



**LEGISLATIVE OPERATING COMMITTEE MEETING  
REVISED AGENDA**

Business Committee Conference Room - 2<sup>nd</sup> Floor Norbert Hill Center  
August 18, 2021  
9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be Approved**
  1. August 4, 2021 LOC Meeting Minutes (pg. 2)
- III. Current Business**
  1. Furlough Law Amendments (pg. 4)
  2. Local Land Use Regulation Reimbursement Law Repeal (pg. 44)
- IV. New Submissions**
  1. Fire Signs Law (pg. 56)
  2. Personnel Policies and Procedures Amendments – Revision of HRD Manager Title (pg. 58)
  3. Workplace Violence Law Amendments (pg. 59)
  4. Personnel Policies and Procedures Amendments – Selection Process (pg. 75)
- V. Additions**
- VI. Administrative Updates**
  1. Legislative Operating Committee FY21 Third Quarter Report (pg. 98)
- VII. Executive Session**
- VIII. Recess/Adjourn**



**LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**  
Oneida Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
August 4, 2021  
9:00 a.m.

**Present:** David P. Jordan, Marie Summers, Jennifer Webster, Kirby Metoxen

**Excused:** Daniel Guzman King,

**Others Present:** Clorissa N. Santiago, Kristen Hooker, Kristal Hill, Rhiannon Metoxen, Lawrence Barton, Brooke Doxtator, Shannon Davis, Justin Nishimoto (Microsoft Teams), Eric Boulanger (Microsoft Teams), Kaylynn Gresham (Microsoft Teams), Michelle Braaten (Microsoft Teams), Reynold Danforth (Microsoft Teams)

**I. Call to Order and Approval of the Agenda**

David P. Jordan called the August 4, 2021, Legislative Operating Committee meeting to order at 9:00 a.m.

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

**II. Minutes to be Approved**

**1. July 21, 2021 LOC Meeting Minutes**

Motion by Jennifer Webster to approve the minutes of July 7, 2021 and forward to the Oneida Business Committee; seconded by Marie Summers. Kirby Metoxen abstained. Motion carried.

**III. Current Business**

**1. Public Peace Law**

Motion by Jennifer Webster to approve the draft of the Public Peace law and the fiscal impact statement request memorandum and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by August 18, 2021; seconded by Kirby Metoxen. Motion carried unanimously.

**2. Furlough Law Amendments**

Motion by Marie Summers to approve the Furlough law amendments draft and direct that a legislative analysis be prepared for consideration at the next LOC meeting; seconded by Kirby Metoxen. Motion carried unanimously.

**IV. New Submissions**

**1. Oneida Nation Emergency Planning Committee Bylaws Amendments**

Motion by Kirby Metoxen to add the Oneida Nation Emergency Planning Committee bylaws amendments to the Active Files List with David Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

**V. Additions**

**VI. Administrative Items**



**VII. Executive Session**

**VIII. Adjourn**

Motion by Jennifer Webster to adjourn at 9:23 a.m.; seconded by Marie Summers. Motion carried unanimously.



Legislative Operating Committee  
August 18, 2021  
**Amendments to the Furlough Law**

<b>Submission Date:</b> 10/7/2020	<b>Public Meetings:</b> n/a
<b>LOC Sponsor:</b> Marie Summers	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This item was added to the Active Files List on October 7, 2020 per the request of the Legislative Operating Committee to develop amendments to the Nation's Furlough law to incorporate Indian preference into the selection/recall process and to provide clarity regarding certain other furlough procedures that were flagged during the COVID-19 pandemic.*

**10/7/20 LOC:** Motion by Jennifer Webster to add the Furlough Law Amendments to the Active Files List with Marie Summers as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

**10/22/20:** *Work Meeting.* Present: Marie Summers and Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss the basis for the Councilwoman's request to have amendments to the Furlough law added to the Active Files List. The next step is for the drafting attorney to schedule a meeting with the workgroup that was created during this meeting to discuss the Councilwoman's concerns, as well as any other concerns/suggestions that the workgroup may have.

**11/13/20:** *Work Meeting.* Present: Eric McLester, Barbara Kolitsch, Geraldine Danforth, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to have a general discussion on needed amendments/updates to the Furlough law. The drafting attorney went through the law line-by-line with the workgroup to flag where they believed changes were needed. The next step is for the drafting attorney to update the draft based on the discussion and schedule a follow-up work meeting with the workgroup for review and further discussion/revision.

**1/26/21:** *Work Meeting.* Present: Eric McLester, Barbara Kolitsch, Geraldine Danforth, Matt Denny, Wendy Alvarez, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to go through the updated draft of the Furlough law amendments to discuss any areas of concern or in need of further revision before bringing to the Legislative Operating Committee for review/consideration.

**2/3/21:** *Work Meeting.* Present: David Jordan, Marie Summers, Daniel Guzman-King, Jennifer Webster, Rhiannon Metoxen, Kristal Hill, Clorissa Santiago, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to update the LOC on discussions had thus far with the workgroup regarding possible amendments to the Furlough law. The drafting attorney went through the draft line-by-line with the LOC to highlight where the workgroup was proposing amendments and to have the LOC flag additional

changes it deems necessary. The next steps are for the drafting attorney to: (1) create a bullet-point of the initial policy decisions the LOC must make before detailed amendments can be developed in alignment therewith; and (2) schedule a follow-up meeting with the workgroup and LOC to afford the LOC an opportunity to hear from the workgroup before making said policy decisions.

**2/17/21:** *Work Meeting.* Present: David Jordan, Jennifer Webster, Kirby Metoxen, Marie Summers, Rhiannon Metoxen, Kristal Hill, Kristen Hooker, Matthew Denny, Lucy Neville, Wendy Alvarez, Geraldine Danforth, Eric McLester (left early). This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to give LOC an opportunity to hear from the workgroup regarding amendments to the Furlough law. The goal of the meeting was to provide the LOC enough information to make certain policy decisions that are necessary to develop amendments to the law in alignment therewith. The next step is for the drafting attorney to compile the information/suggestions provided during the meeting and to present the compilation to the LOC at a future work meeting for further directive.

**2/25/21:** *Work Meeting.* Present: Marie Summers, Kirby Metoxen, Daniel Guzman-King, Jennifer Webster, Kristal Hill, Clorissa Santiago, Kristen Hooker. This was a work meeting held through Microsoft Teams. This work meeting was held in follow-up to the February 17, 2021 work meeting the LOC had with the Workgroup regarding possible amendments to the Furlough law. The purpose of this work meeting was to get directive from the LOC regarding the policy questions that were discussed on February 17th. The next step is for the drafting attorney to update the draft amendments to be consistent with the LOC's directive and to bring the updated draft back to a future LOC meeting for review and further revision.

**4/9/21:** *Work Meeting.* Present: David Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman-King, Rhiannon Metoxen, Kristal Hill, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to start going through the updated draft amendments to the Furlough law with the LOC.

**4/13/21:** *Work Meeting.* Present: David Jordan, Kirby Metoxen, Marie Summers, Jennifer Webster, Daniel Guzman-King, Rhiannon Metoxen, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this meeting was to finish going through the initial draft amendments to the Furlough law before updating the draft for the LOC's final review and consideration. The next step will be for the LRO attorney to update the draft based on the LOC's decisions/suggestions and to schedule a final meeting with the LOC to review the updated draft before sending it to a workgroup meeting for review and comment.

**6/10/21:** *Work Meeting.* Present: Kirby Metoxen, Marie Summers, Daniel Guzman-King, Jennifer Webster, Rhiannon Metoxen, Kristal Hill, Clorissa Santiago, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to go through the updated draft amendments with the LOC before sending it to the workgroup for review and comment. The next step is for the LRO attorney to update the draft based on the comments and suggestions from the LOC and to then schedule a meeting with the workgroup to provide an opportunity for them to comment and make suggestions for the LOC to consider before approving the draft for the public comment portion of the legislative process.

**7/8/21:** *Work Meeting.* Present: Barbara Kolitsch, Geraldine Danforth, Wendy Alvarez, Matthew Denny, James Petitjean (left early), Lucy Neville, Jessica Vandekamp, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of the meeting was to review the draft Furlough law amendments with the workgroup to see whether the members had any questions, concerns or suggested changes they wanted the LOC to consider. The next step is

for the LRO attorney to update the draft with the workgroup's suggestions and bring it back to a LOC work meeting for consideration and possible approval to move forward with the public comment portion of the legislative process.

**7/21/21:** *Work Meeting.* Present: David Jordan, Marie Summers, Jennifer Webster, Justin Nishimoto, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to go through the final draft of the Furlough law amendments and have the LOC consider the comments/suggestions from the workgroup meeting of July 8, 2021. The next steps are for the drafting attorney to: (1) update the draft based on the LOC's decisions during the meeting; (2) draft a legislative analysis on the amendments to the Furlough law; (3) draft the materials for the public meeting notice packet for the LOC to review during its next work meeting; and (4) add the public notice packet for the Furlough law amendments to the next LOC agenda for consideration and possible approval.

**8/4/21 LOC:** Motion by Marie Summers to approve the Furlough law amendments draft and direct that a legislative analysis be prepared for consideration at the next LOC meeting; seconded by Kirby Metoxen. Motion carried unanimously.

### **Next Steps:**

- Approve the draft amendments to the Furlough law and legislative analysis and defer to a work meeting.

**Title 2. Employment – Chapter 205**

[Oneida Language]

[Translation]

**FURLOUGH POLICY**

205.1. Purpose and Policy  
205.2. Adoption, Amendment, Repeal  
205.3. Definitions  
205.4. ~~Furlough Application~~  
205.5. ~~Furlough Plans~~  
205.6. ~~Supervisor Responsibilities~~  
205.7. ~~Appeal~~

205.5. Furlough Implementation Plan  
205.6. Furlough Implementation  
205.7. Placing Employees in Furlough Status  
205.8. Furloughed Employees  
205.9. Recall of Furloughed Employees  
205.10. Direct Report Level and Supervisor Responsibilities  
205.11. Appeal

**205.1. Purpose and Policy**

205.1-1. Purpose. -The purpose of this ~~Policy~~law is to ~~enable:~~  
(a) Enable the ~~Tribe~~Nation to implement a furlough ~~as a tool~~program in response to  
~~remedy an operating budget deficit.~~interruption of governmental revenues or operations,  
insufficient treasury funds or other emergencies/ unplanned events as determined by the  
Oneida Business Committee in accordance with this law;

205.1-2. ~~Policy.~~ This ~~Policy~~ shall apply to all employees of the ~~Tribe.~~ ~~To utilize a furlough, a~~  
~~decrease or lapse of revenue or funding and/or any other budget situation warranting an unpaid~~  
~~leave shall be identified.~~

- (b) Establish a consistent and equitable process for implementation of a furlough program;
- and
- (c) Incorporate Indian preference into the furlough program and require that it be applied  
in accordance with this law.

205.1-2. Policy. It is the policy of the Nation to have consistent and standard procedures to  
address events and/or incidents that impact employees of the Nation. It is further the policy of the  
Nation to incorporate and adhere to Indian preference in all aspects of employment within the  
Oneida Nation.

**205.2. Adoption, Amendment, Repeal**

205.2-1. This ~~Policy~~law was adopted by the Oneida Business Committee by resolution BC-11-  
10-15-B; and amended by resolution BC- - - - .

205.2-2. This ~~Policy~~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.

205.2-3. Should a provision of this ~~Policy~~law or the application thereof to any person or  
circumstances be held as invalid, such invalidity shall not affect other provisions of this ~~policy~~law  
which are considered to have legal force without the invalid portions.

205.2-4. In the event of a conflict between a provision of this ~~Policy~~law and a provision of  
another ~~policy~~law, the provisions of this ~~Policy~~law shall control.

205.2-5. This ~~Policy~~law is adopted under authority of the Constitution of the Oneida ~~Tribe of~~  
Indians of Wisconsin Nation.

**205.3. Definitions**

205.3-1. This section shall govern the definitions of words or phrases as used within this

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37 ~~Policy~~law. All words not defined herein shall be used in their ordinary and everyday sense.

38 ~~(a) “Direct report level~~ “Additional duties” means responsibilities of another  
 39 position” means within the Nation that is not within an employee’s current scope of work.

40 ~~(b) “Authorized designee” means an employee identified by a Direct Report Level position~~  
 41 to develop or assist in developing a furlough implementation plan when the individual  
 42 employed in the Direct Report Level position is unavailable or requests such assistance  
 43 from that employee.

44 ~~(c) “Critical position” means a position of employment within the Nation that is crucial to~~  
 45 governmental functions, including, but not limited to, health, safety, regulatory compliance  
 46 and/or revenue generation.

47 ~~(d) “Direct Report Level position” means a position of employment within the Nation that~~  
 48 is the highest level in the chain of command under the Oneida Business Committee and  
 49 who is responsible for a Tribal Departmentdepartment and/or Divisiondivision of the  
 50 Nation.

51 ~~(e) “Employee” means any individual who is employed by the Tribe and is subject to the~~  
 52 direction and control of the Tribe with respect to the material details of the work performed,  
 53 or who has the status of an employee under the usual common law rules applicable to  
 54 determining the employer-employee relationship. “Employee” includes, but is not limited  
 55 to, an individual employed by the Nation, including, but not limited to, employees of any  
 56 program or enterprise of the Tribe and Nation, political appointees, but does not include  
 57 elected or appointed official temporary employees and employees on probationary status.

58 ~~(f) “Furlough” means a temporary, unpaid leave from time off of work for a specified~~  
 59 period of time.

60 ~~(d) “(g) “Indian” means any person, other than an Oneida citizen, who is a citizen of a~~  
 61 federally-recognized Indian tribe, other than the Oneida Nation.

62 ~~(h) “Indian preference” means a preference granted to retain an Oneida member employee~~  
 63 over other non-member employees. for Indians, regardless of tribal affiliation, in all aspects  
 64 of employment, with Oneida citizens receiving the highest levels of preference for purposes  
 65 of this law.

66 ~~(e)-i) “Nation” means the Oneida Nation.~~

67 ~~(j) “Oneida citizen” means those persons who are enrolled members of the Nation, eligible~~  
 68 for enrollment in the Nation or documented first generation Oneida descendants.

69 ~~(k) “Supervisor” means a person an employee of the Nation who directly oversees the work~~  
 70 and performance of an employee on a daily basis.

71 ~~(f) “Tribe” or “Tribal”~~ “Temporary employee” means an employee hired by the  
 72 Nation for a short-term assignment and consists of the following classifications:

73 (1) Emergency/Temp;

74 (2) Limited Term;

75 (3) Seasonal;

76 (4) Substitute/Relief;

77 (5) Youth Worker; and

78 (6) Student/Intern.

79  
 80 **205.4. Application**



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81 205.4-1. Unless otherwise stated herein, this law shall apply to all employees of the Nation and  
 82 all employment decisions of the Nation that are governed, whether in whole or in part, by this law.

83 205.4-2. Indian Preference. It is the intent of this law, and the policy of the Nation, that no  
 84 employee who is Indian shall be furloughed so long as an employee, within the same department/  
 85 division and position, who is non-Indian is still employed.

86 (a) Title VII of the Civil Rights Act of 1964 allows private and government employers on  
 87 or near a Federal Trust Indian Reservation to exercise Indian preference in employment.

88 (b) The Indian Self Determination and Education Act affirms that any tribal employment  
 89 or contract preference laws adopted by such tribe shall govern.

90 (c) In accordance with this section and subject to any express exceptions set forth herein,  
 91 a furlough program shall be administered in a manner that affords preferential treatment to  
 92 Oneida Tribe of citizens and Indians of Wisconsin in the following order, starting with  
 93 those employees to be given the highest level of preference when applying the provisions  
 94 of this law:

95 \_\_\_\_\_ (1) Enrolled members of the Oneida Nation;

96 \_\_\_\_\_ (2) Oneida citizens eligible for enrollment in the Oneida Nation;

97 \_\_\_\_\_ (3) Documented first generation Oneida descendants;

98 \_\_\_\_\_ (4) Indians; and

99 \_\_\_\_\_ (5) Non-Indians.

100 205.4-3.

101 205.4-3. Equal Opportunity Employer. Notwithstanding section 205.4-2 above, the Nation is an Equal  
 102 Opportunity Employer that prohibits the application of this law and/or the implementation of a  
 103 furlough program in a manner that discriminates based on race, color, religion, sex, pregnancy,  
 104 age, national origin, citizenship status, veteran status, physical or mental disability, genetic  
 105 information and/or any other basis protected by the anti-discrimination provisions of Title VII of  
 106 the Civil Rights Act of 1964.

107 205.4-4. Training on Indian Preference. The Human Resources Department shall be responsible  
 108 for introducing new employees of the Nation to the concept of Indian preference, as well as how  
 109 it applies to the furlough program set forth herein, during employee orientation. Such introduction  
 110 shall include, at a minimum, coverage of the following topics:

111 (a) The history behind Indian preference, including the role that the Bureau of Indian  
 112 Affairs (“BIA”) had in its development;

113 (b) The Indian Self-Determination and Education Assistance Act of 1975, as well as the  
 114 exception to Title VII of the Civil Rights Act of 1964; and

115 (c) Examples of how Indian preference would apply in the event of a furlough program  
 116 when deciding which employees of the Nation would be placed in furlough status, as well  
 117 as the order in which they would be recalled, using methods to include, but not be limited  
 118 to, hypotheticals and charting.

119 205.4-5. Prohibitions. Any furlough program of the Nation that is initiated in accordance with  
 120 this law shall not:

121 (a) Be used as a means to resolve performance-related problems, grievance issues or to  
 122 take the place of disciplinary actions;

123 (b) Be administered or implemented in violation of this law or any other applicable laws/  
 124 policies of the Nation; and/or

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(c) Be implemented in a manner that requires interdepartmental transfers when applying Indian preference to the processes set forth herein.

**205.5. Furlough Implementation Plan**

~~205.4-1.~~ 205.5-1. Implementation Plan. Within a reasonable time after this law goes into effect, all Direct Report Level positions, or their duly authorized designees, shall submit a furlough implementation plan to the Human Resources Department for approval.

(a) The Human Resources Department shall create a standard template that Direct Report Level positions and/or duly authorized designees must use when developing their furlough implementation plan hereunder.

(1) The intent of the standard template shall be to elicit, in advance, information that will allow the Nation to implement a furlough program in as efficient and consistent a manner as possible under the circumstances, the information of which shall include, but not be limited to:

(A) Which positions within their respective department or division may qualify as a critical position;

(B) Which employees within their respective department or division may qualify for Indian preference and the corresponding level of preference that would apply under section 205.4-2 of this law;

(C) Which positions and/or employees within their respective department or division may be exempt from the application of Indian preference and the basis for said exemption;

(D) Whether any employees within their respective department or division may be interested in volunteering to be placed in furlough status in the event a furlough program is implemented; and

(E) Whether any positions within their respective department or division are capable of being adjusted to promote Indian preference when deciding which employees to place in furlough status.

(2) The Human Resources Department shall submit its standard template to the Oneida Business Committee for approval by resolution prior to distributing it to the Direct Report Level positions and/or duly authorized designees for development in accordance herewith.

(b) The Human Resources Department shall create a Standard Operating Procedure which sets forth how a furlough implementation plan shall be processed under this law once the standard template is approved by the Oneida Business Committee, that shall, at a minimum, address the following:

(1) Distribution of the standard template to the Direct Report Level positions and/or their duly authorized designees;

(2) The process for Direct Report Level positions and/or duly authorized designees to follow upon receiving the standard template, including, but not limited to:

(A) How a furlough implementation plan shall be created using the standard template;

(B) How a furlough implementation plan shall be submitted to the Human Resources Department for approval; and

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(C) The amount of time the Direct Report Level positions and/or their duly authorized designees have to submit their furlough implementation plans to the Human Resources Department upon receipt of the standard template.

(3) How the Human Resources Department will process furlough implementation plans for approval upon submission by the Direct Report Level positions and/or duly authorized designees; and

(4) How the Human Resources Department will notify the Direct Report Level positions and/or duly authorized designees of its decision to approve or reject their furlough implementation plan and, if rejected, the reason for the rejection and the process for resubmitting the furlough implementation plan for reconsideration.

(c) Copies of approved furlough implementation plans shall be retained by the Human Resources Department, as well as the Direct Report Level positions and/or duly authorized designees, consistent with governing law.

205.5-2. *Furlough Implementation Plan Updates.* The furlough implementation plan, as well as the standard template upon which it is developed, shall be updated as follows:

(a) *Standard Template.* Within two (2) years of its initial approval by resolution and then every two (2) years thereafter, the Human Resources Department shall review its standard template to assess whether it should be updated to better advance the underlying goals/policies of this section, as well as the law in general.

(1) Updates to the standard template must be approved by the Oneida Business Committee in accordance with section 205.5-1 of this law.

(b) *Implementation Plan.* Within two (2) years of initial approval by the Human Resources Department and then every (2) years thereafter, the Direct Report Level positions and/or duly authorized designees shall review their furlough implementation plan to assess whether it needs to be updated to account for any relevant changes within their department/division, including, but not limited to, changes in personnel, changes in positions and/or changes to any of the job descriptions attached to a position.

(1) Updates to a furlough implementation plan must be processed and approved in accordance with section 205.5-1 of this law, as well as the Standard Operating Procedure created by the Human Resources Department in accordance therewith.

(c) Nothing in this section shall be interpreted to prohibit an earlier review of the standard template or furlough implementation plan nor the number of times they are reviewed.

## 205.6. Furlough Implementation

205.6-1. *Alternatives to Furlough.* Prior to adopting a furlough resolution hereunder, the Oneida Business Committee shall consider whether any reasonable alternative options to implementation of a furlough program exist and, if so, exhaust the option or options in advance of implementation so long as the burden of doing so on the Nation as a whole does not outweigh the benefit to the employees who may be affected by the implementation of a furlough program.

205.6-2. *Furlough Resolution.* —If the Oneida Business Committee has identified the ~~necessity~~need for a furlough program, a directive by resolution shall be given to the appropriate Direct Report Level positions-, duly authorized designees, and any other individual or entity deemed necessary by the Oneida Business Committee.

(a) The resolution shall ~~direct~~include the following:

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213 (1) The basis for implementing the furlough program;

214 (2) Whether it is being implemented as an administrative or emergency furlough  
215 program;

216 (3) If feasible under the circumstances and to the extent of such feasibility so long  
217 as not less than is required under this law for the particular furlough program being  
218 implemented, the beginning and ending dates of the furlough- program;

219 (4) If feasible under the circumstances and to the extent of such feasibility, which  
220 areas within the Nation will be subject to the furlough program and which positions,  
221 if any, are considered critical positions exempt from being placed in furlough status;  
222 and

223 (5) Whether an ad hoc committee will be established pursuant to this section to  
224 assist in the implementation of the furlough program.

225 (b) *Ad Hoc Committee.* The Oneida Business Committee may, in its discretion, establish  
226 an ad hoc committee to assist in the implementation of a furlough program by, among other  
227 activities, helping to identify which areas of the Nation should be subject to the furlough  
228 program and which positions, if any, should be deemed critical, including the number of  
229 those critical positions to be retained, when directed to by the Oneida Business Committee.

230 (1) The ad hoc committee shall be made up of employees of the Nation, identified  
231 by the Oneida Business Committee within the furlough resolution or through a  
232 subsequent resolution or motion, who possess an expertise commensurate with the  
233 type and severity of the event giving rise to the need for the implementation of a  
234 furlough program.

235 (2) The ad hoc committee shall meet as necessary and at the request of the Oneida Business  
236 Committee to~~205.4-2. *Implementation of Furlough Plans.* Upon the passage of a resolution~~  
237 ~~directing that a furlough be implemented, all Direct Report Level positions shall immediately carry~~  
238 ~~out the furlough plans for his or her respective departments or agencies. An employee shall be~~  
239 ~~furloughed on days that the employee is normally scheduled to work or on holidays recognized by~~  
240 ~~the Tribe, whether the employee is normally scheduled to work or not.~~

241 carry out its responsibilities per the directive of the Oneida Business Committee  
242 and in a manner consistent with this law.

243 (3) The ad hoc committee shall not be subject to the Boards, Committees and  
244 Commissions law and employees shall not be entitled to stipends or any additional  
245 form of compensation for serving on an ad hoc committee established hereunder.

246 (4) The ad hoc committee shall dissolve upon conclusion of the furlough program  
247 for which it was established or on an early date as determined by the Oneida  
248 Business Committee, subject to the following:

249 (A) The ad hoc committee shall prepare, as well as present, a close-out  
250 report, in accordance with the Oneida Business Committee's directive; and

251 (B) The ad hoc committee shall forward all materials and records that were  
252 used and/or created to carry out its responsibilities hereunder to the Human  
253 Resources Department for storage/disposal in accordance with governing  
254 law.

255 205.6-3. *Furlough Programs.* A furlough program shall be characterized as either an emergency  
256 or an administrative program in the furlough resolution and then carried out in accordance with

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257 the portions of this section that apply to such characterization.

258 (a) *In General.* The following shall apply to all furlough programs implemented hereunder,  
259 regardless of their characterization.

260 (1) ~~205.4-3.~~ Notice. ~~A supervisor shall give an~~  
261 ~~employee~~ of the implementation of a furlough program shall be provided to  
262 employees in writing and, along with information relevant to the furlough program  
263 being implemented, include the following:

264 (A) Fair warning regarding the failure to respond to a notice of recall as set  
265 forth in section 205.9-2 of this law; and

266 (B) A directive that it is the employee's responsibility to ensure that the  
267 Nation has his or her most current contact information.

268 (2) Written notice shall be sent to employees via the outlet(s) deemed most capable  
269 of reaching them in as efficient a manner as possible under the circumstances.

270 (A) In the event that the Nation develops a formal process to provide mass  
271 notifications to employees for events such as the implementation of a  
272 furlough program, such process shall be deemed the most capable outlet  
273 hereunder and used to provide written notice to employees for purposes  
274 hereof.

275 (b) *Emergency Furlough Program.* An emergency furlough program may be initiated by  
276 the Oneida Business Committee on an emergency basis when in the best interest of the  
277 Nation due to acts of God or sudden emergencies requiring immediate curtailment of  
278 activities.

279 (1) *Notice.* Employees shall be notified of the Oneida Business Committee's  
280 decision to implement an emergency furlough program as far in advance of the  
281 program's implementation date as is reasonably possible under the circumstances.

282 (A) If circumstances do not allow for the Oneida Business Committee to  
283 set a specific date upon which the emergency furlough program will end  
284 within the furlough resolution, notice of the anticipated end date shall be  
285 provided as soon thereafter as is reasonably possible, consistent with section  
286 205.6-3 of this law.

287 (2) *Duration.* No emergency furlough program implemented hereunder shall last  
288 for longer than twenty-six (26) weeks from the date of implementation, unless  
289 extended by the Oneida Business Committee through a subsequent resolution.

290 (c) *Administrative Furlough Program.* The Oneida Business Committee may initiate an  
291 administrative furlough in response to a foreseeable event that is likely to result in a  
292 temporary reduction in revenue/funding or some other organizational issue where the intent  
293 is to recall employees back to work once the event has subsided.

294 (1) *Notice.* Employees shall be notified of the Oneida Business Committee's  
295 decision to implement an administrative furlough program at least five (5) business  
296 days prior to a furlough being implemented in advance of the program's  
297 implementation date.

298 (2) *Duration.* The beginning and ending dates of the administrative furlough  
299 program shall be specified within the furlough resolution.

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300 (A) An administrative furlough program shall end on the date specified  
301 within the furlough resolution, unless revised or extended by the Oneida  
302 Business Committee through a subsequent resolution.

303 (B) Notice of a revised or extended end date for an administrative furlough  
304 program shall be provided as soon as reasonably possible in advance of the  
305 original end date, consistent with section 205.6-3 of this law.

### 307 **205.7. Placing Employees in Furlough Status**

308 205.7-1. This section shall govern the manner in which employees of the Nation are selected to  
309 be placed in furlough status following the adoption of a resolution triggering the implementation  
310 of a furlough program.

311 205.7-2. Critical Positions. Except as otherwise stated herein, employment positions identified  
312 as critical pursuant to this section of the law shall be exempt from placement into furlough status  
313 during the specific furlough program for which the position was deemed critical.

314 (a) Critical positions, as well as the requisite number thereof, shall be identified by the  
315 Oneida Business Committee, or ad hoc committee upon directive of the Oneida Business  
316 Committee and subject to its approval, within the furlough resolution referenced in section  
317 205.6-2 of this law or as soon thereafter as is reasonably possible under the circumstances  
318 in a subsequent resolution or motion.

319 (1) Number of Critical Positions. If the number of individuals employed in the  
320 same position within a department or division that is deemed critical exceeds the  
321 maximum number directed to be retained, employees within that same position will  
322 be retained in accordance with the order of preference and priority provided in  
323 section 205.9-1 of this law.

324 (A) Critical position employees who are not retained hereunder shall be  
325 placed in furlough status and subject to recall in accordance with section  
326 205.9 of this law.

327 (2) Amendments. The Oneida Business Committee, in its discretion, and if so  
328 desired with assistance from the ad hoc committee, may amend the list of identified  
329 critical positions as it deems necessary under the circumstances.

330 (A) Direct Report Level positions or their duly authorized designees may  
331 submit requests for amendments to the list of identified critical positions  
332 within their department or division to the Oneida Business Committee for  
333 consideration.

334 205.7-3. Order for Placement in Furlough Status. Unless otherwise stated herein, the following  
335 order shall be adhered to when placing non-critical position employees within the same department  
336 or division in furlough status.

337 (a) Temporary Employees. Temporary employees within a department or division shall be  
338 the first category of employees to be placed in furlough status.

339 (b) Volunteer Employees. Following the placement of temporary employees in furlough  
340 status, eligible employees who volunteer for said placement shall be the next category of  
341 employees to be placed in furlough status, subject to the following:

342 (1) Employees who volunteer to be placed in furlough status must sign a form,  
343 created by the Human Resources Department, confirming that:

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(A) They volunteered to be placed in furlough status, notwithstanding any preference or eligibility for retention that they may have;

(B) Their decision to volunteer was not coerced or based on any promises of compensation or other consideration; and

(C) They understand that they are not guaranteed a recall back to work, and as a result, could be terminated from their employment with the Nation.

(2) Once signed, the employee shall be provided with a copy for his or her position records and the Human Resources Department shall retain the original copy in a manner consistent with the Nation's Open Records and Open Meetings law and/or any other applicable laws of the Nation.

205.4 4. ~~Continuous Service.~~ A (3) Employees who volunteer to be placed in furlough status shall retain the rights afforded under, as well as be subject to, the recall process set forth in section 205.9 of this law.

(c) Indian Preference. Absent an express exception and upon application of (a) and (b), above, when the remaining number of employees in the same position within a department or division exceeds the number of said employees to be placed in furlough status, the order of placement shall occur in the following order, beginning with the first category:

(1) Non-Indians;

(2) Indians;

(3) Documented first generation Oneida descendants;

(4) Oneida citizens eligible for enrollment in the Oneida Nation; and

(5) Enrolled members of the Oneida Nation.

(A) Exceptions.

(i) Grant Positions. Employment positions within the Nation that are funded, in whole or part, by appropriations from outside of the Nation, which prohibit, as a condition of receiving said funds, the application of Indian preference in employment practices, shall be exempt from the requirements of section 205.7-3 of this law.

(ii) Other Exceptions. Where it would violate an applicable federal law, including any regulations related thereto, or the terms of an applicable loan, memorandum of understanding, contract or other agreement for which the Nation is a party, the requirements of section 205.7-3 shall not constitute apply.

(d) Other Priorities. If, following application of Indian preference, employees subject to placement in furlough status within the same preference category still remain, priority shall be given to their retention in the following order, beginning with the first category:

(1) Seniority. Employees who have served the Nation as a regular status employee without a break in ~~continuous service.~~ employment for the longest amount of time shall be retained first;

(2) Veteran Status. If employees remain after applying the priority for seniority, the remaining employees with veteran status shall be retained over those with a more favorable performance evaluation; and

(3) Performance Evaluation. If employees remain after applying the priority for veterans, the remaining employees with a more favorable performance evaluation

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shall be retained over those with a less favorable performance evaluation.

(A) The most current performance evaluation in existence on the date the furlough resolution is adopted by the Oneida Business Committee shall be the evaluation that is used when assessing priority hereunder.

## **205.8. Furloughed Employees**

205.8-1. Employees shall not perform any work for the ~~Tribe while furloughed.~~ ~~This includes~~ Nation when off of work due to being placed in furlough status, which includes, but is not limited to, responding to work-related e-mail and ~~voice mail~~ voicemail, as well as traveling on behalf of the ~~Tribe.~~ Nation.

~~205.4-5.~~ (a) Employees within the Nation's Gaming Operations who are placed in furlough status, shall continue to adhere to the "Who May Not Play Policy" throughout the furlough period.  
205.8-2. Continuous Employment. Being placed in furlough status shall not be considered a break in continuous service under the Nation's Personnel Policies and Procedures law or any other governing law of the Nation that contemplates continuous employment therein.

205.8-3. Unemployment. ~~Furloughed employees~~ Employees placed in furlough status shall be responsible for contacting the State of Wisconsin Department of Workforce Development to determine if they qualify for unemployment insurance benefits. ~~Eligibility for unemployment insurance benefits is determined by the State of Wisconsin.~~

~~(a) Eligibility for unemployment insurance benefits shall be determined by the State of Wisconsin.~~

205.8-4-6. Benefits. Employees placed in furlough status shall not use or accrue personal or vacation time ~~when on furlough.~~ Employees for the time that they are off of work as a result of said placement.

~~(a) To the extent feasible and subject to the policy of insurance or contractual agreement governing the specific benefit, employees placed in furlough status shall continue to receive other benefits during a furlough for which they were entitled to prior to the implementation of the furlough program throughout the period of time in which the furlough program is in place.~~

205.4-7-8-5. Overtime and Additional Duty Pay. ~~When a furlough~~ Unless otherwise approved by the Oneida Business Committee on a case-by-case basis, when a furlough program is implemented in a department or ~~agency~~ division, no employee in that department or ~~agency~~ division shall be eligible for:

(a) ~~overtime~~ Overtime during the same pay period that another employee from the same department or ~~agency~~ division is ~~en~~ placed in furlough status; or

(b) ~~additional~~ Additional duty pay for performing duties for other employees in his or her department or ~~agency~~ division who ~~are on~~ have been placed in furlough status.

205.4-8-6. Back Pay. ~~Employees on furlough~~ Except as provided for in section 205.11 of this law, employees placed in furlough status shall not be eligible for back pay ~~awards~~ upon their return to work.



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429 **205.5 Furlough Plans**

430 ~~205.5 1. Furlough Plans. The 205.8-7. Outside Employment. Employees placed in furlough~~  
431 ~~status shall be allowed to obtain outside employment while in furlough status but shall remain~~  
432 ~~subject to the recall provisions of section 205.9 of this law.~~

433 ~~(a) Employees who obtain outside employment shall continue to adhere to any existing~~  
434 ~~policies of the Nation that govern their positions of employment with the Nation, including,~~  
435 ~~but not limited to, employee confidentiality and social media use, while in furlough status.~~

436  
437 **205.9. Recall of Furloughed Employees**

438 ~~205.9-1. The following shall be adhered to when deciding the order in which employees placed~~  
439 ~~in furlough status are recalled back to work at the end of a furlough program.~~

440 ~~(a) Order for Employee Recall. If every employee placed in furlough status is unable to be~~  
441 ~~recalled back to work at the same time, or at all, employees shall be recalled as follows:~~

442 ~~(1) Indian Preference. Indian preference shall be applied to the recall process in~~  
443 ~~the following order, with the first category of employees receiving the greatest level~~  
444 ~~of preference:~~

445 ~~\_\_\_\_\_ (A) Enrolled members of the Oneida Nation;~~

446 ~~\_\_\_\_\_ (B) Oneida citizens eligible for enrollment in the Oneida Nation;~~

447 ~~\_\_\_\_\_ (C) Documented first generation Oneida descendants;~~

448 ~~\_\_\_\_\_ (D) Indians; and~~

449 ~~\_\_\_\_\_ (E) Non-Indians.~~

450 ~~(2) Other Priorities. If, following application of Indian preference, employees~~  
451 ~~subject to placement in furlough status within the same preference category still~~  
452 ~~remain, priority shall be given to the recall of those remaining employees in the~~  
453 ~~following order, beginning with the first category:~~

454 ~~(A) Seniority. Employees who have served the Nation as a regular status~~  
455 ~~employee without a break in employment for the longest amount of time~~  
456 ~~shall be given recall priority first;~~

457 ~~(B) Veteran Status. If employees remain after applying the priority for~~  
458 ~~seniority, the remaining employees with veteran status shall be given recall~~  
459 ~~priority over those with a more favorable performance evaluation; and~~

460 ~~(C) Performance Evaluation. If employees remain after applying the~~  
461 ~~priority for veterans, the remaining employees with a more favorable~~  
462 ~~performance evaluation shall be given recall priority over those with a less~~  
463 ~~favorable performance evaluation.~~

464 ~~(i) The most current performance evaluation in existence on the~~  
465 ~~date the furlough resolution was adopted by the Oneida Business~~  
466 ~~Committee shall be the evaluation that is used when assigning~~  
467 ~~priority hereunder.~~

468 ~~(b) Volunteers. Except as stated herein, employees who qualify for Indian preference and~~  
469 ~~volunteered to be placed in furlough status shall retain said preference rights during the~~  
470 ~~recall process, regardless of volunteering, and be recalled consistent therewith.~~

471 ~~(1) A volunteer employee in the same Indian preference category as an employee,~~  
472 ~~who did not volunteer to be placed in furlough status and has no other priority over~~

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the volunteer employee, shall be recalled before the non-volunteer employee.

205.9-2. Notice of Recall and Responses.

(a) Employees shall be provided with written notice of their recall from placement in furlough status, using a method that can accurately determine the date of the employee's receipt of said notice.

(1) Along with information relevant to the employee's recall back to work, the written notice of recall shall include the language of subsection (b), below, in its entirety.

(b) Failure to Respond. A failure to respond to the notice of recall, in the manner indicated within the writing, within ten (10) business days of the employee's receipt thereof shall be interpreted to mean that the employee does not intend to return on the date of his or her recall and treated as a resignation of employment by that employee per the governing laws and policies of the Nation.

205.9-3. Separation in Lieu of Recall. Employees placed in furlough status who are not recalled at the end of the furlough program shall be terminated from their employment with the Nation in accordance with the governing laws/policies of the Nation.

**205.10. Responsibilities of Direct Report Level ~~positions shall develop~~ furlough plans and Supervisor Positions**

205.10-1. Generally. Persons employed in Direct Report Level and supervisory positions with the Nation, along with any of their duly authorized designees, shall be responsible for familiarizing themselves with this law, including any policies or procedures promulgated thereunder.

(a) Within a reasonable time after this law goes into effect, and then every two (2) years thereafter, the Direct Report Level and supervisory positions, along with any of their duly authorized designees, who would be subject to one (1) or more of the responsibilities set forth within this law in the event of a furlough program implementation, shall be required to attend training on the application of this law, as well as the programs to be implemented hereunder.

(1) The Human Resources Department shall be responsible for the creation and administration of the training required herein.

(b) Failure to adhere to the requirements or processes set forth within this law may result in disciplinary action or other consequences consistent with the Nation's employment laws.

205.10-2. Direct Report Level Positions. Upon the passage of a resolution directing a furlough be implemented, all Direct Report Level positions and/or duly authorized designees shall immediately carry out the directive consistent with the resolution; this law, including the Standard Operating Procedure created by the Human Resources Department in accordance therewith; and the furlough implementation plan that was approved for their respective departments and agencies. department or division.

~~205.5-2. The furlough plans shall set forth how each department or agency intends to implement a furlough. The plan shall include, but not be limited to, the following:~~

~~(a) an explanation of how employees will be selected;~~

~~(1) Temporary employees shall be furloughed first, followed by employees who volunteer to be furloughed. All other employees shall then be eligible to be~~

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furloughed.

(b) ~~a tentative schedule for a furlough;~~

~~(1) Furloughs shall be scheduled in a way that allows the departments to continue to provide a basic level of service.~~

~~(c) the estimated number of employees affected; and~~

~~(d) a summary of how the furlough will relieve budgetary shortfalls.~~

~~205.510-3. Disciplinary Furlough. Furloughs shall not be used for disciplinary reasons.~~

~~205.54. Indian Preference. Indian preference may not be used as a consideration in identifying employees to be furloughed.~~

~~205.55. All furlough plans shall be kept on file with the Human Resources Department.~~

## ~~205.6~~ **Supervisor Responsibilities**

~~205.61. Upon notification directive from the appropriate Direct Report Level position that furloughs are necessary, a supervisor shall:~~

~~(a) Identify positions and/or duly authorized designees, supervisors shall be responsible to provide notice to those employees who will be furloughed.~~

~~(b) Notify those employees that they will be furloughed and within their furlough dates; respective department or division as required under section 205.6-3 of this law and provide copies of such notice to the Human Resources Department to maintain in accordance with governing law.~~

~~(c) Notify the Human Resources Department of the chosen employees and their furlough dates.~~

~~(a) Supervisors shall ensure that job descriptions within their respective departments or divisions are accurately maintained and up-to-date.~~

## **205.711. Appeal**

~~205.711-1. An employee who has been furloughed placed in furlough status under this Policy law may only appeal a furlough that is said placement if based on disciplinary reasons a claim that it occurred in violation of this law.~~

~~(a) A written appeal must be submitted to the Direct Report Level position and/or duly authorized designee within ten (10) business days from of the notification employees receipt of the furlough notice under section 205.6 of this law.~~

~~(b) The burden for showing that the employee was placed in furlough status in violation of this law is based on disciplinary reasons rests on the employee. appealing the placement.~~

~~(c) The Direct Report Level position and/or duly authorized designee may make a decision based on the written appeal alone.~~

~~(1) The Direct Report Level position and/or duly authorized designee shall provide a written decision on the matter to the employee and the supervisor employee's supervisor within ten (10) business days of receiving the written appeal unless for good cause an extension is necessary.~~

~~(2) This decision is final and cannot be appealed.~~

~~205.711-2. An employee who has been furloughed placed in furlough status does not have any other right to appeal a furlough decision under any Tribal law, policy or the personnel grievance process of the Nation.~~

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560

561 *End.*

562

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563 Emergency Adoption – BC-10-15-13-A

564 Emergency Adoption Extension – BC-04-09-14-D

565 Adoption – BC-11-10-15-B\_

566 Adoption – BC- - - -

**Title 2. Employment – Chapter 205**  
*[Oneida Language]*  
*[Translation]*  
**FURLOUGH**

205.1. Purpose and Policy  
205.2. Adoption, Amendment, Repeal  
205.3. Definitions  
205.4. Application  
205.5. Furlough Implementation Plan  
205.6. Furlough Implementation

205.7. Placing Employees in Furlough Status  
205.8. Furloughed Employees  
205.9. Recall of Furloughed Employees  
205.10. Direct Report Level and Supervisor Responsibilities  
205.11. Appeal

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**205.1. Purpose and Policy**

205.1-1. *Purpose.* The purpose of this law is to:

- (a) Enable the Nation to implement a furlough program in response to an interruption of governmental revenues or operations, insufficient treasury funds or other emergencies/ unplanned events as determined by the Oneida Business Committee in accordance with this law;
- (b) Establish a consistent and equitable process for implementation of a furlough program; and
- (c) Incorporate Indian preference into the furlough program and require that it be applied in accordance with this law.

205.1-2. *Policy.* It is the policy of the Nation to have consistent and standard procedures to address events and/or incidents that impact employees of the Nation. It is further the policy of the Nation to incorporate and adhere to Indian preference in all aspects of employment within the Oneida Nation.

**205.2. Adoption, Amendment, Repeal**

205.2-1. This law was adopted by the Oneida Business Committee by resolution BC-11-10-15-B and amended by resolution BC-\_\_-\_\_-\_\_-\_\_.

205.2-2. 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.

205.2-3. 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.

205.2-4. 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.

205.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**205.3. Definitions**

205.3-1. This section shall govern the definitions of words or phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Additional duties” means responsibilities of another position within the Nation that is not within an employee’s current scope of work.
- (b) “Authorized designee” means an employee identified by a Direct Report Level position to develop or assist in developing a furlough implementation plan when the individual employed in the Direct Report Level position is unavailable or requests such assistance

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38 from that employee.

39 (c) “Critical position” means a position of employment within the Nation that is crucial to  
40 governmental functions, including, but not limited to, health, safety, regulatory compliance  
41 and/or revenue generation.

42 (d) “Direct Report Level position” means a position of employment within the Nation that  
43 is the highest level in the chain of command under the Oneida Business Committee and is  
44 responsible for a department and/or division of the Nation.

45 (e) “Employee” means any individual employed by the Nation, including, but not limited  
46 to, employees of any program or enterprise of the Nation, political appointees, temporary  
47 employees and employees on probationary status.

48 (f) “Furlough” means temporary, unpaid time off of work for a specified period of time.

49 (g) “Indian” means any person, other than an Oneida citizen, who is a citizen of a federally-  
50 recognized Indian tribe, other than the Oneida Nation.

51 (h) “Indian preference” means preference for Indians, regardless of tribal affiliation, in all  
52 aspects of employment, with Oneida citizens receiving the highest levels of preference for  
53 purposes of this law.

54 (i) “Nation” means the Oneida Nation.

55 (j) “Oneida citizen” means those persons who are enrolled members of the Nation, eligible  
56 for enrollment in the Nation or documented first generation Oneida descendants.

57 (k) “Supervisor” means an employee of the Nation who directly oversees the work and  
58 performance of an employee on a daily basis.

59 (l) “Temporary employee” means an employee hired by the Nation for a short-term  
60 assignment and consists of the following classifications:

- 61 (1) Emergency/Temp;
- 62 (2) Limited Term;
- 63 (3) Seasonal;
- 64 (4) Substitute/Relief;
- 65 (5) Youth Worker; and
- 66 (6) Student/Intern.

67

#### 68 **205.4. Application**

69 205.4-1. Unless otherwise stated herein, this law shall apply to all employees of the Nation and  
70 all employment decisions of the Nation that are governed, whether in whole or in part, by this law.

71 205.4-2. *Indian Preference.* It is the intent of this law, and the policy of the Nation, that no  
72 employee who is Indian shall be furloughed so long as an employee, within the same department/  
73 division and position, who is non-Indian is still employed.

74 (a) Title VII of the Civil Rights Act of 1964 allows private and government employers on  
75 or near a Federal Trust Indian Reservation to exercise Indian preference in employment.

76 (b) The Indian Self Determination and Education Act affirms that any tribal employment  
77 or contract preference laws adopted by such tribe shall govern.

78 (c) In accordance with this section and subject to any express exceptions set forth herein,  
79 a furlough program shall be administered in a manner that affords preferential treatment to  
80 Oneida citizens and Indians in the following order, starting with those employees to be  
81 given the highest level of preference when applying the provisions of this law:

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- 82 (1) Enrolled members of the Oneida Nation;  
83 (2) Oneida citizens eligible for enrollment in the Oneida Nation;  
84 (3) Documented first generation Oneida descendants;  
85 (4) Indians; and  
86 (5) Non-Indians.

87 205.4-3. *Equal Opportunity Employer.* Notwithstanding section 205.4-2 above, the Nation is an  
88 Equal Opportunity Employer that prohibits the application of this law and/or the implementation  
89 of a furlough program in a manner that discriminates based on race, color, religion, sex, pregnancy,  
90 age, national origin, citizenship status, veteran status, physical or mental disability, genetic  
91 information and/or any other basis protected by the anti-discrimination provisions of Title VII of  
92 the Civil Rights Act of 1964.

93 205.4-4. *Training on Indian Preference.* The Human Resources Department shall be responsible  
94 for introducing new employees of the Nation to the concept of Indian preference, as well as how  
95 it applies to the furlough program set forth herein, during employee orientation. Such introduction  
96 shall include, at a minimum, coverage of the following topics:

- 97 (a) The history behind Indian preference, including the role that the Bureau of Indian  
98 Affairs (“BIA”) had in its development;  
99 (b) The Indian Self-Determination and Education Assistance Act of 1975, as well as the  
100 exception to Title VII of the Civil Rights Act of 1964; and  
101 (c) Examples of how Indian preference would apply in the event of a furlough program  
102 when deciding which employees of the Nation would be placed in furlough status, as well  
103 as the order in which they would be recalled, using methods to include, but not be limited  
104 to, hypotheticals and charting.

105 205.4-5. *Prohibitions.* Any furlough program of the Nation that is initiated in accordance with  
106 this law shall not:

- 107 (a) Be used as a means to resolve performance-related problems, grievance issues or to  
108 take the place of disciplinary actions;  
109 (b) Be administered or implemented in violation of this law or any other applicable laws/  
110 policies of the Nation; and/or  
111 (c) Be implemented in a manner that requires interdepartmental transfers when applying  
112 Indian preference to the processes set forth herein.

113

## 114 **205.5. Furlough Implementation Plan**

115 205.5-1. *Implementation Plan.* Within a reasonable time after this law goes into effect, all Direct  
116 Report Level positions, or their duly authorized designees, shall submit a furlough implementation  
117 plan to the Human Resources Department for approval.

- 118 (a) The Human Resources Department shall create a standard template that Direct Report  
119 Level positions and/or duly authorized designees must use when developing their furlough  
120 implementation plan hereunder.

121 (1) The intent of the standard template shall be to elicit, in advance, information  
122 that will allow the Nation to implement a furlough program in as efficient and  
123 consistent a manner as possible under the circumstances, the information of which  
124 shall include, but not be limited to:

- 125 (A) Which positions within their respective department or division may

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- 126 qualify as a critical position;
- 127 (B) Which employees within their respective department or division may
- 128 qualify for Indian preference and the corresponding level of preference that
- 129 would apply under section 205.4-2 of this law;
- 130 (C) Which positions and/or employees within their respective department
- 131 or division may be exempt from the application of Indian preference and
- 132 the basis for said exemption;
- 133 (D) Whether any employees within their respective department or division
- 134 may be interested in volunteering to be placed in furlough status in the event
- 135 a furlough program is implemented; and
- 136 (E) Whether any positions within their respective department or division
- 137 are capable of being adjusted to promote Indian preference when deciding
- 138 which employees to place in furlough status.
- 139 (2) The Human Resources Department shall submit its standard template to the
- 140 Oneida Business Committee for approval by resolution prior to distributing it to the
- 141 Direct Report Level positions and/or duly authorized designees for development in
- 142 accordance herewith.
- 143 (b) The Human Resources Department shall create a Standard Operating Procedure which
- 144 sets forth how a furlough implementation plan shall be processed under this law once the
- 145 standard template is approved by the Oneida Business Committee, that shall, at a minimum,
- 146 address the following:
- 147 (1) Distribution of the standard template to the Direct Report Level positions and/or
- 148 their duly authorized designees;
- 149 (2) The process for Direct Report Level positions and/or duly authorized designees
- 150 to follow upon receiving the standard template, including, but not limited to:
- 151 (A) How a furlough implementation plan shall be created using the standard
- 152 template;
- 153 (B) How a furlough implementation plan shall be submitted to the Human
- 154 Resources Department for approval; and
- 155 (C) The amount of time the Direct Report Level positions and/or their duly
- 156 authorized designees have to submit their furlough implementation plans to
- 157 the Human Resources Department upon receipt of the standard template.
- 158 (3) How the Human Resources Department will process furlough implementation
- 159 plans for approval upon submission by the Direct Report Level positions and/or
- 160 duly authorized designees; and
- 161 (4) How the Human Resources Department will notify the Direct Report Level
- 162 positions and/or duly authorized designees of its decision to approve or reject their
- 163 furlough implementation plan and, if rejected, the reason for the rejection and the
- 164 process for resubmitting the furlough implementation plan for reconsideration.
- 165 (c) Copies of approved furlough implementation plans shall be retained by the Human
- 166 Resources Department, as well as the Direct Report Level positions and/or duly authorized
- 167 designees, consistent with governing law.
- 168 205.5-2. *Furlough Implementation Plan Updates.* The furlough implementation plan, as well as
- 169 the standard template upon which it is developed, shall be updated as follows:



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170 (a) *Standard Template.* Within two (2) years of its initial approval by resolution and then  
171 every two (2) years thereafter, the Human Resources Department shall review its standard  
172 template to assess whether it should be updated to better advance the underlying goals/  
173 policies of this section, as well as the law in general.

174 (1) Updates to the standard template must be approved by the Oneida Business  
175 Committee in accordance with section 205.5-1 of this law.

176 (b) *Implementation Plan.* Within two (2) years of initial approval by the Human Resources  
177 Department and then every (2) years thereafter, the Direct Report Level positions and/or  
178 duly authorized designees shall review their furlough implementation plan to assess  
179 whether it needs to be updated to account for any relevant changes within their department/  
180 division, including, but not limited to, changes in personnel, changes in positions and/or  
181 changes to any of the job descriptions attached to a position.

182 (1) Updates to a furlough implementation plan must be processed and approved in  
183 accordance with section 205.5-1 of this law, as well as the Standard Operating  
184 Procedure created by the Human Resources Department in accordance therewith.

185 (c) Nothing in this section shall be interpreted to prohibit an earlier review of the standard  
186 template or furlough implementation plan nor the number of times they are reviewed.  
187

## 188 **205.6. Furlough Implementation**

189 205.6-1. *Alternatives to Furlough.* Prior to adopting a furlough resolution hereunder, the Oneida  
190 Business Committee shall consider whether any reasonable alternative options to implementation  
191 of a furlough program exist and, if so, exhaust the option or options in advance of implementation  
192 so long as the burden of doing so on the Nation as a whole does not outweigh the benefit to the  
193 employees who may be affected by the implementation of a furlough program.

194 205.6-2. *Furlough Resolution.* If the Oneida Business Committee has identified the need for a  
195 furlough program, a directive by resolution shall be given to the appropriate Direct Report Level  
196 positions, duly authorized designees, and any other individual or entity deemed necessary by the  
197 Oneida Business Committee.

198 (a) The resolution shall include the following:

199 (1) The basis for implementing the furlough program;

200 (2) Whether it is being implemented as an administrative or emergency furlough  
201 program;

202 (3) If feasible under the circumstances and to the extent of such feasibility so long  
203 as not less than is required under this law for the particular furlough program being  
204 implemented, the beginning and ending dates of the furlough program;

205 (4) If feasible under the circumstances and to the extent of such feasibility, which  
206 areas within the Nation will be subject to the furlough program and which positions,  
207 if any, are considered critical positions exempt from being placed in furlough status;  
208 and

209 (5) Whether an ad hoc committee will be established pursuant to this section to  
210 assist in the implementation of the furlough program.

211 (b) *Ad Hoc Committee.* The Oneida Business Committee may, in its discretion, establish  
212 an ad hoc committee to assist in the implementation of a furlough program by, among other  
213 activities, helping to identify which areas of the Nation should be subject to the furlough

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214 program and which positions, if any, should be deemed critical, including the number of  
215 those critical positions to be retained, when directed to by the Oneida Business Committee.

216 (1) The ad hoc committee shall be made up of employees of the Nation, identified  
217 by the Oneida Business Committee within the furlough resolution or through a  
218 subsequent resolution or motion, who possess an expertise commensurate with the  
219 type and severity of the event giving rise to the need for the implementation of a  
220 furlough program.

221 (2) The ad hoc committee shall meet as necessary and at the request of the Oneida  
222 Business Committee to carry out its responsibilities per the directive of the Oneida  
223 Business Committee and in a manner consistent with this law.

224 (3) The ad hoc committee shall not be subject to the Boards, Committees and  
225 Commissions law and employees shall not be entitled to stipends or any additional  
226 form of compensation for serving on an ad hoc committee established hereunder.

227 (4) The ad hoc committee shall dissolve upon conclusion of the furlough program  
228 for which it was established or on an early date as determined by the Oneida  
229 Business Committee, subject to the following:

230 (A) The ad hoc committee shall prepare, as well as present, a close-out  
231 report, in accordance with the Oneida Business Committee's directive; and

232 (B) The ad hoc committee shall forward all materials and records that were  
233 used and/or created to carry out its responsibilities hereunder to the Human  
234 Resources Department for storage/disposal in accordance with governing  
235 law.

236 205.6-3. *Furlough Programs.* A furlough program shall be characterized as either an emergency  
237 or an administrative program in the furlough resolution and then carried out in accordance with  
238 the portions of this section that apply to such characterization.

239 (a) *In General.* The following shall apply to all furlough programs implemented hereunder,  
240 regardless of their characterization.

241 (1) Notice of the implementation of a furlough program shall be provided to  
242 employees in writing and, along with information relevant to the furlough program  
243 being implemented, include the following:

244 (A) Fair warning regarding the failure to respond to a notice of recall as set  
245 forth in section 205.9-2 of this law; and

246 (B) A directive that it is the employee's responsibility to ensure that the  
247 Nation has his or her most current contact information.

248 (2) Written notice shall be sent to employees via the outlet(s) deemed most capable  
249 of reaching them in as efficient a manner as possible under the circumstances.

250 (A) In the event that the Nation develops a formal process to provide mass  
251 notifications to employees for events such as the implementation of a  
252 furlough program, such process shall be deemed the most capable outlet  
253 hereunder and used to provide written notice to employees for purposes  
254 hereof.

255 (b) *Emergency Furlough Program.* An emergency furlough program may be initiated by  
256 the Oneida Business Committee on an emergency basis when in the best interest of the  
257 Nation due to acts of God or sudden emergencies requiring immediate curtailment of

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258 activities.

259 (1) *Notice.* Employees shall be notified of the Oneida Business Committee's  
260 decision to implement an emergency furlough program as far in advance of the  
261 program's implementation date as is reasonably possible under the circumstances.

262 (A) If circumstances do not allow for the Oneida Business Committee to  
263 set a specific date upon which the emergency furlough program will end  
264 within the furlough resolution, notice of the anticipated end date shall be  
265 provided as soon thereafter as is reasonably possible, consistent with section  
266 205.6-3 of this law.

267 (2) *Duration.* No emergency furlough program implemented hereunder shall last  
268 for longer than twenty-six (26) weeks from the date of implementation, unless  
269 extended by the Oneida Business Committee through a subsequent resolution.

270 (c) *Administrative Furlough Program.* The Oneida Business Committee may initiate an  
271 administrative furlough in response to a foreseeable event that is likely to result in a  
272 temporary reduction in revenue/funding or some other organizational issue where the intent  
273 is to recall employees back to work once the event has subsided.

274 (1) *Notice.* Employees shall be notified of the Oneida Business Committee's  
275 decision to implement an administrative furlough program at least five (5) business  
276 days in advance of the program's implementation date.

277 (2) *Duration.* The beginning and ending dates of the administrative furlough  
278 program shall be specified within the furlough resolution.

279 (A) An administrative furlough program shall end on the date specified  
280 within the furlough resolution, unless revised or extended by the Oneida  
281 Business Committee through a subsequent resolution.

282 (B) Notice of a revised or extended end date for an administrative furlough  
283 program shall be provided as soon as reasonably possible in advance of the  
284 original end date, consistent with section 205.6-3 of this law.

285

## 286 **205.7. Placing Employees in Furlough Status**

287 205.7-1. This section shall govern the manner in which employees of the Nation are selected to  
288 be placed in furlough status following the adoption of a resolution triggering the implementation  
289 of a furlough program.

290 205.7-2. *Critical Positions.* Except as otherwise stated herein, employment positions identified  
291 as critical pursuant to this section of the law shall be exempt from placement into furlough status  
292 during the specific furlough program for which the position was deemed critical.

293 (a) Critical positions, as well as the requisite number thereof, shall be identified by the  
294 Oneida Business Committee, or ad hoc committee upon directive of the Oneida Business  
295 Committee and subject to its approval, within the furlough resolution referenced in section  
296 205.6-2 of this law or as soon thereafter as is reasonably possible under the circumstances  
297 in a subsequent resolution or motion.

298 (1) *Number of Critical Positions.* If the number of individuals employed in the  
299 same position within a department or division that is deemed critical exceeds the  
300 maximum number directed to be retained, employees within that same position will  
301 be retained in accordance with the order of preference and priority provided in

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302 section 205.9-1 of this law.

303 (A) Critical position employees who are not retained hereunder shall be  
304 placed in furlough status and subject to recall in accordance with section  
305 205.9 of this law.

306 (2) *Amendments.* The Oneida Business Committee, in its discretion, and if so  
307 desired with assistance from the ad hoc committee, may amend the list of identified  
308 critical positions as it deems necessary under the circumstances.

309 (A) Direct Report Level positions or their duly authorized designees may  
310 submit requests for amendments to the list of identified critical positions  
311 within their department or division to the Oneida Business Committee for  
312 consideration.

313 205.7-3. *Order for Placement in Furlough Status.* Unless otherwise stated herein, the following  
314 order shall be adhered to when placing non-critical position employees within the same department  
315 or division in furlough status.

316 (a) *Temporary Employees.* Temporary employees within a department or division shall be  
317 the first category of employees to be placed in furlough status.

318 (b) *Volunteer Employees.* Following the placement of temporary employees in furlough  
319 status, eligible employees who volunteer for said placement shall be the next category of  
320 employees to be placed in furlough status, subject to the following:

321 (1) Employees who volunteer to be placed in furlough status must sign a form,  
322 created by the Human Resources Department, confirming that:

323 (A) They volunteered to be placed in furlough status, notwithstanding any  
324 preference or eligibility for retention that they may have;

325 (B) Their decision to volunteer was not coerced or based on any promises  
326 of compensation or other consideration; and

327 (C) They understand that they are not guaranteed a recall back to work, and  
328 as a result, could be terminated from their employment with the Nation.

329 (2) Once signed, the employee shall be provided with a copy for his or her records  
330 and the Human Resources Department shall retain the original copy in a manner  
331 consistent with the Nation's Open Records and Open Meetings law and/or any other  
332 applicable laws of the Nation.

333 (3) Employees who volunteer to be placed in furlough status shall retain the rights  
334 afforded under, as well as be subject to, the recall process set forth in section 205.9  
335 of this law.

336 (c) *Indian Preference.* Absent an express exception and upon application of (a) and (b),  
337 above, when the remaining number of employees in the same position within a department  
338 or division exceeds the number of said employees to be placed in furlough status, the order  
339 of placement shall occur in the following order, beginning with the first category:

340 (1) Non-Indians;

341 (2) Indians;

342 (3) Documented first generation Oneida descendants;

343 (4) Oneida citizens eligible for enrollment in the Oneida Nation; and

344 (5) Enrolled members of the Oneida Nation.

345 (A) *Exceptions.*

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346 (i) *Grant Positions*. Employment positions within the Nation that  
347 are funded, in whole or part, by appropriations from outside of the  
348 Nation, which prohibit, as a condition of receiving said funds, the  
349 application of Indian preference in employment practices, shall be  
350 exempt from the requirements of section 205.7-3 of this law.

351 (ii) *Other Exceptions*. Where it would violate an applicable federal  
352 law, including any regulations related thereto, or the terms of an  
353 applicable loan, memorandum of understanding, contract or other  
354 agreement for which the Nation is a party, the requirements of  
355 section 205.7-3 shall not apply.

356 (d) *Other Priorities*. If, following application of Indian preference, employees subject to  
357 placement in furlough status within the same preference category still remain, priority shall  
358 be given to their retention in the following order, beginning with the first category:

359 (1) *Seniority*. Employees who have served the Nation as a regular status employee  
360 without a break in employment for the longest amount of time shall be retained  
361 first;

362 (2) *Veteran Status*. If employees remain after applying the priority for seniority, the  
363 remaining employees with veteran status shall be retained over those with a more  
364 favorable performance evaluation; and

365 (3) *Performance Evaluation*. If employees remain after applying the priority for  
366 veterans, the remaining employees with a more favorable performance evaluation  
367 shall be retained over those with a less favorable performance evaluation.

368 (A) The most current performance evaluation in existence on the date the  
369 furlough resolution is adopted by the Oneida Business Committee shall be  
370 the evaluation that is used when assessing priority hereunder.

371  
372 **205.8. Furloughed Employees**

373 205.8-1. Employees shall not perform any work for the Nation when off of work due to being  
374 placed in furlough status, which includes, but is not limited to, responding to work-related e-mail  
375 and voicemail, as well as traveling on behalf of the Nation.

376 (a) Employees within the Nation's Gaming Operations who are placed in furlough status,  
377 shall continue to adhere to the "*Who May Not Play Policy*" throughout the furlough period.

378 205.8-2. *Continuous Employment*. Being placed in furlough status shall not be considered a  
379 break in continuous service under the Nation's Personnel Policies and Procedures law or any other  
380 governing law of the Nation that contemplates continuous employment therein.

381 205.8-3. *Unemployment*. Employees placed in furlough status shall be responsible for contacting  
382 the State of Wisconsin Department of Workforce Development to determine if they qualify for  
383 unemployment insurance benefits.

384 (a) Eligibility for unemployment insurance benefits shall be determined by the State of  
385 Wisconsin.

386 205.8-4. *Benefits*. Employees placed in furlough status shall not use or accrue personal or  
387 vacation time for the time that they are off of work as a result of said placement.

388 (a) To the extent feasible and subject to the policy of insurance or contractual agreement  
389 governing the specific benefit, employees placed in furlough status shall continue to

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390 receive other benefits for which they were entitled to prior to the implementation of the  
391 furlough program throughout the period of time in which the furlough program is in place.  
392 205.8-5. *Overtime and Additional Duty Pay.* Unless otherwise approved by the Oneida Business  
393 Committee on a case-by-case basis, when a furlough program is implemented in a department or  
394 division, no employee in that department or division shall be eligible for:

- 395 (a) Overtime during the same pay period that another employee from the same department  
396 or division is placed in furlough status; or  
397 (b) Additional duty pay for performing duties for other employees in his or her department  
398 or division who have been placed in furlough status.

399 205.8-6. *Back Pay.* Except as provided for in section 205.11 of this law, employees placed in  
400 furlough status shall not be eligible for back pay upon their return to work.

401 205.8-7. *Outside Employment.* Employees placed in furlough status shall be allowed to obtain  
402 outside employment while in furlough status but shall remain subject to the recall provisions of  
403 section 205.9 of this law.

- 404 (a) Employees who obtain outside employment shall continue to adhere to any existing  
405 policies of the Nation that govern their positions of employment with the Nation, including,  
406 but not limited to, employee confidentiality and social media use, while in furlough status.  
407

#### 408 **205.9. Recall of Furloughed Employees**

409 205.9-1. The following shall be adhered to when deciding the order in which employees placed  
410 in furlough status are recalled back to work at the end of a furlough program.

- 411 (a) *Order for Employee Recall.* If every employee placed in furlough status is unable to be  
412 recalled back to work at the same time, or at all, employees shall be recalled as follows:

413 (1) *Indian Preference.* Indian preference shall be applied to the recall process in  
414 the following order, with the first category of employees receiving the greatest level  
415 of preference:

- 416 (A) Enrolled members of the Oneida Nation;  
417 (B) Oneida citizens eligible for enrollment in the Oneida Nation;  
418 (C) Documented first generation Oneida descendants;  
419 (D) Indians; and  
420 (E) Non-Indians.

421 (2) *Other Priorities.* If, following application of Indian preference, employees  
422 subject to placement in furlough status within the same preference category still  
423 remain, priority shall be given to the recall of those remaining employees in the  
424 following order, beginning with the first category:

425 (A) *Seniority.* Employees who have served the Nation as a regular status  
426 employee without a break in employment for the longest amount of time  
427 shall be given recall priority first;

428 (B) *Veteran Status.* If employees remain after applying the priority for  
429 seniority, the remaining employees with veteran status shall be given recall  
430 priority over those with a more favorable performance evaluation; and

431 (C) *Performance Evaluation.* If employees remain after applying the  
432 priority for veterans, the remaining employees with a more favorable  
433 performance evaluation shall be given recall priority over those with a less

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434 favorable performance evaluation.

435 (i) The most current performance evaluation in existence on the  
436 date the furlough resolution was adopted by the Oneida Business  
437 Committee shall be the evaluation that is used when assigning  
438 priority hereunder.

439 (b) *Volunteers.* Except as stated herein, employees who qualify for Indian preference and  
440 volunteered to be placed in furlough status shall retain said preference rights during the  
441 recall process, regardless of volunteering, and be recalled consistent therewith.

442 (1) A volunteer employee in the same Indian preference category as an employee,  
443 who did not volunteer to be placed in furlough status and has no other priority over  
444 the volunteer employee, shall be recalled before the non-volunteer employee.

445 205.9-2. *Notice of Recall and Responses.*

446 (a) Employees shall be provided with written notice of their recall from placement in  
447 furlough status, using a method that can accurately determine the date of the employee's  
448 receipt of said notice.

449 (1) Along with information relevant to the employee's recall back to work, the  
450 written notice of recall shall include the language of subsection (b), below, in its  
451 entirety.

452 (b) *Failure to Respond.* A failure to respond to the notice of recall, in the manner indicated  
453 within the writing, within ten (10) business days of the employee's receipt thereof shall be  
454 interpreted to mean that the employee does not intend to return on the date of his or her  
455 recall and treated as a resignation of employment by that employee per the governing laws  
456 and policies of the Nation.

457 205.9-3. *Separation in Lieu of Recall.* Employees placed in furlough status who are not recalled  
458 at the end of the furlough program shall be terminated from their employment with the Nation in  
459 accordance with the governing laws/policies of the Nation.

460

## 461 **205.10. Responsibilities of Direct Report Level and Supervisor Positions**

462 205.10-1. *Generally.* Persons employed in Direct Report Level and supervisory positions with  
463 the Nation, along with any of their duly authorized designees, shall be responsible for familiarizing  
464 themselves with this law, including any policies or procedures promulgated thereunder.

465 (a) Within a reasonable time after this law goes into effect, and then every two (2) years  
466 thereafter, the Direct Report Level and supervisory positions, along with any of their duly  
467 authorized designees, who would be subject to one (1) or more of the responsibilities set  
468 forth within this law in the event of a furlough program implementation, shall be required  
469 to attend training on the application of this law, as well as the programs to be implemented  
470 hereunder.

471 (1) The Human Resources Department shall be responsible for the creation and  
472 administration of the training required herein.

473 (b) Failure to adhere to the requirements or processes set forth within this law may result  
474 in disciplinary action or other consequences consistent with the Nation's employment laws.

475 205.10-2. *Direct Report Level Positions.* Upon the passage of a resolution directing a furlough be  
476 implemented, all Direct Report Level positions and/or duly authorized designees shall immediately  
477 carry out the directive consistent with the resolution; this law, including the Standard Operating

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478 Procedure created by the Human Resources Department in accordance therewith; and the furlough  
479 implementation plan that was approved for their respective department or division.

480 205.10-3. *Supervisor Responsibilities.* Upon directive from the appropriate Direct Report Level  
481 positions and/or duly authorized designees, supervisors shall be responsible to provide notice to  
482 those employees within their respective department or division as required under section 205.6-3  
483 of this law and provide copies of such notice to the Human Resources Department to maintain in  
484 accordance with governing law.

485 (a) Supervisors shall ensure that job descriptions within their respective departments or  
486 divisions are accurately maintained and up-to-date.

487

### 488 **205.11. Appeal**

489 205.11-1. An employee who has been placed in furlough status under this law may only appeal  
490 said placement if based on a claim that it occurred in violation of this law.

491 (a) A written appeal must be submitted to the Direct Report Level position and/or duly  
492 authorized designee within ten (10) business days of the employees receipt of the notice  
493 under section 205.6 of this law.

494 (b) The burden for showing that the employee was placed in furlough status in violation  
495 of this law is on the employee appealing the placement.

496 (c) The Direct Report Level position and/or duly authorized designee may make a decision  
497 based on the written appeal alone.

498 (1) The Direct Report Level position and/or duly authorized designee shall provide  
499 a written decision on the matter to the employee and the employee's supervisor  
500 within ten (10) business days of receiving the written appeal unless for good cause  
501 an extension is necessary.

502 (2) This decision is final and cannot be appealed.

503 205.11-2. An employee who has been placed in furlough status does not have any other right to  
504 appeal a furlough decision under any law, policy or the personnel grievance process of the Nation.

505

506 *End.*

507

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508 Emergency Adoption – BC-10-15-13-A

509 Emergency Adoption Extension – BC-04-09-14-D

510 Adoption – BC-11-10-15-B

511 Adoption – BC-\_\_-\_\_-\_\_-\_\_





## FURLOUGH LAW AMENDMENTS LEGISLATIVE ANALYSIS

### HANDOUT

#### SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
<b>Intent of the Amendments</b>	<ul style="list-style-type: none"> <li>▪ To incorporate Indian preference into the Furlough law (“Law”) and require that it be applied to the Nation’s furlough process in accordance therewith;</li> <li>▪ To add priority levels to govern the order for placing in furlough status and recalling back to work those employees who remain after the application of Indian preference;</li> <li>▪ To clarify the process for preparing, initiating and implementing a furlough program, by:               <ul style="list-style-type: none"> <li>• Setting conditions and clear procedures, as well as express prohibitions, for when and how a furlough program may be initiated by the Oneida Business Committee (“OBC”);</li> <li>• Setting conditions and clear procedures for how a furlough program will be implemented by the Nation, once initiated; and</li> <li>• Assigning responsibilities to specific persons/entities for carrying out certain activities in accordance with the Law.</li> </ul> </li> <li>▪ To require a furlough be initiated as either an emergency or administrative program and then implemented in accordance therewith;</li> <li>▪ To allow the OBC to establish an ad hoc committee, made up of employees of the Nation, to assist in the implementation of furlough programs;</li> <li>▪ To add more due process to the Law by:               <ul style="list-style-type: none"> <li>• Specifying how notice must be provided to employees of the Nation who are subject to a furlough program;</li> <li>• Requiring the Human Resources Department to add training on Indian preference to its employee orientation that includes, at a minimum:                   <ul style="list-style-type: none"> <li>○ The history behind Indian preference, including the role the Bureau of Indian Affairs (“BIA”) had in its development;</li> <li>○ The Indian Self-Determination and Education Assistance Act of 1975, as well as the exception to Title VII of the Civil Rights Act of 1964 for Indian preference; and</li> <li>○ Examples of how Indian preference would apply to a furlough program using methods such as hypotheticals and charting.</li> </ul> </li> <li>• Requiring Direct Report Level positions/supervisors, who are responsible for implementing a furlough program, to undergo training on the application of the Law every two (2) years; and</li> <li>• Broadening the scope of claims that an employee placed in furlough status can bring on a appeal under the Law.</li> </ul> </li> </ul>
<b>Purpose</b>	To enable the Nation to implement a furlough as a tool to remedy an operating budget deficit when a decrease or lapse of revenue or funding and/or any other budget situation warranting an unpaid leave is identified. [2 O.C. 205.1-1 and 205.1-2].
<b>Affected Entities and Individuals</b>	Employees of the Oneida Nation; Human Resources Department; the Oneida Business Committee, Oneida Nation employees in Direct Report Level and supervisory positions, along with their authorized designees;

<b>Related Legislation</b>	Legislative Procedures Act, Layoff Policy; Open Records and Open Meetings law; Budget Management and Control law; Boards, Committees and Commissions law; Personnel Policies and Procedures law.
<b>Public Meeting</b>	A public meeting has not yet been held.
<b>Fiscal Impact</b>	A fiscal impact statement has not yet been requested.

## SECTION 2. LEGISLATIVE DEVELOPMENT

- 1  
2 A. The Furlough Policy, which will be referred to as the Furlough law upon adoption of the proposed  
3 amendments, was first adopted by OBC on November 10, 2015, through resolution BC-11-10-15-B. [2  
4 *O.C. 205.2-1*]. The Law was established to enable the Nation to implement a furlough as a tool to  
5 remedy an operating budget deficit when a decrease or lapse of revenue or funding and/or any other  
6 budget situation warranting an unpaid leave is identified. [2 *O.C. 205.1-1 and 205.1-2*].
- 7 B. On October 7, 2020, the Legislative Operating Committee (“LOC”) added this item to the Active Files  
8 List to incorporate Indian preference into the Law, as well as to provide clarity regarding certain other  
9 processes within the Law that were flagged for review following the recent furlough program that was  
10 implemented in response to the COVID-19 pandemic.
- 11 C. This will be the first time that the Law has been amended since its adoption in 2015; thus, along with  
12 the substantive amendments that resulted from the collaboration referenced further herein, the Law was  
13 updated to reflect the Nation’s current legislative practices that are less substantive in nature.  
14

## SECTION 3. CONSULTATION AND OUTREACH

- 15  
16 A. **Departments.** Representatives from the following departments participated in the development of this  
17 Law:  
18     ▪ Human Resources Department  
19     ▪ General Manager - Retail  
20     ▪ Employee Relations Department  
21     ▪ Gaming Employee Services
- 22 B. **Laws of the Nation.** The drafting of this legislative analysis included a review of the following laws  
23 of the Nation: Boards, Committees and Commissions law [1 *O.C. 105*]; Open Records and Open  
24 Meetings law [1 *O.C. 107*]; Legislative Procedures Act [1 *O.C. 109*]; Budget Management and Control  
25 law [1 *O.C. 121*]; Layoff Policy [2 *O.C. 207*]; Conflict of Interest law [2 *O.C. 217*]; Emergency  
26 Management law [3 *O.C. 302*]; Oneida Nation Gaming Ordinance [5 *O.C. 501*]; Indian Preference in  
27 Contracting law [5 *O.C. 502*]; and Personnel Policies and Procedures law.
- 28 C. **Area and Tribal Laws.** The following federal, state and tribal laws were also reviewed in the  
29 development of this legislative analysis:  
30     ▪ Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e;  
31     ▪ The Indian Self Determination and Education Assistance Act of 1975, 25 U.S.C. § 450(c);  
32     ▪ Federal and state laws related to labor and employment standards for exempt and non-exempt  
33 employees;  
34     ▪ Unemployment insurance benefits laws of the State of Wisconsin;  
35     ▪ Stockbridge-Munsee Tribal Law, Chapter 54 – Employee Preference Policy Ordinance;  
36     ▪ Coquille Indian Tribal Code, Chapter 188, Part 1 – General Governmental Affairs – Tribal  
37 and Indian Preference in Employment;  
38     ▪ Nez Perce Tribe’s Human Resources Manual;  
39

## SECTION 4. PROCESS

- 40  
41 A. Thus far, the amendments to this Law have followed the process set forth in the Legislative Procedures  
42 Act (“LPA”).
- 43 B. The Law was added to the Active Files List on October 7, 2020.
- 44 C. The following work meetings were held by Legislative Reference Office in the development of the  
45 amendments to this Law:

- 46       ▪ October 22, 2020, a meeting was held with Councilwoman, Marie Summers, to briefly discuss
- 47       her basis for requesting that the Furlough law be added to the Active Files List.
- 48       ▪ November 13, 2020, a work meeting was held with representatives from the Human Resources
- 49       Department (“HRD”) and Retail.
- 50       ▪ January 26, 2021, a work meeting was held with representatives from the HRD and Retail.
- 51       ▪ February 3, 2021, a work meeting was held with the LOC.
- 52       ▪ February 17, 2021, a work meeting was held between the LOC and representatives from the
- 53       HRD, Gaming Employee Services and Retail.
- 54       ▪ February 25, 2021, a work meeting was held with the LOC.
- 55       ▪ April 9, 2021, a work meeting was held with the LOC.
- 56       ▪ April 13, 2021, a work meeting was held with the LOC.
- 57       ▪ June 10, 2021, a work meeting was held with the LOC.
- 58       ▪ July 8, 2021, a work meeting was held with representatives from the HRD, Gaming Employee
- 59       Services and Retail.
- 60       ▪ July 21, 2021, a work meeting was held with the LOC.
- 61       ▪ August 17, 2021, a work meeting was held with the LOC.
- 62

## 63       **SECTION 5. CONTENTS OF THE LEGISLATION**

64       **A. Indian Preference.** Currently, the Law does not allow Indian preference to be used as a consideration  
65       in identifying which employees of the Nation to place in furlough status upon the implementation of a  
66       furlough program. [2 O.C. 205.5-4]. The proposed amendments will incorporate Indian preference into  
67       the Nation’s furlough programs and require that it be applied when deciding the order in which  
68       employees of the Nation are placed in furlough status, upon initiation of a furlough program, as well as  
69       recalled back to work when the program expires. [2 O.C. 205.1(c) and 205.4-2].

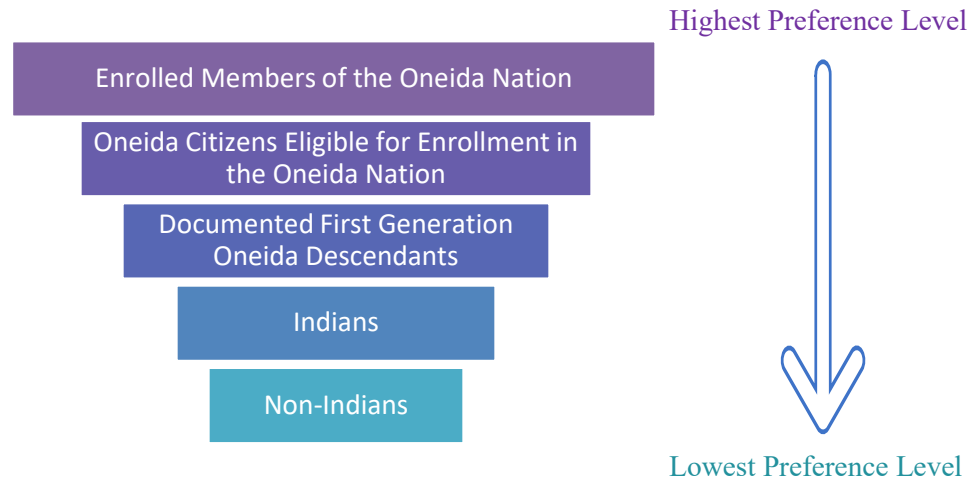
- 70       ▪ **Basis for Preference.** Federal laws have been adopted by the United States Congress to combat  
71       employment and economic discrimination that remains from the forcible removal of Indigenous  
72       people from their homelands.
  - 73           ○ Indian Self-Determination and Education Assistance Act of 1975. Through the Indian Self-  
74           Determination and Education Assistance Act of 1975 (“ISDEAA”), tribes are authorized  
75           to provide their own services created by the federal trust responsibility. ISDEAA allows  
76           tribes to assume administrative responsibility for federally funded programs designed for  
77           their benefit, primarily services which are administered by the BIA and the Indian Health  
78           Service. [25 U.S.C. § 5130].
  - 79
  - 80           ○ Title VII of the Civil Rights Act of 1964. Title VII of the Civil Rights Act of 1964 (“Title  
81           VII”) prohibits preferential employment practices that are based on race, religion, color,  
82           sex or national origin. However, Title VII contains an exception for Indian preference that  
83           reads: “nothing contained in this title shall apply to any business or enterprise on or near  
84           an Indian Reservation with regard to any *publicly* announced employment practice of such  
85           business or enterprise under which preferential treatment is given to an individual because  
86           he or she is Indian.” [42 U.S.C. § 2000e-2(i)(emphasis added.)].

87       By adding Indian preference to the Law, the Nation is exercising its sovereign power to help protect  
88       the gainful employment of its members and eradicate discrimination against Indian people in the  
89       workforce. Also, it is fulfilling the prerequisite to Title VII’s exception by publicly announcing the  
90       Nation’s intent to afford preferential treatment to its citizens and citizens of other federally  
91       recognized Indian tribes when implementing a furlough program under the Law.

- 92       ▪ **Applying Preference Levels.** Under section 205.4-2 of the proposed amendments and subject to  
93       any exceptions set forth within the Law, the Nation’s furlough programs will now be administered  
94       in a manner that affords preferential treatment to Indian people in the following order, starting with  
95       the category of employees to be given the highest level of preference:

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[2 O.C. 205.4-2(c)].

- **Definitions.** To ensure consistency in the application of Indian preference to the Nation’s furlough programs, the following definitions were added to the Law to help clarify where employees of the Nation fall within the preference spectrum:
  - Indian preference – means preference for Indians, regardless of tribal affiliation, in all aspects of employment, with Oneida citizens receiving the highest levels of preference for purposes of this law. [2 O.C. 205.3-1(h)];
  - Indian – means any person, other than an Oneida citizen, who is a citizen of a federally-recognized Indian tribe, other than the Oneida Nation. [2 O.C. 205.3-1(g)]; and
  - Oneida citizen – means those persons who are enrolled members of the Nation, eligible for enrollment in the Nation or documented first generation Oneida descendants. [2 O.C. 205.3-1(j)].
- **Effect.** Absent an exception, by adding Indian preference into the Law and requiring that it be applied to give preference according to the above diagram, with the highest level of preference being accorded to the top category of employees, no employee of the Nation who is an Oneida citizen or an Indian, as defined within the Law, shall be placed in furlough status so long as an employee, within the same department or division and position, who is non-Indian is still employed. [2 O.C. 205.4-2].

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- B. **Application [2 O.C. 205.4].** Section 205.4 of the proposed amendments titled, *Application*, replaces section 205.4 of the current Law titled, *Furlough*. This section was added, not only to publicly declare the incorporation of Indian preference into the Nation’s furlough programs (as discussed more fully above), but to clarify and/or mandate the following with respect to the application of this Law:
  - That, unless otherwise stated therein, the Law shall apply to all employees of the Nation and all employment decisions of the Nation that are governed, whether in whole or in part, thereby. [2 O.C. 205.4-1];
  - That, but for the requirements of Indian preference, the Nation is an Equal Opportunity Employer that prohibits the application of this Law and/or the implementation of a furlough program to occur in a manner that discriminates based on race, color, religion, sex, pregnancy, age, national origin, citizenship status, veteran status, physical or mental disability, genetic information and/or any other basis protected by the anti-discrimination provisions of Title VII. [2 O.C. 205.4-3];
  - That, the HRD will be responsible for introducing new employees of the Nation to the concept of Indian preference, as well as how it applies to the Nation’s furlough programs, during its employee orientation training. [2 O.C. 205.4-4]; and
    - Goal for Orientation. During the development of these amendments, the LOC wanted to ensure that employees of the Nation were familiar with the concept of Indian preference

141 and the history behind it, as well as how it would be applied to one or more departments/  
142 divisions of the Nation during a furlough program, so that the employees are not caught off  
143 guard when they first encounter Indian preference during a furlough program of the Nation.

- 144 ■ That, furlough programs shall not be:
- 145 ○ Used to resolve performance-related issues, grievances or to take the place of disciplinary  
146 actions [2 O.C. 205.4-5(a);
  - 147 ○ Administered or implemented in violation of the Law or any other applicable laws/ policies  
148 of the Nation [2 O.C. 205.4-5(b)]; and
  - 149 ○ Implemented in a manner that requires interdepartmental transfers when applying Indian  
150 preference to the processes set forth within the Law [2 O.C. 205.4-5(c)].
    - 151 • *Effect.* When developing the amendments relating to Indian preference, questions  
152 were raised with respect to whether interdepartmental transfers of employees had  
153 to be taken into consideration when deciding the order for placement into furlough  
154 status, as well as for recall back to work. Members of the workgroup, especially  
155 those from the revenue generating areas of the Nation, voiced concerns over how  
156 disruptive it could be for business to have to train an employee from another  
157 department to replace an existing employee who is already trained so as to comply  
158 with the requirements of Indian preference. This provision makes clear that  
159 interdepartmental transfers **are not** a necessary consideration in applying Indian  
160 preference during a furlough program.

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162 **C. Furlough Implementation Plan [2 O.C. 205.5].** Under the proposed amendments, section 205.5 of the  
163 current Law, titled, *Furlough Plans*, was replaced with section 205.5 titled, *Furlough Implementation*  
164 *Plan*, which sets forth certain steps that must be taken before a furlough program is even implemented.  
165 [2 O.C. 205.5-1(a)(1)]. The goal in adding these pre-implementation steps into the Law is to allow for  
166 a furlough program to be implemented in a more efficient, organized and consistent manner upon  
167 initiation by the OBC. [2 O.C. 205.5-1 (a)(1)]. Such pre-implementation activities include:

- 168 ■ That, within a reasonable time after the amendments to the Law are adopted, all Direct Report Level  
169 positions, or their authorized designees, are required to submit a furlough implementation plan to  
170 the HRD for approval. [2 O.C. 205.5-1].
- 171 ○ A definition for “authorized designee” was added to section 205.3 of the Law to mean “an  
172 employee identified by a Direct Report Level position to develop or assist in developing a  
173 furlough implementation plan when the individual employed in the Direct Report Level  
174 position is unavailable or requests such assistance from that employee.” [2 O.C. 205.3-  
175 1(b)].
  - 176 ■ That, the HRD shall be required to create the standard template, subject to approval by the OBC,  
177 for the Direct Report Level positions/authorized designees to use when creating their department’s  
178 or division’s furlough implementation plan for approval, the goal of the template being to elicit, at  
179 a minimum, the following information from the Direct Report Level positions or their authorized  
180 designees:
    - 181 ○ Which positions within their respective department or division may qualify as a critical  
182 position [2 O.C. 205.5-1(a)(1)(A)];
      - 183 • A “critical position” definition was added to section 205.3 of the proposed Law to  
184 mean “a position of employment within the Nation that is crucial to governmental  
185 functions, including, but not limited to, health, safety, regulatory compliance  
186 and/or revenue generation.” [2 O.C. 205.3-1(c)]. Critical positions, including how  
187 they are determined and treated during a furlough program, are discussed further  
188 below in this legislative analysis.
    - 189 ○ Which employees within their respective department or division may qualify for Indian  
190 preference and the corresponding level of preference that would apply under section 205.4  
191 of the proposed Law [2 O.C. 205.5-1(a)(1)(B)];

- 192 ○ Which positions and/or employees within their respective department or division may be  
193 exempt from the application of Indian preference and the basis for said exemption [2 O.C.  
194 205.5-1(a)(1)(C)];
- 195 ○ Whether any employees within their respective department or division may be interested  
196 in volunteering to be placed in furlough status if a furlough program were implemented [2  
197 O.C. 205.5-1(a)(1)(D)]; and
- 198 ○ Whether any positions within their respective department or division are capable of being  
199 adjusted to promote Indian preference when deciding which employees to place in furlough  
200 status [2 O.C. 205.5-1(a)(1)(E)].
  - 201 • *Point of Clarification.* The purpose of this last category is to explore whether  
202 positions or position descriptions, *within the same department or division*, could  
203 be adjusted to better advance the goal of Indian preference – not to require a Direct  
204 Report Level position to consider the transfer of employees from one department/  
205 division to another because, as explained above, this would be prohibited under  
206 section 205.4-5(c) of the Law.
- 207 ■ That, the HRD shall create a Standard Operating Procedure (“SOP”) setting forth how a furlough  
208 implementation plan is to be processed under the Law once the standard template is approved by  
209 the OBC, which must, at a minimum, address the following:
  - 210 ○ How the standard template will be distributed to the Direct Report Level positions and/or  
211 their authorized designees [2 O.C. 205.5-1(b)(1)];
  - 212 ○ The process for Direct Report Level positions and/or authorized designees to follow upon  
213 receiving the standard template, including:
    - 214 • How to create a furlough implementation plan using the standard template [2 O.C.  
215 205.5-1(b)(2)(A)]; and
    - 216 • How to submit a furlough implementation plan to the HRD for approval and how  
217 long the Direct Report Level positions/authorized designees have to submit their  
218 plans to the HRD after receiving the standard template [2 O.C. 205.5-1(b)(2)(B)  
219 and 205.5-1(b)(2)(C)].
  - 220 ○ How the HRD will process furlough implementation plans for approval upon submission  
221 by the Direct Report Level positions/authorized designees [2 O.C. 205.5-1(b)(3)]; and
  - 222 ○ How the HRD will notify the Direct Report Level positions/authorized designees of its  
223 decision to approve or reject their furlough implementation plan and, if rejected, the reason  
224 for the rejection and the process for resubmitting the furlough implementation plan for  
225 reconsideration [2 O.C. 205.5-1(b)(4)].
- 226 ■ And that, both the HRD and Direct Report Level positions/authorized designees shall review their  
227 standard template and furlough implementation plan, respectively, every two (2) years to assess  
228 whether they need to be updated to better advance the underlying goals/policies of the Law or  
229 account for any relevant changes within departments/divisions or the organization in general. [2  
230 O.C. 205.5-2].
  - 231 ○ Any changes to either the standard template or furlough implementation plan are required  
232 to go through the same approval process as the original document. [2 O.C. 205.5-2(a) &  
233 (b)].

235 **D. Furlough Implementation [2 O.C. 205.6].** This section was added, causing the current section 205.6  
236 titled, *Supervisor Responsibilities*, to be relocated to a later section within the Law, to govern the  
237 implementation of a furlough program, beginning with its initiation. Under the proposed amendments,  
238 a furlough program must still be initiated through a directive by resolution of the OBC, as is currently  
239 required. [2 O.C. 205.4-1; Proposed Law 2 O.C. 205.6-2]. However, the following provisions were  
240 added for purposes of clarity, due process and consistency:

- 241 ■ **Alternatives to Furlough.** Prior to initiating a furlough program through adoption of a resolution,  
242 the OBC will now be required to consider whether any reasonable alternative(s) to a furlough exist  
243 and, if so, must exhaust said alternative(s) before initiating the furlough, so long as the burden of

- 244 doing so on the Nation as a whole does not outweigh the benefit to the employees who may be  
245 affected by the furlough program at issue. [2 O.C. 205.6-1].
- 246 ■ **Contents of the Furlough Resolution.** In addition to the directive and the furlough dates that are  
247 required under the current Law [2 O.C. 205.4-1], the furlough resolution will now have to include  
248 the following information:
- 249 ○ The OBC’s basis for implementing the furlough program at issue [2 O.C. 205.6-2(a)(1)];
  - 250 ○ Whether the furlough is being implemented as an administrative or emergency program [2  
251 O.C. 205.6-2(a)(2)];
    - 252 • **Program Distinctions.** In the proposed Law, a furlough must be characterized as  
253 either an emergency or administrative program and then carried out in accordance  
254 with said characterization, as is more fully explained later in this analysis. [2 O.C.  
255 205.6-3].
  - 256 ○ If feasible under the circumstances and then to the extent thereof, the beginning and ending  
257 dates of the furlough program [2 O.C. 205.6-2(a)(3)];
  - 258 ○ If feasible under the circumstances and then to the extent thereof, which areas within the  
259 Nation will be subject to the furlough program and which positions, if any, are considered  
260 critical positions exempt from placement in furlough status [2 O.C. 205.6-2(a)(4)]; and
  - 261 ○ Whether an ad hoc committee will be established to assist in the implementation of the  
262 furlough program [2 O.C. 205.6-2(a)(5)].
- 263 ■ **Ad Hoc Committee.** Under the proposed Law, the OBC may, in its discretion, establish an ad hoc  
264 committee to assist with the implementation of a furlough program, including, but not limited to,  
265 helping the OBC identify which areas of the Nation should be subject to the furlough program, as  
266 well as which positions, if any, should be deemed critical and the number of those critical positions  
267 that should be retained. [2 O.C. 205.6-2(b)]. If established, the ad hoc committee:
- 268 ○ Must be made up of employees of the Nation, identified by the OBC within the furlough  
269 resolution or through a subsequent resolution/motion, who possess an expertise relative to  
270 the type and severity of the event giving rise to the furlough at issue [2 O.C. 205.6-2(b)(1)];
    - 271 • **Note.** Although the proposed Law requires the OBC to state whether it intends to  
272 establish an ad hoc committee in the furlough resolution, it gives the OBC a little  
273 more flexibility with respect to identifying committee members by allowing it to  
274 appear in the furlough resolution or a subsequent resolution/motion.
  - 275 ○ Must meet as necessary and at the request of the OBC to carry out the OBC’s directives  
276 consistent with the Law [2 O.C. 205.6-2(b)(2)];
  - 277 ○ Is not subject to the Boards, Committees and Commissions law and members of the ad hoc  
278 committee are not entitled to receive stipends or any other form of compensation, other  
279 than their employee pay, for serving on the committee [2 O.C. 205.6-2(b)(3)]; and
  - 280 ○ Will dissolve upon conclusion of the furlough program for which it was established or on  
281 an early date determined by the OBC [2 O.C. 205.6-2(b)(4)].
- 282 ■ **Furlough Programs.** Under the proposed amendments, a furlough must be implemented as either  
283 an administrative or emergency program upon initiation and then carried out in accordance with  
284 the portions of section 205.6 that apply to such characterization. [2 O.C. 205.6-3].
- 285 ○ **Applicable to Both Programs.** In addition to the provisions that will govern the specific  
286 furlough program being initiated, the following will apply to either program, regardless of  
287 characterization during the implementation phase:
    - 288 • That, employees must receive notice of the implementation of a furlough in writing  
289 and the notice must contain, at a minimum:
      - 290 ➤ Advanced warning that, if recalled back to work, the failure to respond to  
291 the recall within ten (10) business days of receiving the written notice of  
292 recall will be treated as a resignation of employment by that employee per  
293 the governing laws of the Nation [2 O.C. 205.6-3(a)(1)(A)]; and
      - 294 ➤ A directive that it is the employee’s responsibility to ensure that the Nation  
295 has his or her most up-to-date contact information throughout the furlough  
296 period [2 O.C. 205.6-3(a)(1)(B)].

- 297 • That, the written notice shall be sent to employees using the outlet or outlets  
298 deemed most capable of reaching them in as efficient a manner as possible under  
299 the circumstances. [2 O.C. 205.6-3(a)(2)].
- 300 ○ Emergency Furlough Programs. Under the proposed amendments, the OBC may initiate a  
301 furlough program on an emergency basis when in the best interest of the Nation due to acts  
302 of God or sudden emergencies requiring an immediate curtailment of activities. [2 O.C.  
303 205.6-3(b)].
  - 304 • More flexibility is given to the Nation when initiating an emergency furlough  
305 program rather than an administrative furlough program since, by its very title/  
306 definition, the event giving rise to the need for an emergency furlough program  
307 will be unexpected and/or unpredictable. As such, if the OBC cannot accurately  
308 determine the start or end date of the emergency furlough program being  
309 implemented, the Law allows for the OBC to provide said dates with as much  
310 advanced notice as is reasonably possible under the circumstances. [2 O.C. 205.6-  
311 3(b)(1)].
    - 312 ➤ Although the LOC wanted to ensure some flexibility for emergency  
313 furlough programs, it wanted to also ensure that employees affected by  
314 the implementation of an emergency furlough program were not in a state  
315 of limbo for an indeterminate amount of time. Thus, a provision was  
316 included that states: “No emergency furlough program implemented  
317 hereunder shall last for longer than twenty-six (26) weeks from the date  
318 of implementation unless extended by the OBC through a subsequent  
319 resolution.” [2 O.C. 205.6-3(b)(2)].
  - 320 ○ Administrative Furlough Programs. Unlike an emergency furlough program, an  
321 administrative furlough program would be initiated by the OBC in response to a  
322 foreseeable event that is likely to result in a temporary reduction in revenue/funding or  
323 some other organizational issue where the intent is to recall employees back to work once  
324 the event has subsided. [2 O.C. 205.6-3(c)]. With administrative furloughs, a minimum of  
325 five (5) business days of advance notice to employees is required, as well as specific dates  
326 in which the program will begin and end. [2 O.C. 205.6-3(c)(1) & 2].
    - 327 • Effect. The basis for including the language “where the intent is to recall employees  
328 back to work once the event has subsided” is to create a definitive line for when a  
329 furlough may be used in place of a layoff. For example, if the event is likely to  
330 result in a reduction of revenue, but is not temporary in nature, the requirement  
331 that there be intent to recall employees back to work would be missing, and thus,  
332 a layoff of the employees affected would be the more appropriate and equitable  
333 avenue.

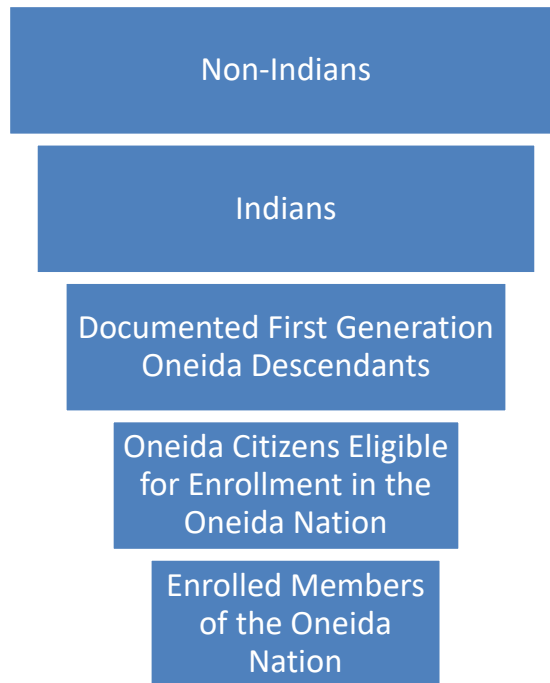
335 **E. Placing Employees in Furlough Status [2 O.C. 205.7].** This section was added to the Law to provide  
336 more direction on how employees of the Nation are to be selected for placement in furlough status upon  
337 the implementation of a program to ensure more consistency, regardless of department/division, in the  
338 application of this Law. [2 O.C. 205.7-1]. According to this section, once a furlough program is initiated  
339 and the appropriate Direct Report Level positions/authorized designees are notified of the same,  
340 employees within a department/division impacted by the program will be retained and placed in  
341 furlough status as follows:

- 342 ■ **Critical Positions.** If the OBC has identified critical positions within an affected department/  
343 division, those positions would be exempt from placement into furlough status during the specific  
344 furlough program for which the position was deemed critical, unless the number of those critical  
345 positions that the OBC directed to be retained is less than the number in existence. [2 O.C. 205.7-  
346 2]. With the latter, the critical positions in excess of the number to be retained would be retained  
347 in accordance with the recall section of the Law. [2 O.C. 205.7-2].
- 348 ■ **Non-Critical Positions.** When deciding the order in which to place non-critical positions in  
349 furlough status, section 205.7-3 of the proposed amendments provides as follows:

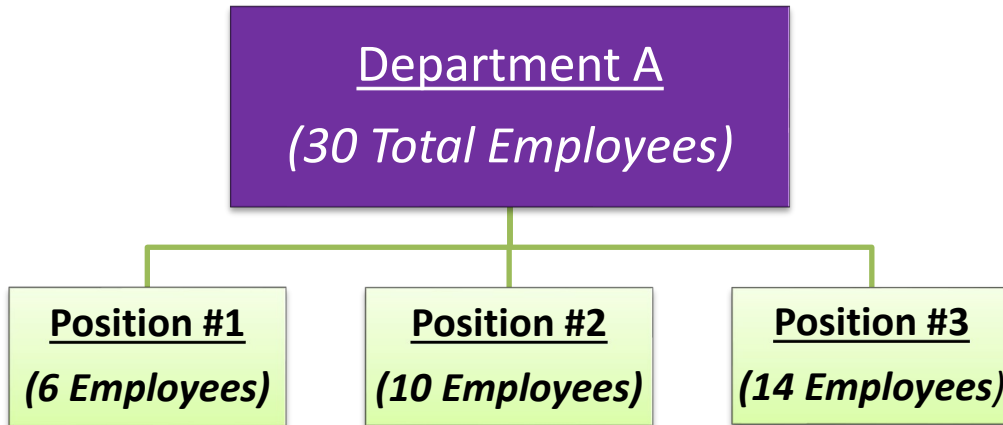


- 350 ○ Temporary Employees. Temporary employees within a department or division that is  
351 affected by a furlough program implementation shall be the first category of employees to  
352 be placed in furlough status. [2 O.C. 205.7-3(a)].
  - 353 • A temporary employee is defined as an employee hired by the Nation for a short-  
354 term assignment and consists of the following classifications: (1) Emergency/  
355 Temp; Limited Term; Seasonal; Substitute/Relief; Youth Worker; and Student/  
356 Intern. [2 O.C. 205.3-1(a)(l)].
- 357 ○ Volunteer Employees. Following the placement of temporary employees in furlough status,  
358 eligible employees who volunteer for said placement shall be the next category of  
359 employees to be placed in furlough status. [2 O.C. 205.7-3(b)].
- 360 ○ Indian Preference. Absent an express exception and following placement of the first two  
361 categories, when the remaining number of employees in the same position within a  
362 department or division exceeds the number of said employees to be placed in furlough  
363 status, the order of placement shall occur in the following order, beginning with the first  
364 category:

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366  
367 *1 Order for Placement in Furlough Status (First to Last)*



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371 ***Illustrative Hypothetical:*** Following a tornado, a portion of Department A’s building suffers structural  
372 damage that makes it impossible for all its employees to conduct business therein. The damage will  
373 take approximately six (6) weeks to repair. In response, the OBC implements an administrative furlough  
374 program, through adoption of a resolution that instructs the Direct Report Level position for Department  
375 A to place half of its non-critical employees in furlough status until the repairs are done. Department A  
376 has thirty (30) employees who incumbent (3) positions as follows:  
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**Scenario A:** Position #1 is deemed critical, and thus, exempt from placement in furlough status unless the number of people employed within Position #1 exceeds the number OBC instructed the Direct Report Level position to retain. [2 O.C. 205.7-2]. Here, the OBC directed four (4) of the six (6) employees within Position #1 to be retained. Position #1 is made up of the following individuals:

385 **G. Furloughed Employees** [2 O.C. 205.8]. This section of the Law was amended to allow for the OBC to  
386 continue providing certain benefits to employees placed in furlough status on a case-by-case basis,  
387 subject to budgetary constraints, as well as any governing policies or agreements underlying said  
388 benefits. In addition, overtime and additional duty pay may be offered on a case-by-case basis, subject  
389 to approval by the OBC. [2 O.C. 205.8-4; 2 O.C. 205.8-5].

- 390     ▪ **Effect.** Under the current law, employees placed in furlough status were not entitled to benefits,  
391         such as medical insurance. Under the proposed amendments, if the Nation is able, both financial  
392         and contractually, employees will continue to receive benefits while in furlough status. And, if the  
393         employees who remain working are working a significant amount of overtime or taking on a  
394         substantial number of additional duties, the OBC now has the authority to approve overtime and  
395         extra duty pay on a case-by-case basis.

397 **H. Recall of Furloughed Employees** [2 O.C. 205.9]. This section of the Law provides more guidance on  
398 the process for recalling back to work those employees who were placed in furlough status. With respect to  
399 the order for recalling back to work, Indian preference is applied in the reverse order as set forth in section  
400 205.7 of the Law. Although the order for recall is clearly set forth in the Law, the manner in which it is  
401 applied may depend upon the directive on how furlough cuts were administered across the various positions  
402 within a department or division. Please see the “Other Considerations” section for further details.

- 403     • Oneida Citizens Eligible for Enrollment in the Oneida Nation  
404     • Oneida Citizens Eligible for Enrollment in the Oneida Nation  
405     • Documented First Generation Oneida Descendants  
406     • Indians  
407     • Non-Indians  
408

## 409 SECTION 6. OTHER CONSIDERATIONS

### 410 A. Added Points of Clarification.

- 411     ▪ One of the bases for initiating an emergency furlough program is an “Act of God.” For purposes of  
412         clarity, the LOC may want to consider adding a definition for “Acts of God” to section 205.3-1 of  
413         the Law.  
414     ▪ To ensure that the organization knows when to use an administrative furlough vs. a layoff, the LOC  
415         may want to consider adding language to that affect in section 205.6-3(c) of the Law.  
416     ▪ With respect to the application of Indian preference, the Law is unclear as to how the number or  
417         percentage of employees to be placed in furlough status will be distributed amongst those positions

418 within a department or division that are non-critical. To ensure consistency in the application of  
419 this Law, especially with respect to how employees are impacted by a furlough implementation,  
420 the LOC should consider providing further direction in this regard.

421 **B. *Fiscal Impact.***

- 422     ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation  
423     except emergency legislation. *[1 O.C. 109.6-1]*.
- 424     ▪ Oneida Business Committee resolution BC-09-25-19-A requires that when developing a fiscal  
425     impact statement for the adoption of proposed legislation by the Oneida Business Committee  
426     the Finance Department shall, within ten (10) business days of final approval of draft legislation  
427     by the Legislative Operating Committee, provide a fiscal impact statement to the Legislative  
428     Operating Committee.

429



Legislative Operating Committee  
August 18, 2021

# Local Land Use Regulation Reimbursement Policy Repeal

<b>Submission Date:</b> 7/7/21	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> Kirby Metoxen	<b>Emergency Enacted:</b> n/a

**Summary:** *This item was added to the Active Files List on July 7, 2021. The Local Land Use Regulation Reimbursement Policy directed members of the Nation and non-members subject to the Nation’s regulation to obtain permits from a municipality under protest if the municipality asserts it has jurisdiction – the cost of the permits would then be reimbursed by the Nation. Based on the Big Apple Fest litigation decision that confirmed municipalities have very limited jurisdiction over the Nation and members of the Nation on the Reservation, the Oneida Law Office has advised that Tribal business units can move forward with projects with permits from the Nation only. Due to the Big Apple Fest case, the policy considerations supporting the Local Land Use Regulation Reimbursement Policy no longer exist, and therefore a repeal of this law is being sought.*

**7/7/21 LOC:** Motion by Marie Summers to add the Land Use Regulation Reimbursement Policy repeal to the Active Files List with Kirby Metoxen as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

**Next Steps:**

- Approve the Local Land Use Regulation Reimbursement Policy Repeal legislative analysis and public meeting notice, and tentatively schedule a public meeting for the repeal of the Local Land Use Regulation Reimbursement Policy to be held on September 9, 2021.

**ONEIDA NATION PUBLIC MEETING NOTICE**

Tentatively Scheduled for:

**THURSDAY, SEPTEMBER 9, 2021\***Norbert Hill Center—Business Committee Conference Room  
N7210 Seminary Road, Oneida, Wisconsin

Find Public Meeting Materials at

[Oneida-nsn.gov/government/register/public meetings](http://Oneida-nsn.gov/government/register/public%20meetings)

Send Public Comments to

[LOC@oneidanation.org](mailto:LOC@oneidanation.org)

Ask Questions here

[LOC@oneidanation.org](mailto:LOC@oneidanation.org)

## **REPEAL OF THE LOCAL LAND USE REGULATION REIMBURSEMENT POLICY**

The purpose of the Local Land Use Regulation Reimbursement Policy is to preserve and protect the inherent right of the Oneida Nation to create and enforce Tribal land use regulations on the Reservation by reimbursing Tribal members, non-members and businesses subject to Tribal land use regulations for fees and/or fines associated with compliance under written protest with local land use regulations. [6 O.C. 607.1-1, 607.1-2]

The Local Land Use Regulation Reimbursement Policy has been deemed no longer necessary. The repeal of the Local Land Use Regulation Reimbursement Policy is being sought as a result of the decision in *Oneida Nation v. Village of Hobart*, 968 F.3d 664 (7th Cir. 2020) which affirms the Nation's sovereignty and sets forth the precedence that local governments do not have the jurisdiction to apply their ordinances to the activities of the Nation on the Reservation due to the fact that the Reservation is Indian Country and not subject to local or state regulation.

For more information on the repeal of the Local Land Use Regulation Reimbursement Policy please review the public comment packet at [oneida-nsn.gov/government/register/public meetings](http://oneida-nsn.gov/government/register/public%20meetings).

### **PUBLIC COMMENT PERIOD CLOSSES THURSDAY, SEPTEMBER 16, 2021**

\*In accordance with Oneida Business Committee resolution BC-08-03-21-A, *Setting Public Gathering Guidelines during Public Health State of Emergency—COVID-19*, the public meeting will not be held if the infection rates within Brown or Outagamie Counties exceed "Low" as identified by the Wisconsin Department of Health Services. If a public meeting is not able to be held, the public comment period would still remain open and the Nation's COVID-19 Team's March 27, 2020, declaration titled "*Suspension of Public Meetings under the Legislative Procedures Act.*" shall take effect. This declaration provides that the Legislative Procedures Act's requirement to hold a public meeting during the public comment period is suspended due to the COVID-19 public health emergency. Although there will be no public meeting, the public comment period will still occur, and individuals can participate in the legislative process by submitting written comments, questions, or other input via e-mail to [LOC@oneidanation.org](mailto:LOC@oneidanation.org).



# REPEAL OF THE LOCAL LAND USE REGULATION REIMBURSEMENT POLICY LEGISLATIVE ANALYSIS

## SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
<b>Intent</b>	Repeal the Local Land Use Regulation Reimbursement Policy.
<b>Purpose</b>	To preserve and protect the inherent right of the Oneida Nation to create and enforce Tribal land use regulations on the Reservation by reimbursing Tribal members, non-members and businesses subject to Tribal land use regulations for fees and/or fines associated with compliance under written protest with local land use regulations. [6 O.C. 607.1-1, 607.1-2].
<b>Affected Entities</b>	Tribal members or Tribal member owned businesses on the Reservation; non-members or non-Tribal member owned businesses who, in accordance with the laws of the Nation, lease, occupy or otherwise use the Nation’s fee lands or trust lands on the Reservation; All Tribal members, non-members, and businesses, whether Tribal member owned or non-Tribal member owned, who, in accordance with the laws of the Nation, lease, occupy or otherwise use the Nation’s trust land outside the boundaries of the Reservation; Environmental, Health, Safety, Land and Agriculture Division, Zoning Administration, Department of Public Works.
<b>Public Meeting</b>	A public meeting has not yet been held for this legislative matter.
<b>Fiscal Impact</b>	A fiscal impact statement has not yet been requested for this legislative matter.

## SECTION 2. LEGISLATIVE DEVELOPMENT

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- 2 **A. Background.** The Local Land Use Regulation Reimbursement Policy (“the Law”) was first adopted
- 3 by the Oneida Business Committee in 2009, for the purpose of preserving and protecting the inherent
- 4 right of the Oneida Nation to create and enforce Tribal land use regulations on the Reservation by
- 5 reimbursing Tribal members, non-members and businesses subject to Tribal land use regulations for
- 6 fees and/or fines associated with compliance under written protest with local land use regulations. [6
- 7 O.C. 607.1-1, 607.1-2].
- 8 **B.** On June 4, 2021, the Oneida Law Office submitted a request for the Legislative Operating Committee
- 9 to consider the repeal of this Law. In a memorandum from the Oneida Law Office on June 4, 2021, the
- 10 following explanation was provided, “*The Nation has maintained jurisdiction over all lands owned by*
- 11 *the Nation and tribal members within the reservation boundaries, and over its own activities and the*
- 12 *activities of tribal members on the Reservation. In response to Hobart’s repeated assertions that it has*
- 13 *jurisdiction on all fee land on the Reservation, the Nation adopted the Local Land Use Regulation*
- 14 *Reimbursement Policy (LURRP). LURRP directed tribal members and nonmembers subject to tribal*
- 15 *regulation to obtain permits from a municipality under protest if the municipality asserts it has*
- 16 *jurisdiction. Obtaining permits under protest maintained project timelines and avoided undue*
- 17 *hardship, threatened legal enforcement and repetitive litigation. The Nation neither condoned the acts*
- 18 *of local governments asserting jurisdiction nor conceded that local governments possess jurisdiction.*

19 *Based on the Big Apple Fest decision that confirmed that municipalities have very limited jurisdiction*  
20 *over the Nation and tribal members on the Reservation, the Oneida Law Office has advised that Tribal*  
21 *business units can move forward with projects with tribal permits only. Due to the definitive ruling we*  
22 *received in the Big Apple Fest case, the policy considerations supporting LURRP no longer exist, so it*  
23 *should be repealed. Repealing LURRP will be consistent with the Oneida Law Office's advice that*  
24 *Tribal business units can move forward with projects with tribal permits only. The Oneida Law Office*  
25 *is requesting that the Legislative Operating Committee consider repealing LURRP.”* The Legislative  
26 Operating Committee added the Law to its Active Files List on July 7, 2021.

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### 28 **SECTION 3. CONSULTATION AND OUTREACH**

29 A. Representatives from the following departments of the Nation participated in the repeal of this Law:

- 30     ▪ Oneida Law Office.

31 B. The following laws were reviewed in the drafting of this analysis:

- 32     ▪ Non-Metallic Mine Reclamation Law.
- 33     ▪ Wood Cutting Ordinance.
- 34     ▪ Well Abandonment Law.
- 35     ▪ On-Site Waste Disposal Law.
- 36     ▪ Sanitation Ordinance.
- 37     ▪ Water Resources Law.
- 38     ▪ Building Code Law.
- 39     ▪ Zoning and Shoreland Protection Law.

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### 41 **SECTION 4. PROCESS**

42 A. The repeal of this Law has followed the process set forth in the Legislative Procedures Act.

- 43     ▪ On June 4, 2021, the Oneida Law Office submitted a request for the Legislative Operating  
44     Committee to consider the repeal of this Law.
- 45     ▪ The LOC added the repeal of this Law to the Active Files List on July 7, 2021.

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### 47 **SECTION 5. REPEAL OF THE LEGISLATION**

48 A. *Contents of the Legislation.* The Law was created to reimburse Tribal members, non-members and  
49 businesses subject to land use regulations of the Nation for fees and/or fines associated with compliance  
50 under written protest with local land use regulations. [6 O.C. 607.1-2]. This Law was necessary because  
51 certain local governments refused to recognize the preemption of state and local land use regulations  
52 with respect to the activities of Tribal members and Tribal member-owned businesses on the  
53 Reservation, and with respect to non-members and non-Tribal member owned businesses utilizing  
54 Tribal land, and refused to recognize the authority of the Nation to regulate such activities. [6 O.C.  
55 607.1-1]. This situation caused hardships for such Tribal members, non-members and businesses who  
56 are inappropriately threatened with enforcement of local land use regulations. The purpose of this Law  
57 was to alleviate such hardship. The Law neither condoned the acts of local governments nor conceded  
58 that such local governments have jurisdiction to regulate the land use of Tribal members, non-members  
59 and businesses otherwise subject to laws of the Nation. [6 O.C. 607.1-2].

- 60     ▪ *Eligibility for Reimbursement under the Law.*

61     ▪ The following were eligible to seek reimbursement under this Law:

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- All Tribal members or Tribal member owned businesses on the Reservation on land under the Tribal member's or Tribal member owned business's ownership or control;
  - All non-members or non-Tribal member owned businesses who, in accordance with the laws of the Nation, lease, occupy or otherwise use the Nation's fee lands or trust lands on the Reservation; and
  - All Tribal members, non-members, and businesses, whether Tribal member owned or non-Tribal member owned, who, in accordance with the laws of the Nation, lease, occupy or otherwise use the Nation's trust land outside the boundaries of the Reservation.
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- *Reimbursements under the Law.*
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- The Nation would reimburse an individual or business for fees and/or fines actually paid by the individual or business to the local government when the following conditions were met:
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- The individual or business first complies with all applicable Tribal land use regulations, including obtaining any required permits and/or inspections.
  - The individual or business receives written notification from a local government stating that the individual or business is in violation of local land use regulations, or the individual or business is otherwise threatened with enforcement of local land use regulations.
  - One of the following occurs:
    - i. The individual or business complies with the local land use regulation after October 28, 2009 under written protest; or
    - ii. The individual or business complied with the local land use regulation from January 1, 2009 through October 28, 2009 without protesting in writing.
  - The individual or business submits the following to the appropriate department of the Nation:
    - i. receipts for the local government's fines and/or fees for compliance with the local land use regulation; and
    - ii. verification that the individual or business complied with the local land use regulation under written protest, if required to comply under written protest.
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- The Nation would not bear any responsibility to an eligible individual or business for any the following:
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- Additional costs the individual or business incurs as a result of their compliance under written protest with the local land use regulations, including, but not limited to, construction costs or engineering costs.
  - Enforcement actions mandated by a local government, including, but not limited to, building razing.
  - Fines in excess of one thousand dollars (\$1,000).
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- *Denial of Reimbursement.*



104           ▪ If an individual or business was denied reimbursement, the Law required that the individual  
105           or business be provided notice of the denial, and then the individual or business was  
106           provided the opportunity to appeal the denial with the division director of the department  
107           which denied the reimbursement, and subsequently the Judiciary.

108 **B. Reason for Repeal of Law.** The Oneida Law Office requested that the Legislative Operating  
109 Committee consider the repeal of this Law based on the decision in *Oneida Nation v. Village of Hobart*,  
110 968 F.3d 664 (7<sup>th</sup> Cir. 2020).

111           ▪ *Background.*

112           ▪ The Nation annually holds its Big Apple Fest to provide family fun on the Reservation  
113           which includes activities such as pick your own apples, horse and wagon rides, variety of  
114           foods to taste, live music, various demonstrations, caramel apple making, apple cider press,  
115           pony rides, historic log home tours, time period clothing, old time games, Oneida Farmers  
116           Market, and an apple pie contest. The Big Apple Fest event is held at the Oneida Apple  
117           Orchard and Oneida Cultural Heritage, which are located on both trust land and land owned  
118           by the Nation in fee simple status.

119           ▪ In 2016 the Village of Hobart, which lies entirely within the boundaries of the Oneida  
120           Nation Reservation, adopted a special event’s permit ordinance that required the Nation to  
121           obtain a permit for its festivals. The Nation rejected Hobart’s permitting process, and its  
122           continued attempts to assert jurisdiction over Tribal lands and members. The Nation held  
123           its Big Apple Fest, and as a result Hobart then issued the Nation a five-thousand dollar  
124           (\$5,000) citation for violating its ordinance.

125           ▪ The Nation then filed an action in the U.S. District Court for the Eastern District of  
126           Wisconsin for declaratory and injunctive relief that challenged Hobart’s legal authority to  
127           enforce the ordinance. Hobart filed a counterclaim for declaratory relief. The Court later  
128           dismissed this counterclaim, reasoning that the Nation would comply with the ordinance  
129           following the ruling in the case. The Court then entered summary judgment for Hobart,  
130           holding that the festival grounds owned by the Nation in fee simple were not sovereign  
131           federal trust land and thus fell within Hobart’s jurisdiction. The Court inferred that  
132           Congress’s intent to diminish the Reservation was manifest in the Dawes Act and  
133           subsequent legislative acts, which divided the Reservation into individual allotments rather  
134           than collectively held Tribal property, and thus the conveyance of Tribal members’ fee  
135           simple lands to non-Tribal members following allotment paired with the fact that these  
136           lands were not reobtained and placed into federal trust meant that the lands in question no  
137           longer constituted the Reservation. Since the Big Apple Fest was on held on non-trust  
138           property, the Court reasoned that the Nation was subject to Hobart’s ordinance.

139           ▪ The Nation appealed the decision of the U.S. District Court for the Eastern District of  
140           Wisconsin to the U.S. Court of Appeals for the Seventh Circuit. The Seventh Circuit  
141           reversed the lower court’s decision and confirmed that the Oneida Nation Reservation, as  
142           defined in the 1838 Treaty, remained intact and was not diminished by Congress.  
143           Therefore, the land falling within the Reservation’s boundaries was Indian country under  
144           18 U.S.C. § 1151(a) and not subject to most state and local regulation, so Hobart lacked  
145           jurisdiction to apply its ordinance to the Nation’s on-Reservation activities.

146           *[Harvard Law Review, Vol. 134, No. 4, Feb. 2021].*

147           ▪ *Effect.*

- 148           ▪ The decision in *Oneida Nation v. Village of Hobart*, 968 F.3d 664 (7<sup>th</sup> Cir. 2020) affirms  
149 the Nation’s sovereignty and sets forth the precedence that local governments, such as  
150 Hobart, do not have the jurisdiction to apply their ordinances to the activities of the Nation  
151 on the Reservation due to the fact that the Reservation is Indian Country and not subject to  
152 local or state regulation. Therefore, this Law is no longer necessary since the decision in  
153 *Oneida Nation v. Village of Hobart* recognizes the authority of the Nation to regulate such  
154 activities as well as the preemption of state and local regulations on the Nation.  
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## 156 **SECTION 6. EXISTING LEGISLATION**

157 **A. *References to other Laws of the Nation.*** The Law requires that in order to be eligible for  
158 reimbursement of fees and/or fines actually paid by the individual or business to the local government  
159 the individual or business must first comply with all applicable Tribal land use regulations, including  
160 obtaining any required permits and/or inspections. [6 O.C. 607.5-1(a)]. Under the Law “Tribal land use  
161 regulations” is defined as the following regulations:

- 162           ▪ *Chapter 402, Non-Metallic Mine Reclamation Law.*
  - 163                   ▪ The Non-Metallic Mine Reclamation law requires that every operator of a nonmetallic  
164 mining site on the reservation who engages in or plans to engage in nonmetallic mining  
165 shall obtain a reclamation permit issued under this section, except for nonmetallic  
166 mining sites that are exempt from this law under section 402.5-2. [4 O.C. 402.7-1].
- 167           ▪ *Chapter 403, Wood Cutting Ordinance.*
  - 168                   ▪ The Wood Cutting Ordinance requires that applicants who wish to cut wood on Tribal  
169 lands apply for and be approved a woodcutting permit. [4 O.C. 403.5-3].
- 170           ▪ *Chapter 404, Well Abandonment Law.*
  - 171                   ▪ The Well Abandonment law requires that a private well owner obtain a yearly well  
172 operation permit from the Oneida Environmental Health and Safety Division in order  
173 to operate a well. [4 O.C. 404.5-1].
- 174           ▪ *Chapter 407, On-Site Waste Disposal Law.*
  - 175                   ▪ The On-Site Waste Disposal law requires sanitary permits for the installation of private  
176 sewage systems be obtained from the Environmental Health and Safety Division. [4  
177 O.C. 407.5-1].
- 178           ▪ *Chapter 408, Sanitation Ordinance.*
  - 179                   ▪ The Sanitation Ordinance provides that it shall be unlawful for any person or entity to  
180 make or cause to be made any connection to the public sewer without first receiving a  
181 permit from or executing the standard participation contract provided by the Oneida  
182 Utilities Department. [4 O.C. 408.6-7]. The Sanitation Ordinance also provides that  
183 the owner of any structure which will discharge industrial or commercial waste to the  
184 public sewer shall obtain from the manager a discharge permit prior to construction of  
185 a new facility or connection of any existing facility to the public sewer. [4 O.C. 408.6-  
186 12]. Additionally, this law provides that it shall be unlawful for any person other than  
187 representatives of the Oneida Utilities Department to use, alter, or disturb any of the  
188 public water or public sewer facilities of the Nation or appurtenances thereof, without  
189 first obtaining a written permit from the Manager. [4 O.C. 408.9-1].
- 190           ▪ *Chapter 409, Water Resources Law.*

- 191                   ▪ The Water Resources law requires that the Oneida Environmental Department shall be  
192                   responsible for the application, processing, and review of Tribal water quality  
193                   certifications required by Section 401 of the Federal Water Pollution Control Act, 33  
194                   USC 1341, and shall require that all persons discharging any substance to waters of the  
195                   Reservation requiring a permit under the Federal Water Pollution Control Act, 33  
196                   U.S.C. 1251, et seq., report the manner used, amount used and amount discharged to  
197                   the waters of the Reservation for each substance. [4 O.C. 409.4-3, 409.6-1].
- 198                   ▪ *Chapter 603, Building Code Law.*
  - 199                   ▪ The Building Code law provides that no person shall erect or construct any building or  
200                   structure, or shall add to, enlarge, move, improve, alter, convert, extend or demolish  
201                   any building or structure or cause the same to be done, or shall commence any work  
202                   covered by this Code on any structure without first obtaining a building permit therefor  
203                   from the Zoning Administrator; provided that, the Zoning Administrator may authorize  
204                   minor repairs not involving structural alterations without requiring a building permit  
205                   to be issued. [4 O.C. 603.6-1].
- 206                   ▪ *Chapter 605, Zoning and Shoreland Protection Law.*
  - 207                   ▪ The Zoning and Shoreland Protection law requires the use of land use permits,  
208                   conditional use permits, and regulation of signs permits. [4 O.C. 605.140-1, 605.10-2,  
209                   605.11-2].
- 210                   ▪ And any Tribal law which is hereafter adopted and/or designated as a Tribal land use regulation.

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212 **SECTION 7. OTHER CONSIDERATIONS**

213 **A. Fiscal Impact.** Under the Legislative Procedures Act, a fiscal impact statement is required for all  
214 legislation except emergency legislation. [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-  
215 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*  
216 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete  
217 a fiscal impact statement at various stages of the legislative process, as well as timeframes for  
218 completing the fiscal impact statement.

- 219                   ▪ *Conclusion.* A fiscal impact statement has not yet been requested.

**Title 6. Property and Land – Chapter 607**  
**LOCAL LAND USE REGULATION REIMBURSEMENT POLICY**

607.1.	Purpose and Policy	607.4.	Eligible Individuals and Businesses
607.2.	Adoption, Amendment, Conflicts	607.5.	Reimbursement and Denials
607.3.	Definitions	607.6.	Appeals

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**607.1. Purpose and Policy**

6071-1. *Purpose.* It is the purpose of this policy to preserve and protect the inherent right of the Oneida Tribe of Indians of Wisconsin to create and enforce Tribal land use regulations on the Reservation. Certain local governments refuse to recognize the preemption of state and local land use regulations with respect to the activities of Tribal members and Tribal member-owned businesses on the Reservation, and with respect to non-members and non-Tribal member owned businesses utilizing Tribal land, and refuse to recognize the authority of the Tribe to regulate such activities. This situation causes hardships for such Tribal members, non-members and businesses who are inappropriately threatened with enforcement of local land use regulations. The purpose of this policy is to alleviate such hardship.

607.1-2. *Policy.* It is the policy of the Tribe to reimburse Tribal members, non-members and businesses subject to Tribal land use regulations for fees and/or fines associated with compliance under written protest with local land use regulations. This policy neither condones the acts of local governments nor concedes that such local governments have jurisdiction to regulate the land use of Tribal members, non-members and businesses otherwise subject to Tribal law.

**607.2. Adoption, Amendment, Conflicts**

607.2-1. This policy was adopted by the Oneida Business Committee by resolution BC-09-08-10-B and amended by resolution BC-02-25-15-C.

607.2-2. This policy may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

607.2-3. Should a provision of this policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policy which are considered to have legal force without the invalid portions.

607.2-4. In the event of a conflict between a provision of this policy and a provision of another policy, the provisions of this policy shall control. Provided that, nothing in this policy is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

607.2-5. This policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

607.2-6. This policy shall not be construed to repeal, abrogate, annul or impair any intergovernmental agreements between the Tribe and local governments.

**607.3. Definitions**

607.3-1. This section shall govern the definitions of words and phrases used within this policy. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Appropriate Tribal department” means the Tribal department(s) that approved an individual’s or business’s use of the land in accordance with the applicable Tribal land use regulations.

(b) “Business” means a firm, association, organization, partnership, estate, trust, company, corporation or similar entity.

44 (c) “Judiciary” means the judicial system that was established by Oneida General Tribal  
45 Council resolution GTC-01-07-13-B to administer the judicial authorities and  
46 responsibilities of the Tribe.

47 (d) “Local government” includes, but is not limited to towns, villages, cities and counties  
48 organized pursuant to the laws of the State of Wisconsin.

49 (e) “Local land use regulations” means local government’s ordinances containing  
50 inspection and/or permit requirements which regulate private use of land.

51 (f) “Reservation” means all lands within the exterior boundaries of the Reservation of the  
52 Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the  
53 Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

54 (g) “Tribal fee land” means land to which the Tribe holds title in fee simple on the  
55 Reservation.

56 (h) “Tribal land” means Tribal trust land and Tribal fee land.

57 (i) “Tribal land use regulations” means the following regulations:

58 (1) Chapter 402, Non-Metallic Mine Reclamation

59 (2) Chapter 403, Wood Cutting Ordinance

60 (3) Chapter 404, Well Abandonment Law

61 (4) Chapter 407, On-Site Waste Disposal Ordinance

62 (5) Chapter 408, Sanitation Ordinance

63 (6) Chapter 409, Water Resources Ordinance

64 (7) Chapter 603, Building Code of the Oneida Reservation

65 (8) Chapter 605, Zoning and Shoreland Protection Law

66 (9) Any Tribal law which is hereafter adopted and/or designated as a Tribal land  
67 use regulation.

68 (j) “Tribal member” means an enrolled member of the Oneida Tribe of Indians of  
69 Wisconsin.

70 (k) “Tribal member owned business” means a business which is majority owned and  
71 managed by one (1) or more enrolled members of the Tribe.

72 (l) “Tribal trust land” means land to which the United States holds title for the benefit of  
73 the Tribe pursuant to federal law.

74 (m) “Tribe” means the Oneida Tribe of Indians of Wisconsin

75 (n) “Under written protest” means written documentation demonstrating that the  
76 individual or business has protested the application of the local land use regulations to his  
77 or her activities and conveyed such protest to the local government.

#### 79 **607.4. Eligible Individuals and Businesses**

80 607.4-1. This policy extends only to the following:

81 (a) All Tribal members or Tribal member owned businesses on the Reservation on land  
82 under the Tribal member’s or Tribal member owned business’s ownership or control;

83 (b) All non-members or non-Tribal member owned businesses who, in accordance with  
84 Tribal law, lease, occupy or otherwise use Tribal fee lands or trust lands on the  
85 Reservation; and

86 (c) All Tribal members, non-members, and businesses, whether Tribal member owned or  
87 non-Tribal member owned, who, in accordance with Tribal law, lease, occupy or otherwise  
88 use Tribal trust land outside the boundaries of the Reservation.

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91 **607.5. Reimbursement and Denials**

92 607.5-1. Where the following conditions are met, the Tribe will reimburse the individuals or  
93 businesses identified in Section 607.4-1:

94 (a) The individual or business first complies with all applicable Tribal land use  
95 regulations, including obtaining any required permits and/or inspections.

96 (b) The individual or business receives written notification from a local government  
97 stating that the individual or business is in violation of local land use regulations, or the  
98 individual or business is otherwise threatened with enforcement of local land use  
99 regulations.

100 (c) One of the following occurs:

101 (1) The individual or business complies with the local land use regulation after  
102 October 28, 2009 under written protest; or

103 (2) The individual or business complied with the local land use regulation from  
104 January 1, 2009 through October 28, 2009 without protesting in writing.

105 (d) The individual or business submits the following to the appropriate Tribal department:

106 (1) receipts for the local government's fines and/or fees for compliance with the  
107 local land use regulation; and

108 (2) verification that the individual or business complied with the local land use  
109 regulation under written protest, if required to comply under written protest.

110 607.5-2. When an individual or business identified in Section 4-1 satisfies the requirements set  
111 forth in Section 607.5-1, the Tribe shall reimburse the individual or business for fees and/or fines  
112 actually paid by the individual or business to the local government; however, in no event shall  
113 the Tribe bear any responsibility for the following:

114 (a) Additional costs the individual or business incurs as a result of his or her compliance  
115 under written protest with the local land use regulations, including, but not limited to,  
116 construction costs or engineering costs.

117 (b) Enforcement actions mandated by a local government, including, but not limited to,  
118 building razing.

119 (c) Fines in excess of \$1,000.

120 607.5-3. If an individual or business is denied reimbursement, the appropriate Tribal  
121 department shall inform the individual or business of the denial in writing within ten (10)  
122 business days after receiving the reimbursement request. The notice shall also inform the  
123 individual or business he or she has ten (10) business days after receiving the denial to file an  
124 appeal and where he or she can file an appeal.

125 607.5-4. In no case shall an individual or business purport to allow a local government to  
126 rezone Tribal fee land or Tribal trust land.

127

128 **607.6. Appeals**

129 607.6-1. Any individual or business denied reimbursement for fees and/or fines actually paid  
130 by the individual or business may file an appeal with the division director of the department  
131 which denied the reimbursement. The denial of reimbursement shall specify where the  
132 individual or business may appeal the decision. The appeal shall be filed within ten (10)  
133 business days after the individual or business is notified of the denial of reimbursement.

134 607.6-2. The division director, or a designee, shall determine whether the individual or  
135 business is eligible for reimbursement within five (5) business days of receipt of the appeal. The  
136 determination shall be sent by registered mail (return receipt requested) or delivered in person to  
137 the individual or business.

138 607.6-3. If reimbursement is denied by the division director, or designee, the individual or  
139 business may file an appeal of the decision with the Judiciary.

140

141 *End.*

142

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143 Emergency Adoption – BC-10-28-09-C

144 Emergency Adoption (extension) –BC-04-28-10

145 Adopted – BC-09-08-10-B

146 Amended – BC-02-25-15-C



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



### AGENDA REQUEST FORM

- 1) Request Date: July 28, 2021
- 2) Contact Person(s): Clorissa N. Santiago  
Dept: Legislative Reference Office  
Phone Number: (920) 869-4417 Email: csantia1@oneidation.org
- 3) Agenda Title: Fire Signs Law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
On July 28, 2021, the Oneida Business Committee adopted a motion to request the Legislative Operating Committee to develop appropriate legislation regarding fire signs.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Excerpt from Draft 7/28/21 Minutes
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_

- 5) Please list any laws, policies or resolutions that might be affected:  
\_\_\_\_\_
- 6) Please list all other departments or person(s) you have brought your concern to:  
Request came from motion adopted by OBC during Intergovernmental Affairs, Communications, and Self Governance July 2021 Report
- 7) Do you consider this request urgent?     Yes     No  
If yes, please indicate why:  
\_\_\_\_\_

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:

\_\_\_\_\_

*Please send this form and all supporting materials to:*

**LOC@oneidation.org**  
*or*  
**Legislative Operating Committee (LOC)**  
P.O. Box 365  
Oneida, WI 54155  
Phone 920-869-4376



**DRAFT****2. Accept the Intergovernmental Affairs, Communications, and Self-Governance July 2021 report (02:08:40)**

Sponsor: Melinda J. Danforth, Director/Intergovernmental Affairs

Motion by Jennifer Webster to accept the Intergovernmental Affairs, Communications, and Self-Governance July 2021 report, seconded by David P. Jordan. Motion carried:

Ayes: Daniel Guzman King, David P. Jordan, Lisa Liggins, Kirby Metoxen, Marie Summers, Jennifer Webster

Not Present: Tina Danforth, Brandon Stevens

Motion by Jennifer Webster to accept the recommendation from Intergovernmental Affairs Director, allow the Town of Oneida Cooperative Governance Agreement to automatically renew, and assign Chairman Tehassi Hill, and Councilmembers David P. Jordan and Daniel Guzman King to the Town of Oneida Cooperative Governance Agreement sub-team, seconded by David P. Jordan. Motion carried:

Ayes: Daniel Guzman King, David P. Jordan, Lisa Liggins, Kirby Metoxen, Marie Summers, Jennifer Webster

Not Present: Tina Danforth, Brandon Stevens

Motion by Jennifer Webster to request the Legislative Operating Committee to develop appropriate legislation regarding fire signs, seconded by David P. Jordan. Motion carried:

Ayes: Daniel Guzman King, David P. Jordan, Lisa Liggins, Kirby Metoxen, Marie Summers, Jennifer Webster

Not Present: Tina Danforth, Brandon Stevens

*Treasurer Tina Danforth returned at 2:54 p.m.*

Motion by Jennifer Webster to approve the lease agreement modifications for FY-2022 for contract(s) # 2019-1044, # 2019-1045, # 2019-1046, and # 2019-1047, authorize the Chairman to sign the lease agreement modifications, and direct Self-Governance to submit the documents to Indian Health Service, seconded by Marie Summers. Motion carried:

Ayes: Tina Danforth, Daniel Guzman King, David P. Jordan, Lisa Liggins, Kirby Metoxen, Marie Summers, Jennifer Webster

Not Present: Brandon Stevens

**3. Accept the Chief Counsel report (02:10:48)**

Sponsor: Jo Anne House, Chief Counsel

*Vice-Chairman Brandon Stevens returned at 2:55 p.m.*

Motion by Kirby Metoxen to accept the Chief Counsel report, seconded by Jennifer Webster. Motion carried:

Ayes: Tina Danforth, Daniel Guzman King, David P. Jordan, Lisa Liggins, Kirby Metoxen, Brandon Stevens, Marie Summers, Jennifer Webster

Motion by Lisa Liggins to authorize Chairman Tehassi Hill to meet with legal counsel to discuss and determine action regarding appeal of Brackeen v. Haaland matter, seconded by Jennifer Webster.

Motion carried:

Ayes: Tina Danforth, Daniel Guzman King, David P. Jordan, Lisa Liggins, Kirby Metoxen, Brandon Stevens, Marie Summers, Jennifer Webster

# Legislative Operating Committee



## Agenda Request Form

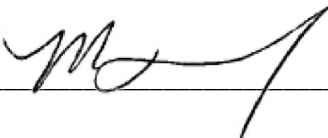
- 1) Request Date: August 11, 2021
- 2) Contact Person(s): Matthew J. Denny Sr. Dept: HRD/EEO  
 Phone Number: 490-3647 Email: mdenny@oneidanation.org
- 3) Agenda Title: Change HRD Manager title throughout the Nation's policis
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
With the new Executive Human Resources (EHR) Director starting employment  
after Labor Day, the Nation's Personnel Policies and Procedures need to be  
updated to reflect this postion in place of the HRD Manager.

List any supporting materials included and submitted with the Agenda Request Form

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_

- 5) Please List any laws, ordinances or resolution that might be affected:  
Oneida Personnel Policies and Procedures
- 6) Please List all other departments or person(s) you have brought your concern to:  
HRD & Gaming Personnel Services
- 7) Do you consider this request urgent?  Yes  No  
 If yes, please indicate why: The new director starts working after Labor Day 2021.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester:  Matthew J. Denny Sr.

*Please send this form and all supporting materials to:*

**LOC@oneidanation.org**  
*or*  
**Legislative Operating Committee (LOC)**  
 P.O. Box 365  
 Oneida, WI 54155  
 Phone 920-869-4376

# Legislative Operating Committee



## Agenda Request Form

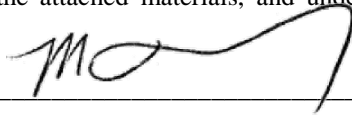
- 1) Request Date: August 11, 2021
- 2) Contact Person(s): Matthew J. Denny Sr. Dept: HRD/EEO  
 Phone Number: 490-3647 Email: mdenny@oneidanation.org
- 3) Agenda Title: Workplace Violence Employment Eligibility
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
Employees terminated for Workplace Violence (WPV) are eligible for rehire,  
unless they were charged and convicted of assault. This is not equal to Drug &  
Alcohol terminations that require a Pardon for rehire in section 11-5.(c)(1).  
Terminations for Workplace Violence should also require a Pardon for rehire.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Drug & Alcohol Free Workplace Policy 3) \_\_\_\_\_
- 2) Workplace Violence Policy 4) \_\_\_\_\_

- 5) Please List any laws, ordinances or resolution that might be affected:  
Workplace Violence Policy and the Personnel Policies and Procedures
- 6) Please List all other departments or person(s) you have brought your concern to:  
HRD
- 7) Do you consider this request urgent?  Yes  No  
 If yes, please indicate why: I believe this was an oversight when the WPV policy was drafted

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester:  Matthew J. Denny Sr.

*Please send this form and all supporting materials to:*

**LOC@oneidanation.org**  
*or*  
**Legislative Operating Committee (LOC)**  
 P.O. Box 365  
 Oneida, WI 54155  
 Phone 920-869-4376

## Title 2. Employment – Chapter 223 WORKPLACE VIOLENCE

223.1.	Purpose and Policy	223.8.	Supervisor Responsibilities
223.2.	Adoption, Amendment, Appeal	223.9.	Equal Employment Opportunity Department Responsibilities
223.3.	Definitions	223.10.	Fraudulent Report
223.4.	Applicability	223.11.	Confidentiality
223.5.	Prohibited Behavior	223.12.	Enforcement
223.6.	Reporting Workplace Violence		
223.7.	Future Workplace Violence		

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### 223.1. Purpose and Policy

223.1-1. *Purpose.* The purpose of this law is to provide all Oneida Nation employees and visitors an environment that is free of violence and the threat of violence.

223.1-2. *Policy.* It is the policy of the Nation to provide a safe and secure environment for employees to work and for conducting business by establishing the procedures by which incidents of workplace violence shall be addressed.

### 223.2. Adoption, Amendment, Repeal

223.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-E.

223.2-2. 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.

223.2-3. 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.

223.2-4. 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.

223.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

### 223.3. Definitions

223.3-1. This section shall govern the definitions of words and phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Area Manager” means the person two (2) levels of supervision in the chain of command above an employee, or an individual designated to be the Area Manager by the Division Director.

(b) “EEO Department” means the Equal Employment Opportunity Department within the Nation’s Human Resource Department.

(c) “Employee” means anyone employed by the Oneida Nation in one of the following employed capacities: full-time, part-time, emergency temporary, limited term or on a contractual basis.

(d) “Intimidation” means making others feel afraid or fearful through threatening behavior.

(e) “Nation” means the Oneida Nation.

(f) “Stalking” means unwanted or obsessive attention by an individual or group toward another person. Stalking includes a course of conduct directed at a specific person that involves repeated visual or physical proximity, nonconsensual communication, or verbal,

written, or implied threats, or a combination thereof, that would cause a reasonable person fear.

(g) “Supervisor” means the person or entity responsible for directly overseeing the employee.

(h) “Threat” means the implication or expression of intent to inflict physical harm or actions that a reasonable person would interpret as a threat to physical safety or property.

(i) “Weapon” means a firearm, knife, electric weapon, club, or any other object intended to cause harm to oneself or others.

(j) “Workplace” means any location owned and operated by the Nation, and any location where an employee represents the Nation, including over-the-road travel in the Nation’s owned or rented vehicles and circumstances where the employee is being reimbursed for expenses.

(k) “Workplace Violence” means any intentional act committed by an employee in a workplace that:

- (1) inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person; or
- (2) inflicts, attempts to inflict, or threatens to inflict, damage to property.

#### **223.4. Applicability**

223.4-1. This law applies to all employees in any of the Nation’s workplaces, whether or not the employee is operating within the course of his or her employment at the time the incident of workplace violence occurs.

#### **223.5. Prohibited Behavior**

223.5-1. *Prohibited Behaviors.* Examples of workplace violence include, but are not limited to, the following prohibited behaviors:

- (a) intentionally causing physical injury to another person;
- (b) hitting or shoving;
- (c) fighting or "horseplay" that may be dangerous to others;
- (d) direct threats or physical intimidation;
- (e) implications or suggestions of violence;
- (f) stalking;
- (g) possession or use of weapons of any kind on property of the Nation, including parking lots, other exterior premises or while engaged in activities for the Nation;
- (h) physical restraint, confinement;
- (i) loud, disruptive, angry or abusive language or behavior;
- (j) sending of threatening, harassing or abusive e-mails, letters, faxes, phone calls, text messages or other form of electronic media;
- (k) using the workplace to violate protective orders;
- (l) intentionally damaging property of the Nation or property of another;
- (m) throwing an object at an individual; and
- (n) any other act that a reasonable person would perceive as constituting a threat of violence.

223.5-2. *Exceptions to Prohibited Behavior.* The following shall be exempt from this law:

- (a) Law enforcement officials and security staff are not considered to be in violation of this law when acting in their official capacity;

- (b) Employees required to use knives or other tools owned by the Nation that could potentially be used as weapons are not considered to be in violation of this law as long as the tools are used within the normal scope of employment and not used in a way to intimidate, threaten or otherwise harm another person within the workplace; and
- (c) Any other action that is consistent with laws of the Nation.

### **223.6. Reporting Workplace Violence**

223.6-1. *Reporting by a Non-Employee.* Any non-employee is encouraged to report threats of or observed workplace violence that occurs in the Nation's facilities and workplaces. A report of workplace violence given to an employee from a non-employee shall be promptly reported in writing to the employee's supervisor. The supervisor shall perform the initial assessment of the information pursuant to section 223.8.

223.6-2. *Permissive Reporting by an Employee.* An employee may report workplace violence to his or her supervisor where the employee:

- (a) is the victim of workplace violence; or
- (b) believes he or she has been threatened with workplace violence.

223.6-3. *Mandatory Reporting by an Employee.* An employee shall report workplace violence where the employee witnesses an act or threat of workplace violence towards anyone else.

(a) *Emergency Situation.* If an emergency exists or the situation is one of immediate danger to the life and safety of a person, the employee shall, if possible without causing themselves to be in danger, contact the Oneida Police Department or local law enforcement, and facility security if determined appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself from immediate harm. The employee shall report the incident in writing to the appropriate supervisor as soon as possible.

(b) *Non-Emergency Situation.* If a non-emergency situation exists the employee shall report the incident in writing to the appropriate supervisor as soon as possible if the situation is not one of immediate danger to life and safety.

223.6-4. *Reporting the Behavior of a Supervisor.* If the incident of alleged workplace violence involves the supervisor, the employee shall report the incident to the supervisor's supervisor, or if none exists, to the area manager.

223.6-5. *Reporting Restraining Orders.* An employee who possesses a current restraining order against another employee, shall immediately supply a copy of the signed order to his or her supervisor.

- (a) The supervisor shall provide copies of the restraining order to the area manager and the EEO Department Director or designee.

### **223.7. Future Workplace Violence**

223.7-1. Where an employee has reason to believe that he, she or others, may be victimized sometime in the future, either at the workplace or as a direct result of their employment with the Nation, he or she is encouraged to provide this information in writing to his or her supervisor for an initial assessment pursuant to section 223.8-1.

- (a) If an employee reports a possibility of future workplace violence to his or her supervisor the supervisor shall inform the EEO Department Director or designee.
- (b) The EEO Department Director or designee shall inform the Oneida Police Department or local law enforcement and/or facility security if determined appropriate.

223.7-2. *Anonymous threats or letters.* In the event that an employee receives anonymous threats or letters, the employee shall immediately forward a summary of such information in a confidential manner to the Chief of the Oneida Police Department in accordance with the Nation's laws, policies and rules governing anonymous letters. The employee shall then immediately notify his or her supervisor. The supervisor shall notify the target of the threat, take measures to ensure safety, and ensure that the Oneida Police Department as notified, and notify local law enforcement and/or facility security if determined appropriate.

### **223.8. Supervisor Responsibilities**

223.8-1. Upon receiving a report of workplace violence or otherwise becoming aware of a threat of workplace violence or a workplace violence episode, a supervisor shall immediately conduct an assessment of the situation and determine if an emergency exists or if the situation is one of immediate danger.

223.8-2. *Emergency Situation.* If an emergency situation exists and if possible without causing themselves to be in danger, a supervisor shall immediately contact the Oneida Police Department or local law enforcement, and facility security if appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself, employees and others from immediate harm.

223.8-3. *Non-Emergency Situation.* If the situation is not creating immediate danger to life and safety, the supervisor shall speak to the person reporting the incident and assess the situation.

(a) If the supervisor deems the episode is not a workplace violence problem then the investigation as a workplace violence matter ends.

(b) Where the supervisor deems the episode as a workplace violence matter, he or she shall prepare a written Workplace Violence Incident Report detailing the complaint. The supervisor shall then forward this report to the EEO Department Director or designee.

223.8-4. *Investigative Leave.* A supervisor may place an employee alleged to be involved in a workplace violence incident on investigative leave, if the supervisor deems the investigative leave necessary and appropriate, in accordance with the Nation's laws, policies and rules governing investigative leave except for the EEO Department Director or designee, not the employee's supervisor, shall conduct the investigation of the alleged workplace violence incident.

223.8-5. A supervisor shall consider the recommendation for disciplinary action provided by the EEO Department Director or designee pursuant to section 223.9-4(b) when carrying out a disciplinary action of an employee. The supervisor shall carry out any disciplinary action of an employee within five (5) days of receiving the recommendation. If the supervisor does not follow the disciplinary action recommendation provided by the EEO Department Director or designee, the supervisor shall provide justification for the deviation from the recommendation to the EEO Department Director and the supervisor's Area Manager.

### **223.9. Equal Employment Opportunity Department Responsibilities**

223.9-1. The EEO Department Director, or an individual assigned as designee by the EEO Department Director, shall be responsible for investigating alleged workplace violence.

223.9-2. Upon receipt of a completed Workplace Violence Incident Report, or other acceptable written notice of an allegation of workplace violence, the EEO Department Director or designee shall coordinate with all involved agencies or departments and immediately conduct an investigation which may include the following duties:

(a) Personally visit the scene of an incident as soon as possible;

- (b) Interview employees and other witnesses;
- (c) Examine the workplace for security risk factors associated with the incident, including examination of any reports of inappropriate behavior by the perpetrator;
- (d) Determine the cause of the incident;
- (e) Determine what mitigating action could prevent the incident from recurring;
- (f) Record the findings and recommended mitigating actions; and
- (g) Contact the Oneida Police Department and/or any other appropriate law enforcement agency when necessary;
- (h) Review relevant video surveillance footage if available, in accordance with standard operating procedures on the subject; and
- (i) Any other investigative methods necessary for a thorough investigation.

223.9-3. In performing these investigative duties, the EEO Department Director or designee shall not interfere in the investigation of any law enforcement agencies. If at any time criminal charges are brought against an employee as a result of an incident of workplace violence, then the employee shall be placed on investigative leave in accordance with the Nation's laws, policies and rules governing investigative leave, except for the EEO Department Director or designee, not the employee's supervisor, shall conduct the investigation of the alleged workplace violence incident.

223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:

- (a) implement any preventive factors within the Nation's Human Resources Department's authority;
- (b) provide a written report of the investigation and recommendation for disciplinary action, if any, to the supervisor of the employee;
- (c) notify the Oneida Police Department or local law enforcement when a potential criminal act has occurred; and
- (d) refer employees to post-event trauma counseling for those employees desiring such assistance.

223.9-5. *Employee Resignation.* An employee who resigns from their position when there is an ongoing investigation or in lieu of a termination shall not be eligible for hiring consideration in a different position within the Nation for three (3) years from the date of the resignation. The EEO Department Director or designee shall remain responsible for completing the investigation in the event an employee resigns during an investigation.

223.9-6. In appropriate circumstances, the EEO Department Director or designee shall inform the reporting individual of the results of the investigation which would not compromise the legally-protected confidentiality of any other person.

### **223.10. Fraudulent Report**

223.10-1. If at any time the EEO Department Director or designee, or supervisor is made aware that an employee or supervisor has made a report other than in good faith, the employee or supervisor may be disciplined according to the Nation's laws, policies and rules governing employment, up to and including termination.

### **223.11. Confidentiality**

223.11-1. To the extent possible, the Nation shall maintain the confidentiality of employees and the investigation. However, the Nation may need to disclose results in appropriate circumstances; for example, in order to protect individual safety.



223.11-2. Information related to the application of this law is strictly confidential. Information shall not be disclosed to third parties unless:

- (a) the prior written consent of the alleged victim is obtained;
- (b) the release of information is in compliance with a court order; and/or
- (c) the release of information is pursuant to applicable laws and/or policies.

**223.12. Enforcement**

223.12-1. An employee or supervisor who violates this law may be subject to disciplinary action under the Nation's laws, policies and rules governing employment, up to and including termination.

223.12-2. An employee who violates this law may be subject to removal from a workplace of the Nation.

*End*

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Adopted – BC-06-28-17-E

## **Drug and Alcohol Free Workplace Policy**

Article I. Purpose and Policy  
 Article II. Adoption, Amendment, Repeal  
 Article III. Definitions  
 Article IV. Application  
 Article V. Shared Responsibility  
 Article VI. Prohibited Behavior  
 Article VII. Reasonable Suspicion  
 Article VIII. Drug and Alcohol Testing

Article IX. Refusal to Test  
 Article X. Waiting Period  
 Article XI. Consequences for Prohibited Behavior  
 Article XII. Re-hire  
 Article XIII. Other Potential Consequences  
 Article XIV. Confidentiality  
 Article XV. Communication

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### **Article I. Purpose and Policy**

1-1. The Tribe is committed to protecting the safety, health and well-being of all employees, and other individuals in the workplace. The Tribe recognizes that alcohol abuse and drug use pose a significant health and safety threat to customers and other employees. The Tribe also recognizes that alcohol/drug abuse and addiction are treatable illnesses. The Tribe realizes that early intervention and support may improve the success of rehabilitation.

1-2. It is the policy of the Tribe to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. The Tribe encourages employees to voluntarily seek help for their personal drug and alcohol-related problems.

### **Article II. Adoption, Amendment, Repeal**

2-1. This Policy was adopted by the Oneida Business Committee by resolution BC-10-25-95-A and amended by BC-10-20-99-A, BC-12-05-07-B and BC-12-11-13-F.

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

2-3. Should a provision of this Policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Policy which are considered to have legal force without the invalid portions.

2-4. In the event of a conflict between a provision of this Policy and a provision of another Policy, the provisions of this Policy shall control.

2-5. This Policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### **Article III. Definitions**

3-1. This Article 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) "Appropriate authority" shall mean the Human Resource hiring representative, immediate supervisor, MRO, and/or EAP who requests the drug and/or alcohol testing for reasons of pre-employment, reasonable suspicion, and/or follow-up testing.

(b) "Confirmed positive test result" shall mean a lab-confirmed drug test that is verified by the MRO that exceeds the cut-off levels established by this Policy (levels established by the US Department of Health and Human Services), confirmed saliva testing, confirmed evidential breath alcohol test results of 0.02 or greater; and/or refusal to test.

(c) "Employee" shall mean any individual who is employed by the Tribe and is subject to the direction and control of the Tribe with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. "Employee" includes, but

is not limited to; an individual employed by any program or enterprise of the Tribe, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this Policy, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants.

(d) “External applicant” shall mean a person who is applying for a position and not currently employed by the Tribe.

(e) “HRD” shall mean the Human Resources Department and/or representatives performing Human Resources functions applicable to this Policy.

(f) “Internal applicant” shall mean a person who is applying for a position who is currently employed by the Tribe, this shall include those employed under a temporary status.

(g) “MRO” shall mean Medical Review Officer who is a licensed physician who is responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.

(h) “ONEAP” shall mean the Oneida Nation Employee Assistance Program which is a professional counseling program staffed by clinical social workers licensed by the State of Wisconsin which offers services to Tribal employees and family members.

(i) “Prohibited drug(s)” shall mean marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This shall also include prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

(j) “Return-to-Work Agreement” shall mean an agreement, developed by an ONEAP counselor and signed by the employee and the ONEAP counselor, and the referring supervisor, which sets out the actions the employee needs to complete in order to return to work and remain employed.

(k) “Supervisor” shall mean the immediate supervisor, or person who has taken on the role of supervisor due to an absence that is responsible for performance review, corrective action, and day-to-day assignments of duties.

(l) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.

(m) “Work-related accident” shall mean an unexpected event involving an employee that occurs in the employee’s working environment or during an activity related to work, that:

- (1) results in an injury to the employee and requires medical intervention by a police officer or emergency medical technician, or treatment at a medical facility,
- (2) results in death of the employee or another person, or
- (3) involves any property damage.

#### **Article IV. Application**

4-1. This Policy applies to all applicants for employment, whether external or internal, and all employees during working hours and when on-call.

4-2. Employees are prohibited from the use of intoxicants and prohibited drugs while on official business travel while the conference or meeting is in session.

4-3. An employee is not exempted from this Policy if they travel to another state, territory or country where the use of certain drugs is legal.

## **Article V. Shared Responsibility**

5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation and shared responsibility between the employer and employees.

5-2. *Employee.* It is the employee's responsibility to:

- (a) Be free from the effects of prohibited drugs, and/or alcohol during working hours, and/or when scheduled to be on-call.
- (b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any prohibited drugs while working.
- (c) Comply with drug and alcohol testing if directed to do so upon the request of an appropriate authority.
- (d) Confidentially report suspicious behavior of an employee immediately to the supervisor of the employee in question.
- (e) Cooperate with the requests made by the MRO and return the call of the MRO within twenty-four (24) hours of the call being made to the employee. Employees who fail to cooperate and do not contact the MRO within twenty-four (24) hours of receiving contact shall not receive back pay for any time between the date the MRO placed the call until the time the employee does return the call of the MRO.
- (f) Sign a consent form to be tested for alcohol and drugs when requested by a supervisor, EHN, a certified drug and alcohol technician, or police personnel in accordance with this Policy.

5-3. *Supervisor.* It is the supervisor's responsibility to:

- (a) Be familiar with this Policy and any related policies and procedures.
- (b) Investigate reported suspicious behaviors while maintaining the confidentiality of the person who reported the suspicious behavior.
- (c) Promptly intervene with employees who are believed to be under the influence of prohibited drugs and/or alcohol.
- (d) Monitor the employee under the influence of prescription and/or over-the-counter medications that could compromise the safety of the employee, fellow employees, or the public.
- (e) Send the employee through the contracted transportation service for drug and alcohol forensic testing.
- (f) Take appropriate action as outlined by this Policy.
- (g) Sign the Return to Work Agreement along with the employee and ONEAP counselor that was developed by ONEAP.
- (h) Send a copy of the consent to submit to drug and alcohol testing form signed by the employee to EHN.

5-4. *Supervisor and Employee.* Supervisors and employees that fail to adhere to their responsibilities under this Policy may be subject to disciplinary action or other consequences as explained in Article XIII.

5-5. *Off-duty Use of Prohibited Drugs or Alcohol.* Off-duty use of prohibited drugs or alcohol may result in continued impairment during on-duty hours, which shall then constitute a violation of this Policy. It is the employee's responsibility to understand the consequences of off-duty use, and take steps to avoid the possibility of on-duty impairment. In the case where employee is called in for an emergency or unplanned work (this does not include those on-call), and he or she has been using prohibited drugs or drinking alcoholic beverages prior to such a call, such employee should

decline to report until the effects of the prohibited drugs or alcohol have left his or her system. Such refusal to report shall not be viewed as improper, and disciplinary action shall not arise specifically from such refusal.

5-6. *Use of Controlled Substances That May Affect Safety or Performance.* Employees who are taking or are under the influence of any controlled substances during working hours (such as prescription medication or over the counter medication), which may affect the employee's job performance or safety of the employee, fellow employees, public, or assets of the Tribe have the following obligations:

- (a) The employee shall notify the employee's immediate supervisor about the use of the substance and possible work-related effects prior to commencing work.
- (b) Upon request, the employee may be required to obtain a written statement of any work restrictions or impact on performance or safety relating to the legal substances from his or her physician or pharmacist.
- (c) An employee shall not sell or share his or her prescribed medications with any other person, and shall not take medications that are prescribed to another person.
- (d) It may be necessary for the employee's supervisor, area manager or Employee Health Nursing (EHN) to consult with the employee's personal physician or an MRO to determine if the medication might impact the employee's ability to perform his or her job, or pose a hazard to other employees or to the general public.
- (e) The employee's duties may be temporarily modified for up to one hundred eighty (180) days. Any modification of duties shall result in the appropriate modification of pay as established by the Human Resources Department.

#### **Article VI. Prohibited Behavior**

6-1. An applicant or employee of the Tribe is in violation of this Policy if he or she:

- (a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited drugs or alcohol while on duty. Notwithstanding Article XI, any employee who is caught using, possessing or selling prohibited drugs shall be immediately terminated from employment with the Tribe.
- (b) Fails to inform his or her supervisor of being under the influence of prescription medication and/or over-the-counter medication(s) which may affect the employee's job performance or safety of the employee, fellow employees, public, or assets of the Tribe.
- (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses prescription medications.
- (d) Refuses to test.
- (e) Has a confirmed positive test after completing a drug and/or alcohol forensic test through EHN or its designee, or has a confirmatory test come back as positive.

#### **Article VII. Reasonable Suspicion**

7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by personal observation and/or secondary reported observation that an employee may be under the influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee has taken or possess prohibited drugs or prescription medication that is not specifically prescribed to that employee. In order to make a reasonable suspicion determination, the supervisor shall evaluate the following:

Specific, contemporaneous and articulable observations concerning appearance, behavior, speech, or body odors of the employee consistent with possible drug use or alcohol misuse. The observations may include indications of the chronic and withdrawal effects of prohibited drugs or alcohol.

7-2. The supervisor shall document his or her observations and discuss the matter with the employee. During this discussion, the supervisor may ask the employee for proof of a prescription. The employee shall comply with this request. If after a discussion with the employee, the supervisor continues to suspect the employee may currently still be under the influence or reasonable suspicion is otherwise established, the supervisor shall refer the employee for drug and alcohol forensic testing.

### **Article VIII. Drug and Alcohol Testing**

8-1. Drug and alcohol tests are forensic in nature, meaning they are performed to formalize conditions of employment as described in this Policy. To ensure the accuracy and fairness of this Policy, all forensic testing shall be conducted according to the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMSHA) guidelines for Federal Workplace Drug testing Programs

8-2. The Employee Health Nursing Department or its designee shall use Federal Drug Administration approved urine tests and National Highway Transportation Safety Administration (NHTSA) certified evidential breath testing devices or NHTSA certified saliva-screening devices, operated by technicians whose training terminology, procedures, methods, equipment, forms, and quality assurance comply with best practices.

(a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory which is certified by the U.S. Department of Health and Human Services using its confirmation methods and established cut-off levels. Laboratory-confirmed results shall undergo the verification process by a MRO.

(b) Confirmation breath alcohol testing shall be performed using an NHTSA certified evidential breath testing device.

(c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA certified saliva test.

8-3. If an employee is involved in a work-related accident, he or she shall immediately inform his or her supervisor of the accident. 8-4. Each employee, as a condition of employment, is required to participate in pre-employment, reasonable suspicion, and follow-up testing upon the request of an appropriate authority.

8-5. A negative test result is required for employment eligibility. In cases where a test result is diluted or the test was cancelled, retesting urine for drugs is required. If the re-test results in a negative-dilute, the applicant shall be given a negative test result. If the re-test results in a positive-dilute, then the applicant shall be given a positive test result. Other retesting may also be required at the direction of the MRO.

### **Article IX. Refusal to Test**

9-1. Refusal to test is prohibited behavior as defined in Article VI. Refusal to test carries the same consequences as a non-negative and/or confirmed positive test result. Examples of refusal to test include, but are not limited to:

(a) Substituting, adulterating (falsifying), or diluting the specimen

- (b) Refusal to sign the required forms
- (c) Refusal to cooperate in the testing process in such a way that prevents completion of accurate testing and as directed by the collector
- (d) Failing to remain at the testing site until the testing process is complete
- (e) Providing an insufficient sample of urine or breath
- (f) Failing to test or to re-test
- (g) Failing to appear within two (2) hours after an order or request is made for testing or re-testing.
- (h) Behaving in a confrontational or discourteous manner that disrupts the collection process
- (i)

#### **Article X. Waiting Period**

10-1. An employee shall be immediately removed from duty without pay during the waiting period between the time of specimen collection and the employer's notification of negative results on both tests, alcohol and drugs, or MRO-verified negative test results.

10-2. When negative test results are made available to the employer, the supervisor shall notify the employee by telephone and by certified mail using the contact information provided by the employee. The notice to the employee shall identify a reinstatement date. Back pay shall be provided in accordance with the Back Pay Policy. However, if the employee fails to return to work on the assigned reinstatement date as instructed in the notice from the supervisor, the supervisor shall discipline the employee in accordance with the Personnel Policies and Procedures, unless an extension is granted in writing by the supervisor along with the reason for the extension. An employee who is ultimately terminated for failure to return to work on his or her assigned reinstatement date shall not be eligible for employment for one (1) year after the date of termination.

10-3. This article applies only to current employees who meet the reasonable suspicion standard. It does not apply to applicants.

#### **Article XI. Consequences for Prohibited Behavior**

11-1. Either an internal applicant or an external applicant may decline the position at any time before being directed to the Employee Health Nursing Department or other designated testing site for his or her drug and alcohol testing.

11-2. *External Applicant.* If an external applicant fails to show at the testing site within the time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section 6-1(e) that has been documented, the employment offer shall be withdrawn. An external applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the date of the urine drug screening test.

11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section 6-1, the employment offer shall be withdrawn. The applicant shall be removed from duty and subject to respective consequences of this Policy. The applicant shall not be eligible for hiring consideration in a different position for one hundred eighty (180) days from the date of the urine drug screening test.

11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section 6-1, and/or fails to cooperate by not responding to contact from the MRO within ten (10) business days (which shall be deemed thereafter as a definite positive test), he or she shall be removed from duty and subject to the respective consequences of this Policy.

11-5. *Consequences.*

(a) *First Violation.*

(1) Any employee who engages in prohibited behavior as defined in Article VI for the first time shall be removed from duty without pay and shall receive a mandatory referral to ONEAP for an assessment. The ONEAP shall also determine if the employee shall be subject to return-to-duty/follow-up testing. If follow-up testing is required, the testing shall be at the employee's expense.

(2) The employee shall be required to sign a Return-to-Work Agreement and submit it to his or her supervisor within ten (10) calendar days or the employee shall be terminated and ineligible for re-hire for one (1) year.

(A) When the supervisor signs the Return-to-Work Agreement the employee shall be placed back on the work schedule by the next regularly scheduled workday.

(3) Failure to comply with the Return-to-Work Agreement shall result in the employee being terminated and ineligible for re-hire for one (1) year.

(b) *Second Violation.*

(1) Any employee who engages in prohibited behavior as defined in Article VI a second time within his or her lifetime of employment with the Tribe shall be removed from duty without pay and shall receive a mandatory referral to ONEAP for an assessment.

(2) The employee shall be required to sign a Return-to-Work Agreement and submit it to their supervisor for signature within ten (10) calendar days or the employee shall be terminated and ineligible for re-hire for one (1) year. After a second violation the employee shall not be placed back on the work schedule until:

(A) The employee receives approval from the ONEAP that they have demonstrated sufficient progress in a treatment program that would indicate the employee is drug and alcohol free within thirty (30) days of the employee being removed from duty; and

(B) The employee completes a return-to-duty drug screening and alcohol test at a SAMHSA-certified facility at their own expense, which shall be negative within thirty (30) days of the employee being removed from duty;

(C) The ONEAP notifies the supervisor of the employee's eligibility to return to work.

(3) As a condition of continuing employment, the employee shall participate in follow-up testing with continued negative results as directed by the ONEAP and listed in the Return-to-Work Agreement. All follow-up testing shall be at the employee's expense.

(4) Failure to comply with the Return-to-Work agreement shall result in the employee being terminated and ineligible for re-hire for one (1) year.

(c) *Third Violation.*



(1) Any employee who engages in prohibited behavior as defined in Article VI a third time in his or her lifetime of employment with the Tribe shall be terminated. The employee shall not be eligible for employment unless he or she receives a forgiveness pursuant to the Pardon and Forgiveness Law. An employee that receives a forgiveness shall not be eligible for re-hire for one (1) year after the date of termination.

#### **Article XII. Re-hire**

12-1. Former employees that were terminated due to violations of this Policy shall provide, along with their application for employment, the following:

- (a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and
- (b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed within the last thirty (30) days. This drug screening and alcohol test shall be done at their own expense.

#### **Article XIII. Other Potential Consequences**

13-1. The violation of this Policy may result in consequences to the employee beyond any discipline or corrective action that may be taken. Other potential consequences include the following:

- (a) *Disqualification of Unemployment Benefits:* Employees who are terminated as a result of a violation of this Policy may be ineligible for unemployment benefits.
- (b) *Reduction of Workers Compensation Benefits:* Employees who suffer an injury in a work-related accident that occurred while engaged in a violation of this Policy may have any workers compensation benefits reduced.
- (c) *Criminal Penalties:* Employees whose conduct violates state or federal criminal laws may be referred to appropriate law enforcement for criminal prosecution.
- (d) *Liability for Accidents:* Employees whose conduct in violation of this Policy causes an accident may be held personally responsible for losses associated with the accident, and may be required to pay for those losses.

#### **Article XIV. Confidentiality**

14-1. Information related to the application of this Policy is confidential. Access to this information is limited to those who have a legitimate “need to know” in compliance with relevant laws and personnel policies and procedures.

14-2. All drug and alcohol testing information shall be maintained in confidential records, separate from the employee’s clinical and personnel files. The employee may request a copy of his or her records. The records may be requested by a third party in accordance with the Oneida Personnel Policies and Procedures.

#### **Article XV. Communication**

15-1. HRD shall communicate this Policy to all employees to ensure all employees are aware of their role in supporting this Policy:

- (a) All employees shall be given information on how to access this Policy.
- (b) This Policy shall be reviewed in new employee orientation and other means, as deemed appropriate by HRD.

(c) All employees shall sign an acknowledgment form stating they have received a copy of this Policy, have read and understand it, and agree to follow this Policy.

*End.*

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See GTC-1-31-94-B  
Adopted by the OBC on 8-17-94  
Emergency Amendments BC-04-20-95-C  
Adopted BC-10-25-95-A (repealed previous versions)  
Amended BC-10-20-99-A  
Amended BC-12-05-07-B  
Amended BC-12-11-13-F  
Amended BC-10-26-16-D

# Legislative Operating Committee



## Agenda Request Form

- 1) Request Date: August 11, 2021
- 2) Contact Person(s): Wendy Alvarez Dept: HRD  
Phone Number: 3642 Email: walvarez@oneidation.org
- 3) Agenda Title: Policy Updates (SECTION 111 - SELECTION POLICY)
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
Update the Nation's Personnel Policies & Procedures using current interpretations,  
language and technology. These updates will improve supervisor applicant time to fill  
with more options.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Section III (Original)
  - 2) Section III (Strikethrough)
  - 3) Section 111 (Clean Edited)
  - 4) \_\_\_\_\_
- 5) Please List any laws, ordinances or resolution that might be affected:  
Oneida Nation Personnel Policies & Procedures, Section 111 - Selection Policy
  - 6) Please List all other departments or person(s) you have brought your concern to:  
Oneida Business Committee, HRD & Gaming Personnel Services
  - 7) Do you consider this request urgent?  Yes  No  
If yes, please indicate why: Minimize time to hire employees from post to hire in a tightened labor market.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester:  Matthew J. Denny Sr.

*Please send this form and all supporting materials to:*

**LOC@oneidation.org**  
or  
**Legislative Operating Committee (LOC)**  
P.O. Box 365  
Oneida, WI 54155  
Phone 920-869-4376

## SECTION III – SELECTION POLICY

### ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

Federal policy since 1834 accords hiring preference to Indians. The purpose of this preference is threefold: 1) to give Indians a greater participation in self-government; 2) to further the Government's trust obligation; and 3) to increase the positive effect of having Indians administer matters that affect Indian tribal life. ([GTC Resolution – 5-23-11-A](#))

More recently, legislation such as the Civil Rights Act (1964) and the Education Amendments of 1972 (passed after the Equal Employment Opportunity Act) continued to specifically provide for preferential hiring of Indians by Indian Nations.

As an employer, the Nation seeks to employ individuals who possess the skills, abilities and background to meet the employment needs of the Nation.

As a sovereign Indian Nation and a unique cultural group, the Oneida Nation has determined that a highly desirable employment characteristic is knowledge of Oneida culture that can be attained only by membership (or eligibility for membership) in the Oneida Nation. Further, the Nation recognizes the unique, shared culture of Native American Indians and has determined that a desirable employment characteristic is status as a member of an American Indian Nation. At a minimum, the Nation has determined that some knowledge of Indian culture is a desirable employment characteristic.

Accordingly, the Oneida Nation establishes the following policy in regard to Indian Preference for selecting employees to provide services that meet the needs of the Oneida people. This Indian Preference policy shall be specific to staffing decisions made under the Personnel Policies and Procedures and shall not be construed to have an application outside of these policies and procedures.

The Oneida Nation is an equal employment opportunity employer and follows non-discriminatory policies and procedures in personnel decisions. ([HR Interpretation 5-19-14](#)) However, the Oneida Nation exists to serve the needs of the Oneida people and therefore accords Oneida Preference to enrolled Oneida Nation Members where such preference is not otherwise prohibited. All General Managers and top administrative positions, as defined by HRD, shall be held by enrolled Tribal members. In all other instances, the Nation applies the following priorities of Indian Preference in staffing decisions:

- 1 Enrolled Oneida Tribal member;
- 2 Oneida Indians eligible for enrollment in the Oneida Nation;
- 3 Documented first generation Oneida descendant;
- 4 Other Native American Indian;
- 5 Other (non-Indian). ([HR Interpretation – 6-24-11](#))

This policy will apply in decisions where the basic requirements for employment are met.

### B. HIRING PROCEDURE

- 1 Statement of Policy
  - a. The Oneida Nation is an equal employment opportunity employer and follows nondiscriminatory policies in hiring.

- b. The Oneida Nation is a firm advocate of the 1964 Civil Rights Act (as amended) and the 1968 Indian Civil Rights Act (as amended) and will make every effort to ensure compliance with each Act; however:
  - c. The Oneida Nation follows the principles of Indian Preference in the implementation of hiring practices (see the Oneida Preference and Indian Preference Statement of Policy).
  - d. The members of the Personnel Commission and all Oneida Nation employees who supervise other Oneida Nation employees shall undergo training in EEO and Tribal laws, rules and regulations.
    - 1) Training will be knowledge - and skills-based
    - 2) All Personnel Commission members and Tribal supervisors will undergo periodic re-training in EEO and Tribal laws, rules and regulations
  - e. No person shall be recommended for a position if a conflict of interest or nepotism is created. Nepotism is created by the following relationships: [\(HR Interpretation 08-13-12\)](#)
    - a) Father
    - b) Mother
    - c) Husband
    - d) Wife
    - e) Brother
    - f) Sister
    - g) Son
    - h) Daughter
    - i) Father-in-law
    - j) Mother-in-law
    - k) Brother-in-law
    - l) Sister-in-law
    - m) Son-in-law
    - n) Daughter-in-law
    - o) Grandparent
    - p) Grandchild
2. Hiring Procedures
- a. HRD Office Responsibilities
    - 1) Unless specifically noted, the HRD Office will have responsibility for implementing the policies and procedures guiding the selection of Tribal employees.
  - b. Personnel Commission Role
    - 1) The Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of tribal employees.
      - a) The Personnel Commission is directed to:
        - i. Seek out the best-matched applicants for each available position;
        - ii. Consider only job-related factors (such as education, experience, past job performance, skills and abilities, and compatibility with the position and potential co-workers) when selecting candidates.
  - c. Identification of Vacancies and Development of Job Descriptions [\(Work Standard, 11-16-11\)](#)
    - 1) Supervisors may inform the HRD Office of pending vacancies as soon as they are identified.
    - 2) For existing positions, the HRD Manager (or designate), the supervisor and the Area Manager (at his/her option) will review the job description to ensure compliance with:
      - a) The Nation's job structure;
      - b) The needs and requirements of the job.

- 3) For new positions, the HRD Manager, the appropriate Area Manager, and the supervisor shall develop the job description. [\(HR Interpretation, 12-8-16\)](#)
    - a) The new job description shall conform to the Oneida Nation job structure.
    - b) The new job description will be reviewed by the General Manager.
  - 4) All job descriptions shall contain the following information:
    - a) Job title, division/department, location, supervisor's title;
    - b) Posting date, application deadline, preferred starting date, date of job, description review;
    - c) Pay level (grade, step, hourly rate);
    - d) A brief job summary;
    - e) Duties and responsibilities;
    - f) Qualifications;
    - g) Inquiry address;
    - h) Statement of compliance with EEO and Indian Preference policies.
- d. Applications
- 1) All inquiries for job vacancies will be responded to with an Oneida Nation Application Form which will consist of:
    - a) Job vacancy title;
    - b) Applicant biographical data;
    - c) A request for a resume (where applicable).
  - 2) The Application Form shall be accompanied by a Statement of Policy regarding Oneida Preference and Indian Preference.
  - 3) Hand-delivered applications will be accepted at the HRD Office until 4:30 p.m. on the deadline date; mailed applications must be postmarked on or before the deadline date.
  - 4) All applications will be acknowledged.
- e. Advertising
- 1) Position vacancies will be advertised as widely as possible including:
    - a) The Kalihwisaks;
    - b) Statewide, through print and electronic media and public employment agencies;
    - c) Through targeted recruiting efforts including:
      - i. Major metropolitan areas (i.e. Milwaukee, Chicago, Minneapolis, etc.)
      - ii. The Bureau of Indian Affairs;
      - iii. The Oneida Higher Education Office.
    - d) Other postings targeted toward special recruiting categories (such as professions) shall be carried out at the discretion of the HRD Office with the advice and consent of the affected department.
  - 2) Unless otherwise prohibited by external grant source or federal law, the first posting for a position vacancy shall be limited to enrolled Oneida members and shall be posted for a minimum of seven (7) calendar days.
  - 3) The second posting for a position vacancy shall be posted for a minimum of ten (10) calendar days and shall be open to the general public, unless the position must be filled by an enrolled Oneida Nation member. [\(HR Interpretation 8-9-11\)](#)

- 4) All vacancies requiring re-posting shall be referred back to B-2.c (Identification of Vacancies and Development of Job description) to begin the re-posting process.
- f. Screening of Applicants ([HR Interpretation 11-16-12](#)) ([HR Interpretation 10-22-12](#))
  - 1) A Screening Committee consisting of the HRD Manager (or designate), the position supervisor, the Area Manager (at his/her option), and a member of the Personnel Commission shall be convened to conduct the screening of applicants. The Screening process will begin as soon as practical following the closing of the position. This Committee will:
    - a) Verify that all applications are complete, are accurate and were submitted on time.
      - i. Applications that are incomplete, inaccurate, or were not submitted on or before the posted deadline date may be screened out.
    - b) Analyze the job description to establish screening criteria. These criteria will include qualifications listed on the job description determined by the supervisor and Area Manager to be essential to the job. ([T.O.E. WS - 5-6-13](#))
    - c) Screen verified applications
    - d) Recommend a list of applicants to be interviewed.
  - 2) The HRD Office shall notify screened out applicants within five (5) working days after the initial screening and reserve these applications in the general recruiting pool.
  - 3) The HRD Office will arrange for interviews with the listed candidates.
- g. Candidate Interviews
  - 1) An Interview Committee will be convened and will consist of the members of the Screening Committee except that the HRD Manager will be replaced with a second member of the Personnel Commission. The Interview Committee will:
    - a) Construct an interview format consisting of:
      - i. A set of questions related to the screening criteria qualifications;
      - ii. An interview rating scale designed to objectively evaluate each candidate's qualifications.
    - b) Interview candidates and evaluate each individually.
  - 2) The HRD Manager (or designee) will total the evaluation rating scale to rank order of the candidates.
- h. Selection ([HR Interpretation - Disqualification of Applicant 10-24-13](#))
  - 1) The supervisor shall select one of the top two (2) candidates as ranked through the rating scale. ([HR Interpretation - 10-17-12](#))
    - a) The supervisor may conduct an additional personal interview with the top two (2) candidates.
    - b) The selection decision shall be governed by the Oneida Preference and Indian Preference Policy. ([HR Interpretation - 6-6-11](#))
    - c) The HRD Office will notify the selected candidate and offer the candidate the job within five (5) working days of the selection decision by the supervisor.
      - i. Should the supervisor's first choice refuse the offer, the HRD Office will offer the job to the second ranked candidate.

- 2) Should both of the top two ranked candidates refuse the job offer, the supervisor may:
  - a) Repeat the process outlined in B.2.h.1. above; or
  - b) Re-post the position.
- 3) The HRD Office will notify those candidates interviewed but not selected of the decision to hire the best-qualified candidate.
- 4) All newly hired employees will be listed in the HR newsletter.

C. TRANSFERS AND PROMOTIONS POLICY - The Oneida Nation encourages transfers and promotions within and among units in order to make the best possible use of human resources to meet Oneida Nation goals and objectives. Supervisors and employees are encouraged to work together to create an environment in which employees constantly strive to improve their skills and abilities and managers constantly seek to provide challenging and rewarding work experiences.

#### 1. Procedure

##### a. Internal Posting and Bidding

- 1) Open positions as determined by a supervisor and his/her Area Manager will be posted internally for five (5) working days. This internal posting will be concurrent with the external (public) posting of positions.
  - a) Positions will be posted in prominent locations in each Oneida Nation building
- 2) Oneida Nation employees may bid for transfers by notifying their immediate supervisor and submitting an Application Form to the HRD Office.
  - a) The HRD Manager will inform all affected Area Managers of each transfer bid.
- 3) At the end of the five (5) day internal posting period, the HRD Manager will schedule a conference with the open position's supervisor and the Area Manager.
  - a) The conference committee will consist of the supervisor, the Area Manager and the HRD Manager (or designate) acting as this Committee will:
    - i. Establish selection criteria; and
    - ii. Review each bid.
  - b) The Committee may select the best-qualified applicant but is not required to choose an applicant to fill the open position from those employees who have submitted an application for a transfer or promotion.
  - c) If the Committee does not fill the position from the transfer/promotion process, the process will continue through the full advertising, screening and interview steps.
    - i. Any decision will be governed by the Indian Preference Policy.
- 4) Employees who are transferred or promoted will not lose any benefits; however:
  - a) An employee may be required to continue serving in his/her present position until a replacement can be found;



- b) An employee who is transferred to a position lower on the Oneida Nation Job Structure will be paid at the grade level corresponding to the new position;
  - c) An employee must have completed one year of service to the Nation before being eligible for a promotion or transfer (requests for transfers for documented medical conditions will be handled on a case by case basis and only when in the best interests of both the employee and the Nation);
  - d) The newly transferred or promoted employee shall be required to complete a three (3) month probation period (all conditions of the Nation's Probation Policy shall apply).
- b. Applicant Pool Process
- 1) New and vacant positions will be advertised through the Tribal Applicant Pool.
  - 2) The job description will be sent to persons whose applications are maintained in the Applicant Pool.
    - a) The Tribal Applicant Pool will consist of open (unspecified) applications from Tribal members who wish to be considered for employment by the Nation.
    - b) Advertising through the Tribal Applicant Pool will follow the format and time conditions set forth in the Hiring Policy.
2. Reassignments [\(Transfers & Promotions\)](#)
- a. Title Reassignments
    - 1) Title Reassignments may be made by supervisors to:
      - a) More accurately describe or define an existing job; or
      - b) Make minor adjustments in jobs within a unit or operating division.
    - 2) Title Reassignments may be made at any time with the approval of the Area Manager and HRD Manager.
  - b. Job Reassignments
    - 1) Job Reassignments may be made by supervisors to make more efficient and effective use of human resources.
    - 2) Job Reassignments may be supervisor-initiated or employee-initiated but must be made in the best interests of the operating unit.
    - 3) Job Reassignments may be made at any time with the approval of the Area Manager and after a review of each affected job by the Personnel Evaluation Committee.
  - c. Interim Job Reassignments [\(Work Standard 7-11-13\)](#)

#### D. PROBATION

- 1. The first three (3) months after an employee's starting date shall be considered a period of probation. At the end of six (6) weeks, the employee's performance shall be reviewed with him/her by the supervisor by completing an employee evaluation.
  - a. At the end of the three-month probation period, a second performance evaluation will be conducted. This evaluation will recommend the end of probation and regular status for the employee, an extension of probation, or termination for cause.

2. Status as a Probationary Employee
  - a. Probationary employees will be paid at five percent (5%) below the posted pay rate for the position.
    - 1) New employees hired under a negotiated salary will receive a salary one step below the agreed upon salary during the probationary period.
  - b. Probationary employees will accrue vacation/personal days during the probation period and will receive holiday pay.
  - c. Probationary employees may be terminated for cause at any time during the probation period. Cause must consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position. This termination is subject to appeal. [\(BC Action 3-20-92\)](#)
3. Completion of Probation Period
  - a. Satisfactory completion of probation will result in the employee receiving the regular salary for the position.
  - b. Employees who are terminated during the probation period will receive credit for accrued vacation/personal days in their final paycheck.
  - c. Extensions of probation periods will not affect accrual of or use of benefits as explained under D.2.

### SECTION III – SELECTION POLICY – *Who is the audience? Employees*

#### A. ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

Federal policy since 1834 accords hiring preference to Indians. The purpose of this preference is threefold: 1) to give Indians a greater participation in self-government; 2) to further the Government's trust obligation; and 3) to increase the positive effect of having Indians administer matters that affect Indian tribal life. (GTC Resolution – 5-23-11-A)

More recently, legislation such as the Civil Rights Act (1964) and the Education Amendments of 1972 (passed after the Equal Employment Opportunity Act) continued to specifically provide for preferential hiring of Indians by Indian Nations.

As an employer, the Nation seeks to employ individuals who possess the skills, abilities, and background to meet the employment needs of the Nation.

As a sovereign Indian Nation and a unique cultural group, the Oneida Nation has determined that a highly desirable employment characteristic is knowledge of Oneida culture that can be attained only by membership (or eligibility for membership) in the Oneida Nation. Further, the Nation recognizes the unique, shared culture of Native American Indians and has determined that a desirable employment characteristic is status as a member of an American Indian Nation. At a minimum, the Nation has determined that some knowledge of Indian culture is a desirable employment characteristic.

Accordingly, the Oneida Nation establishes the following policy in regard to Indian Preference for selecting employees to provide services that meet the needs of the Oneida people. This Indian Preference policy shall be specific to staffing decisions made under the Personnel Policies and Procedures and shall not be construed to have an application outside of these policies and procedures.

The Oneida Nation is an equal employment opportunity employer and follows non-discriminatory policies and procedures in personnel decisions (HR Interpretation 5-19-14). However, the Oneida Nation exists to serve the needs of the Oneida people and therefore accords Oneida Preference to enrolled Oneida Nation Members where such preference is not otherwise prohibited. All General Managers and top administrative positions, as defined by HRD, shall be held by enrolled Tribal members. In all other instances, the Nation applies the following priorities of Indian Preference in staffing decisions:

- 1 Enrolled Oneida Tribal member.
- 2 Oneida Indians eligible for enrollment in the Oneida Nation.
- 3 Documented first generation Oneida descendant.
- 4 Other Native American Indian.
- 5 Other (non-Indian). (HR Interpretation – 6-24-11)

This policy will apply in decisions where the basic requirements for employment are met.

#### B. HIRING PROCEDURE

- 1 Statement of Policy
  - a. The Oneida Nation is an equal employment opportunity employer and follows nondiscriminatory policies in hiring.

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- b. The Oneida Nation is a firm advocate of the 1964 Civil Rights Act (as amended) and the 1968 Indian Civil Rights Act (as amended) and will make every effort to ensure compliance with each Act; however:
- c. The Oneida Nation follows the principles of Indian Preference in the implementation of hiring practices (see the Oneida Preference and Indian Preference Statement of Policy).
- d. ~~The members of the Personnel Commission and all Oneida Nation employees who supervise other Oneida Nation employees shall undergo training in EEO and Tribal laws, rules, and regulations.~~
  - a. ~~Training will be knowledge and skills based~~
  - b. ~~All Personnel Commission members and Tribal supervisors will undergo periodic retraining in EEO and Tribal laws, rules, and regulations~~
- e. ~~No person shall be recommended for a position if a conflict of interest or nepotism is created. Nepotism is created by the following relationships.~~ (HR Interpretation 8-13-12)

<del>a) Father</del>	<del>#</del>	<del>Father-in-law</del>
<del>b) Mother</del>	<del>jt</del>	<del>Mother-in-law</del>
<del>c) Husband</del>	<del>kt</del>	<del>Brother-in-law</del>
<del>d) Wife</del>	<del>jt</del>	<del>Sister-in-law</del>
<del>e) Brother</del>	<del>mt</del>	<del>Son-in-law</del>
<del>f) Sister</del>	<del>nt</del>	<del>Daughter-in-law</del>
<del>g) Son</del>	<del>ot</del>	<del>Grandparent</del>
<del>h) Daughter</del>	<del>pt</del>	<del>Grandchild</del>

2. Hiring ~~Procedures~~ Guidelines

a. ~~HRD Office Responsibilities~~

- a. ~~Unless specifically noted, the HRD Office will have responsibility for implementing the policies and procedures guiding the selection of Tribal employees. All Tribal Supervisor will undergo periodic retraining in EEO and Tribal laws, rules and regulations.~~

b. Personnel Commission ~~Role~~

- 1) The Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of tribal employees.
  - a) The Personnel Commission is directed to:
    - i. Seek out the best-matched applicants for each available position.
    - ~~ii. Consider only job-related factors (such as education, experience, past job performance, skills and abilities, and compatibility with the position and potential co-workers) when selecting candidates.~~
  - ~~iii. Identification of Vacancies and Development of Job Descriptions~~ (Work Standard, 11-16-11)
  - ~~iv. Supervisors may inform the HRD Office of pending vacancies as soon as they are identified.~~
- 2) For ~~new and~~ existing positions, the HR ~~Representative~~ ~~D Manager (or designate)~~, the supervisor and the Area Manager (at his/her option) will review the job description to ensure compliance with:
  - a) The Nation's job structure.
  - b) The needs and requirements of the job.

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- 3) ~~For new positions, the HRD Manager, the appropriate Area Manager, and the supervisor shall develop the job description.~~ <sup>(HR Interpretation, 12-8-16)</sup>
- a) ~~The new job description shall conform to the Oneida Nation job structure.~~
- b) ~~The new job description will be reviewed by the General Manager.~~
- 4) ~~All job descriptions shall contain the follow the outlined structuring information:~~
- a) ~~Job title, division/department, location, supervisor's title.~~
- b) ~~Posting date, application deadline, preferred starting date, date of job, description review.~~
- c) ~~Pay level (grade, step, hourly rate).~~
- d) ~~A brief job summary.~~
- e) ~~Duties and responsibilities.~~
- f) ~~Qualifications.~~
- g) ~~Inquiry address.~~
- ~~h) Statement of compliance with EEO and Indian Preference policies.~~

#### ~~d.c.~~ Applications

- 1) ~~All inquiries for job vacancies will be responded to with an application and/or resume. Oneida Nation Application Form which will consist of:~~
- a) ~~Job vacancy title.~~
- b) ~~Applicant biographical data.~~
- ~~1) A request for a resume (where applicable).~~
- 2) ~~The Application Form shall be accompanied by a Statement of Policy regarding Oneida Preference and Indian Preference.~~
- 3) ~~2) Hand-delivered applications will be accepted at the HRD Office until 4:30 p.m. on the deadline date; mailed applications must be postmarked on or before the deadline date.~~
- 4) ~~3) All applications will be acknowledged.~~

#### ~~e.~~ Advertising

- 1) ~~Position vacancies will be advertised as widely as possible including:~~
- a) ~~The Kalihwisaks.~~
- b) ~~Statewide, through print and electronic media and public employment agencies.~~
- c) ~~Through targeted recruiting efforts including:~~
- i. ~~Major metropolitan areas (i.e. Milwaukee, Chicago, Minneapolis, etc.)~~
- ii. ~~The Bureau of Indian Affairs.~~
- iii. ~~The Oneida Higher Education Office.~~
- d) ~~Other postings targeted toward special recruiting categories (such as professions) shall be carried out at the discretion of the HRD Office with the advice and consent of the affected department.~~
- 2) ~~4) Unless otherwise prohibited by external grant source or federal law, the first posting for a position vacancy shall be limited to enrolled Oneida members and shall be posted for a minimum of seven (7) calendar days.~~
- 3) ~~5) The second posting for a position vacancy shall be posted for a minimum of ten (10) calendar days and shall be open to the general public, unless the position must be filled by an enrolled Oneida Nation member.~~ <sup>(HR Interpretation 8-9-11)</sup>

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**Commented [WMA7]:** Can we combine into one posting utilizing Indian preference?

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4) All vacancies requiring re-posting shall be referred back to B-2.c (Identification of Vacancies and Development of Job description) to begin the re-posting process.

f.d. Screening of Applicants (HR Interpretation 11-16-12) (HR Interpretation 10-22-12)

1) A Screening Committee consisting of the HR Representative ~~or Manager (or designate)~~, the position supervisor, the Area Manager (at his/her option), and a member of the Personnel Commission shall be convened to conduct the screening of applicants. The Screening process will begin as soon as practical following the closing of the position. This Committee will:

a) Verify that all applications ~~/resumes are complete, are accurate and~~ were submitted on time.

i. Applications ~~/resumes~~ that are incomplete, ~~inaccurate, and~~ or were not submitted on or before the posted deadline date may be screened out.

2) ~~No person shall be recommended for a position if a conflict of interest or nepotism is created. Nepotism is created by the following relationships that are created by, birth marriage or through relationships as stated below:~~ (HR Interpretation 8-13-12)

a) Father	i)	Father-in-law	g	Great-grandparents
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f) Sister	n)	Daughter-in-law	v	Adopted child
g) Son	o)	Grandparent	w	Foster child
h) Daughter	p)	Grandchild	x	Guardian

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3) ~~No person shall be recommended for a position if a conflict of interest is created. Conflict of interest is defined as:~~

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a) Analyze the job description to establish screening criteria. These criteria will include qualifications listed on the job description determined by the supervisor and ~~Area Manager~~ HR Representative to be essential to the job. (T.O.E. WS - 5-6-13)

c) Screen ~~verified applications~~

b) ~~Recommend and identify~~ a list of applicants to be interviewed.

c) ~~Ensure there are no applicants that have been terminated in the last year~~

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d) ~~The HRD Office shall notify screened out applicants within five (5) working days after the initial screening and reserve these applications in the general recruiting pool. The HR Representative and supervisor will construct an interview format consisting of:~~

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i. ~~A set of questions related to the screening criteria qualifications.~~

ii. ~~An interview rating scale designed to objectively evaluate each candidate's qualifications.~~

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5) The HRD Office will arrange for interviews with the listed ~~candidates applicants~~

g.e. Candidate Applicant Interviews

1) An Interview Committee will be convened and will consist of the members of the

Screening Committee ~~except that the HRD Manager will be replaced with~~ plus a second member of the Personnel Commission. The Interview Committee will:

- a) ~~Construct an interview format consisting of:~~
  - i. ~~A set of questions related to the screening criteria qualifications.~~
  - ii. ~~An interview rating scale designed to objectively evaluate each candidate's qualifications.~~

~~h) a)~~ Interview candidates and evaluate each individually.

- 2) The HR ~~Representative~~ D Manager (or designee) will total the evaluation rating scale to rank order of the candidates.

h.f. Selection (HR Interpretation - Disqualification of Applicant 10-24-13)

- 1) The supervisor shall select one of the top two (2) candidates as ranked through the rating scale. (HR Interpretation - 10-17-12)
  - a) The supervisor may conduct an additional personal interview with the top two (2) candidates.
  - b) The selection decision shall be governed by the Oneida Preference and Indian Preference Policy. (HR Interpretation - 6-6-11)
  - c) The HRD Office will notify and offer the position to the selected candidate ~~and offer the candidate the job within five (5) working days of the selection decision by the supervisor.~~
    - i. Should the supervisor's first choice refuse the offer, the HRD Office will provide the supervisor with the next two ~~offer the job to the second~~ ranked candidates to choose from.

- ~~2) Should both top two ranked candidates refuse the job offer, the supervisor may:
 
  - a) Repeat the process outlined in B.2.h.1. above, or
  - b) Re-post the position.~~
- ~~3) The HRD Office will notify those candidates interviewed but not selected of the decision to hire the best qualified candidate.~~
- ~~4) All newly hired employees will be listed in the HR newsletter.~~

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C. ~~TRANSFERS AND PROMOTIONS POLICY~~INTERNAL JOB POSTING - The Oneida Nation encourages ~~transfers and promotions~~movement within and among units to make the best possible use of human resources to meet Oneida Nation goals and objectives. Supervisors and employees are encouraged to work together to create an environment in which employees constantly strive to improve their skills and abilities and managers constantly seek to provide challenging and rewarding work experiences.

a. Procedure

a. Internal Job Posting and Bidding

- 1) Open positions as determined by a supervisor and his/her Area Manager ~~may~~will be posted internally for five (5) working days. ~~This internal posting will be concurrent with the external (public) posting of positions.~~
  - ~~a) Positions will be posted in prominent locations in each Oneida Nation building~~
  - ~~2) Oneida Nation employees may bid for transfers by notifying their immediate supervisor and submitting an Application Form to the HRD Office.~~
    - ~~a) The HRD Manager will inform all affected Area Managers of each transfer bid.~~
  - ~~3) At the end of the five (5) day internal posting period, the HRD Manager, Representative will schedule a conference screening with the open position's supervisor and the Area Manager.~~
    - ~~a) The conference screening committee will consist of the supervisor, the Area Manager and the HRD Manager (or designate HR Representative) acting as this Committee will:
 
      - ~~i. Establish selection criteria; and~~
      - ~~ii. a) Review each bid.~~~~
    - ~~b) The Committee may select the best qualified applicant but is not required to choose an applicant to fill the open position from those employees who have submitted an application for a transfer or promotion.~~
    - ~~c) If the Committee does not fill the position from the transfer/promotion process, the process will continue through the full advertising, screening, and interview steps.~~
      - ~~i. Any decision will be governed by the Indian Preference Policy.~~
  - ~~4) Employees who are transferred or promoted job reassigned will not lose any benefits; however:
 
    - ~~a) An employee may be required to continue serving in his/her present position until a replacement can be found up to 30 days.~~~~

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- ~~b)a)~~ An employee who is ~~transferred-reassigned~~ to a position lower on the Oneida Nation Job Structure will be paid at the grade level corresponding to the new position.
- ~~e)b)~~ An employee must have completed one year of service to the Nation before being eligible for a ~~promotion~~-or transfer (requests for transfers for documented medical conditions will be handled on a case by case basis and only when in the best interests of both the employee and the Nation);
- ~~c)~~ The newly transferred or promoted employee shall be required to complete a three (3) month probation period (all conditions of the Nation's Probation Policy shall ~~apply~~).
- ~~d)~~ Internal employees provide a minimum 2-week notice, unless an alternative agreement is made between both supervisors.

**Commented [WMA10]:** Can we review performance evals, attendance records for internal employees?

~~b. Applicant Pool Process~~

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- ~~1) New and vacant positions will be advertised through the Tribal Applicant Pool.~~
- ~~2) The job description will be sent to persons whose applications are maintained in the Applicant Pool.~~
  - ~~a) The Tribal Applicant Pool will consist of open (unspecified) applications from Tribal members who wish to be considered for employment by the Nation.~~
  - ~~b) Advertising through the Tribal Applicant Pool will follow the format and time conditions set forth in the Hiring Policy.~~

b. Reassignments

a. Title Reassignments

- 1) Title Reassignments may be made by supervisors to:
  - a) More accurately describe or define an existing job; or
  - b) Make minor adjustments in jobs within a unit or operating division.
- 2) Title Reassignments may be made at any time with the approval of the Area Manager and HRD Manager or designee.

b. Job Reassignments

- 1) Job Reassignments may be made by supervisors to make more efficient and effective use of human resources.
- 2) Job Reassignments may be supervisor-initiated or employee-initiated but must be made in the best interests of the operating unit.
- 3) Job Reassignments may be made at any time with the approval of the Area Manager and after a review of each affected job by the Personnel Evaluation Committee.

~~c. Interim Job Reassignments~~

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~~e. Interim Job Reassignments can be processes to fill a position in which the previous employee(s) is in the appeals process, on a leave of absence or for a vacant position. (Work Standard 7-11-13)~~

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d.

D. PROBATION

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- a. The first three (3) months after an employee's starting date shall be considered a period of probation. At the end of six (6) weeks, the employee's performance shall be reviewed with him/her by the supervisor by completing an employee evaluation.
- a. At the end of the three-month probation period, a second performance evaluation



will be conducted. This evaluation will recommend the end of probation and regular status for the employee, an extension of probation, or termination for cause.

b. Status as a Probationary Employee

~~a. Probationary employees will be paid at five percent (5%) below the posted pay rate for the position.~~

~~1) New employees hired under a negotiated salary will receive a salary one step below the agreed upon salary during the probationary period.~~

~~b.a.~~ Probationary employees will accrue vacation/personal days during the probation period and will receive holiday pay.

~~b.~~ Probationary employees may be terminated for cause at any time during the probation period. Cause must consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position.

~~This termination is subject to appeal.~~ <sup>(BC Action 3-20-92)</sup>

~~c. Completion of Probation Period~~

~~a. Satisfactory completion of probation will result in the employee receiving the regular salary for the position.~~

~~b. Employees who are terminated during the probation period will receive credit for accrued vacation/personal days in their final paycheck.~~

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  - c. The Oneida Nation follows the principles of Indian Preference in the implementation of hiring practices (see the Oneida Preference and Indian Preference Statement of Policy).
2. Hiring Guidelines
- a. All Tribal Supervisor will undergo periodic retraining in EEO and Tribal laws, rules and regulations.
  - b. Personnel Commission Role
    - 1) The Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of tribal employees.
      - a) The Personnel Commission is directed to:
        - i. Seek out the best-matched applicants for each available position.
- Consider only job-related factors (such as education, experience, ~~past job performance~~, skills and abilities, and compatibility with the position and potential co-workers) when selecting candidates. Identification of Vacancies and Development of Job Descriptions Supervisors may inform the HRD Office of pending vacancies as soon as they are identified.
- 2) For new and existing positions, the HR Representative), the supervisor and the Area Manager (at his/her option) will review the job description to ensure compliance with:
    - a) The Nation's job structure.
    - b) The needs and requirements of the job.

- c. Applications
- 1) All inquiries for job vacancies will be responded to with an application and/or resume.
  - 2) Hand-delivered applications will be accepted at the HRD Office until 4:30 p.m. on the deadline date; mailed applications must be postmarked on or before the deadline date.
  - 3) All applications will be acknowledged.
  - 4) Unless otherwise prohibited by external grant source or federal law, the position shall be posted shall be open to the general public, unless the position must be filled by an enrolled Oneida Nation member.
    - a) All positions will be screened utilizing Indian Preference.

- d. Screening ([HR Interpretation 11-16-12](#)) ([HR Interpretation 10-22-12](#))
- 1) A Screening Committee consisting of the HR Hiring Representative, the position supervisor, the position Area Manager (at his/her option), and a member of the Personnel Commission shall be convened to conduct the screening of applicants. The Screening process will begin as soon as practical following the closing of the position. This Committee will:
    - a) Verify that all applications or resumes were submitted on time.
      - i. Applications or resumes that are submitted after posted deadline date will be screened out.
  - 2) No person shall be recommended for a position if nepotism is created. Nepotism is created by the following relationships that are created by, birth marriage or through relationships as stated below: <sup>(HR</sup>

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f) Sister	n)	Daughter-in-law	v	Adopted child
g) Son	o)	Grandparent	W	Foster child
h) Daughter	p)	Grandchild	x	Guardian

- 3) No person shall be recommended for a position if a conflict of interest is created. Conflict of interest is defined as:
  - a) Any interest, real or apparent, whether it be personal, financial, political, or otherwise, held by an elected official, officer, political appointee, employee, consultant, or appointed or elected member.
  - b) Immediate family members, friends or associates, or any other person with whom they have contact, that conflicts with any right of the Nation to property, information.
  - c) Any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation.
  - d) This ss not an all-inclusive list.
- 4) Analyze the job description to establish screening criteria. These criteria will include qualifications listed on the job description determined by the

supervisor and HR Representative to be essential to the job. [\(T.O.E. WS - 5-6-13\)](#)

- a) Screen and identify a list of applicants to be interviewed.
  - b) Ensure there are no applicants that have been terminated from the Oneida Nation in the last year.
  - c) The HR Representative and supervisor will construct an interview format consisting of:
    - i. A set of questions related to the screening criteria qualifications.
    - ii. An interview rating scale designed to objectively evaluate each candidate's qualifications.
  - 5) The HRD Office will arrange for interviews with the listed applicants
- e. Applicant Interviews
- 1) An Interview Committee will be convened and will consist of the members of the Screening Committee plus a second member of the Personnel Commission. The Interview Committee will:
    - a) Interview candidates and evaluate each individually.
  - 2) The HR Representative will total the evaluation rating scale to rank order of the candidates.
- f. Selection [\(HR Interpretation - Disqualification of Applicant 10-24-13\)](#)
- 1) The supervisor shall select one of the top two (2) candidates as ranked through the rating scale. [\(HR Interpretation -10-17-12\)](#)
    - a) The supervisor may conduct an additional personal interview with the top two (2) candidates.
    - b) The selection decision shall be governed by the Oneida Preference and Indian Preference Policy. [\(HR Interpretation -6-6-11\)](#)
    - c) The HRD Office will notify and offer the position to the selected candidate
      - i. Should the supervisor's first choice refuse the offer, the HRD Office will provide the supervisor with the next two ranked candidates to choose from.
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- C. INTERNAL JOB POSTING - The Oneida Nation encourages movement within and among units to make the best possible use of human resources to meet Oneida Nation goals and objectives. Supervisors and employees are encouraged to work together to create an environment in which employees constantly strive to improve their skills and abilities and managers constantly seek to provide challenging and rewarding work experiences.
- a. Procedure
- a. Internal Job Posting
    - 1) Open positions as determined by a supervisor and his/her Area Manager may be posted internally for five (5) working days.
    - 2) At the end of the five (5) day internal posting period, the HR Hiring Representative will schedule a screening with the position's supervisor and the Area Manager.
      - a) The screening committee will consist of the supervisor, the Area

Manager and the HR Hiring Representative

- 3) Employees who are job reassigned will not lose any benefits; however:
  - a) An employee may be required to continue serving in his/her present position until a replacement can be found up to 30 days.
  - b) An employee who is reassigned will be paid at the grade level corresponding to the new position.
  - c) An employee must have completed one year of service to the Nation before being eligible for a transfer (requests for transfers for documented medical conditions will be handled on a case by case basis and only when in the best interests of both the employee and the Nation);
  - d) The newly transferred or promoted employee shall be required to complete a three (3) month performance probation period).
  - e) Internal employees will provide a minimum 2-week notice, unless an alternative agreement is made between both supervisors.
- b. Reassignments
  - a. Title Reassignments
    - 1) Title Reassignments may be made by supervisors to:
      - a) More accurately describe or define an existing job; or
      - b) Make minor adjustments in jobs within a unit or operating division.
    - 2) Title Reassignments may be made at any time with the approval of the Area Manager and HRD Manager or designee
  - b. Job Reassignments
    - 1) Job Reassignments may be made by supervisors to make more efficient and effective use of human resources.
    - 2) Job Reassignments may be supervisor-initiated or employee-initiated but must be made in the best interests of the department.
    - 3) Job Reassignments may be made at any time with the approval of the Area Manager
  - c. Interim Job Reassignments may be processed to fill a position in which the previous employee(s) is in the appeals process, on a leave of absence or for a vacant position.
- D. PROBATION
  - a. The first three (3) months after an employee's starting date shall be considered a period of probation. At the end of six (6) weeks, the employee's performance shall be reviewed with him/her by the supervisor by completing an employee evaluation.
  - b. At the end of the three-month probation period, a second performance evaluation will be conducted. This evaluation will recommend the end of probation and regular status for the employee, an extension of probation, or termination for cause.
  - c. Status as a Probationary Employee
    - a. Probationary employees will accrue vacation/personal days during the probation period and will receive holiday pay.
    - b. Probationary employees may be terminated for cause at any time during the probation period. Cause must consist of a violation of policies or the documented inability of the employee to perform the duties and



responsibilities of the position. [\(BC Action 3-20-92\)](#)



## Legislative Operating Committee FY2021 Third Quarter Report

Active Files List As of 6/30/2021  
 Work completed April 1, 2021 – June 30, 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	●	●	●
Early Return to Work Law Emergency Amendments <i>Emerg. Expires 11/12/21</i>	●	●	●
Election Law Emergency Amendments <i>Emerg. Expires 10/28/21</i>	●	●	●
Emergency Management and Homeland Security Law Amendments	●	●	●
Endowments Law	●	●	●
Environmental Review Law	●	●	●
Furlough Law Amendments	●	●	●
GTC Meeting Stipends Payment Policy Emergency Amendments <i>Emerg. Expires 4/8/21</i>	●	●	●
Guardianship Law	●	●	●
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 Emergency Amendments <i>Emerg. Expires 11/12/21</i>	●	●	●
Oneida Personnel Policies and Procedures Amendments	●	●	●
Oneida Worker's Compensation Law Emergency Amendments <i>Emerg. Expires 11/12/21</i>	●	●	●
Oneida Trust Enrollment Committee Bylaws	●	●	●
Pandemic Relief Assistance Law <i>Emerg. Expires 5/24/21</i>	●	●	●

Pardon and Forgiveness Law Emergency Amendments <i>Emerg. Expires 10/28/21</i>	●
Pardon and Forgiveness Screening Committee Bylaws Amendments	●
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 Third Quarter the Legislative Operating Committee added six (6) legislative items 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 April 7, 2021, the Legislative Operating Committee added the Election law emergency amendments to its Active Files List.

Then on April 21, 2021, the Legislative Operating Committee added the following items to its Active Files List:

- Pardon and Forgiveness Law Emergency Amendments,
- Pardon and Forgiveness Screening Committee Bylaw Amendments,
- Petition: L. Elm – Real Property Law Eviction and Termination.

On May 11, 2021, the Legislative Operating Committee conducted e-polls to add the following items to its Active Files List:

- Oneida Worker’s Compensation Law Emergency Amendments; and
- Early Return to Work Law Emergency Amendments.

#### *Items Denied by the Legislative Operating Committee*

On May 5, 2021, the Legislative Operating Committee denied a request for the emergency repeal of the Budget Management and Control law. The Legislative Operating Committee denied this request due to the fact that on April 28, 2021, the Oneida Business Committee had considered whether emergency amendments or an emergency repeal of the Budget Management and Control law should be pursued and adopted a motion to “*direct the LOC to have emergency amendments to the Budget Management and Control law to remove much of the budget process/deadlines and leave it simply at a budget should be adopted by September 30, 2021.*”

### FY21 Third Quarter Legislative Accomplishments

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

### **Audit Committee Bylaws Amendments**

The Legislative Operating Committee assisted the Audit Committee in updating its bylaws. On April 14, 2021, the Oneida Business Committee adopted amendments to the Audit Committee bylaws.

### **Pardon and Forgiveness Law Emergency Amendments**

The purpose of the Pardon and Forgiveness law is to provide a fair, efficient, and formal process by which an individual may receive a pardon or forgiveness from the Nation, as well as define the duties and responsibilities of the Oneida Pardon and Forgiveness Screening Committee (“PFSC”), Oneida Business Committee, Secretary’s Office, and other persons involved in the granting or denial of pardons and forgiveness. [1 O.C. 126.1-1]. Emergency amendments to the Pardon and Forgiveness law were sought to address the impact that the COVID-19 pandemic has had on the ability of the PFSC to process, as well as conduct hearings, on applications for a pardon or forgiveness in a fair and efficient manner as is required under the Pardon and Forgiveness law. Prior to the emergency amendments, the Pardon and Forgiveness law only allowed for hearings on an application for a pardon or forgiveness to be conducted in-person, at a location to be determined by the PFSC. [1 O.C. 126.8-1]. The emergency amendments to the Pardon and Forgiveness law added an option for the PFSC to conduct its hearings virtually when it deems necessary. [1 O.C. 126.8-1(a)]. The Oneida Business Committee adopted the emergency amendments to the Pardon and Forgiveness law on April 28, 2021, through resolution BC-04-28-21-A. The emergency amendments to the Pardon and Forgiveness law will expire on October 28, 2021.

### **Election Law Emergency Amendments**

The Election law governs the procedures for the conduct of orderly elections of the Nation, including pre-election activities. [1 O.C. 102.1-1]. Emergency amendments to the Election law were sought to address the impact of the COVID-19 pandemic on the Nation’s 2021 Special Election. The emergency amendments to the law:

- Eliminated the caucus from the election process [1 O.C. 102.6-1];
- Required an individual to submit an application in order to have his or her name placed on a ballot for an election [1 O.C. 102.6-1];
- Eliminated the requirement for an individual to obtain at least ten (10) signatures of qualified voters when submitting an application to be placed on the ballot [1 O.C. 102.6-1];
- Required that all applications be submitted to the Business Committee Support Office by the close of business on the application deadline established by the Oneida Election Board [1 O.C. 102.6-1(c)];
- Reduced the number of Oneida Election Board members who are required to sign the election totals on machine counted ballots from six (6) to three (3) [1 O.C. 102.10-2];
- Clarified that elections shall be held at an Oneida Nation facility instead of just in an Oneida Nation facility [1 O.C. 102.9-2]; and
- Eliminated the requirement that referendum questions be submitted in writing at the caucus, and instead allows for referendum questions to be submitted in writing to the Business Committee Support Office by the deadline established by the Oneida Election Board [1 O.C. 102.12-9(c)].

The Oneida Business Committee adopted the emergency amendments to the Election law on April

28, 2021, through resolution BC-04-28-21-B. The emergency amendments to the Election law will expire on October 28, 2021.

### **Pardon and Forgiveness Screening Committee Bylaws Amendments**

On April 28, 2021, the Oneida Business Committee adopted amendments to the Pardon and Forgiveness Screening Committee bylaws.

### **Budget Management and Control Law Emergency Amendments**

The Budget Management and Control law sets forth the requirements to be followed by the Oneida Business Committee and Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval and to establish a triennial strategy planning process for the Nation's budget. [1 O.C. 121.1-1]. Emergency amendments to the Budget Management and Control law were sought to address the Nation's non-compliance with the budget development process and deadlines contained in the law. The emergency amendments to the Budget Management and Control law removed much of the details of the budget process, requirements, and deadlines, and instead provided that the Treasurer shall develop the necessary guidelines and procedures, including specific deadlines, for the Nation's budget development process, to be reviewed and approved by the Oneida Business Committee. The Oneida Business Committee adopted the emergency amendments to the law on May 12, 2021, through resolution BC-05-12-21-C. The emergency amendments to the Budget Management and Control law will expire on November 12, 2021.

### **Oneida Nation Gaming Ordinance Emergency Amendments**

Emergency amendments to the Oneida Nation Gaming Ordinance ("ONGO") were sought to protect the Nation against exposure to litigation and/or legal claims relating to ONGO's placement of the Gaming Security Department ("Security") within the Nation's organizational structure. Specifically, the emergency amendments removed an avenue for potential liability that has been raised with respect to Security being placed within the Oneida Police Department under section 501.9-1 of the law. [5 O.C. 501.9-1]. The emergency amendments to ONGO re-assigned Security to the Oneida Business Committee to expeditiously dispose of any legal risks associated with its current placement. The Oneida Business Committee adopted the emergency amendments to the ONGO on May 12, 2021, through resolution BC-05-12-21-D. The emergency amendments to the ONGO will expire on November 12, 2021.

### **Oneida Worker's Compensation Law Emergency Amendments**

The Oneida Worker's Compensation law sets 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. [2 O.C. 203.1-1]. Emergency amendments to the Oneida Worker's Compensation law were sought to address the effects of the May 1, 2021 shooting incident at the Radisson on employees of the Nation by ensuring 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 had access to the necessary resources to address their mental health needs as a result of the May 1, 2021, shooting incident. The emergency amendments to the Oneida Worker's Compensation law:

- Revised 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)];

- Revised 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
- Extended 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 one hundred and eight (180) 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 adopted the emergency amendments to the Oneida Worker’s Compensation law on May 12, 2021, through resolution BC-05-12-21-H. The emergency amendments to the Oneida Worker’s Compensation law will expire on November 12, 2021.

### **Early Return to Work Law Emergency Amendments**

The purpose of the Early Return to Work 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)]. Emergency amendments to the Early Return to Work law were sought to address the effects the May 1, 2021 shooting incident at the Radisson 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 emergency amendments to the Early Return to Work law created an exception to section 209.4-4 of the law that allowed for employees of the Nation, who were on duty 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 Early Return to Work Program and be considered for modified duty work, subject to the approval of the Employee Health Nursing Department. Prior to this emergency amendment, the Early Return to Work law provided, 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 Early Return to Work Program. [2 O.C. 209.4-4]. The Oneida Business Committee adopted the emergency amendments to the Early Return to Work law on May 12, 2021, through resolution BC-05-12-21-I. The emergency amendments to the Oneida Worker’s Compensation law will expire on November 12, 2021.

### **FY21 Third Quarter Administrative Accomplishments**

The Legislative Operating Committee brought forward the following administrative items for adoption or approval during the FY21 Third Quarter:

#### **Petition: L. Elm Real Property Law Eviction and Termination**

This petition called a “*General Tribal Council (GTC) meeting be held by virtual or in-person, regarding the Real Property Law, concerning Eviction and termination including residential leases. With our current pandemic of addiction in the community, the stipulation of vacating your home in five (5) days, from the time of the incident is or should be considered and Unconstitutional, furthermore we need a due process to protect the heads of household leases), from losing their*

*homes, an include procedures in the case they do. Including timeframes for them to sell their homes; implementation of a chart of penalties, (Drugs and type, Violence, Sexual abuse or assault, human trafficking and all unlawful activities) including intent of eviction Notice with timelines, from the date of the incident as well as date of Notice and including Due Process; Request an advocated board be created between Oneida Land Commission, Oneida Police Commission, with representatives from Behavior Health, and Comprehensive Housing Division Area; Request if the head of household is not the occupant in violation, a compliance agreement be done with them, outline, behavior or property for a period of time, before termination (eviction) of lessee is implemented; also requesting occupant of violation must be removed from residence and if a successful treatment plan and stability review is approved by advocate board, they may be able to enter into their own lease or reside back at residence; Evaluation of how one can be held responsible of activities: address on citation, activity at residence, accusations and/or any other ways; Timeline(s) for getting another lease and how; The reasoning for this petition is to protect families from their loved one's addiction, and so they do not lose their home after all the other family suffering, they already, have consumed over the addiction.”.* The Oneida Business Committee acknowledged receipt of the petition on April 14, 2021, assigned the petition to the next available General Tribal Council meeting agenda, and directed that the Law, Finance, and Legislative Reference Offices complete and submit the legal review, fiscal impact statement, and statement of effect, respectively, to the Secretary by June 9, 2021. On June 2, 2021, the Legislative Operating Committee approved the statement of effect for the Petition: L. Elm Real Property Law Eviction and Termination drafted by the Legislative Reference Office. On June 9, 2021, the Oneida Business Committee accepted the statement of effect.

### **Community Support Fund Law Rule Handbook Amendments**

The Community Support Fund law delegates administrative rulemaking authority to the Fund Operator, which has been identified as the Economic Support Services Department, to promulgate rules for the administration of the Community Support Fund. [1 O.C. 124. 4-1 (a), 121.3-1 (i)]. The Rule Handbook provides guidance on how the Community Support Fund is utilized so that the Nation can assist the greatest number of members of the Nation who apply for assistance to the Community Support Fund in times of a catastrophic event, illness, injury or emergency event when no other resources for assistance exist. Amendments to the Rule Handbook were sought to bring the Rule Handbook into compliance with the Community Support Fund law as amended by the Oneida Business Committee on March 10, 2021, through the adoption of resolution BC-03-10-21-C. The Oneida Business Committee adopted the amendments to the Community Support Fund Law Rule Handbook on June 9, 2021.

### **FY21 Third Quarter Legislative Highlights**

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

#### **Budget Management and Control Law Amendments**

The Legislative Operating Committee held four (4) work meetings during the FY21 Third 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, and Budget Analyst.

**Children’s Code Amendments**

The Legislative Operating Committee held four (4) work meetings during the FY21 Third Quarter on the development of amendments to the Children’s Code. The work meetings were held in collaboration with the Indian Child Welfare Department, Oneida Family Court, and Oneida Law Office.

**Furlough Law Amendments**

The Legislative Operating Committee held three (3) work meetings during the FY21 Third 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.

**Marijuana Law**

The Legislative Operating Committee participated in two (2) work meetings during the FY21 Third Quarter on the development of Marijuana law and the legalization of marijuana. Some of the work meetings were held in collaboration with representatives from the Oneida Law Office, Oneida Police Department, Intergovernmental Affairs and Communications, General Manager, Oneida Business Committee, and Department of Public Works, and the Environmental, Health, Safety, Land, and Agriculture Division.

**Oneida General Welfare Law**

The Legislative Operating Committee held three (3) work meetings during the FY21 Third Quarter on the permanent adoption of the Oneida General Welfare law. The Legislative Operating Committee also held open a public comment period during the FY21 Third quarter on the Oneida General Welfare law to gain input from the community on the following question: Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment? Six individuals submitted written comments during the public comment period.

**Public Peace Law**

The Legislative Operating Committee held one (1) work meetings during the FY21 Third Quarter on the development a Public Peace law. The work meeting was held in collaboration with the Oneida Business Committee, Oneida Law Office, Oneida Police Department, Tribal Action Plan (TAP), and the Comprehensive Housing Division. The Legislative Operating Committee also held open a public comment period during the FY21 Third quarter on the proposed Public Peace law. Six individuals submitted written comments during the public comment period.

**Wellness Court Law**

The Legislative Operating Committee held one (1) work meeting during the FY21 Third 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 Behavioral Health, Tribal Action Plan (TAP), and the Cultural Heritage Department.

**Pandemic Relief Assistance Law**

The emergency adoption of the Pandemic Relief Assistance law expired on May 24, 2021. The emergency adoption of the Pandemic Relief Assistance law was sought to create the Pandemic



Relief Assistance Program for the purpose of assisting eligible members with payments for limited and specific needs created by the COVID-19 Public Health Emergency with funding from the Coronavirus Aid, Relief, and Economic Security (CARES) Act Coronavirus Relief Funds (CRF). The Pandemic Relief Assistance law was allowed to expire due to the fact that the Nation exhausted its CARES Act CRF.

### **General Tribal Council Meeting Stipend Payment Policy**

The emergency amendments to the General Tribal Council (GTC) Meeting Stipend Payment Policy expired on April 8, 2021. The emergency amendments to the GTC Meeting Stipend Payment Policy allowed for GTC meeting stipends to be discontinued when the Oneida Business Committee finds, through adoption of a resolution, that it is necessary to protect the resources and general welfare of the Nation. This emergency amendment was adopted through resolution BC-04-08-20-A. The BC then adopted resolution BC-04-08-20-F, halting payment of GTC meeting stipends for FY2020 & FY2021. The emergency amendments to the GTC Meeting Stipend Payment Policy were extended by the Oneida Business Committee for an additional six (6) month term through the adoption of resolution BC-09-23-20-B. The Legislative Procedures Act allows for an emergency amendment to be in place for a period of up to six (6) months, with an opportunity for a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].

### **FY21 Third 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 were closed to the public during the FY21 Third Quarter. Employees of the Nation were provided the opportunity to attend the Legislative Operating Committee meeting through Microsoft Teams. 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](mailto:LOC@oneidanation.org) no later than the close of business the day prior to any 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 Third Quarter:

- April 7, 2021 – Regular meeting;
- April 21, 2021 – Regular meeting;
- May 5, 2021 – Regular meeting;
- May 19, 2021 – Regular meeting; and
- June 2, 2021 – Regular meeting.

The June 16, 2021, Legislative Operating Committee meeting was canceled due to a lack of quorum.

## Goals for FY21 Fourth Quarter

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

1. Continued response to the COVID-19 pandemic;
2. Adoption of the Public Peace law;
3. Public meeting for the permanent adoption of the Oneida General Welfare law;
4. Development of amendments to the Budget Management and Control law;
5. Public meeting for the amendments to the Furlough law; and
6. Hire a legislative analyst for the Legislative Reference Office.

## 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](mailto:LOC@oneidanation.org) with any questions or comments, or individual LOC members at the following:

- David Jordan, LOC Chairman  
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- Kirby Metoxen, LOC Vice-Chairman  
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# August 2021

August 2021

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

September 2021

Su	Mo	Tu	We	Th	Fr	Sa
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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

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