



**LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**  
Business Committee Conference Room - 2<sup>nd</sup> Floor Norbert Hill Center  
October 6, 2021  
9:00 a.m.

This Legislative Operating Committee meeting will be closed to the public in accordance with Oneida Business Committee resolution BC-08-03-21-A, *Setting Public Gathering Guidelines During Public Health State of Emergency - COVID-19*.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be Approved**
  1. September 15, 2021 LOC Meeting Minutes (pg. 2)
- III. Current Business**
  1. Local Land Use Regulation Reimbursement Policy Repeal (pg. 4)
  2. Furlough Law Amendments (pg. 7)
- IV. New Submissions**
- V. Additions**
- VI. Administrative Updates**
- VII. Executive Session**
- VIII. Recess/Adjourn**



**LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**  
Oneida Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
September 15, 2021  
9:00 a.m.

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

**Others Present:** Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Brooke Doxtator, Bonnie Pigman, Denise Vigue, Justin Nishimoto (Microsoft Teams), Barbara Webster (Microsoft Teams), Michelle Myers (Microsoft Teams), Amy Spears (Microsoft Teams), Rhiannon Metoxen (Microsoft Teams), Cora Bell (Microsoft Teams), Todd Vandenheuvel (Microsoft Teams), Jennifer Berg Hargrove (Microsoft Teams)

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

David P. Jordan called the September 15, 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. September 1, 2021 LOC Meeting Minutes**

Motion by Kirby Metoxen to approve the September 1, 2021 LOC meeting minutes and forward to the Oneida Business Committee; seconded by Marie Summers. Motion carried unanimously.

**III. Current Business**

**1. Oneida General Welfare Law Amendments**

Motion by Kirby Metoxen to approve the legislative analysis for the Oneida General Welfare law; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Marie Summers to approve the approve the Oneida General Welfare law public comment period notice and forward the Oneida General Welfare law to a public comment period to be held open until October 13, 2021; seconded by Jennifer Webster. Motion carried unanimously.

**IV. New Submissions**

**1. Children's Code Amendments, Guardianship and Adoption Law**

Motion by Jennifer Webster to deny the request to add the Children's Code Amendments, and the Guardianship law and Adoption law to the Active Files List noting that the Children's Code Amendments and the Guardianship law are already currently on the Active Files List; seconded by Marie Summers. Motion carried unanimously.

**V. Additions**

**VI. Administrative Items**

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

Legislative Operating Committee Meeting Minutes of September 15, 2021



**VII. Executive Session**

**VIII. Adjourn**

Motion by Marie Summers to adjourn at 9:28 a.m.; seconded by Daniel Guzman King.  
Motion carried unanimously.



Legislative Operating Committee  
October 6, 2021

# Local Land Use Regulation Reimbursement Policy Repeal

<b>Submission Date:</b> 7/7/21	<b>Public Meeting:</b> Due to the COVID-19 pandemic, public meetings were suspended by declaration of the Nation’s COVID-19 Core Decision Making Team. A public comment period was still offered in accordance with the Legislative Procedures Act and held open until 9/16/21.
<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.

**8/18/21 LOC:** Motion by Kirby Metoxen to 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; seconded by Marie Summers. Daniel Guzman King abstained. Motion carried.

**9/13/21:** *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Clorissa N. Santiago, Kristen Hooker, Carmen Vanlanen, Melinda J. Danforth, Tana Aguirre. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss with Intergovernmental Affairs and Communications their review of the potential repeal of this law, and input regarding the effects of this repeal on political strategy.

**9/16/21:** *Public Comment Period Closed.* No written comments were received during the public comment period.

**Next Steps:**

- Approve the public comment review memorandum.



TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney *CMS*  
DATE: October 6, 2021  
RE: Local Land Use Regulation Reimbursement Policy Repeal: Public Comment Review

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On August 18, 2021, the Legislative Operating Committee approved a tentative public meeting date for the proposed repeal of the Local Land Use Regulation Reimbursement Policy (“the Policy”) to be held on September 9, 2021, with a public comment period to be held open until September 16, 2021. A public meeting for the repeal of the Policy was not held due to the COVID-19 pandemic, but a public comment period was still held open.

On March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State of Emergency*” regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. The Public Health State of Emergency has since been extended until November 25, 2021, by the Oneida Business Committee through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, BC-05-12-21-A, BC-06-23-21-B, BC-07-28-21-N, and BC-09-22-21-A.

On March 27, 2020, the Nation’s COVID-19 Core Decision Making Team issued a “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allowed members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

On August 3, 2021, the Oneida Business Committee adopted resolution BC-08-03-21-A, *Setting Public Gathering Guidelines during Public Health State of Emergency—COVID-19*, which prohibits indoor and outdoor public gatherings when the COVID-19 infection rates within Brown or Outagamie Counties exceed “Low” as identified by the Wisconsin Department of Health Services.

In accordance with resolution BC-08-03-21-A, the public meeting was not held due to the infection rates within Brown and Outagamie Counties exceeding “Low” as identified by the Wisconsin Department of Health Services. The public comment period for the repeal of the Policy remained open and the Nation’s COVID-19 Team’s “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration took effect.

Members of the community were provided an opportunity to provide written submissions of comments or questions to the Legislative Operating Committee through e-mail until September 16, 2021. No written comments were received for the proposed repeal of the Policy.



Legislative Operating Committee  
October 6, 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.
- 8/18/21 LOC:** Motion by Kirby Metoxen to approve the draft amendments to the Furlough law and legislative analysis and defer to a work meeting; Seconded by Daniel Guzman-King. Motion carried unanimously.
- 8/18/21:** *Work Meeting.* Present: David Jordan, Marie Summers, Kirby Metoxen, Daniel Guzman-King, Kristen Hooker, Clorissa Santiago, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to go through the legislative analysis with the LOC and to have the LOC make policy decisions regarding the items listed under the "Other Considerations" section of the analysis. This next step is to have the Legislative Reference Office attorney put together numerous diagrams to assist the LOC with making said policy decisions during a follow-up work meeting.
- 8/26/21:** *Work Meeting.* Present: David Jordan, Marie Summers, Jennifer Webster, Daniel Guzman-King, Kristen Hooker, Clorissa Santiago, Kristen Hooker, Carmen VanLanen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to finish going through the legislative analysis with the LOC and to have them make certain policy decisions regarding portions of the section governing placement of employees in furlough status that were flagged in the "Consideration" section of the analysis. The next steps are for the drafting attorney to update the legislative analysis, along with the draft, to coincide with the LOC's decisions at the meeting and to prepare the public notice materials for approval of the LOC at an upcoming LOC meeting.
- 9/23/21:** *Work Meeting.* Present: David Jordan, Daniel Guzman-King, Jennifer Webster, Kirby Metoxen, Clorissa Santiago, Kristen Hooker, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to go through the changes that were made to the draft amendments following the LOC work session of August 26, 2021. The next step is for the drafting attorney to prepare the public meeting notice packet on the amendments to the Furlough law for inclusion on the next LOC meeting agenda.

**Next Steps:**

- Approve the Furlough law amendments public comment period packet and forward the Furlough law amendments to a public comment period to be held open until November 11, 2021.

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

205.1. Purpose and Policy	205.7. Placing Employees in Furlough Status
205.2. Adoption, Amendment, Repeal	205.8. Furloughed Employees
205.3. Definitions	205.9. Recall of Furloughed Employees
205.4. Application	205.10. Direct Report Level and Supervisor Responsibilities
205.5. Furlough Implementation Plan	205.11. Appeal
205.6. Furlough Implementation	

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2 **205.1. Purpose and Policy**  
3 205.1-1. *Purpose.* The purpose of this law is to:  
4 (a) Enable the Nation to implement a furlough program in response to an interruption of  
5 governmental revenues or operations, insufficient treasury funds or other emergencies/  
6 unplanned events as determined by the Oneida Business Committee in accordance with  
7 this law;  
8 (b) Establish a consistent and equitable process for implementation of a furlough program;  
9 and  
10 (c) Incorporate Indian preference into the furlough program and require that it be applied  
11 in accordance with this law.  
12 205.1-2. *Policy.* It is the policy of the Nation to have consistent and standard procedures to  
13 address events and/or incidents that impact employees of the Nation. It is further the policy of the  
14 Nation to incorporate and adhere to Indian preference in all aspects of employment within the  
15 Oneida Nation.  
16  
17 **205.2. Adoption, Amendment, Repeal**  
18 205.2-1. This law was adopted by the Oneida Business Committee by resolution BC-11-10-15-  
19 B and amended by resolution BC-\_\_-\_\_-\_\_-\_\_.  
20 205.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the  
21 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures  
22 Act.  
23 205.2-3. Should a provision of this law or the application thereof to any person or circumstances  
24 be held as invalid, such invalidity shall not affect other provisions of this law which are considered  
25 to have legal force without the invalid portions.  
26 205.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
27 the provisions of this law shall control.  
28 205.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.  
29  
30 **205.3. Definitions**  
31 205.3-1. This section shall govern the definitions of words or phrases as used within this law. All  
32 words not defined herein shall be used in their ordinary and everyday sense.  
33 (a) “Acts of God” means an event or effect that can be neither anticipated nor controlled,  
34 including both acts of nature, such as floods and hurricanes, and acts of people, such as  
35 riots, strikes, and wars.  
36 (b) “Additional duties” means responsibilities of another position within the Nation that is  
37 not within an employee’s current scope of work.

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

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

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

48 (f) “Employee” means any individual employed by the Nation, including, but not limited  
49 to, employees of any program or enterprise of the Nation, political appointees, temporary  
50 employees, and employees on probationary status.

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

52 (h) “Indian” means any person, other than an Oneida citizen, who is a citizen of a federally  
53 recognized Indian tribe, other than the Oneida Nation.

54 (i) “Indian preference” means preference for Indian people, regardless of tribal affiliation,  
55 in all aspects of employment, with Oneida citizens being afforded the highest levels of  
56 preference for purposes of this law.

57 (j) “Nation” means the Oneida Nation.

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

60 (l) “Supervisor” means an employee of the Nation who directly oversees the work and  
61 performance of an employee on a daily basis.

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

- 64 (1) Emergency/Temporary;
- 65 (2) Limited Term;
- 66 (3) Seasonal;
- 67 (4) Substitute/Relief;
- 68 (5) Youth Worker; and
- 69 (6) Student/Intern.

#### 71 **205.4. Application**

72 205.4-1. Unless otherwise stated herein, this law shall apply to all employees of the Nation and  
73 all employment decisions of the Nation that are governed, whether in whole or in part, by this law.

74 205.4-2. *Indian Preference.* It is the intent of this law, and the policy of the Nation, that no  
75 employee who is Indian shall be furloughed so long as an employee, within the same department/  
76 division and position, who is non-Indian is still employed.

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

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

81 (c) In accordance with this section and subject to any express exceptions set forth herein,

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82 a furlough program shall be administered in a manner that affords preferential treatment to  
83 Oneida citizens and Indians in the following order, starting with those employees to be  
84 given the highest level of preference when applying the provisions of this law:

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

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

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

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

108 205.4-5. *Prohibitions.* Any furlough program of the Nation that is initiated in accordance with  
109 this law shall not:

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

116

## 117 **205.5. Furlough Implementation Plan**

118 205.5-1. *Implementation Plan.* Within a reasonable time after this law goes into effect, all Direct  
119 Report Level positions, or their authorized designees, shall submit a furlough implementation plan  
120 to the Human Resources Department for approval.

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

124 (1) The intent of the standard template shall be to elicit, in advance, information  
125 that will allow the Nation to implement a furlough program in as efficient and

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126 consistent a manner as possible under the circumstances, the information of which  
127 shall include, but not be limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

168 (c) Copies of approved furlough implementation plans shall be retained by the Human  
169 Resources Department, as well as the Direct Report Level positions and/or authorized

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170 designees, consistent with governing law.

171 205.5-2. *Furlough Implementation Plan Updates.* The furlough implementation plan, as well as  
172 the standard template upon which it is developed, shall be updated as follows:

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

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

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

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

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

190

## 191 **205.6. Furlough Implementation**

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

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

201 (a) The resolution shall include the following:

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

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

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

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

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

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214 (b) *Ad Hoc Committee*. The Oneida Business Committee may, in its discretion, establish  
215 an ad hoc committee to assist in the implementation of a furlough program by, among other  
216 actions, helping to identify which areas of the Nation should be subject to the furlough  
217 program and which positions, if any, should be deemed critical, when directed to by the  
218 Oneida Business Committee.

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

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

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

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

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

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

239 205.6-3. *Furlough Programs*. A furlough program shall be characterized as either an emergency  
240 or an administrative program in the furlough resolution and then carried out in accordance with  
241 the portions of this section that apply to such characterization.

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

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

247 (A) Fair warning regarding the employee's failure to respond to a notice of  
248 recall as set forth in section 205.9-2 of this law; and

249 (B) A directive that it is the responsibility of the employee to ensure that  
250 the Nation has his or her most current contact information.

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

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



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258 (b) *Emergency Furlough Program.* An emergency furlough program may be initiated by  
259 the Oneida Business Committee when in the best interest of the Nation due to Acts of God  
260 that require immediate curtailment of activities within the organization.

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

264 (A) If circumstances do not allow for the Oneida Business Committee to  
265 set a specific date upon which the emergency furlough program will end  
266 within the furlough resolution, notice of the anticipated end date shall be  
267 provided as soon thereafter as is reasonably possible, consistent with section  
268 205.6-3 of this law.

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

272 (c) *Administrative Furlough Program.* An administrative furlough program may be  
273 initiated by the Oneida Business Committee in response to a foreseeable event that is likely  
274 to result in a temporary reduction in revenue/funding or some other organizational issue  
275 when the intent is to recall employees back to work once the event has subsided.

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

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

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

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

287 (3) If the intent to bring employees back is not present or is improbable at the time  
288 employee reductions are deemed necessary, employees shall be selected for layoff,  
289 as opposed to placement in furlough status, consistent with the laws and policies of  
290 the Nation governing employee layoffs.

## 291 **205.7. Placing Employees in Furlough Status**

292 205.7-1. This section shall govern the manner in which employees of the Nation are selected to  
293 be placed in furlough status following the adoption of a resolution triggering the implementation  
294 of a furlough program.

295 205.7-2. *Critical Positions.* Except as otherwise stated herein, employment positions identified  
296 as critical pursuant to this section of the law shall be exempt from placement into furlough status  
297 during the specific furlough program for which the position was deemed critical.

298 (a) Critical positions shall be identified by the Oneida Business Committee, or ad hoc  
299 committee upon the Oneida Business Committee’s directive and subject to its approval,  
300 within the furlough resolution referenced in section 205.6-2 of this law or as soon thereafter  
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302 as is reasonably possible under the circumstances in a subsequent resolution or motion.

303 (1) *Amendments.* The Oneida Business Committee, with assistance from the ad hoc  
304 committee if so requested, may amend the list of identified critical positions as it  
305 deems necessary under the circumstances.

306 (A) Direct Report Level positions or their authorized designees may submit  
307 requests for amendments to the list of identified critical positions under their  
308 direction to the Oneida Business Committee for consideration.

309 (b) *Exception.* The Oneida Business Committee may, when deemed necessary, direct that  
310 reductions be made to positions initially identified as critical under this section, through  
311 adoption of a subsequent resolution.

312 (1) Employees within the same critical position who become subject to a reduction  
313 hereunder, shall be placed in furlough status pursuant to the order of preference and  
314 priority established in section 205.7, and recalled back to work pursuant to the order  
315 of preference and priority established in section 205.9, of this law.

316 205.7-3. *Non-Critical Positions.* Directives from the Oneida Business Committee regarding  
317 employee furlough reductions, as set forth in the initial resolution or a subsequent resolution  
318 related thereto, shall be carried out by the Direct Reports Level position/authorized designee of the  
319 affected department/division in a manner that furthers the policy behind Indian preference to the  
320 greatest extent possible without rendering the affected department/division inoperable or unable  
321 to reasonably conduct business.

322 (a) *Placing Employees in Furlough Status.* Unless otherwise stated herein, the following  
323 order shall be adhered to when placing non-critical position employees within the same  
324 department or division in furlough status.

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

327 (2) *Volunteer Employees.* Following the placement of temporary employees in  
328 furlough status, eligible employees who volunteer for said placement shall be the  
329 next category of employees to be placed in furlough status, subject to the following:

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

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

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

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

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

343 (C) Employees who volunteer to be placed in furlough status shall retain  
344 the rights afforded under, as well as be subject to, the recall process set forth  
345 in section 205.9 of this law.

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346 (3) *Indian Preference*. Absent an express exception and after application of sub-  
347 sections (1) and (2), above, when the remaining number of employees in the same  
348 position within a department or division exceeds the number of said employees to  
349 be placed in furlough status, the order of placement shall occur in the following  
350 order, beginning with the first category:

- 351 (A) Non-Indians;
- 352 (B) Indians;
- 353 (C) Documented first generation Oneida descendants;
- 354 (D) Oneida citizens eligible for enrollment in the Oneida Nation; and
- 355 (E) Enrolled members of the Oneida Nation.

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

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

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

371 (A) *Seniority*. Employees who have served the Nation as a regular status  
372 employee without a break in employment for the longest amount of time  
373 shall be afforded the highest level of retention priority.

374 (B) *Veteran Status*. If employees remain after applying the priority for  
375 seniority, employees with veteran status shall be afforded the next level of  
376 retention priority over the other employees who remain within the same  
377 preference category; and

378 (C) *Performance Evaluation*. If employees remain after applying the  
379 priority for veterans, employees with a more favorable performance  
380 evaluation shall be afforded retention priority over the employees with a  
381 less favorable performance evaluation who remain within the same  
382 preference category.

383 (i) The most current performance evaluation in existence on the date  
384 the Oneida Business Committee adopts the furlough resolution at  
385 issue shall be the evaluation that is used when assessing priority  
386 hereunder.

### 388 **205.8. Furloughed Employees**

389 205.8-1. Employees shall not perform any work for the Nation when off of work due to being

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390 placed in furlough status, which includes, but is not limited to, responding to work-related e-mail  
391 and voicemail, as well as traveling on behalf of the Nation.

392 (a) Employees within the Nation’s Gaming Operations who are placed in furlough status,  
393 shall continue to adhere to the “*Who May Not Play Policy*” throughout the furlough period.

394 205.8-2. *Continuous Employment.* Being placed in furlough status shall not be considered a  
395 break in continuous service under the Nation’s Personnel Policies and Procedures law or any other  
396 governing law of the Nation that contemplates continuous employment therein.

397 205.8-3. *Unemployment.* Employees placed in furlough status shall be responsible for contacting  
398 the State of Wisconsin Department of Workforce Development to determine if they qualify for  
399 unemployment insurance benefits.

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

402 205.8-4. *Benefits.* Employees placed in furlough status shall not use or accrue personal or  
403 vacation time for the time that they are off of work as a result of said placement.

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

408 205.8-5. *Overtime and Additional Duty Pay.* Unless otherwise approved by the Oneida Business  
409 Committee on a case-by-case basis, when a furlough program is implemented in a department or  
410 division, no employee in that department or division shall be eligible for:

411 (a) Overtime during the same pay period that another employee from the same department  
412 or division is placed in furlough status; or

413 (b) Additional duty pay for performing duties for other employees in his or her department  
414 or division who have been placed in furlough status.

415 205.8-6. *Back Pay.* Except as provided for in section 205.11 of this law, employees placed in  
416 furlough status shall not be eligible for back pay upon their return to work.

417 205.8-7. *Outside Employment.* Employees placed in furlough status shall be allowed to obtain  
418 outside employment while in furlough status but shall remain subject to the recall provisions of  
419 section 205.9 of this law.

420 (a) Employees who obtain outside employment shall continue to adhere to any existing  
421 policies of the Nation that govern their positions of employment with the Nation, including,  
422 but not limited to, employee confidentiality and social media use, while in furlough status.  
423

## 424 **205.9. Recall of Furloughed Employees**

425 205.9-1. The following shall be adhered to when deciding the order in which employees placed  
426 in furlough status are recalled back to work at the end of a furlough program.

427 (a) *Order for Employee Recall.* If every employee placed in furlough status is unable to be  
428 recalled back to work at the same time, or at all, the order of employee recall shall be as  
429 follows:

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

433 (A) Enrolled members of the Oneida Nation;

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- 434 (B) Oneida citizens eligible for enrollment in the Oneida Nation;  
435 (C) Documented first generation Oneida descendants;  
436 (D) Indians; and  
437 (E) Non-Indians.

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

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

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

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

452 (i) The most current performance evaluation in existence on the date  
453 the Oneida Business Committee adopts the furlough resolution at  
454 issue shall be the evaluation that is used when assigning priority  
455 hereunder.

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

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

462 205.9-2. *Notice of Recall and Responses*.

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

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

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

474 205.9-3. *Separation in Lieu of Recall*. Employees placed in furlough status who are not recalled  
475 at the end of the furlough program shall be terminated from their employment with the Nation in  
476 accordance with the governing laws/policies of the Nation.

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478 **205.10. Responsibilities of Direct Report Level and Supervisor Positions**

479 205.10-1. *Generally.* Persons employed in Direct Report Level and supervisory positions with  
480 the Nation, along with any of their authorized designees, shall be responsible for familiarizing  
481 themselves with this law, including any policies or procedures promulgated thereunder.

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

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

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

492 205.10-2. *Direct Report Level Positions.* Upon the passage of a resolution directing a furlough be  
493 implemented, all Direct Report Level positions and/or authorized designees shall immediately  
494 carry out the directive consistent with the resolution; this law, including the Standard Operating  
495 Procedure created by the Human Resources Department in accordance therewith; and the furlough  
496 implementation plan that was approved for their respective department or division.

497 205.10-3. *Supervisor Responsibilities.* Upon directive from the appropriate Direct Report Level  
498 positions and/or authorized designees, supervisors shall be responsible to provide notice to those  
499 employees within their respective department or division as required under section 205.6-3 of this  
500 law and provide copies of such notice to the Human Resources Department to maintain in  
501 accordance with governing law.

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

504

505 **205.11. Appeal**

506 205.11-1. An employee who has been placed in furlough status under this law may only appeal  
507 said placement if based on a claim that it occurred in violation of this law.

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

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

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

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

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

520 205.11-2. An employee who has been placed in furlough status does not have any other right to  
521 appeal a furlough decision under any law, policy or the personnel grievance process of the Nation.

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522

523 *End.*

524

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

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

527 Adoption – BC-11-10-15-B

528 Adoption – BC-\_\_-\_\_-\_\_-\_\_

**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 WisconsinNation.

**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 ~~enplaced in~~ 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- - - -



## FURLOUGH LAW AMENDMENTS LEGISLATIVE ANALYSIS

### 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 an 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.
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## 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*; 2 *O.C. 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/customs that are less substantive in nature  
14 (e.g., replacing the word “Tribe” with “Nation” and re-formatting per the Legislative Procedures Act).  
15

## SECTION 3. CONSULTATION AND OUTREACH

- 16  
17 **A. Departments.** Representatives from the following departments participated in the development of this  
18 Law:  
19     ▪ Human Resources Department  
20     ▪ General Manager - Retail  
21     ▪ Employee Relations Department  
22     ▪ Gaming Employee Services
- 23 **B. Laws of the Nation.** The drafting of this legislative analysis included a review of the following laws  
24 of the Nation: Boards, Committees and Commissions law [1 *O.C. 105*]; Open Records and Open  
25 Meetings law [1 *O.C. 107*]; Legislative Procedures Act [1 *O.C. 109*]; Budget Management and Control  
26 law [1 *O.C. 121*]; Layoff Policy [2 *O.C. 207*]; Conflict of Interest law [2 *O.C. 217*]; Emergency  
27 Management law [3 *O.C. 302*]; Oneida Nation Gaming Ordinance [5 *O.C. 501*]; Indian Preference in  
28 Contracting law [5 *O.C. 502*]; and Personnel Policies and Procedures law.
- 29 **C. Area and Tribal Laws.** The following federal, state and tribal laws were also reviewed in the  
30 development of this legislative analysis:  
31     ▪ Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e;  
32     ▪ The Indian Self Determination and Education Assistance Act of 1975, 25 U.S.C. § 450(c);  
33     ▪ Federal and state laws related to labor and employment standards for exempt and non-exempt  
34 employees;  
35     ▪ Unemployment insurance benefits laws of the State of Wisconsin;  
36     ▪ Stockbridge-Munsee Tribal Law, Chapter 54 – Employee Preference Policy Ordinance;  
37     ▪ Coquille Indian Tribal Code, Chapter 188, Part 1 – General Governmental Affairs – Tribal  
38 and Indian Preference in Employment; and  
39     ▪ Nez Perce Tribe’s Human Resources Manual.  
40

## SECTION 4. PROCESS

- 41  
42 **A.** Thus far, the amendments to this Law have followed the process set forth in the Legislative Procedures  
43 Act (“LPA”).
- 44 **B.** The Law was added to the Active Files List on October 7, 2020.
- 45 **C.** The following work meetings were held by the Legislative Reference Office in the development of the  
46 amendments to this Law:  
47     ▪ October 22, 2020, a meeting was held with Councilwoman, Marie Summers, to briefly discuss  
48 her basis for requesting that the Furlough law be added to the Active Files List.  
49     ▪ November 13, 2020, a work meeting was held with representatives from the Human Resources  
50 Department (“HRD”) and Retail.

- 51       ▪ January 26, 2021, a work meeting was held with representatives from the HRD and Retail.
- 52       ▪ February 3, 2021, a work meeting was held with the LOC.
- 53       ▪ February 17, 2021, a work meeting was held between the LOC and representatives from the
- 54       HRD, Gaming Employee Services and Retail.
- 55       ▪ February 25, 2021, a work meeting was held with the LOC.
- 56       ▪ April 9, 2021, a work meeting was held with the LOC.
- 57       ▪ April 13, 2021, a work meeting was held with the LOC.
- 58       ▪ June 10, 2021, a work meeting was held with the LOC.
- 59       ▪ July 8, 2021, a work meeting was held with representatives from the HRD, Gaming Employee
- 60       Services and Retail.
- 61       ▪ July 21, 2021, a work meeting was held with the LOC.
- 62       ▪ August 18, 2021, a work meeting was held with the LOC.
- 63       ▪ August 26, 2021, a work meeting was held with the LOC.
- 64       ▪ September 23, 2021, a work meeting was held with the LOC.
- 65

## 66 SECTION 5. CONTENTS OF THE LEGISLATION

67 A. **Indian Preference.** Currently, the Law does not allow Indian preference to be used as a consideration  
68 in identifying which employees of the Nation to place in furlough status upon the implementation of a  
69 furlough program. [2 O.C. 205.5-4]. The proposed amendments will incorporate Indian preference into  
70 the Nation’s furlough programs and require that it be applied when deciding the order in which  
71 employees of the Nation are placed in furlough status, upon initiation of a furlough program, as well as  
72 recalled back to work when the program ends. [2 O.C. 205.1-1(c); 2 O.C. 205.4-2].

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

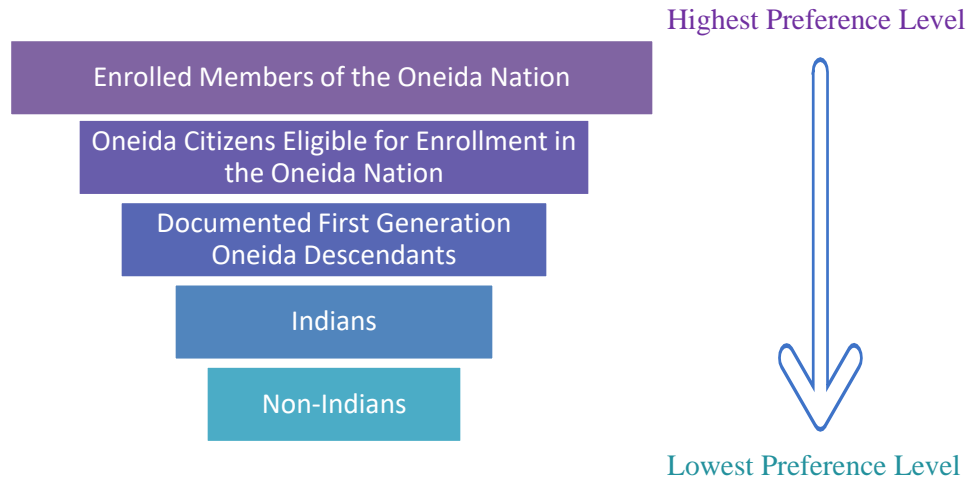
90 By adding Indian preference to the Law, the Nation is exercising its sovereign power to help protect  
91 the gainful employment of its members and eradicate discrimination against Indian people in the  
92 workforce. Also, it is fulfilling the prerequisite to Title VII’s exception by publicly announcing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

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

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- **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:

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- Indian preference – means preference for Indian people, regardless of tribal affiliation, in all aspects of employment, with Oneida citizens being afforded the highest levels of preference for purposes of this law. [2 O.C. 205.3-1(h)];

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- 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

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- 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)].

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119

- **Effect.** By adding Indian preference into the Law and, absent an exception, requiring that it be applied to give preference according to the above diagram, with the highest level of preference being afforded to the top category of employees, no employee of the Nation who is an Oneida citizen or an Indian person, 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 remains 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 above), but to clarify and/or mandate the following with respect to the application of this Law:

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- That, unless otherwise stated, the Law applies to all employees, as well as employment decisions, of the Nation that are governed, whether in whole or part, thereby [2 O.C. 205.4-1];

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- That, but for 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];

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- 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

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- Goal for Orientation. During the development of these amendments, the LOC wanted to ensure that new employees of the Nation were familiar with the concept of Indian preference, as well as the history behind it, and how it would be applied to one or more departments/divisions of the Nation during a furlough program before it happened, as opposed to first learning about the process during an actual program implementation.

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- That, furlough programs shall not be:

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- 146 ○ Used to resolve performance-related issues, grievances or to take the place of disciplinary  
147 actions [2 O.C. 205.4-5(a)];
- 148 ○ Administered or implemented in violation of the Law or any other applicable laws/policies  
149 of the Nation [2 O.C. 205.4-5(b)]; and
- 150 ○ Implemented in a manner that requires interdepartmental transfers when applying Indian  
151 preference to the processes set forth within the Law [2 O.C. 205.4-5(c)].
  - 152 • Effect. When adding Indian preference into the Law, a discussion took place on  
153 whether to require interdepartmental transfers of employees when deciding the  
154 order for placement into furlough status, as well as for recall back to work. Work-  
155 group members, specifically those from the Nation’s revenue generating areas,  
156 raised concerns over how disruptive it could be to have to train an employee from  
157 another department to replace an existing, already trained, employee just to adhere  
158 to the requirements of Indian preference. Section 205.4-5(c) was added to clarify  
159 that interdepartmental transfers are not required when applying Indian preference  
160 during a furlough program.

162 **C. Furlough Implementation Plan [2 O.C. 205.5].** The current section 205.5 of the Law, titled, *Furlough*  
163 *Plans*, was retitled, *Furlough Implementation Plan*, and revised to include certain steps that now must  
164 be taken before a furlough program is even implemented, the goal being for the implementation process  
165 to unfold in a more efficient, organized and consistent manner upon initiation by the OBC. [2 O.C. 205.  
166 5-1(a)(1)]. These pre-implementation activities include:

- 167 ■ That, within a reasonable time after the amendments to the Law are adopted, all Direct Report Level  
168 positions, or their authorized designees, are required to submit a furlough implementation plan to  
169 the HRD for approval. [2 O.C. 205.5-1].
  - 170 ○ “Authorized designee” is defined in the Law as “an employee identified by a Direct Report  
171 Level position to develop or assist in developing a furlough implementation plan when the  
172 individual employed in the Direct Report Level position is unavailable or requests such  
173 assistance from that employee.” [2 O.C. 205.3-1(b)].
    - 174 • Effect. By allowing authorized designees to act in the place of a Direct Report  
175 Level position, the Law now addresses situations where a Direct Report Level  
176 position is vacant or subject to placement in furlough status at the time of program  
177 implementation.
- 178 ■ That, the HRD shall be required to create the standard template, subject to approval by the OBC,  
179 for the Direct Report Level positions/authorized designees to use when creating their department’s  
180 or division’s furlough implementation plan for approval, the goal of the template being to elicit, at  
181 a minimum, the following information from Direct Report Level positions/authorized designees:
  - 182 ○ Which positions within their respective department or division may qualify as a critical  
183 position [2 O.C. 205.5-1(a)(1)(A)];
    - 184 • “Critical position” is now defined in the Law as “a position of employment within  
185 the Nation that is crucial to governmental functions, including, but not limited to,  
186 health, safety, regulatory compliance and/or revenue generation.” [2 O.C. 205.3-1  
187 (c)]. How critical positions are determined and treated during a furlough program  
188 is discussed further below in this 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 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 section 205.5-1(a)(1)(E) is to have Direct  
202 Report Level positions/authorized designees explore whether a position or position  
203 description, *within their department/division*, can be adjusted to better advance the  
204 goal of Indian preference – not to require Direct Report Level positions/authorized  
205 designees to consider the transfer of employees from one department/division to  
206 another since, as indicated above, section 205.4-5(c) prohibits the application of  
207 Indian preference to occur in such manner.
- 208 ■ That, the HRD shall create a Standard Operating Procedure (“SOP”) setting forth how a furlough  
209 implementation plan shall be processed under the Law once the standard template is approved by  
210 the OBC, which must, at a minimum, address:
- 211 ○ How the standard template will be distributed to the Direct Report Level positions or their  
212 authorized designees [2 O.C. 205.5-1(b)(1)];
- 213 ○ The process for Direct Report Level positions and/or authorized designees to follow upon  
214 receiving the standard template, including:
- 215 • How to create a furlough implementation plan using the standard template [2 O.C.  
216 205.5-1(b)(2)(A)]; and
- 217 • How to submit a furlough implementation plan to the HRD for approval and how  
218 long the Direct Report Level positions/authorized designees have to submit their  
219 plans to the HRD after receiving the standard template [2 O.C. 205.5-1(b)(2)(B)  
220 and 205.5-1(b)(2)(C)].
- 221 ○ How the HRD will process furlough implementation plans for approval upon submission  
222 by the Direct Report Level positions/authorized designees [2 O.C. 205.5-1(b)(3)]; and
- 223 ○ How the HRD will notify the Direct Report Level positions/authorized designees of its  
224 decision to approve or reject their furlough implementation plan and, if rejected, the reason  
225 for the rejection and the process for resubmitting the furlough implementation plan for  
226 reconsideration [2 O.C. 205.5-1(b)(4)].
- 227 ■ And that, both the HRD and Direct Report Level positions/authorized designees shall review their  
228 standard template and furlough implementation plan, respectively, every two (2) years to assess  
229 whether they need to be updated to better advance the underlying goals/policies of the Law or  
230 account for any relevant changes within departments/divisions or the organization in general. [2  
231 O.C. 205.5-2].
- 232 ○ Any changes to either the standard template or furlough implementation plan must go  
233 through the same approval process as the original versions. [2 O.C. 205.5-2(a) & (b)].  
234
- 235 **D. Furlough Implementation [2 O.C. 205.6].** This section was added to govern the implementation of a  
236 furlough program, starting with its inception, causing the current section 205.6 titled, *Supervisor*  
237 *Responsibilities*, to be moved to a later section within the Law. Under the proposed amendments, a  
238 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 already required in the current Law [2 O.C. 205.4-1], under the proposed amendments, the furlough  
248 resolution will also have to include the following:
- 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. [2 *O.C. 205.6-3*]. The basis for adding this distinction  
255 and its impact upon implementation are discussed further below.
- 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 by, including, but not limited  
265 to, helping the OBC identify which areas of the Nation should be subject to the furlough program,  
266 as well as which positions, if any, should be deemed critical, and thus, exempt from placement in  
267 furlough status. [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 the  
274 identification to occur within the furlough resolution or a subsequent resolution/  
275 motion.
- 276 ○ Must meet as necessary and at the request of the OBC to carry out the OBC’s directives  
277 consistent with the Law [2 *O.C. 205.6-2(b)(2)*];
- 278 ○ Is not subject to the Boards, Committees and Commissions law and members of the ad hoc  
279 committee are not entitled to receive stipends or any other form of compensation, other  
280 than their employee pay, for serving on the committee [2 *O.C. 205.6-2(b)(3)*]; and
- 281 ○ Will dissolve upon conclusion of the furlough program for which it was established or on  
282 an early date determined by the OBC [2 *O.C. 205.6-2(b)(4)*].
- 283 ■ ***Furlough Programs.*** Under the proposed amendments, a furlough must be implemented as either  
284 an administrative or emergency program upon initiation and then carried out in accordance with  
285 the portions of section 205.6 that apply to such characterization. [2 *O.C. 205.6-3*].
- 286 ○ ***Applicable to Both Programs.*** In addition to the provisions that will govern the specific  
287 furlough program being initiated, the following will apply to either program, regardless of  
288 characterization during the implementation phase:
- 289 • That, employees must receive notice of the implementation of a furlough in writing  
290 and the notice must contain, at a minimum:
- 291 ➤ Advanced warning that, if recalled back to work, the failure to respond to  
292 the recall within ten (10) business days of receiving the written notice of  
293 recall will be treated as a resignation of employment by that employee per  
294 the governing laws of the Nation [2 *O.C. 205.6-3(a)(1)(A)*]; and
- 295 ➤ A directive that it is the employee’s responsibility to ensure that the Nation  
296 has his or her most up-to-date contact information throughout the furlough  
297 period [2 *O.C. 205.6-3(a)(1)(B)*].
- 298 • That, the written notice shall be sent to employees using the outlet or outlets  
299 deemed most capable of reaching them in as efficient a manner as possible under  
300 the circumstances. [2 *O.C. 205.6-3(a)(2)*].
- 301 ○ ***Emergency Furlough Programs.*** Under the proposed amendments, the OBC may initiate a  
302 furlough program on an emergency basis when in the best interest of the Nation due to Acts

303 of God that require an immediate curtailment of activities within the organization. [2 O.C.  
304 205.6-3(b)].

- 305 • A definition for “Acts of God” was added to the Law to mean “an event or effect  
306 that can be neither anticipated nor controlled, including both acts of nature, such  
307 as floods and hurricanes, and acts of people, such as riots, strikes, and wars.” [2  
308 O.C. 205.3-1(a)].
- 309 • Effect. More flexibility is given to the Nation when initiating an emergency versus  
310 an administrative furlough program since, by its very title/definition, the event  
311 giving rise to the need for an emergency furlough program will be unexpected  
312 and/or unpredictable. As such, if the OBC cannot accurately determine the start or  
313 end date of the emergency furlough program being implemented, the Law allows  
314 for it to provide said dates with as much advanced notice as is reasonably possible  
315 under the circumstances. [2 O.C. 205.6-3(b)(1)].
  - 316 ➤ Although the LOC wanted to offer some flexibility when it comes to  
317 emergency furlough programs, it also wanted to ensure that employees  
318 affected by the implementation of an emergency furlough program were  
319 not in a state of limbo for an indeterminate amount of time. Thus, the LOC  
320 added a provision stating: “No emergency furlough program implemented  
321 hereunder shall last for longer than twenty-six (26) weeks from the date  
322 of implementation unless extended by the OBC through a subsequent  
323 resolution.” [2 O.C. 205.6-3(b)(2)].
- 324 ○ Administrative Furlough Programs. Unlike emergency furlough programs, administrative  
325 furlough programs would be initiated by the OBC in response to a foreseeable event that  
326 is likely to result in a temporary reduction in revenue/funding or some other organizational  
327 issue where the intent is to recall employees back to work once the event has subsided. [2  
328 O.C. 205.6-3(c)]. With administrative furloughs, a minimum of five (5) business days of  
329 advance notice to employees is required, as well as specific dates in which the program  
330 will begin and end. [2 O.C. 205.6-3(c)(1) & 2].
  - 331 • Effect. The basis for including the language “where the intent is to recall employees  
332 back to work once the event has subsided” is to create a definitive line for when a  
333 furlough may be used in place of a layoff. For example, if the event is likely to  
334 result in a reduction of revenue, but is not temporary in nature, the requirement  
335 that there be intent to recall employees back to work would be missing, and thus,  
336 a layoff of the employees affected would be the more appropriate and equitable  
337 avenue. [See 2 O.C. 205.6-3(c)(3) “If the intent to bring employees back is not  
338 present or is improbable at the time employee reductions are deemed necessary,  
339 employees shall be selected for layoff, as opposed to placement in furlough status,  
340 consistent with the laws and polices of the Nation governing employee layoffs.”].

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

- 349 ■ **Critical Positions.** If the OBC, or the ad hoc committee per the OBC’s request and subject to its  
350 approval, has identified critical positions within an affected department/division, those positions  
351 would be exempt from placement into furlough status during the specific furlough program for  
352 which the position was deemed critical. [2 O.C. 205.7-2].
- 353 ○ Exception. If, after the initial identification of critical positions occurs, the OBC determines  
354 that it is necessary to cut some or all of a position within a department/division that is  
355 deemed critical, it may do so through adoption of a subsequent resolution. [2 O.C. 205.7-

356 2(b)]. Employees within the same critical position that are later subject to reduction per  
357 this exception shall be placed in furlough status pursuant to the order of preference and  
358 priority established in section 205.7 and recalled back to work pursuant to the order of  
359 preference and priority established in section 205.9 of the Law. [2 O.C. 205.7-2(b)(1)].

- 360 ■ **Non-Critical Positions.** When deciding the order for placing non-critical positions in furlough  
361 status, the proposed Law states, generally, that “[d]irectives from the Oneida Business Committee  
362 regarding employee furlough reductions . . . shall be carried out by the Direct Reports Level position  
363 /authorized designee of the affected department/division in a manner that furthers the policy behind  
364 Indian preference to the greatest extent possible without rendering the affected department/division  
365 inoperable or unable to reasonably conduct business.” [2 O.C. 205.7-3]. And specifically, it dictates  
366 that, absent an exception, the following order shall be adhered to when placing non-critical position  
367 employees within the same department or division in furlough status:

- 368 ○ Temporary Employees. Temporary employees within a department or division that is  
369 affected by a furlough program implementation shall be the first category of employees to  
370 be placed in furlough status. [2 O.C. 205.7-3(a)].

- 371 • A temporary employee is defined as an employee hired by the Nation for a short-  
372 term assignment and consists of the following classifications: (1) Emergency/  
373 Temporary; Limited Term; Seasonal; Substitute/Relief; Youth Worker; and  
374 Student/Intern. [2 O.C. 205.3-1(a)(1)].

- 375 ○ Volunteer Employees. Following the placement of temporary employees in furlough status,  
376 eligible employees who volunteer for said placement shall be the next category of  
377 employees to be placed in furlough status. [2 O.C. 205.7-3(b)].

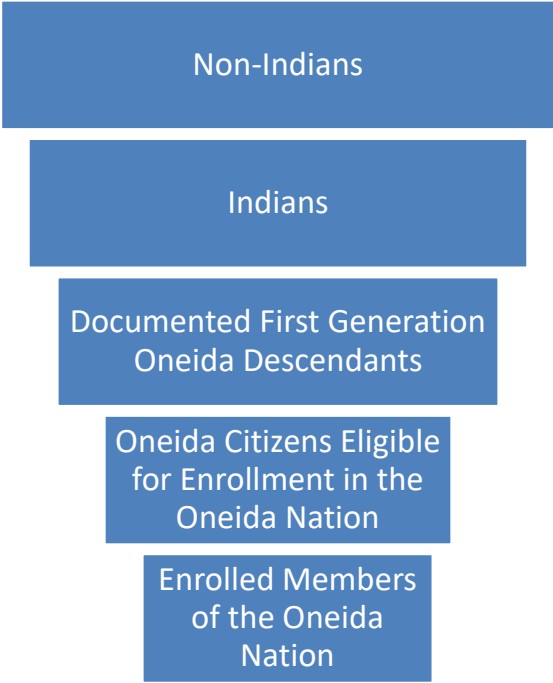
- 378 • In order to ensure that any employee who volunteers for placement in furlough  
379 status does so of his or her own free will, the following was added to the Law to  
380 govern this category of employees:

- 381 ➤ That, employees who volunteer to be placed in furlough status must sign  
382 a form, created by the HRD, confirming as follows:

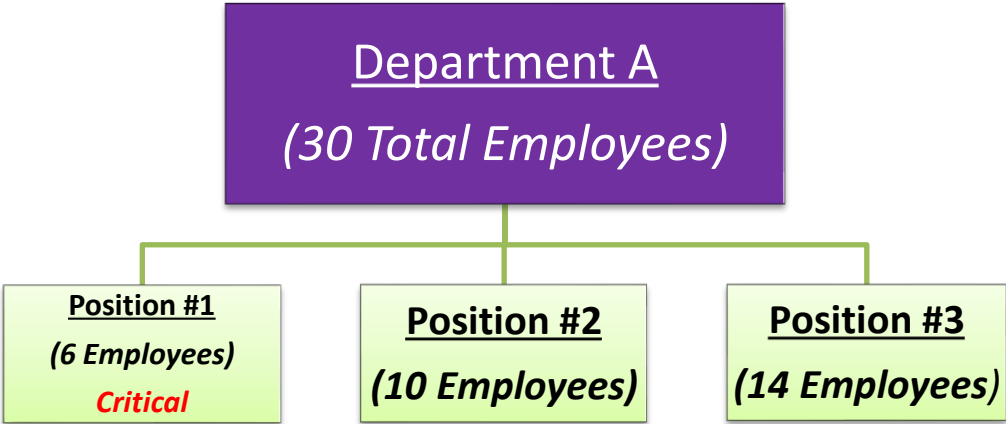
- 383 1. They volunteered to be placed in furlough status notwithstanding  
384 any preference or eligibility for retention that they may have;
- 385 2. Their decision to volunteer was not coerced or based on any  
386 promises of compensation or other consideration; and
- 387 3. They understand that they are not guaranteed a recall back to  
388 work and, as a result, could be terminated from their employment  
389 with the Nation. [2 O.C. 205.7-3(a)(2)(A)(i)-(iii)].

- 390 ○ Indian Preference. Absent an express exception and following placement of the first two  
391 categories, when the remaining number of employees in the same position within a  
392 department or division exceeds the number of said employees to be placed in furlough  
393 status, the order of placement shall occur in the following order, beginning with the first  
394 category:  
395

396 1 Order for Placement in Furlough Status (First to Last)



397  
 398 ***Illustrative Hypothetical:*** Following a tornado, a portion of Department A’s building suffers structural  
 399 damage that makes it impossible for all its employees to conduct business therein. The damage will  
 400 take approximately six (6) weeks to repair. In response, the OBC implements an administrative furlough  
 401 program, through adoption of a resolution that instructs the Direct Report Level position for Department  
 402 A to place half of its non-critical employees in furlough status until the repairs are done. Department A  
 403 has thirty (30) employees who incumbent (3) positions as follows:  
 404



405  
 406  
 407 **Scenario A:** Position #1 is deemed critical, and thus, exempt from placement in furlough status. [2  
 408 O.C. 205.7-2]. This leaves Positions #2 and #3 subject to placement in furlough status per the  
 409 OBC’s directive. In accordance with the general requirement that placement in furlough status  
 410 occur in a manner that adheres to Indian preference to the greatest extent without rendering  
 411 Department A inoperable or unable to reasonably conduct business, the Direct Reports Level  
 412 position decides to cut five (5) employees from Position #2 and seven (7) employees from Position  
 413 #3.

*Position #2:* Of the ten (10) employees in Position #2, three (3) of the employees are Non-Indian, two (2) of the employees are Indian, and the remaining five (5) employees are a

416 combination of Nation Members or Documented First Generation Descendants of the  
417 Nation. **Result** – The three (3) Non-Indian employees and two (2) Indian employees will  
418 be placed in furlough status, while the remaining five (5) employees, who are either  
419 Members of the Nation or Documented First Generation Descendants, will remain  
420 working.

421  
422 *Position #3:* Of the fourteen (14) employees in Position #3, four (4) of the employees are  
423 Non-Indian and the remaining ten (10) employees are Members of the Nation. **Result** –  
424 The four (4) Non-Indian employees will be placed in furlough status, leaving three (3) of  
425 the remaining ten (10) employees in the same preference category – i.e., Members of the  
426 Nation – subject to placement in furlough status. In order to decide which three (3) of the  
427 ten (10) Members to place in furlough status, the Direct Reports Level position would have  
428 to look to section 205.7-3(a)(4) of the Law, which lays out how to prioritize the retention  
429 of employees who remain in the same preference category, following application of Indian  
430 preference. Section 205.7-3(a)(4) provides as follows:

- 431 1. *Seniority.* Employees who have served the Nation as a regular status employee  
432 without a break in employment for the longest amount of time shall be afforded  
433 the highest level of retention priority;
- 434 2. *Veteran Status.* If employees remain after applying the priority for seniority,  
435 employees with veteran status shall be afforded the next level of retention  
436 priority over the other employees who remain within the same preference  
437 category; and
- 438 3. *Performance Evaluation.* If employees remain after applying the priority for  
439 veterans, employees with a more favorable performance evaluation shall be  
440 afforded retention priority over the employees with a less favorable  
441 performance evaluation who remain within the same preference category.

442 ❖ Note: The Law requires that the most current performance  
443 evaluation in existence on the date the OBC adopts the furlough  
444 resolution at issue shall be the evaluation that is used when assessing  
445 priority under this last category. [2 O.C. 205.7-3(a)(4)(C)(i)].  
446

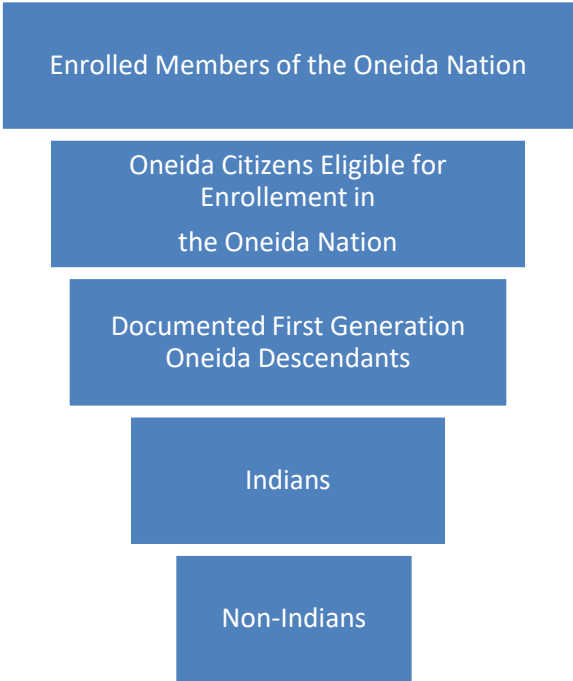
447 **G. Furloughed Employees** [2 O.C. 205.8]. This section of the Law was amended to allow for the OBC to  
448 continue providing certain benefits to employees placed in furlough status on a case-by-case basis,  
449 subject to budgetary constraints, as well as any governing policies or agreements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

- 452 ▪ *Effect.* Under the current law, employees placed in furlough status were not entitled to benefits,  
453 such as medical insurance. Under the proposed amendments, if the Nation is able, both financial  
454 and contractually, employees will continue to receive benefits while in furlough status. And, if the  
455 employees who remain working are working a significant amount of overtime or taking on a  
456 substantial number of additional duties, the OBC now has the authority to approve overtime and  
457 extra duty pay on a case-by-case basis.  
458

459 **H. Recall of Furloughed Employees** [2 O.C. 205.9]. This section of the Law provides more guidance on  
460 the process for recalling back to work those employees who were placed in furlough status. With respect  
461 to the order for recalling back to work, Indian preference is applied in the reverse order as set forth in  
462 section 205.7 of the Law and contains the same priority requirements to be applied when the number  
463 of employees who remain in the same preference category exceeds the number to be recalled upon the  
464 close of the furlough program at issue.  
465  
466  
467  
468



469 2 Order for Recall Back from Placement in Furlough Status (First to Last)



470 This section of the Law was further amended to provide additional direction regarding the following:

- 471 ▪ Volunteers. With respect to those employees who volunteered for placement in furlough status, the
- 472 proposed Law makes clear that those employees who qualify for the preference and priority as set
- 473 forth within this section will retain such preference/priority regardless of volunteering and will be
- 474 given additional priority over others within the same preference and priority category who did not
- 475 volunteer. [2 O.C. 205.9-1(b)].
- 476
- 477 ▪ Notice of Recall and Responses. With respect to what is expected of employees placed in furlough
- 478 status who are recalled back to work, the proposed Law now states:
- 479 ○ That, a failure to respond to the notice of recall within ten (10) business days of the
- 480 employee’s receipt thereof shall be interpreted to mean that the employee does not intend
- 481 to return on the date of his or her recall and treated as a resignation of employment by that
- 482 employee per the governing laws and policies of the Nation. [2 O.C. 205.9-2(b)].
- 483

484 **I. Responsibilities of Direct Report Level and Supervisor Positions** [2 O.C. 205.10]. This section of the  
485 Law was amended to include a requirement that persons employed in Direct Reports Level and supervisory  
486 positions with the Nation, along with any of their authorized designees, shall be responsible for undergoing  
487 training, provided by the HRD, on the application of the Law, as well as the programs to be implemented  
488 thereunder. [2 O.C. 205.10-1(a)].

489  
490 **J. Appeal** [2 O.C. 205.11]. The proposed amendments to the Law expand the basis upon which an  
491 employee can file an appeal from claims that a placement in furlough status was based on a disciplinary  
492 reason to claims that a placement in furlough status occurred in violation of the Law. [2 O.C. 205.11-1].

493  
494 **SECTION 6. RELATED LEGISLATION**

495 **A. Reference to Other Laws.** The following laws of the Nation are referenced in the proposed Law, and  
496 thus, are required to be followed absent a legislative exception, or were contemplated during the  
497 development of the proposed amendments or this legislative analysis.

- 498 ▪ Open Records and Open Meetings [1 O.C. Chapter 107]. This law sets the requirements for how
- 499 meetings of the Nation’s governmental bodies shall be conducted, as well as how materials from

500 that meeting shall be maintained and made available to the public. [1 O.C. 107.1 & 107.12]. Section  
501 107.9 of the Open Records and Open Meetings law governs the retention of records that are  
502 produced in the course of governmental business. [1 O.C. 107.9-1]. It provides, in pertinent part,  
503 that “[u]nless an alternate retention period is approved by the Oneida Business Committee for  
504 specific records and except as otherwise provided by law, all records shall be retained at least seven  
505 (7) years before destruction.” [1 O.C. 107.9-4]. The proposed amendments do not conflict with the  
506 portion of the Open Records and Open Meetings law that governs the release and retention of  
507 records.

- 508
- 509 ▪ Social Media Policy [2 O.C. Chapter 218]. This law regulates social media accounts, including  
510 how content is managed and published on behalf of the Nation. [2 O.C. 218.1-1]. Employees who  
511 obtain outside employment while in furlough status under a program governed by the proposed  
512 Law will be required to still adhere to the social media requirements that apply to employees of the  
513 Nation pending their recall back to work. There are no conflicts between the proposed amendments  
514 and the Nation’s Social Media Policy.  
515
- 516 ▪ Computer Resources Ordinance [2 O.C. Chapter 215]. This law regulates the use of computer  
517 resources that are owned and operated by the Nation and, among other individuals, applies to  
518 employees of the Nation. [2 O.C. 215.1-1 & 215.3-1]. Employees who obtain outside employment  
519 while in furlough status under a program governed by the proposed Law will be required to still  
520 adhere to the provisions of this law that apply to employees of the Nation pending their recall back  
521 to work. There are no conflicts between the proposed amendments and the Nation’s Computer  
522 Resources Ordinance.  
523
- 524 ▪ Conflict of Interest [2 O.C. Chapter 217]. This law establishes specific limitations on the handling,  
525 as well as sharing, of information/materials that are confidential in nature or could be used by the  
526 Nation’s competitors and providers during negotiations to the Nation’s detriment. [2 O.C. 217.1-  
527 1]. It applies to the Nation’s employees, contractors, elected officials, officers, political appointees  
528 and appointed/elected members of the Nation’s boards, committees and commissions. [2 O.C.  
529 217.1-1]. Employees who obtain outside employment while in furlough status under a program  
530 governed by the proposed Law will be required to still adhere to the provisions of this law that  
531 apply to employees of the Nation pending their recall back to work. There are no conflicts between  
532 the proposed amendments and the Nation’s Conflict of Interest law.  
533
- 534 ▪ Layoff Policy [2 O.C. Chapter 207]. This law establishes a fair, respectful policy for employee  
535 layoff and recall which enables Oneida Nation programs and enterprises to operate effectively and  
536 efficiently in varying economic conditions within the parameters of Oneida Nation Seventh  
537 Generation Mission, Priorities and Objectives. [2 O.C. 207.1-1]. There are no conflicts between  
538 the proposed amendments and the Nation’s Conflict of Interest law.
  - 539 ○ It is worth noting that the Layoff Policy is on the LOC’s Active Files List for amendment  
540 this term. Any gaps in the law or provisions that could be interpreted to conflict with the  
541 proposed amendments to this Law will be amended accordingly and consistently with the  
542 LOC’s policy/basis for placing both the Layoff Policy and Furlough Policy on the Active  
543 Files List for amendment.  
544
- 545 ▪ Personnel Policies and Procedures. The Personnel Polices and Procedures law provides employees  
546 with a ready source of information about employee related Oneida Nation polices and procedures  
547 that apply to all employees. [PPP, Section 1]. There are no conflicts between the proposed  
548 amendments and the Nation’s Personnel Policies and Procedures law.  
549

## 550 SECTION 7. OTHER CONSIDERATIONS

### 551 A. Added Points of Clarification/Processes.

- 552           ▪ The LOC may want to consider adding a provision within the law that addresses what happens  
553 to the Nation’s temporary employees once placed in furlough status (e.g., is there a possibility  
554 for recall or are they just termed earlier than anticipated in accordance with the governing  
555 process).
- 556           ▪ Section 205.11 of the proposed Law provides, without exception, that the decision of the Direct  
557 Report Level position/authorized designee on appeal is final, and thus, not subject to further  
558 review by the Judiciary or any other agency. The LOC may want to consider whether any  
559 exception to this provision should be added when, for example, the decision of the Direct  
560 Report Level position/authorized designee is egregious or in contradiction of governing law.

561 **B. *Fiscal Impact.***

- 562           ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation  
563 except emergency legislation. *[1 O.C. 109.6-1]*.
- 564           ▪ Oneida Business Committee resolution BC-09-25-19-A requires that when developing a fiscal  
565 impact statement for the adoption of proposed legislation by the Oneida Business Committee  
566 the Finance Department shall, within ten (10) business days of final approval of draft legislation  
567 by the Legislative Operating Committee, provide a fiscal impact statement to the Legislative  
568 Operating Committee.
- 569

## ONEIDA NATION PUBLIC COMMENT PERIOD NOTICE

***Due to the COVID-19 Public Health Emergency  
Only Written Comments Will Be Accepted Until:  
THURSDAY, November 11, 2021***

**Find Public Meeting Materials at**

[Oneida-nsn.gov/government/register/public meetings](https://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)



## FURLOUGH LAW AMENDMENTS

The purpose of this law is 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.

### The Amendments to the Furlough law will:

1. Incorporate Indian preference into the law and require that it be applied to the Nation's furlough process in accordance therewith;
2. 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;
3. Clarify the process for preparing, initiating, and implementing a furlough program;
4. Require that a furlough be initiated as either an emergency or administrative program and then be implemented in accordance with such characterization;
5. Allow the Oneida Business Committee to establish an ad hoc committee, made up of employees of the Nation, to assist in the implementation of furlough programs; and
6. Add more due process and training requirements to the law.

For more information on the Amendments to the Furlough law please review the public comment packet at [oneida-nsn.gov/government/register/public meetings](https://oneida-nsn.gov/government/register/public%20meetings).

## PUBLIC COMMENT PERIOD CLOSSES THURSDAY, NOVEMBER 11, 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*, indoor and outdoor gatherings are prohibited when the COVID-19 infection rates within Brown or Outagamie Counties exceed "Low" as identified by the Wisconsin Department of Health Services. Although an in-person public meeting will not be held for this item, a public comment period will still remain open in accordance with the Nation's COVID-19 Team's March 27, 2020 declaration titled "*Suspension of Public Meetings under the Legislative Procedures Act*" which 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, but individuals can still participate in the legislative process by submitting written comments, questions or other input via e-mail to [LOC@oneidanation.org](mailto:LOC@oneidanation.org).

# October 2021

October 2021						
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November 2021						
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28	29	30				

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Sep 26	27	28	29	30	Oct 1	2
3	4	5	6 8:30am LOC Prep (BC_Conf_Room) - Clorissa 9:00am LOC Meeting (BC_Conf_Room)	7	8	9
10	11	12 1:30pm Oneida Personnel Policies and Procedures Emergency Amendments	13	14 9:30am LOC Work Session (Microsoft Teams Meeting) - Clorissa N.	15	16
17	18	19	20 8:30am LOC Prep (BC_Conf_Room) - Clorissa 9:00am LOC Meeting (BC_Conf_Room)	21	22	23
24	25	26	27	28 9:30am LOC Work Session (Microsoft Teams Meeting) - Clorissa N.	29	30
31	Nov 1	2	3	4	5	6