or less than fifty dollars (\$50).
381 (2) In no case will the weekly compensation payable exceed the average weekly
382 wages of the employee at the time of death.
383 (b) *Maximum Wage for Permanent Partial Only.* For injuries occurring after December
384 31, 1999, the maximum weekly benefit will be one hundred and seventy-five dollars
385 (\$175).

386 203.7-4. *Claims of Creditors.* Compensation awards are subject to child support income
387 withholding and other remedies available for the enforcement of a child support order. The
388 maximum amount that may be withheld is one-half of the compensation award.

389
390 **203.8. Medical and Surgical Aid**

391 203.8-1. *Choice of Provider.* The choice of a provider is generally made by the employer.
392 Provided that, the employee may select a physician, surgeon, or other provider and the employer
393 may be required to reimburse fifty percent (50%) of reasonable expenses.

394 203.8-2. *Benefits.* The employer must supply free of charge to the employee, all reasonable and
395 necessary first aid, medical, surgical and hospital services incurred by the employee as a direct
396 result of a compensable injury. Benefits payable under any policy of no-fault automobile insurance
397 will be primary to benefits payable by the employer. The employer may require the employee to
398 seek services, equipment and medicines at, or from, specified medical providers and facilities.
399 Non compliance with these requirements will reduce or relieve the employer of liability of medical
400 payments until such time compliance is met. Compensation will not be paid to an employee who
401 refuses medical treatment. Likewise, any permanent disability from this refusal is non-
402 compensable. The employer will supply the employee with the group of physicians they can
403 access. In cases of an emergency the employee can elect the physician of their choice. However
404 when the emergency passes, the employee must seek follow up medical attention from the
405 specified physicians supplied by the employer. If the employer requires the employee to submit
406 to treatment outside the county of employment, and further than thirty (30) miles from the place
407 of employment the employer must also pay reasonable travel expenses, not to exceed the limits of
408 the employers travel policies. The employer must supply the following services and supplies:

- 409 (a) Medical
410 (b) Surgical
411 (c) Psychological
412 (d) Podiatric

- 413 (e) Dental
- 414 (f) Hospital treatment
- 415 (g) Prescription Medicines
- 416 (h) Medical and surgical supplies
- 417 (i) Crutches
- 418 (j) Artificial limbs (liability for repair and replacement is limited to the effects of normal
- 419 wear and tear)
- 420 (i) Appliances
- 421 (k) Training in use of artificial limbs and appliances

422 203.8-3. *Utilization Review*. The employer liability for medical, surgical, hospital, and nursing
423 care will be limited to those charges that prevail in the same community for similar services to
424 injured persons of like standard of living when the service is paid for by the injured person.

425 203.8-4. *Fee Schedules*. Fee schedules may be followed as negotiated by the employer with any
426 provider network or individual, or clinics but may not exceed the fee schedule of the state of the
427 employment.

428 203.8-5. *Independent Medical Exams*. An employee must, if requested in writing by the employer
429 submit to reasonable exams by medical practitioner, chiropractor, podiatrist, psychologists,
430 dentists, or vocational experts, provided and paid for by the employer. Expenses will be paid by
431 the employer, including transportation.

432 203.8-6. *Refusal to Submit*. If the employee refuses to submit to or in any way obstructs the
433 examination, the responsibility of the employer for payment of medical expenses incurred after
434 the scheduled date of the examination will cease. Likewise, the employer's responsibility for
435 payment of all other benefits accruing ceases immediately upon the failure to appear.

436 203.8-7. *Rehabilitation*. "Physical rehabilitation" means the restoration of the seriously injured
437 person as soon as possible to a condition of gainful employment. The Administrator or the
438 employer may contract for the services of a rehabilitation consultant to assist the employee in
439 rehabilitation and return-to-work efforts. Rehabilitation may be provided to the employee at the
440 sole option of the administrator and the employer at the expense of the employer or insurer. It is
441 administered by the Employee Benefits Department, who also may provide transportation. At the
442 option of the Administrator and the employer, the employee may receive temporary total benefits
443 while the employee is actively engaged in a program of rehabilitation which is reasonable and
444 designed to restore the employee to gainful employment. Initial rehabilitation plan may not exceed
445 26 weeks, and only the employer may extend the period of the plan for an additional 26 week
446 period.

447 203.8-8. *Vocational Rehabilitation*. Vocational Rehabilitation may be provided to the employee
448 at the sole option of the administrator and the employer at the expense of the employer or insurer.
449 It is administered by the Employee Benefits department, who also may provide transportation. At
450 the option of the Administrator and the employer, the employee may receive temporary total
451 benefits while the employee is actively engaged in a program of rehabilitation which is reasonable
452 and designed to restore the employee to gainful employment. Initial rehabilitation plan may not
453 exceed 52 weeks, and only the employer may extend the period of the plan for an additional 26
454 week period.

455 203.8-9. *Refusal to Undergo Rehabilitation*. Failure by the employee to cooperate in rehabilitation
456 efforts will result in a fifty percent (50%) reduction in temporary total or temporary partial benefits.
457 Refusal by the employee to undergo rehabilitation will terminate the responsibility of the employer
458 for payment of all benefits and medical expenses thereafter.

459

460 **203.9. Notices, Reports and Limitations**

461 203.9-1. *Notice of the Injury.* No compensation shall be due under this law unless, the employee,
462 or another on behalf of the employee, reports the injury to the employee's supervisor, manager or
463 the employers designated representative within forty-eight (48) hours of the accident causing the
464 injury. No compensation or medical benefits will be paid if a written notice of injury is not given
465 to the employer within ten (10) calendar days of the date the employee first reports the injury. If
466 the injury incapacitates the employee, the ten (10) day time limitation will not begin until the
467 incapacity ends. A repetitive traumatic injury is deemed to have occurred when the employee
468 knows or has reason to know that the injury caused the employee to be unable to work, whichever
469 occurs first.

470 203.9-2. *First Report of Injury.* Upon actual knowledge of the occurrence of an injury or upon
471 written or verbal notice from the employee or another on behalf of the employee, the employer
472 will complete a report of injury and file it with the Administrator within forty-eight (48) hours.

473 203.9-3. *Limitations of Claims.* No compensation benefits shall be paid or awarded under this
474 Law unless the written claim for benefits is made within one hundred and eighty (180) days of the
475 date of the claimed injury. In the case of mental or physical incapacity or minority, the period of
476 limitation shall be extended for one hundred and eighty (180) days from the date that the incapacity
477 ceases.

478 203.9-4. *Notice of Injury Pursuant to May 1, 2021 Incident.* An employee requesting consideration
479 for compensable injuries under the Oneida Worker's Compensation law for mental harm sustained
480 on the evening of May 1, 2021 during the shooting incident at the Radisson, shall report the mental
481 harm to the employee's supervisor, manager, or employer's designated representative within sixty
482 (60) days of the incident. An employee requesting consideration for compensable injuries under
483 the Oneida Worker's Compensation Law for physical harm sustained on the evening of May 1,
484 2021 during the shooting incident at the Radisson, shall report the physical harm to the employee's
485 supervisor, manager, or employer's designated representative within thirty (30) days of the
486 incident. The deadlines within this subsection preempt the forty-eight (48) hour time limit to report
487 injuries within section 203.9-1. The time limit within section 203.9-1 shall not apply to injuries
488 sustained pursuant to the May 1, 2021 shooting incident at the Radisson.

489 **203.10. Administration and Claims Procedures**

491 203.10-1. *Administrator.* The Business Committee shall have the authority to designate an
492 Administrator, enter into contracts for administrative services and expend such funds as is
493 necessary to pay for all administrative costs incurred in furtherance of this law. The Administrator
494 will act on behalf of the Oneida Nation in receiving and processing workers' compensation claims.
495 The Administrator is responsible for determinations and decisions not limited to the following:

496 (a) Make determinations based on investigations and available medical information
497 regarding the liability of the employer and approve or deny the claim. The Administrator
498 will notify the employer and employee of its determination within the time constraints
499 listed previously.

500 (b) Determine amounts payable according to fee schedules, compliance with provider
501 arrangements, and disability schedule.

502 (c) Utilizing the appropriate guidelines the Administrator will determine the compensation
503 rate payable for temporary total disability, temporary partial disability, permanent partial
504 disability and dependency.

505 (d) The Administrator will determine the length of time during which temporary total
506 disability or temporary partial disability benefits are payable. The Administrator will also
507 determine the amount of permanent partial disability benefits payable.

508 (e) Determination of the eligibility of dependents and the term of any dependency benefits
509 payable.

510 (f) Determine the claims of creditor allocations,

511 (g) Notify the employee and employee in writing of the preexisting limitations when
512 applicable.

513 203.10-2. *Timing of Payments.*

514 (a) *Indemnity Payments.* The first weekly installment of compensation is due fourteen
515 (14) days after the disability begins. Not later than fifteen (15) days from the date that the
516 first installment of compensation is due, the employer or insurer must tender to the
517 employee or dependents all compensation due. Once temporary or permanent total
518 disability benefits have begun, they must continue to be paid on a regular basis on the date
519 the employee would have received wages from the employer had the employee continued
520 working subject to discontinuance and the limitations otherwise provided for under this
521 law. Payment of temporary partial disability benefits is due ten (10) days following the
522 date the employer or employee sends wage verification to the Administrator.

523 (b) *Medical Expenses.* Payment or reimbursement of medical expenses are due within
524 thirty (30) days after receipt by the Administrator of itemized billing and medical records
525 or reports documenting the reasonableness and necessity of the medical service(s).

526 203.10-3. *Denial of Claim.* A denial of primary liability or a denial of a period of total or partial
527 disability, permanent impairment disability or medical benefits must:

528 (a) be made in writing by the Administrator

529 (b) contain the specific reason for the denial in language easily readable and
530 understandable to a person of average intelligence and education,

531 (c) clearly state the facts forming the basis for the denial.

532 The denial must include information identifying the employee, the date of claimed injury, claim
533 number, the name and telephone number of the person making the decision, and instruction to the
534 employee of the rules and time limitations for challenging the denial.

535 203.10-4. *Discontinuance of Benefits.* The Administrator may discontinue weekly compensation
536 benefits by serving a written notice on the employee. The notice must identify the employee, the
537 date of claimed injury, claim number, the type of benefits being reduced or discontinued, the
538 effective date of the discontinuance and the reason for the discontinuance. The notice must be
539 written in language easily readable and understandable to a person of average intelligence and
540 education and contain sufficient detail to inform the employee of the factual basis for
541 discontinuance. The notice must also include an itemization of previous benefits paid, the name
542 and telephone number of the person making the decision and copies of any evidence, medical or
543 otherwise upon which the discontinuance is based. The Administrator shall enclose a claim
544 petition with instruction for completion and filing.

545 203.10-5. *Claim Petition.* The Administrator shall provide the employee with a claim petition
546 form with every notice of reduction, denial or discontinuance of benefits. If an employee objects
547 to the denial of a claim or to a reduction or discontinuance of benefits, the employee may file a
548 claim petition with the Hearing Body within twenty-one (21) days of the receipt by the employee
549 of the reduction, denial or discontinuance. The claim petition shall contain the name of the
550 employee, the date of injury, claim number, the type of benefits being sought, the basis of the claim
551 for benefits and any evidence, medical or otherwise, in support of the employee's claim. Failure

552 to file the claim petition within thirty (30) days will result in loss of right of the employee to pursue
553 those benefits affected by the reduction, denial or discontinuance.

554 203.10-6. *Settlements*. No lump sum settlement is allowed in any case of permanent total
555 disability on an estimated life expectancy, except on consent of all parties, after hearing and finding
556 by the appointed body that the interests of the injured employee will be conserved. Settlements
557 will not be paid for permanency of less than seven and one-half percent (7½%).

558 203.10-7. *Method of Service*. All notices, decisions, or orders provided for in this law may be
559 served personally or by the United States mail. Time periods shall be calculated starting on the
560 day following the beginning of the period, and shall include weekends and holidays.

561 203.10-8. *Recoupment of Overpayment*. Payment of compensation made under a mistake of fact
562 or law by the employer or Administrator may be recouped from future payments of compensation
563 to the employee, whether for the same injury or not, or from the employee's wages with the
564 employer, if any. Overpayments may not be recouped against medical expenses due or payable.

565 203.10-9. *Fraud and Misrepresentation*. Intentional misrepresentation by an employee resulting
566 in benefits paid under this law shall allow the employer to bring an action at law in any court of
567 competent jurisdiction against the employee to collect benefits paid as a result of the intentional
568 misrepresentation.

569 203.10-10. In cases where it is determined that periodic benefits granted by the federal social
570 security act are paid to the employee because of disability, the benefits payable under this law shall
571 be reduced as set out in this section. This provides that any offset is taken on the compensation
572 benefits rather than the social security benefits. The injured worker is to receive the same total
573 amount from the continued benefits that he or she would have received before the offset was
574 figured on the worker's compensation benefits but not less than the benefits payable under this law.
575 Attorney fees and costs are not offset.

576 (a) For each dollar that the total monthly benefits under this law, excluding attorney fees
577 and costs, plus the monthly benefits payable under the social security act for disability
578 exceed seventy-five percent (75%) of the employee's average current earnings as
579 determined by the social security administration, the benefits payable under this law shall
580 be reduced by the same amount so that the total benefits payable shall not exceed seventy-
581 five percent (75%) of the employee's average current earnings. However, no total benefit
582 payable under this law and under the federal social security act may be reduced to an
583 amount less than the benefit payable under this law.

584 (b) No reduction under this section shall be made because of an increase granted by the
585 social security administration as a cost of living adjustment.

586 (c) Failure of the employee, except for excusable neglect, to report social security disability
587 payments within thirty (30) days after written request shall allow the employer or insurance
588 carrier to reduce weekly compensation benefits payable under this law by seventy-five
589 (75%). Compensation benefits otherwise payable shall be satisfactory proof of the basis
590 for reduction.

591 (d) The reduction prescribed by this section shall be allowed only as to payments made on
592 or after July 1, 1980, and shall be computed on the basis of payments made for temporary
593 total, temporary partial, permanent total, and permanent partial disability.

594 (e) No reduction shall take into account payments made under the social security act to
595 dependents of an employee.

596

597 **203.11. Hearing Body and Authority**

598 203.11-1. *Designation of Hearing Body.* The Judiciary is delegated the responsibility to create an
599 original hearing body with the authority to hear, determine and review all claims for compensation
600 until such time as a determination can be made regarding the need for a permanent hearing body
601 to hear issues arising under this law. The hearing body also has the authority to require medical
602 services for injured employees, approve claims for medical services, attorney fees, and charges for
603 nurses and hospitals. Additionally, the hearing body has the power to approve agreements, modify
604 or change awards, make conclusions of facts and rulings of law, certify questions of law, and
605 approve deductions in the compensation made by employers for amounts paid in excess of the
606 amount required by law. The hearing body can also approve agreements between an employer
607 and an employee or the employee's dependents for the cash payment of compensation in a lump
608 sum or, in the case of a person under eighteen (18) years of age, to order cash payments. Physical
609 examination, administering oaths and witness subpoenas can also be ordered by the hearing body.
610 Lastly the hearing body is authorized to assess and collect any penalties.

611 203.11-2. *Appeals Process.* If the employer, injured employee, or dependents disagree in regard
612 to the Administrator's determination of compensation payable, extent of disability, the continuance
613 of payments under the agreement or the amount to be paid because of a change in condition, either
614 party may petition the hearing body for resolution of the dispute. The petition must be submitted
615 within twenty-one (21) days after the Administrator mails a copy of their determination regarding
616 compensation payable, extent of disability, the continuance of payments under the agreement or
617 the amount to be paid because of a change in condition. The hearing body will determine whether
618 to hear the appeal. If the hearing body decides to hear the appeal, the hearing body will notify the
619 parties and their respective representatives in writing of the time and place of the hearing. If the
620 hearing body determines not to hear the appeal, the hearing body will issue and order to that effect
621 and notify the parties and their representatives in writing of that order. Upon the filing of an
622 application, the hearing body will set a hearing date and notify the employer, employee, and
623 attorneys of record. The hearing body will consider evidence, hear witnesses, receive exhibits and
624 make its determination based on the preponderance of evidence and credibility of the evidence and
625 witnesses. The burden of proof in any hearing of the appeals process will be on the employee or
626 dependents. The cost of legal representation at any hearing of the appeals process will be the
627 responsibility of the employee or dependents. The hearing of all claims for compensation for
628 injuries will be held on the Reservation. All decisions of the hearing body are final. The decision
629 must be issued in writing, and copies must be mailed to all interested parties. The decision must
630 detail the final determination of the hearing body on all issues.

631 203.11-3. *Examination; Competent Witnesses.*

632 (a) Any physician, chiropractor, psychologist, podiatrist, or vocational expert who is
633 present at any examination may be required to testify as to the results thereof.

634 (b) Any physician, chiropractor, psychologist, podiatrist, or vocational expert who
635 attended a worker's compensation claimant for any condition or complaint reasonably
636 related to the condition for which the claimant claims compensation may be required to
637 testify before the hearing body when it so directs.

638 (c) The testimony of any physician, chiropractor, psychologist, or podiatrist who is
639 licensed to practice where he or she resides or practices in any state and the testimony of
640 any vocational expert may be received in evidence in compensation proceedings.

641 (d) Expert medical or vocational testimony may be provided by written report on a form
642 to be drafted by the employer so long as that expert is available for cross examination.

643 203.11-4. *Costs.* Costs for all proceedings before the hearing will be awarded and taxed as
644 provided by the law in ordinary Judiciary court actions and paid by the Nation. However, if the
645 hearing body determines that any proceedings have been brought, prosecuted, or defended without
646 reasonable ground, it may assess the whole cost of the proceedings upon the party who brought,
647 prosecuted, or defended them.

648

649 **203.12. Accident Reports Required**

650 203.12-1. Employer must keep a record of all accidents causing the death or disability of any
651 employee that occur while the employee is performing services during the course of employment.
652 The record must state:

- 653 (a) name, address, age and wages of the employee;
- 654 (b) time and cause of the accident
- 655 (c) nature and extent of the injury
- 656 (d) any other information that may be deemed necessary

657

658 **203.13. Occupational Diseases**

659 203.13-1. *Coverage.* “Occupational disease” means a disease arising out of and in the course of
660 employment. Ordinary diseases of life to which the general public is exposed outside of the
661 employment are not compensable.

662 Claims based on mental conditions or mental disabilities caused by stress do not fall within the
663 definition of “occupational disease.” No employee of any covered employer will have any right
664 to any other method, form or amount of compensation or damages for the contraction of an
665 occupational disease or for injury, disability, loss of service or death resulting from the disease,
666 arising out of and in the course of employment, or determination thereof, in any manner other than
667 as provided. Unless otherwise specifically provided, no employer and no officer, director, agent,
668 or employee of the employer will be held civilly liable for the contraction of an occupational
669 disease or for injury, disability, loss of service or death of any employee due to an occupational
670 disease.

671 203.13-2. *Nature of Employment.* The disease must have resulted from the nature of the
672 employment in which the employee was engaged and must have actually been contracted while so
673 employed. The nature of employment means:

- 674 (a) that it involves a particular hazard of such disease that distinguishes it from the usual
675 run of occupations; or
- 676 (b) the incidence of such disease is substantially higher in the occupation in which the
677 employee was so engaged than in the usual run of occupations; or
- 678 (c) in the case of death, unless death follows continuous disability from the disease and
679 results within 250 weeks after the last work related exposure.

680 No compensation is allowed for any condition of physical illness, mental illness or stress,
681 disability, disablement or death for which compensation is recoverable on account of an accidental
682 injury. Claims based on mental conditions or mental disabilities caused by stress do not fall within
683 the definition of “occupational disease”.

684 203.13-3. *Nature of Injury.* An employer will not be liable for any compensation for an
685 occupational disease unless such disease is due to the nature of an employment in which the
686 hazards of such disease actually exist, and which hazards are characteristic thereof and peculiar to
687 the trade, occupation, process, or employment, and such disease actually arises out of the
688 employment, and unless disablement or death results within three years in case of pneumoconiosis,
689 or within one year in case of any other occupational disease, after the last injurious exposure to

690 such disease in such employment, or in case of death, unless death follows continuous disability
691 from such disease commencing within the period above limited for which compensation has been
692 paid or awarded or timely claim made and results within six years after such exposure. In any case
693 where disablement or death was caused by latent or delayed pathological conditions, blood, or
694 other tissue changes or malignancies due to occupational exposure to x-rays, radium, radioactive
695 substances or machines, or ionizing radiation the employer will not be liable for any compensation
696 unless claim is filed within 30 days after disablement or death. "Disablement" means the event of
697 becoming disabled from earning full wages at the work in which the employee was engaged when
698 last exposed to the hazards of the occupational disease. "Disability" means the state of being
699 incapacitated.

700 203.13-4. *Statute of Limitations - Date of injury.* For occupational diseases other than
701 pneumoconiosis and radiation, date of injury is the date of the last exposure to the hazards of the
702 disease in the employment of the employer in whose employment the employee was last exposed
703 to the hazards of the disease. For purposes of pneumoconiosis and radiation, date of injury means
704 the date of the last exposure to the hazards of the disease in the employment of the employer in
705 whose employment the employee was last exposed to the hazards of the disease in each of at least
706 twelve (12) months, within a period of five (5) years prior to the date of the injury.

707 Written notice of the contraction of an occupational disease must be given to the employer
708 by the employee or by someone on such employee's behalf within thirty (30) days after the first
709 distinct manifestation, or in the event of death, within thirty (30) days after the death.

710 203.13-5. *Burden of Proof.* There is no presumption that disablement or death from any cause of
711 infirmity is the result of an occupational disease or that an occupational disease will result in
712 disablement or death. Anyone claiming compensation or other benefits has the burden of
713 establishing entitlement to the benefits.

714 203.13-6. *Time Limit on Filing Claims.* Claims will be denied unless an employee's claim for
715 compensation is filed within two (2) years after the date of disablement. Dependents must file
716 claim within two (2) years after the date of death. There is no limitation of time against any person
717 who is mentally incompetent or minor dependent, as long as there is in place a guardian or trustee.

718 203.13-7. *Lung Diseases - Emphysema.* Compensation will not be payable for pulmonary
719 emphysema or other types of emphysema unless it is proved by clear and convincing medical
720 evidence to a reasonable probability that the emphysema was caused solely by the employment.
721 If it is proved that the emphysema was aggravated and contributed to by the employment,
722 compensation will be payable for the resulting condition of the worker, but only to the extent that
723 the condition was so aggravated.

724 203.13-8. *Awards.*

725 (a) *Amount of Compensation.* Waiting periods will follow those listed in section 203.6.
726 The compensation and benefits provided for occupational diseases are paid in the same
727 manner as compensation and benefits for injuries as listed in section 203.6. Where an
728 employee claims to be suffering from both an injury and an occupational disease, the
729 administrator shall determine whether the disease or the injury or both, are related to the
730 disability and shall order compensation awarded for both injury and disease not to exceed
731 the amount payable for the total percentage of disability.

732 (b) *Aggravation.* Aggravation of an occupational disease by any other disease or infirmity
733 that is not of itself compensable reduces compensation to the proportion of the
734 compensation that would be payable if the occupational disease were the sole cause of the
735 disability or death as the occupational disease bears to all the causes of the disability or
736 death. The reduction is effected by reducing the number of weekly or monthly payments
737 or the amounts of the payments.

738

739 *End.*

740

741

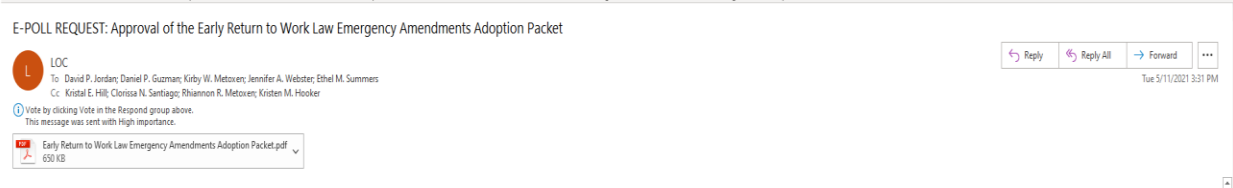
742 Adopted- BC-07-07-99B

743 Amended – BC-06-25-14-B (effective 11/01/14)

744 Emergency Amended – BC-__-__-__-__

May 11, 2021 Legislative Operating Committee E-Poll

Approval of the Early Return to Work Law Emergency Amendments Adoption Packet



Good Morning Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Early Return to Work law emergency amendments adoption packet.

EXECUTIVE SUMMARY

Emergency amendments to the Early Return to Work law (“Law”) are being sought to address the effects of the May 1, 2021 shooting incident at the Radisson on employees of the Nation. The emergency amendments to the Law are being sought to ensure that employees of the Nation on duty at or around the main Oneida Casino, the Irene Moore Activity Center (IMAC), or on the grounds encompassing the Oneida Casino, IMAC, and the Radisson Hotel and Conference Center (Radisson) on the evening of May 1, 2021 have access to the necessary resources to address their mental health needs as a result of the May 1, 2021, shooting incident. The emergency amendments will add an exception to section 209.4-4 of the Law that reads as follows:

209.4-4. Except as provided for in subsection (a), below, a mental/behavioral health condition is not considered an Early Return to Work condition.

(a) *Exception.* An employee on duty at or around the main Oneida Casino, Irene Moore Activity Center, or on the grounds encompassing the Oneida Casino, Irene Moore Activity Center and the Radisson Hotel and Conference Center on the evening of May 1, 2021, during the shooting incident, and diagnosed with a mental health injury as a result of that incident, shall not be subject to the above limitation and may be considered for modified duty, subject to the review and approval of the EHN.

The Oneida Business Committee is delegated the authority to temporarily enact emergency legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency amendments to a law of the Nation. [1 O.C. 109.9-5(a)].

The emergency amendments to this Law are necessary for the preservation of the health and safety of our Reservation population and the Nation’s employees in order to address the mental health needs that resulted from the May 1, 2021 incident at the Radisson. Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this law would be contrary to public interest. The Nation must act expeditiously to assist the employees on duty at the main Oneida Casino, the IMAC, or

on the grounds encompassing the Oneida Casino, IMAC, and the Radisson on the evening of May 1, 2021 to ensure their mental health needs are addressed through the Law.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months. There will be one (1) opportunity to extend the emergency amendments to this Law for an additional six (6) month period. [1 O.C. 109.9-5(b)].

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is not scheduled until May 19, 2021, and immediate action is required by Legislative Operating Committee to approve the materials for the Early Return to Work law emergency amendments adoption packet so that the adoption of the emergency amendments to this law can be submitted to the Oneida Business Committee for consideration on the May 12, 2021, meeting agenda.

REQUESTED ACTION

Add the Early Return to Work law emergency amendments to the Active Files List with David P. Jordan as the sponsor, and approve the Early Return to Work law emergency amendments adoption packet and forward to the Oneida Business Committee.

DEADLINE FOR RESPONSE

May 11, 2021 at 5:30 p.m.

All supporting documentation has been attached to this email for your convenience.



A good mind. A good heart. A strong fire.

E-POLL RESULTS:

The e-poll was approved by Jennifer Webster, David P. Jordan, Kirby Metoxen, Marie Summers, and Daniel Guzman-King.

RE: E-POLL REQUEST: Approval of the Early Return to Work Law Emergency Amendments Adoption Packet

David P. Jordan

To: LOC, Daniel P. Guzman; Kirby W. Metoxen; Jennifer A. Webster; Ethel M. Summers; David P. Jordan
Cc: Kristal E. Hill; Cloressa N. Santiago; Rhiannon R. Metoxen; Kristen M. Hooker

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⋮

Tue 5/11/2021 3:34 PM

Approve 2nd E-Poll

Re: E-POLL REQUEST: Approval of the Early Return to Work Law Emergency Amendments Adoption Packet

Kirby W. Metoxen

To: David P. Jordan; LOC; Daniel P. Guzman; Jennifer A. Webster; Ethel M. Summers
Cc: Kristal E. Hill; Cloressa N. Santiago; Rhiannon R. Metoxen; Kristen M. Hooker

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Tue 5/11/2021 3:36 PM

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Approve

Re: E-POLL REQUEST: Approval of the Early Return to Work Law Emergency Amendments Adoption Packet



Jennifer A. Webster

To: Daniel P. Guzman; Kirby W. Metoxen; David P. Jordan; LOC; Ethel M. Summers
Cc: Clorissa N. Santiago; Rhiannon R. Metoxen; Kristal E. Hill; Kristen M. Hooker

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Approving the 2nd Epoll.
Jenny

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Tue 5/11/2021 3:39 PM

RE: E-POLL REQUEST: Approval of the Early Return to Work Law Emergency Amendments Adoption Packet



Ethel M. Summers

To: LOC; David P. Jordan; Daniel P. Guzman; Kirby W. Metoxen; Jennifer A. Webster
Cc: Kristal E. Hill; Clorissa N. Santiago; Rhiannon R. Metoxen; Kristen M. Hooker

Approve.

Yaw'ko,
Marie Summers
Councilwoman
Oneida Business Committee

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Tue 5/11/2021 3:49 PM

RE: E-POLL REQUEST: Approval of the Early Return to Work Law Emergency Amendments Adoption Packet



Daniel P. Guzman

To: LOC; David P. Jordan; Kirby W. Metoxen; Jennifer A. Webster; Ethel M. Summers
Cc: Kristal E. Hill; Clorissa N. Santiago; Rhiannon R. Metoxen; Kristen M. Hooker

Approve

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Tue 5/11/2021 3:58 PM



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson DJ
DATE: May 12, 2021
RE: Early Return to Work Law Emergency Amendments

Please find the following attached backup documentation for your consideration of the emergency amendments to the Nation's Early Return to Work law:

1. Resolution: Emergency Amendments to the Early Return to Work Law
2. Statement of Effect: Emergency Amendments to the Early Return to Work Law
3. Early Return to Work Law Emergency Amendments Legislative Analysis
4. Early Return to Work Law (Redline)
5. Early Return to Work Law (Clean)

Overview

This item comes before the Oneida Business Committee in response to the tragic mass shooting that took place on the evening of May 1, 2021, at and around the Radisson Hotel and Conference Center ("Radisson"). Emergency amendments to the Nation's Early Return to Work law are being sought to address the effects that the shooting may have had on the mental health of those employees of the Nation who were on duty at or around the main Oneida Casino ("Casino"), Irene Moore Activity Center ("IMAC"), or on the grounds encompassing the Casino, IMAC, and Radisson on May 1, 2021, during the time of the shooting incident.

The Nation's Early Return to Work law ("Law") was adopted by the Oneida Business Committee in 1997, through resolution BC-07-30-97-B, and subsequently amended through resolutions BC-06-09-99-D, BC-01-26-11-G and BC-11-13-13-A. The purpose of the Law is to accommodate employees of the Nation who are placed on restrictions by their healthcare provider, for a specific period of time, due to an injury, illness, or pregnancy that renders them unable to perform one or more of their essential functions or work the full shift they would have otherwise been scheduled to work. [2 O.C. 209.3-1(h)]. The Law establishes an Early Return to Work Program ("Program"), that is meant to:

- Assist an employee in returning to work with temporary activities, restrictions and/or other recommendations prescribed by a healthcare provider [2 O.C. 209.1-1(a)];
- Place an employee with temporary activities, restrictions and/or other recommendations in a job with responsibilities that reflect his or her capabilities [2 O.C. 209.1-1(b)];
- Assist an employee with temporary activities, restrictions and/or other recommendations during the transitions from a modified duty position to his or her original job [2 O.C. 209.1-1(c)];
- Provide a capable work force for areas which are understaffed or have a need for short-term, temporary employees [2 O.C. 209.1-1(d)]; and

- Include all employees of the Oneida Nation [2 O.C. 209.1-1(e)].

Currently, section 209.4-4 of the Law states, without exception, that a mental/behavioral health condition does not fall within the type of condition that allows an employee, with a mental health injury, to be considered for modified duty work in accordance with the Program. [2 O.C. 209.4-4]. Emergency amendments to the Law are being sought to create an exception to section 209.4-4 that will allow for employees of the Nation, who were on duty at or around the Casino, IMAC, or on the grounds encompassing the Casino, IMAC, and Radisson during the shooting incident of May 1, 2021 and diagnosed with a mental health injury as a result thereof, the opportunity to participate in the Program and be considered for modified duty work, subject to the approval of the Employee Health Nursing Department.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendments to this Law are necessary for the preservation of the health and safety of our Reservation population, as well as the Nation's employees, to address any injury those employees, on duty at or around the Casino, IMAC, or on the grounds encompassing the Casino, IMAC, and Radisson, during the shooting incident of May 1, 2021, may have suffered to their mental health as a result of the incident.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to the public interest since the Nation must act expeditiously to assist employees, who were on duty at the Casino, IMAC, or on the grounds encompassing the Casino, IMAC, and Radisson on the evening of May 1, 2021, during the shooting incident, by ensuring that their mental health needs are addressed within the Law sooner than would be possible under the standard process set forth within the Legislative Procedures Act.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months. There will be one (1) opportunity to extend the emergency amendments for an additional six (6) months. [1 O.C. 109.9-5(b)].

Requested Action

Adopt the Resolution: Emergency Amendments to the Early Return to Work Law.

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # Emergency Amendments to the Early Return to Work Law

- 1 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
- 2 recognized by the laws of the United States of America; and
- 3
- 4 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- 5
- 6 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
- 7 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- 8
- 9 **WHEREAS,** the Early Return to Work law (“Law”) was adopted by the Oneida Business Committee
- 10 through resolution BC-07-30-97-B, and subsequently amended through resolutions BC-06-
- 11 09-99-D, BC-01-26-11-G and BC-11-13-13-A; and
- 12
- 13 **WHEREAS,** the purpose of the Law is to: (1) assist an employee in returning to work with temporary
- 14 activities, restrictions and/or other recommendations prescribed by a healthcare provider;
- 15 (2) place an employee with temporary activities, restrictions and/or other recommendations
- 16 in a job with responsibilities that reflect his or her capabilities; (3) assist an employee with
- 17 temporary activities, restrictions and/or other recommendations during the transition from
- 18 a modified duty position to his or her original job; (4) provide a capable work force for areas
- 19 which are understaffed or have a need for short-term, temporary employees; and (5)
- 20 include all employees of the Oneida Nation; and
- 21
- 22 **WHEREAS,** the Oneida Nation, its members, employees, guests, and neighbors became the latest
- 23 victims in the onslaught of mass shootings in the United States on May 1, 2021; and
- 24
- 25 **WHEREAS,** the Oneida Nation and its neighboring communities lost two (2) souls, another suffered
- 26 serious wounds, and more endured the trauma of a mass shooting in their community and
- 27 their place of work; and
- 28
- 29 **WHEREAS,** the Oneida Business Committee seeks to ensure that its employees have access to the
- 30 necessary resources to address their mental health needs as a result of the May 1, 2021,
- 31 shooting incident; and
- 32
- 33 **WHEREAS,** the Oneida Business Committee is seeking emergency amendments to the Law to ensure
- 34 employees on duty at or around the main Oneida Casino, the Irene Moore Activity Center
- 35 (IMAC), or on the grounds encompassing the Oneida Casino, IMAC, and the Radisson
- 36 Hotel and Conference Center (Radisson) on the evening of May 1, 2021, during the
- 37 shooting incident, may receive necessary mental health assistance and integrate back into
- 38 the work force as soon as possible; and
- 39
- 40 **WHEREAS,** section 209.4-4 of the Law currently provides, without exception, that a “mental/behavioral
- 41 health condition is not considered an Early Return to Work condition” for purposes of
- 42 participating in the Early Return to Work Program set forth therein; and
- 43

44 **WHEREAS,** the proposed amendments to the Law will create an exception to section 209.4-4 that
45 allows for employees, who were on duty at or around the main Oneida Casino, IMAC or on
46 the grounds encompassing the Oneida Casino, IMAC and Radisson during the shooting
47 incident of May 1, 2021 and diagnosed with a mental health injury as a result of that
48 incident, to be considered for modified duty under the Law, subject to review and approval
49 of the Employee Health Nursing Department; and
50

51 **WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact
52 legislation on an emergency basis when legislation is necessary for the immediate
53 preservation of the public health, safety or general welfare of the Reservation population,
54 and the amendment of the legislation is required sooner than would be possible under the
55 Legislative Procedures Act; and
56

57 **WHEREAS,** emergency adoption of this Law is necessary for the preservation of the health and safety
58 of the Reservation population and the Nation's employees to address any injury those
59 employees, on duty at or around the main Oneida Casino, IMAC or on the grounds
60 encompassing the Oneida Casino, IMAC and Radisson, may have suffered to their mental
61 health as a result of the shooting incident that took place on the evening of May 1, 2021;
62 and
63

64 **WHEREAS,** observance of the requirements under the Legislative Procedures Act for adoption of these
65 amendments would be contrary to public interest since the Nation must act expeditiously
66 to assist employees, who were on duty at the main Oneida Casino, IMAC or on the grounds
67 encompassing the Oneida Casino, IMAC and Radisson on the evening of May 1, 2021, by
68 ensuring that their mental health needs are addressed within the Law sooner than would
69 be possible under the standard process set forth within the Legislative Procedures Act; and
70

71 **WHEREAS,** adoption of emergency amendments to this Law would remain in effect for a period of six
72 (6) months, renewable by the Oneida Business Committee for an additional six (6) month
73 term; and
74

75 **WHEREAS,** the Legislative Procedures Act does not require a public meeting or fiscal impact statement
76 when considering emergency legislation; and
77

78 **NOW THEREFORE BE IT RESOLVED,** the Oneida Business Committee hereby adopts the emergency
79 amendments to the Early Return to Work law, effective immediately.



Statement of Effect

Emergency Amendments to the Early Return to Work Law

Summary

This resolution comes in response to the tragic mass shooting that took place on the evening of May 1, 2021, at the Radisson Hotel and Conference Center (“Radisson”). It adopts emergency amendments to the Early Return to Work law (“Law”) to afford employees, on duty at or around the main Oneida Casino (“Casino”), Irene Moore Activity Center (“IMAC”), or on the grounds encompassing the Casino, IMAC and Radisson during the May 1, 2021 shooting incident and diagnosed with a mental health injury as a result thereof, an opportunity to participate in the Law’s Early Return to Work Program, subject to the review and approval of the Employee Health Nursing Department.

Submitted by: Kristen M. Hooker, Staff Attorney, Legislative Reference Office

Date: May 10, 2021

Analysis by the Legislative Reference Office

The Nation’s Early Return to Work law, adopted by resolution BC-07-30-97-B and subsequently amended by resolutions BC-06-09-99-D, BC-01-26-11-G and BC-11-13-13-A, establishes an Early Return to Work Program (“Program”) to accommodate employees of the Nation who are placed on restrictions, prescribed by a healthcare provider for a specific period of time, because of an injury, illness or pregnancy that renders them unable to perform one or more of their essential functions or work the full shift they would have otherwise been scheduled to work. [2 O.C. 209.3-1(h)]. More specifically, the Law is meant to:

- Assist an employee in returning to work with temporary activities, restrictions and/or other recommendations prescribed by a healthcare provider [2 O.C. 209.1-1(a)];
- Place an employee with temporary activities, restrictions and/or other recommendations in a job with responsibilities that reflect his or her capabilities [2 O.C. 209.1-1(b)];
- Assist an employee with temporary activities, restrictions and/or other recommendations during the transitions from a modified duty position to his or her original job [2 O.C. 209.1-1(c)];
- Provide a capable work force for areas which are understaffed or have a need for short-term, temporary employees [2 O.C. 209.1-1(d)]; and
- Include all employees of the Oneida Nation [2 O.C. 209.1-1(e)].

On May 1, 2021, the Oneida Nation, its members, employees, guests and neighbors became the latest victims in the onslaught of mass shootings in the United States. The Nation, as well as its neighboring communities, lost two souls, another suffered serious wounds, and more endured the trauma associated with experiencing a mass shooting within their community and/or place of work. The Oneida Business Committee wants to ensure that employees, who were on duty at or around the Casino, IMAC, or on the grounds encompassing the Casino, IMAC, and Radisson during the

May 1st shooting, have access to the resources necessary to address any mental health needs caused by the incident so that they can integrate back into the workforce as soon as possible.

The Legislative Procedures Act (“LPA”) allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5].

Currently, section 209.4-4 of the Law states, without exception, that a mental/behavioral health condition does not fall within the types of condition that would afford an employee, with a mental health injury, an opportunity to participate in the Program and be considered for modified duty work. [2 O.C. 209.4-4]. This resolution adopts proposed amendments to the Law which will create an exception to section 209.4-4 that allows for employees of the Nation, who were on duty at or around the Casino, IMAC, or on the grounds encompassing the Casino, IMAC, and Radisson during the shooting incident of May 1, 2021 and diagnosed with a mental health injury as a result of the incident, an opportunity to be considered for modified duty work in accordance with the Program, subject to approval of the Employee Health Nursing Department. [Proposed Draft 2 O.C. 209.4-4(a)].

The resolution further provides that emergency amendments to the Law are necessary for the preservation of the health and safety of the Reservation population, as well as the Nation’s employees, to address any injury those employees, on duty at or around the Casino, IMAC, or on the grounds encompassing the Casino, IMAC, and Radisson, during the shooting incident of May 1, 2021, may have suffered to their mental health as a result of the incident.

Additionally, the resolution provides that observance of the requirements under the LPA for adoption of these amendments would be contrary to public interest since the Nation must act expeditiously to assist employees, who were on duty at the Casino, IMAC, or on the grounds encompassing the Casino, IMAC and Radisson on the evening of May 1, 2021, by ensuring that their mental health needs are addressed within the Law sooner than would be possible under the standard process set forth within the LPA.

The emergency amendments to the Law will take effect immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months. The LPA provides the possibility to extend the emergency amendments for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Conclusion

Adoption of this resolution would not conflict with any of the Nation’s laws.



EMERGENCY AMENDMENTS TO THE EARLY RETURN TO WORK LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Amendments	Create an exception to section 209.4-4 of the Early Return to Work law (“Law”) for those employees, who were on duty at or around the main Oneida Casino (“Casino”), Irene Moore Activity Center (“IMAC”), or on the grounds encompassing the Casino, IMAC, and the Radisson Hotel and Conference Center (“Radisson”) during the shooting incident that took place at the Radisson on May 1, 2021 and diagnosed with a mental health injury as a result, to have an opportunity to be considered for modified duty work through the Early Return to Work Program established under the Law, subject to review and approval of the Employee Health Nursing Department. <i>[Proposed Draft Amendments 2 O.C. 209.4-4(a)].</i>
Purpose	Establish an Early Return to Work Program to accommodate employees of the Nation who are placed on restrictions, prescribed by a healthcare provider for a specific period of time, due to an injury, illness or pregnancy that renders them unable to perform one or more of their essential functions or work the full shift they would have otherwise been scheduled to work. <i>[2 O.C. 209.3-1(h)].</i>
Affected Entities	Employees of the Nation, Human Resources Department, Employee Health Nursing Department, Third Party Administrator of the Nation’s Worker’s Compensation Benefits Program, Employee Benefits Department.
Public Meeting	A public meeting is not required for emergency legislation. <i>[1 O.C. 109.8-1(b) and 109.9-5(a)].</i>
Fiscal Impact	A fiscal impact statement is not required for emergency legislation. <i>[1 O.C. 109.9-5(a)].</i>
Expiration of Emergency Legislation	Emergency legislation expires six (6) months after adoption and may be renewed for an additional six (6) month period.

SECTION 2. LEGISLATIVE DEVELOPMENT

A. Background. The Nation’s Early Return to Work law was adopted by the Oneida Business Committee through resolution BC-07-30-97-B and subsequently amended through resolutions BC-06-09-99-D, BC-01-26-11-G and BC-11-13-13-A. *[2 O.C. 209.1-1]*. The Law establishes an Early Return to Work Program (“Program”), meant to accommodate the Nation’s employees who are placed on restrictions, prescribed by a healthcare provider for a specific period of time, because of an injury, illness or pregnancy that renders them unable to perform one or more of their essential functions or work the full shift they would have otherwise been scheduled to work, by:

- Assisting employees in returning to work with temporary activities, restrictions and/or other recommendations prescribed by a healthcare provider *[2 O.C. 209.1-1(a)]*;
- Placing employees with temporary activities, restrictions and/or other recommendations in a job with responsibilities that reflect their capabilities *[2 O.C. 209.1-1(b)]*;

- 13 ▪ Assisting employees with temporary activities, restrictions and/or other recommendations during
14 the transition from a modified duty position to their original job [2 O.C. 209.1-1(c)];
- 15 ▪ Providing a capable work force for areas which are understaffed or have a need for short-term,
16 temporary employees [2 O.C. 209.1-1(d)]; and
- 17 ▪ Including all employees of the Oneida Nation [2 O.C. 209.1-1(e)].
- 18 **B. Section 209.4-4 of the Law.** Section 209.4-4 of the Law excludes employees of the Nation, who are
19 placed on work restrictions by a healthcare provider for a mental/behavioral health condition, from
20 participating in the Program, and thus, possibly qualifying for modified duty work under the Law. [2
21 O.C. 209.4-4]. Currently, there are no exceptions to this section’s exclusion of mental health conditions
22 from the type of conditions that are covered by the Law.
- 23 **C. Request for Emergency Amendments.** On May 1, 2021, the Nation, its members, employees, guests,
24 and neighbors became the latest victims in the onslaught of mass shootings in the United States when
25 a mass shooting occurred at and around the Radisson. Two (2) souls were lost, another suffered serious
26 wounds, and more endured the trauma of a mass shooting in their community and their place of work.
27 The Oneida Business Committee seeks to ensure its employees have access to the necessary resources
28 to address their mental health needs as a result of the May 1, 2021, shooting incident, and is thereby
29 seeking emergency amendments to the Law that will create an exception to section 209.4-4 for
30 employees of the Nation, who were on duty at or around the Casino, IMAC, or on the grounds
31 encompassing the Casino, IMAC, and Radisson during the shooting incident of May 1, 2021 and were
32 diagnosed with a mental health injury as a result of the incident.

33

34 **SECTION 3. CONSULTATION AND OUTREACH**

- 35 **A.** Representatives from the following departments or entities participated in the development of this Law
36 and legislative analysis:
- 37 ▪ Oneida Law Office;
- 38 ▪ Human Resources Department;
- 39 ▪ Risk Management Department; and
- 40 ▪ Gaming Employee Services.
- 41 **B.** The Legislative Operating Committee has held the following work meetings specific to the proposed
42 emergency amendments to this Law:
- 43 ▪ May 11, 2021: LOC work meeting with the Oneida Law Office.
- 44

44

45 **SECTION 4. PROCESS**

- 46 **A.** These amendments are being considered on an emergency basis. The Oneida Business Committee may
47 temporarily enact an emergency law where legislation is necessary for the immediate preservation of
48 public health, safety, or general welfare of the Reservation population and enactment or amendment of
49 legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].
- 50 ▪ Emergency amendments to this Law are being pursued for the preservation of the of the health and
51 safety of our Reservation population and the Nation’s employees in order to address the mental
52 health needs that resulted from the May 1, 2021 incident at the Radisson.
- 53 ▪ Observance of the requirements under the Legislative Procedures Act for the adoption of this
54 amendment to the Law would be contrary to public interest. The Nation must act expeditiously to
55 assist the employees, who were on duty at the Casino, IMAC, or on the grounds encompassing the

56 Casino, IMAC, and Radisson on the evening of May 1, 2021, by ensuring that their mental health
57 needs are addressed within the Law sooner than would be possible under the standard process set
58 forth in the Legislative Procedures Act.

59 **B.** Emergency legislation typically expires six (6) months after adoption, with one (1) opportunity for a
60 six (6) month extension of the emergency legislation. [1 O.C. 109.9-5(b)].

61 **C.** The Legislative Procedures Act does not require a public meeting or fiscal impact statement when
62 considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact
63 statement will eventually be required when considering permanent adoption of this Law.
64

65 **SECTION 5. CONTENTS OF THE LEGISLATION**

66 **A. Exception to Section 209.4-4 of the Law.** The proposed emergency amendments create an exception
67 to section 209.4-4 of the Law. [Proposed Draft 2 O.C. 209.4-4(a)]. Currently, section 209.4-4 states,
68 “[a] mental/behavioral health conditions is not considered an Early Return to Work condition.” [2 O.C.
69 209.4-4]. This means, without exception, that a mental/behavioral health condition does not fall with
70 the types of condition that would afford an employee, with a mental health injury, the opportunity to
71 participate in the Program and be considered for modified duty work thereunder. The proposed
72 amendment would provide the following exception to the prohibitions of section 209.4-4: “An
73 employee on duty at or around the main Oneida Casino, Irene Moore Activity Center, or on the grounds
74 encompassing the Oneida Casino, Irene Moore Activity Center and the Radisson Hotel and Conference
75 Center on the evening of May 1, 2021, during the shooting incident, and diagnosed with a mental health
76 injury as a result of that incident, shall not be subject to the above limitation and may be considered for
77 modified duty, subject to the review and approval of the EHN.” [Proposed Draft 2 O.C. 209.4-4(a)].

78 **▪ Effect.** The proposed emergency amendments to the Law will now consider a mental health injury
79 caused by the May 1, 2021 shooting incident at the Radisson as an Early Return to Work condition
80 that, subject to approval of the Employee Health Nursing Department, would render those
81 aforementioned employees of the Nation who are diagnosed with a mental injury as a result of the
82 May 1st shooting eligible to participate in the Program and be considered for modified duty work.

83 **SECTION 6. EXISTING LEGISLATION**

84 **A. Related Legislation.** The following laws of the Nation are related to this Law:

85 **▪ Legislative Procedures Act.** The Legislative Procedures Act was adopted by the General Tribal
86 Council for the purpose of providing a standard process for the adoption of laws of the Nation
87 which includes taking into account comments from members of the Nation and input from agencies
88 of the Nation. [1 O.C. 109.1-1, 109.1-2].

89 **▪** The Legislative Procedures Act provides a process for the adoption of emergency legislation
90 when the legislation is necessary for the immediate preservation of the public health, safety,
91 or general welfare of the Reservation population and the enactment or amendment of
92 legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].

93 **▪** The Legislative Operating Committee is responsible for first reviewing the
94 emergency legislation and for forwarding the legislation to the Oneida
95 Business Committee for consideration. [1 O.C. 109.9-5(a)].

96 **▪** The proposed emergency legislation is required to have a legislative analysis
97 completed and attached prior to being sent to the Oneida Business Committee
98 for consideration. [1 O.C. 109.9-5(a)].

- 99 a. A legislative analysis is a plain language analysis describing the
100 important features of the legislation being considered and factual
101 information to enable the Legislative Operating Committee to make
102 informed decisions regarding legislation. A legislative analysis
103 includes a statement of the legislation’s terms and substance; intent of
104 the legislation; a description of the subject(s) involved, including any
105 conflicts with Oneida or other law, key issues, potential impacts of the
106 legislation and policy considerations. [1 O.C. 109.3-1(g)].
- 107 ▪ Emergency legislation does not require a fiscal impact statement to be
108 completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
 - 109 ▪ Upon the determination that an emergency exists the Oneida Business
110 Committee can adopt emergency legislation. The emergency legislation
111 becomes effective immediately upon its approval by the Oneida Business
112 Committee. [1 O.C. 109.9-5(b)].
 - 113 ▪ Emergency legislation remains in effect for a period of up to six (6) months,
114 with an opportunity for a one-time emergency law extension of up to six (6)
115 months. [1 O.C. 109.9-5(b)].
 - 116 ▪ Adoption of the emergency amendments to this Law would conform with the requirements
117 of the Legislative Procedures Act.
 - 118 ▪ *Oneida Worker’s Compensation Law.* The purpose of the Oneida Worker’s Compensation Law is
119 to set up a system of compensation and medical benefits for employees of the Nation who suffer
120 compensable injuries in the employment of the Nation. [2 O.C. 203.1-1].
 - 121 ▪ The Oneida Worker’s Compensation Law defines mental harm as “[a]ny injury arising out
122 of and in the course of employment which includes mental harm or emotional stress or
123 strain without physical trauma, which arises from exposure to conditions or circumstances
124 beyond those common to occupational and/or non-occupational life and is predominantly
125 work related.” [2 O.C. 203.3-1(g)]. Since the proposed emergency amendments will now
126 include certain mental health injuries as an Early Return to Work condition, the following
127 may apply with respect to the Oneida Worker’s Compensation Law:
 - 128 ▪ The Early Return to Work law provides that failure to cooperate with this law may
129 result in disciplinary action according to Tribal policies and procedures,
130 suspension of worker’s compensation benefits, and/or removal from a modified
131 duty position. [2 O.C. 209.1-2(b), 209.5-1(d)(1)];
 - 132 ▪ Under the Early Return to Work law modified duty is required for the duration of
133 the employee’s period of recovery and return to original full duty, or up to ninety
134 (90) days, whichever comes first, but modified duty may be allowed for a total of
135 one hundred eighty (180) days within a three hundred sixty-five (365) day period.
136 [2 O.C. 209.4-2]. If one hundred eighty (180) days have passed and an employee
137 with a work-related injury or illness remains unable to return to his or her regular
138 work duties, the employee is required to contact the Employee Benefits department
139 regarding Worker’s Compensation benefits. [2 O.C. 209.4-2(e)]. An exception
140 may be granted for a different illness or injury covered under the Oneida Worker’s
141 Compensation Law. [2 O.C. 209.4-2(f)]; and

- 142 ▪ An employee is required to comply with the requirements of the Early Return to
143 Work law, or his or her worker’s compensation benefits could be suspended. [2
144 *O.C. 209.5-1(d)(1)*].
- 145 ▪ Adoption of the proposed emergency amendments to this Law will not conflict with the
146 Oneida Worker’s Compensation Law.

147 **SECTION 7. OTHER CONSIDERATIONS**

148 **A. *Deadline for Permanent Adoption of Legislation.*** The adoption of emergency amendments to this Law
149 will expire six (6) months after adoption. The emergency legislation may be renewed for an additional
150 six (6) month period.

- 151 ▪ *Conclusion:* The Legislative Operating Committee will need to determine if the adoption of these
152 amendments is necessary on a permanent basis, and if so, develop the permanent amendments to
153 this Law within the next six (6) to twelve (12) months.

154 **B. *Fiscal Impact.*** A fiscal impact statement is not required for emergency legislation.

- 155 ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except
156 emergency legislation [*1 O.C. 109.6-1*].

157

HANDOUT

**Title 2. Employment – Chapter 209
EARLY RETURN TO WORK**

209.1 Purpose and Policy

209.2. Adoption, Amendment, ~~Conflicts~~Repeal

209.3. Definitions

209.4. Scope

209.5. Employee Responsibility

209.6. Original Supervisor Responsibility

209.7. Placement Site Supervisor Responsibility

209.1. Purpose and Policy

209.1-1. The ~~purposes~~purpose of this law ~~are~~is to:

(a) assist an employee in returning to work with temporary activities, restrictions and/or other recommendations prescribed by a healthcare provider~~;~~

(b) ~~place~~ an employee with temporary activities, restrictions and/or other recommendations in a job with responsibilities that reflect his or her capabilities~~;~~

(c) ~~assist~~ an employee with temporary activities, restrictions and/or other recommendations during the transition from a modified duty position to his or her original job~~;~~

(d) provide a capable work force for areas which are understaffed or have a need for short term, temporary employees~~;~~ and

(e) include all employees of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

209.1-2. It is the policy of this ~~Law~~law that:

(a) all Early Return to Work participants and supervisors shall cooperate with all aspects of this ~~Law~~law~~;~~ and

(b) failure to cooperate with this ~~Law~~law may result in disciplinary action according to ~~Tribe~~the Nation's policies and procedures, suspension of worker's compensation benefits, and/or removal from a modified duty position.

209.2. Adoption, Amendment, ~~Conflicts~~Repeal

209.2-1. This law was adopted by the Oneida Business Committee by ~~Resolution~~resolution BC-07-30-97-B ~~and~~; amended by resolutions BC-06-09-99-D, BC-01-26-11-G, and BC-11-13-13-A~~;~~ and emergency amended by resolution BC- - - - .

209.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

209.2-3. 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.

209.2-4. 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.

209.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

209.3. Definitions

38 209.3-1. This section shall govern the definitions of words and phrases used within this ~~Law~~law.
 39 All words not defined herein shall be used in their ordinary and everyday sense.

40 (a) “Days” means calendar days.

41 (b) “EHN” means the Employee Health Nursing Department.

42 (c) ~~—~~“Modified duty” means temporary, transitional work within the healthcare provider’s
 43 prescribed activities, restrictions, and other recommendations for the employee, which
 44 reflects that individual’s functional capacity and/or rehabilitative needs.

45 (d) “Oneida Worker’s Compensation Law” means Chapter 203, Latiyótashe Kayanláhsla,
 46 of the Oneida Code of Laws.

47 (e) ~~—~~“Original supervisor” means the employee’s day-to-day/immediate supervisor or
 48 his or her designee.

49 (f) “Period of modified duty” means a period of calendar days which begins on the first
 50 day that the employee is able to return to work in accordance with a healthcare provider’s
 51 prescribed activities, restrictions and/or other recommendations.

52 (g) “Placement site supervisor” means the supervisor of a work area an employee is placed
 53 in, other than his or her original department, for a period of modified duty.

54 (h) “Restrictions” means activity limitations which are prescribed by a healthcare provider
 55 for a specified duration of time because of an injury, illness, or pregnancy which results in
 56 an employee being unable to perform one (1) or more essential functions of his or her job,
 57 or is unable to work the full workday that he or she would otherwise have been scheduled
 58 to work.

59 (i) “TPA” means a third party administrator of worker’s compensation benefits.

60 (j) ~~—~~“Worker’s compensation benefits” means all medical and compensatory costs
 61 associated with a work-related injury or illness paid on behalf of or to an employee.
 62

63 **209.4. Scope**

64 209.4-1. Modified duty includes, but is not limited to, accommodation in the employee’s original
 65 department or a suitable alternate placement site assigned by an EHN RN-Case Manager.
 66 Modified duty may not be available. If available, modified duty is always temporary.

67 209.4-2. If available, modified duty shall be for the duration of the employee’s period of recovery
 68 and return to original full duty, or up to ninety (90) days, whichever comes first.

69 (a) The period of modified duty shall begin on the first day that the employee is able to
 70 return to work, as prescribed by the healthcare provider.

71 (b) Modified duty may be allowed up to a total of one hundred eighty (180) days within a
 72 three hundred sixty-five (365) day period for those with a work-related injury or illness, or
 73 for those with a non-work-related injury or illness. The first day of any three hundred
 74 sixty-five (365) day period begins on the first day of the period of modified duty. No new
 75 job description may be created to accommodate restrictions during the initial one hundred
 76 eighty (180) day period.

77 (c) ~~—~~If an employee is unable to return to regular work duty after one hundred eighty (180)
 78 days of being on modified duty due to a non-work-related injury or illness, the employee’s
 79 supervisor shall discuss with the employee the following as first options:

80 (1) The ability of the employee to qualify for disability benefits; or

81 (2) The use of the employee’s available personal and/or vacation time to
 82 cover the additional time the employee is placed under restrictions until the
 83 medical provider provides a written release allowing the employee to return
 84 to work with no restrictions; or

85 (3) If the employee does not qualify for disability or there is no vacation or
 86 personal time available to the employee, taking a leave of absence pursuant
 87 to Personnel Policies and Procedures IV.D.3, Leave of Absence.

88 (d) Termination of the employee. This step shall only occur after the supervisor can show
 89 that attempts to accommodate the employee as provided in 209.4-2(c) or (e) were made,
 90 and no agreement was able to be reached with the employee. The supervisor shall note in
 91 the employee's personnel file that the termination was for non-disciplinary reasons. The
 92 supervisor shall contact the HRD Equal Employment Opportunity Officers for assistance
 93 as needed. However, if a transfer of the employee to another position has been approved
 94 by HRD in writing and is in process, the modified duty may be extended up to a maximum
 95 of an additional 90 days to allow the transfer to be processed.

96 (e) ~~___~~ If one hundred eighty (180) days have passed and an employee with a work-related
 97 injury or illness remains unable to return to return to his or her regular work duties, the
 98 employee shall contact the Employee Benefits department regarding Worker's
 99 Compensation benefits.

100 (f) An exception to (b) may be granted for a different illness or injury covered under the
 101 Oneida Worker's Compensation Law. The employee shall request an extension in writing
 102 to the EHN RN-Case Manager and shall provide medical documentation of the new illness
 103 or injury.

104 209.4-3. All cases shall be monitored by an EHN RN-Case Manager for appropriate continuing
 105 placement/accommodation.

106 209.4-4. ~~A~~ Except as provided for in subsection (a), below, a mental/behavioral health condition
 107 is not considered an Early Return to Work condition.

108 (a) Exception. An employee on duty at or around the main Oneida Casino, Irene Moore
 109 Activity Center, or on the grounds encompassing the Oneida Casino, Irene Moore Activity
 110 Center and the Radisson Hotel and Conference Center on the evening of May 1, 2021,
 111 during the shooting incident, and diagnosed with a mental health injury as a result of that
 112 incident, shall not be subject to the above limitation and may be considered for modified
 113 duty, subject to the review and approval of the EHN.

114 209.4-5. An employee participating in the Early Return to Work Program is subject to all ~~Tribal~~of
 115 the Nation's policies and procedures.

116 209.4-6. An employee in a modified duty position shall return to his or her original position as
 117 soon as the temporary activities, restrictions and/or other recommendations have been removed by
 118 his or her healthcare provider.

119 209.4-7. ~~–~~Departments shall assist and cooperate in creating and maintaining positions for
 120 employees on modified duty and may consult with EHN nurses in doing so.

122 209.5. Employee Responsibility

123 209.5-1. An employee shall:

124 (a) ~~–~~ comply with temporary activities, restrictions, and/or other recommendations as
 125 prescribed by his or her healthcare provider~~;~~

126 (b) comply with the EHN case managers, including but not limited to, providing requested
 127 documents, and attending all scheduled meetings~~;~~

128 (c) accurately and immediately report any changes in his or her activities, restrictions or
 129 other recommendations prescribed by his or her healthcare provider~~;~~ and

130 (d) -submit copies of the healthcare provider’s prescribed activities, restrictions, and/or
131 other recommendations to the Employee Insurance Department, the EHN RN-Case
132 Manager, and to his or her original supervisor and, if applicable, placement supervisor.

133 (1) The TPA is authorized to suspend an employee’s worker’s compensation
134 benefits for reasons of employee non-compliance and/or refusal to participate in the
135 Early Return to Work Program.
136

137 **209.6. Original Supervisor Responsibility**

138 209.6-1. -Every time an employee submits new or revised activities, restrictions or other
139 recommendations prescribed by his or her healthcare provider to his or her original supervisor,
140 that supervisor is responsible for reviewing those with the employee to determine whether or not
141 accommodation in the original department is available.

142 209.6-2. The original supervisor is responsible for communicating to the EHN RN-Case Manager
143 whether the employee can be accommodated in the original department, or if the employee will
144 need placement elsewhere.

145 209.6-3. -When an employee is accommodated in his or her original department, the supervisor
146 shall ensure that the employee works within the healthcare provider’s prescribed activities,
147 restrictions and/or other recommendations.
148

149 **209.7. Placement Site Supervisor Responsibility**

150 209.7-1. The placement site supervisor shall assume all aspects of the original supervisor’s role
151 including, but not limited to, approving personal and/or vacation time and issuing disciplinary
152 action.

153 209.7-2. The placement site supervisor shall review new or revised activity restrictions or other
154 recommendations prescribed by the employee’s healthcare provider to determine whether
155 accommodation within that department remains available.

156 209.7-3. The placement site supervisor shall ensure that the employee works within the healthcare
157 provider’s prescribed activities, restrictions and/or other recommendations.
158

159 *End.*

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- 160 Adopted BC-02-19-97-L Emergency
 - 161 Adopted BC-07-30-97-B Permanent
 - 162 Amended BC-01-20-99-A Emergency
 - 163 Amended BC-06-09-99-D Permanent
 - 164 Amended BC-01-26-11-G
 - 165 Amended BC-11-13-13-A
 - 166 Emergency Amended – BC- - - -

HANDOUT

**Title 2. Employment – Chapter 209
EARLY RETURN TO WORK**

209.1 Purpose and Policy
209.2. Adoption, Amendment, Repeal
209.3. Definitions
209.4. Scope

209.5. Employee Responsibility
209.6. Original Supervisor Responsibility
209.7. Placement Site Supervisor Responsibility

1
2
3 **209.1. Purpose and Policy**

4 209.1-1. The purpose of this law is to:

- 5 (a) assist an employee in returning to work with temporary activities, restrictions and/or
6 other recommendations prescribed by a healthcare provider;
7 (b) place an employee with temporary activities, restrictions and/or other
8 recommendations in a job with responsibilities that reflect his or her capabilities;
9 (c) assist an employee with temporary activities, restrictions and/or other
10 recommendations during the transition from a modified duty position to his or her original
11 job;
12 (d) provide a capable work force for areas which are understaffed or have a need for short
13 term, temporary employees; and
14 (e) include all employees of the Oneida Nation.

15 209.1-2. It is the policy of this law that:

- 16 (a) all Early Return to Work participants and supervisors shall cooperate with all aspects
17 of this law; and
18 (b) failure to cooperate with this law may result in disciplinary action according to the
19 Nation’s policies and procedures, suspension of worker’s compensation benefits, and/or
20 removal from a modified duty position.

21
22 **209.2. Adoption, Amendment, Repeal**

23 209.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-30-97-B;
24 amended by resolutions BC-06-09-99-D, BC-01-26-11-G, and BC-11-13-13-A; and emergency
25 amended by resolution BC-__-__-__-__.

26 209.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the
27 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures
28 Act.

29 209.2-3. Should a provision of this law or the application thereof to any person or circumstances
30 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
31 to have legal force without the invalid portions.

32 209.2-4. In the event of a conflict between a provision of this law and a provision of another law,
33 the provisions of this law shall control.

34 209.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

35
36 **209.3. Definitions**

37 209.3-1. This section shall govern the definitions of words and phrases used within this law. All
38 words not defined herein shall be used in their ordinary and everyday sense.

- 39 (a) “Days” means calendar days.
40 (b) “EHN” means the Employee Health Nursing Department.
41 (c) “Modified duty” means temporary, transitional work within the healthcare provider’s
42 prescribed activities, restrictions, and other recommendations for the employee, which
43 reflects that individual’s functional capacity and/or rehabilitative needs.
44 (d) “Oneida Worker’s Compensation Law” means Chapter 203, Latiyótashe Kayanláhsla,
45 of the Oneida Code of Laws.
46 (e) “Original supervisor” means the employee’s day-to-day/immediate supervisor or his or
47 her designee.
48 (f) “Period of modified duty” means a period of calendar days which begins on the first
49 day that the employee is able to return to work in accordance with a healthcare provider’s
50 prescribed activities, restrictions and/or other recommendations.
51 (g) “Placement site supervisor” means the supervisor of a work area an employee is placed
52 in, other than his or her original department, for a period of modified duty.
53 (h) “Restrictions” means activity limitations which are prescribed by a healthcare provider
54 for a specified duration of time because of an injury, illness, or pregnancy which results in
55 an employee being unable to perform one (1) or more essential functions of his or her job,
56 or is unable to work the full workday that he or she would otherwise have been scheduled
57 to work.
58 (i) “TPA” means a third party administrator of worker’s compensation benefits.
59 (j) “Worker’s compensation benefits” means all medical and compensatory costs
60 associated with a work-related injury or illness paid on behalf of or to an employee.
61

62 **209.4. Scope**

63 209.4-1. Modified duty includes, but is not limited to, accommodation in the employee’s original
64 department or a suitable alternate placement site assigned by an EHN RN-Case Manager.
65 Modified duty may not be available. If available, modified duty is always temporary.

66 209.4-2. If available, modified duty shall be for the duration of the employee’s period of recovery
67 and return to original full duty, or up to ninety (90) days, whichever comes first.

68 (a) The period of modified duty shall begin on the first day that the employee is able to
69 return to work, as prescribed by the healthcare provider.

70 (b) Modified duty may be allowed up to a total of one hundred eighty (180) days within a
71 three hundred sixty-five (365) day period for those with a work-related injury or illness, or
72 for those with a non-work-related injury or illness. The first day of any three hundred
73 sixty-five (365) day period begins on the first day of the period of modified duty. No new
74 job description may be created to accommodate restrictions during the initial one hundred
75 eighty (180) day period.

76 (c) If an employee is unable to return to regular work duty after one hundred eighty (180)
77 days of being on modified duty due to a non-work-related injury or illness, the employee’s
78 supervisor shall discuss with the employee the following as first options:

- 79 (1) The ability of the employee to qualify for disability benefits; or
80 (2) The use of the employee’s available personal and/or vacation time to
81 cover the additional time the employee is placed under restrictions until the
82 medical provider provides a written release allowing the employee to return
83 to work with no restrictions; or

84 (3) If the employee does not qualify for disability or there is no vacation or
85 personal time available to the employee, taking a leave of absence pursuant
86 to Personnel Policies and Procedures IV.D.3, Leave of Absence.

87 (d) Termination of the employee. This step shall only occur after the supervisor can show
88 that attempts to accommodate the employee as provided in 209.4-2(c) or (e) were made,
89 and no agreement was able to be reached with the employee. The supervisor shall note in
90 the employee's personnel file that the termination was for non-disciplinary reasons. The
91 supervisor shall contact the HRD Equal Employment Opportunity Officers for assistance
92 as needed. However, if a transfer of the employee to another position has been approved
93 by HRD in writing and is in process, the modified duty may be extended up to a maximum
94 of an additional 90 days to allow the transfer to be processed.

95 (e) If one hundred eighty (180) days have passed and an employee with a work-related
96 injury or illness remains unable to return to his or her regular work duties, the
97 employee shall contact the Employee Benefits department regarding Worker's
98 Compensation benefits.

99 (f) An exception to (b) may be granted for a different illness or injury covered under the
100 Oneida Worker's Compensation Law. The employee shall request an extension in writing
101 to the EHN RN-Case Manager and shall provide medical documentation of the new illness
102 or injury.

103 209.4-3. All cases shall be monitored by an EHN RN-Case Manager for appropriate continuing
104 placement/accommodation.

105 209.4-4. Except as provided for in subsection (a), below, a mental/behavioral health condition is
106 not considered an Early Return to Work condition.

107 (a) *Exception.* An employee on duty at or around the main Oneida Casino, Irene Moore
108 Activity Center, or on the grounds encompassing the Oneida Casino, Irene Moore Activity
109 Center and the Radisson Hotel and Conference Center on the evening of May 1, 2021,
110 during the shooting incident, and diagnosed with a mental health injury as a result of that
111 incident, shall not be subject to the above limitation and may be considered for modified
112 duty, subject to the review and approval of the EHN.

113 209.4-5. An employee participating in the Early Return to Work Program is subject to all of the
114 Nation's policies and procedures.

115 209.4-6. An employee in a modified duty position shall return to his or her original position as
116 soon as the temporary activities, restrictions and/or other recommendations have been removed by
117 his or her healthcare provider.

118 209.4-7. Departments shall assist and cooperate in creating and maintaining positions for
119 employees on modified duty and may consult with EHN nurses in doing so.

121 **209.5. Employee Responsibility**

122 209.5-1. An employee shall:

123 (a) comply with temporary activities, restrictions, and/or other recommendations as
124 prescribed by his or her healthcare provider;

125 (b) comply with the EHN case managers, including but not limited to, providing requested
126 documents, and attending all scheduled meetings;

127 (c) accurately and immediately report any changes in his or her activities, restrictions or
128 other recommendations prescribed by his or her healthcare provider; and

129 (d) submit copies of the healthcare provider’s prescribed activities, restrictions and/or
130 other recommendations to the Employee Insurance Department, the EHN RN-Case
131 Manager, and to his or her original supervisor and, if applicable, placement supervisor.
132 (1) The TPA is authorized to suspend an employee’s worker’s compensation
133 benefits for reasons of employee non-compliance and/or refusal to participate in the
134 Early Return to Work Program.
135

136 **209.6. Original Supervisor Responsibility**

137 209.6-1. Every time an employee submits new or revised activities, restrictions or other
138 recommendations prescribed by his or her healthcare provider to his or her original supervisor,
139 that supervisor is responsible for reviewing those with the employee to determine whether or not
140 accommodation in the original department is available.

141 209.6-2. The original supervisor is responsible for communicating to the EHN RN-Case Manager
142 whether the employee can be accommodated in the original department, or if the employee will
143 need placement elsewhere.

144 209.6-3. When an employee is accommodated in his or her original department, the supervisor
145 shall ensure that the employee works within the healthcare provider’s prescribed activities,
146 restrictions and/or other recommendations.
147

148 **209.7. Placement Site Supervisor Responsibility**

149 209.7-1. The placement site supervisor shall assume all aspects of the original supervisor’s role
150 including, but not limited to, approving personal and/or vacation time and issuing disciplinary
151 action.

152 209.7-2. The placement site supervisor shall review new or revised activity restrictions or other
153 recommendations prescribed by the employee’s healthcare provider to determine whether
154 accommodation within that department remains available.

155 209.7-3. The placement site supervisor shall ensure that the employee works within the healthcare
156 provider’s prescribed activities, restrictions and/or other recommendations.
157

158 *End.*

159 Adopted BC-02-19-97-L Emergency
160 Adopted BC-07-30-97-B Permanent
161 Amended BC-01-20-99-A Emergency
162 Amended BC-06-09-99-D Permanent
163 Amended BC-01-26-11-G
164 Amended BC-11-13-13-A
165 Emergency Amended – BC-__-__-__-__

May 2021

May 2021							June 2021						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
						1			1	2	3	4	5
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23	24	25	26	27	28	29	27	28	29	30			
30	31												

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Apr 25	26	27	28	29	30	May 1
2	3	4	5 8:30am Canceled: LOC Prep (BC_Conf_Roo) 3:00pm LOC Meeting (BC_Conf_Roo)	6	7	8
9	10	11 10:00am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	12 8:30am Oneida Business Committee Meeting	13	14	15
16	17	18	19 8:30am LOC Prep (BC_Conf_Room) - Clorissa N. Santiago 9:00am LOC Meeting (BC_Conf_Roo)	20	21	22
23	24	25	26 8:30am Oneida Business Committee Meeting	27 9:00am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	28 8:00am Oneida Code Talkers Day	29
30	31	Jun 1	2	3	4	5