

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

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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](http://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.



FURLOUGH LAW AMENDMENTS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Amendments	<ul style="list-style-type: none"> ▪ To incorporate Indian preference into the Furlough law (“Law”) and require that it be applied to the Nation’s furlough process in accordance therewith; ▪ 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; ▪ To clarify the process for preparing, initiating and implementing a furlough program, by: <ul style="list-style-type: none"> • 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”); • Setting conditions and clear procedures for how a furlough program will be implemented by the Nation, once initiated; and • Assigning responsibilities to specific persons/entities for carrying out certain activities in accordance with the Law. ▪ To require a furlough be initiated as either an emergency or administrative program and then implemented in accordance therewith; ▪ 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; ▪ To add more due process to the Law by: <ul style="list-style-type: none"> • Specifying how notice must be provided to employees of the Nation who are subject to a furlough program; • 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"> ○ The history behind Indian preference, including the role the Bureau of Indian Affairs (“BIA”) had in its development; ○ 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 ○ Examples of how Indian preference would apply to a furlough program using methods such as hypotheticals and charting. • 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 • Broadening the scope of claims that an employee placed in furlough status can bring on an appeal under the Law.
Purpose	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].
Affected Entities and Individuals	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;
Related Legislation	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.
Public Meeting	A public meeting has not yet been held.

Fiscal Impact	A fiscal impact statement has not yet been requested.
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SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Furlough Policy, which will be referred to as the Furlough law upon adoption of the proposed amendments, was first adopted by OBC on November 10, 2015, through resolution BC-11-10-15-B. [2 O.C. 205.2-1]. The Law was established 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; 2 O.C. 205.1-2].
- B. On October 7, 2020, the Legislative Operating Committee (“LOC”) added this item to the Active Files List to incorporate Indian preference into the Law, as well as to provide clarity regarding certain other processes within the Law that were flagged for review following the recent furlough program that was implemented in response to the COVID-19 pandemic.
- C. This will be the first time that the Law has been amended since its adoption in 2015; thus, along with the substantive amendments that resulted from the collaboration referenced further herein, the Law was updated to reflect the Nation’s current legislative practices/customs that are less substantive in nature (e.g., replacing the word “Tribe” with “Nation” and re-formatting per the Legislative Procedures Act).

SECTION 3. CONSULTATION AND OUTREACH

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

SECTION 4. PROCESS

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

- January 26, 2021, a work meeting was held with representatives from the HRD and Retail.
- February 3, 2021, a work meeting was held with the LOC.
- February 17, 2021, a work meeting was held between the LOC and representatives from the HRD, Gaming Employee Services and Retail.
- February 25, 2021, a work meeting was held with the LOC.
- April 9, 2021, a work meeting was held with the LOC.
- April 13, 2021, a work meeting was held with the LOC.
- June 10, 2021, a work meeting was held with the LOC.
- July 8, 2021, a work meeting was held with representatives from the HRD, Gaming Employee Services and Retail.
- July 21, 2021, a work meeting was held with the LOC.
- August 18, 2021, a work meeting was held with the LOC.
- August 26, 2021, a work meeting was held with the LOC.
- September 23, 2021, a work meeting was held with the LOC.

SECTION 5. CONTENTS OF THE LEGISLATION

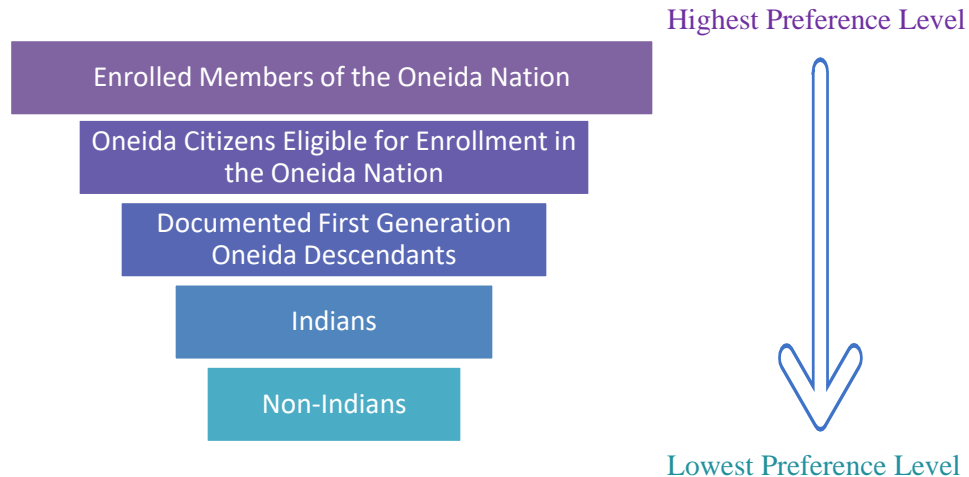
A. **Indian Preference.** Currently, the Law does not allow Indian preference to be used as a consideration in identifying which employees of the Nation to place in furlough status upon the implementation of a furlough program. [2 O.C. 205.5-4]. The proposed amendments will incorporate Indian preference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

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

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

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

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107 [2 O.C. 205.4-2(c)].

108 ■ **Definitions.** To ensure consistency in the application of Indian preference to the Nation’s furlough
109 programs, the following definitions were added to the Law to help clarify where employees of the
110 Nation fall within the preference spectrum:

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

114 ○ Indian – means any person, other than an Oneida citizen, who is a citizen of a federally-
115 recognized Indian tribe, other than the Oneida Nation. [2 O.C. 205.3-1(g)]; and

116 ○ Oneida citizen – means those persons who are enrolled members of the Nation, eligible for
117 enrollment in the Nation or documented first generation Oneida descendants. [2 O.C.
118 205.3-1(j)].

119 ■ **Effect.** By adding Indian preference into the Law and, absent an exception, requiring that it be
120 applied to give preference according to the above diagram, with the highest level of preference
121 being afforded to the top category of employees, no employee of the Nation who is an Oneida
122 citizen or an Indian person, as defined within the Law, shall be placed in furlough status so long as
123 an employee, within the same department or division and position, who is non-Indian remains
124 employed. [2 O.C. 205.4-2].

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126 B. **Application [2 O.C. 205.4].** Section 205.4 of the proposed amendments titled, *Application*, replaces
127 section 205.4 of the current Law titled, *Furlough*. This section was added, not only to publicly declare
128 the incorporation of Indian preference into the Nation’s furlough programs (as discussed above), but to
129 clarify and/or mandate the following with respect to the application of this Law:

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

132 ■ That, but for Indian preference, the Nation is an Equal Opportunity Employer that prohibits the
133 application of this Law and/or the implementation of a furlough program to occur in a manner that
134 discriminates based on race, color, religion, sex, pregnancy, age, national origin, citizenship status,
135 veteran status, physical or mental disability, genetic information and/or any other basis protected
136 by the anti-discrimination provisions of Title VII [2 O.C. 205.4-3];

137 ■ That, the HRD will be responsible for introducing new employees of the Nation to the concept of
138 Indian preference, as well as how it applies to the Nation’s furlough programs, during its employee
139 orientation training [2 O.C. 205.4-4]; and

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

145 ■ That, furlough programs shall not be:

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

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

- That, within a reasonable time after the amendments to the Law are adopted, all Direct Report Level positions, or their authorized designees, are required to submit a furlough implementation plan to the HRD for approval. [2 O.C. 205.5-1].
 - “Authorized designee” is defined in the Law as “an employee identified by a Direct Report Level position to develop or assist in developing a furlough implementation plan when the individual employed in the Direct Report Level position is unavailable or requests such assistance from that employee.” [2 O.C. 205.3-1(b)].
 - Effect. By allowing authorized designees to act in the place of a Direct Report Level position, the Law now addresses situations where a Direct Report Level position is vacant or subject to placement in furlough status at the time of program implementation.
- That, the HRD shall be required to create the standard template, subject to approval by the OBC, for the Direct Report Level positions/authorized designees to use when creating their department’s or division’s furlough implementation plan for approval, the goal of the template being to elicit, at a minimum, the following information from Direct Report Level positions/authorized designees:
 - Which positions within their respective department or division may qualify as a critical position [2 O.C. 205.5-1(a)(1)(A)];
 - “Critical position” is now defined in the Law as “a position of employment within the Nation that is crucial to governmental functions, including, but not limited to, health, safety, regulatory compliance and/or revenue generation.” [2 O.C. 205.3-1(c)]. How critical positions are determined and treated during a furlough program is discussed further below in this analysis.
 - 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 of the Law [2 O.C. 205.5-1(a)(1)(B)];
 - 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 [2 O.C. 205.5-1(a)(1)(C)];
 - Whether any employees within their respective department or division may be interested in volunteering to be placed in furlough status if a furlough program were implemented [2 O.C. 205.5-1(a)(1)(D)]; and

- 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 O.C. 205.5-1(a)(1)(E)].
 - Point of Clarification. The purpose of section 205.5-1(a)(1)(E) is to have Direct Report Level positions/authorized designees explore whether a position or position description, *within their department/division*, can be adjusted to better advance the goal of Indian preference – not to require Direct Report Level positions/authorized designees to consider the transfer of employees from one department/division to another since, as indicated above, section 205.4-5(c) prohibits the application of Indian preference to occur in such manner.
 - That, the HRD shall create a Standard Operating Procedure (“SOP”) setting forth how a furlough implementation plan shall be processed under the Law once the standard template is approved by the OBC, which must, at a minimum, address:
 - How the standard template will be distributed to the Direct Report Level positions or their authorized designees [2 O.C. 205.5-1(b)(1)];
 - The process for Direct Report Level positions and/or authorized designees to follow upon receiving the standard template, including:
 - How to create a furlough implementation plan using the standard template [2 O.C. 205.5-1(b)(2)(A)]; and
 - How to submit a furlough implementation plan to the HRD for approval and how long the Direct Report Level positions/authorized designees have to submit their plans to the HRD after receiving the standard template [2 O.C. 205.5-1(b)(2)(B) and 205.5-1(b)(2)(C)].
 - How the HRD will process furlough implementation plans for approval upon submission by the Direct Report Level positions/authorized designees [2 O.C. 205.5-1(b)(3)]; and
 - How the HRD will notify the Direct Report Level positions/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 [2 O.C. 205.5-1(b)(4)].
 - And that, both the HRD and Direct Report Level positions/authorized designees shall review their standard template and furlough implementation plan, respectively, every two (2) years to assess whether they need to be updated to better advance the underlying goals/policies of the Law or account for any relevant changes within departments/divisions or the organization in general. [2 O.C. 205.5-2].
 - Any changes to either the standard template or furlough implementation plan must go through the same approval process as the original versions. [2 O.C. 205.5-2(a) & (b)].
- D. Furlough Implementation [2 O.C. 205.6].** This section was added to govern the implementation of a furlough program, starting with its inception, causing the current section 205.6 titled, *Supervisor Responsibilities*, to be moved to a later section within the Law. Under the proposed amendments, a furlough program must still be initiated through a directive by resolution of the OBC, as is currently required. [2 O.C. 205.4-1; Proposed Law 2 O.C. 205.6-2]. However, the following provisions were added for purposes of clarity, due process and consistency:
- **Alternatives to Furlough.** Prior to initiating a furlough program through adoption of a resolution, the OBC will now be required to consider whether any reasonable alternative(s) to a furlough exist and, if so, must exhaust said alternative(s) before initiating the furlough, 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 furlough program at issue. [2 O.C. 205.6-1].
 - **Contents of the Furlough Resolution.** In addition to the directive and the furlough dates that are already required in the current Law [2 O.C. 205.4-1], under the proposed amendments, the furlough resolution will also have to include the following:
 - The OBC’s basis for implementing the furlough program at issue [2 O.C. 205.6-2(a)(1)];

- Whether the furlough is being implemented as an administrative or emergency program [2 O.C. 205.6-2(a)(2)];
 - Program Distinctions. In the proposed Law, a furlough must be characterized as either an emergency or administrative program and then carried out in accordance with said characterization. [2 O.C. 205.6-3]. The basis for adding this distinction and its impact upon implementation are discussed further below.
- If feasible under the circumstances and then to the extent thereof, the beginning and ending dates of the furlough program [2 O.C. 205.6-2(a)(3)];
- If feasible under the circumstances and then to the extent thereof, which areas within the Nation will be subject to the furlough program and which positions, if any, are considered critical positions exempt from placement in furlough status [2 O.C. 205.6-2(a)(4)]; and
- Whether an ad hoc committee will be established to assist in the implementation of the furlough program [2 O.C. 205.6-2(a)(5)].
- **Ad Hoc Committee.** Under the proposed Law, the OBC may, in its discretion, establish an ad hoc committee to assist with the implementation of a furlough program by, including, but not limited to, helping the OBC identify which areas of the Nation should be subject to the furlough program, as well as which positions, if any, should be deemed critical, and thus, exempt from placement in furlough status. [2 O.C. 205.6-2(b)]. If established, the ad hoc committee:
 - Must be made up of employees of the Nation, identified by the OBC within the furlough resolution or through a subsequent resolution/motion, who possess an expertise relative to the type and severity of the event giving rise to the furlough at issue [2 O.C. 205.6-2(b)(1)];
 - Note. Although the proposed Law requires the OBC to state whether it intends to establish an ad hoc committee in the furlough resolution, it gives the OBC a little more flexibility with respect to identifying committee members by allowing the identification to occur within the furlough resolution or a subsequent resolution/motion.
 - Must meet as necessary and at the request of the OBC to carry out the OBC's directives consistent with the Law [2 O.C. 205.6-2(b)(2)];
 - Is not subject to the Boards, Committees and Commissions law and members of the ad hoc committee are not entitled to receive stipends or any other form of compensation, other than their employee pay, for serving on the committee [2 O.C. 205.6-2(b)(3)]; and
 - Will dissolve upon conclusion of the furlough program for which it was established or on an early date determined by the OBC [2 O.C. 205.6-2(b)(4)].
- **Furlough Programs.** Under the proposed amendments, a furlough must be implemented as either an administrative or emergency program upon initiation and then carried out in accordance with the portions of section 205.6 that apply to such characterization. [2 O.C. 205.6-3].
 - Applicable to Both Programs. In addition to the provisions that will govern the specific furlough program being initiated, the following will apply to either program, regardless of characterization during the implementation phase:
 - That, employees must receive notice of the implementation of a furlough in writing and the notice must contain, at a minimum:
 - Advanced warning that, if recalled back to work, the failure to respond to the recall within ten (10) business days of receiving the written notice of recall will be treated as a resignation of employment by that employee per the governing laws of the Nation [2 O.C. 205.6-3(a)(1)(A)]; and
 - A directive that it is the employee's responsibility to ensure that the Nation has his or her most up-to-date contact information throughout the furlough period [2 O.C. 205.6-3(a)(1)(B)].
 - That, the written notice shall be sent to employees using the outlet or outlets deemed most capable of reaching them in as efficient a manner as possible under the circumstances. [2 O.C. 205.6-3(a)(2)].
 - Emergency Furlough Programs. Under the proposed amendments, the OBC may initiate a furlough program on an emergency basis when in the best interest of the Nation due to Acts

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

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

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

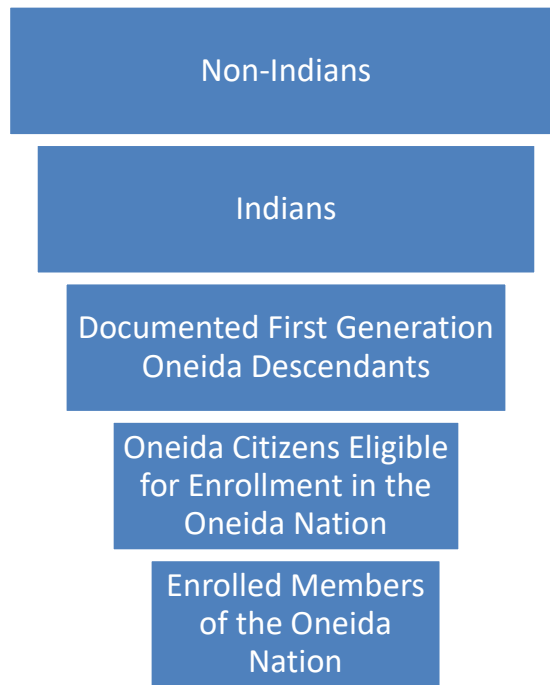
- **Critical Positions.** If the OBC, or the ad hoc committee per the OBC’s request and subject to its approval, has identified critical positions within an affected department/division, those positions would be exempt from placement into furlough status during the specific furlough program for which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

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

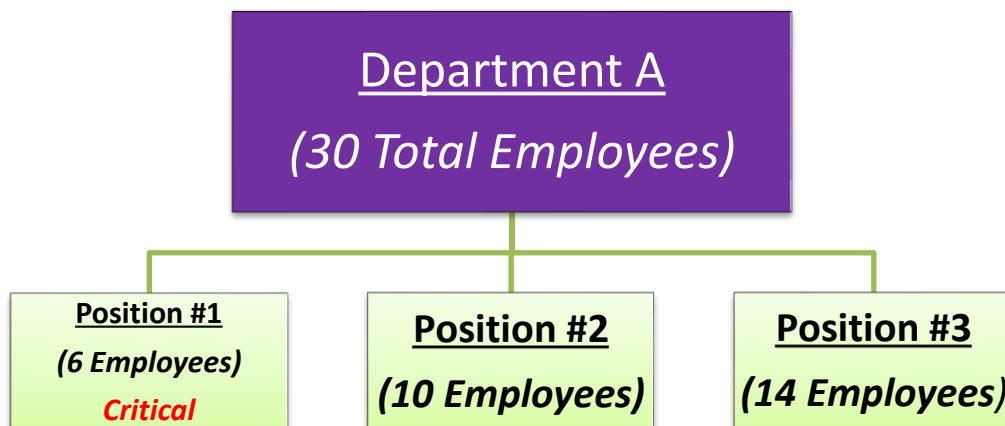
- **Non-Critical Positions.** When deciding the order for placing non-critical positions in furlough status, the proposed Law states, generally, that “[d]irectives from the Oneida Business Committee regarding employee furlough reductions ... shall be carried out by the Direct Reports Level position /authorized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

- Temporary Employees. Temporary employees within a department or division that is affected by a furlough program implementation shall be the first category of employees to be placed in furlough status. [2 O.C. 205.7-3(a)].
 - A temporary employee is defined as an employee hired by the Nation for a short-term assignment and consists of the following classifications: (1) Emergency/Temporary; Limited Term; Seasonal; Substitute/Relief; Youth Worker; and Student/Intern. [2 O.C. 205.3-1(a)(1)].
- Volunteer Employees. Following the placement of temporary employees in furlough status, eligible employees who volunteer for said placement shall be the next category of employees to be placed in furlough status. [2 O.C. 205.7-3(b)].
 - In order to ensure that any employee who volunteers for placement in furlough status does so of his or her own free will, the following was added to the Law to govern this category of employees:
 - That, employees who volunteer to be placed in furlough status must sign a form, created by the HRD, confirming as follows:
 1. They volunteered to be placed in furlough status notwithstanding any preference or eligibility for retention that they may have;
 2. Their decision to volunteer was not coerced or based on any promises of compensation or other consideration; and
 3. 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 O.C. 205.7-3(a)(2)(A)(i)-(iii)].
- Indian Preference. Absent an express exception and following placement of the first two categories, 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:

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.

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

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

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

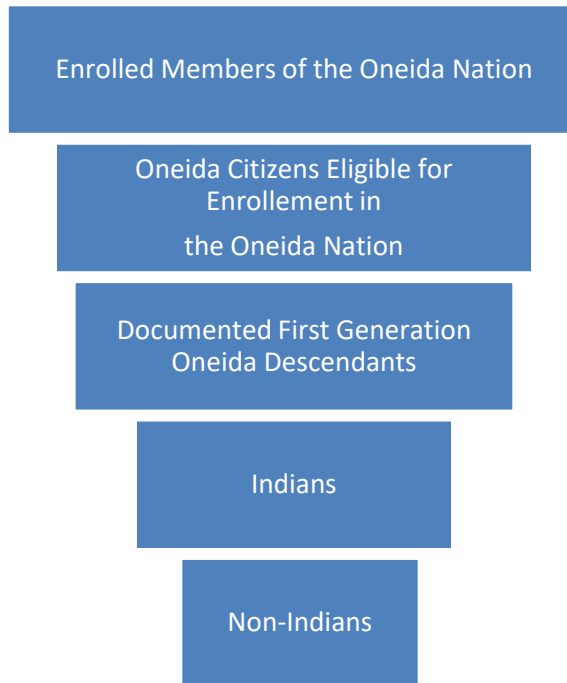
1. *Seniority.* Employees who have served the Nation as a regular status employee without a break in employment for the longest amount of time shall be afforded the highest level of retention priority;
2. *Veteran Status.* If employees remain after applying the priority for seniority, employees with veteran status shall be afforded the next level of retention priority over the other employees who remain within the same preference category; and
3. *Performance Evaluation.* If employees remain after applying the priority for veterans, employees with a more favorable performance evaluation shall be afforded retention priority over the employees with a less favorable performance evaluation who remain within the same preference category.
 - ❖ Note: The Law requires that the most current performance evaluation in existence on the date the OBC adopts the furlough resolution at issue shall be the evaluation that is used when assessing priority under this last category. [2 O.C. 205.7-3(a)(4)(C)(i)].

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

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

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

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

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

- Social Media Policy [2 O.C. Chapter 218]. This law regulates social media accounts, including how content is managed and published on behalf of the Nation. [2 O.C. 218.1-1]. Employees who obtain outside employment while in furlough status under a program governed by the proposed Law will be required to still adhere to the social media requirements that apply to employees of the Nation pending their recall back to work. There are no conflicts between the proposed amendments and the Nation’s Social Media Policy.
- Computer Resources Ordinance [2 O.C. Chapter 215]. This law regulates the use of computer resources that are owned and operated by the Nation and, among other individuals, applies to employees of the Nation. [2 O.C. 215.1-1 & 215.3-1]. Employees who obtain outside employment while in furlough status under a program governed by the proposed Law will be required to still adhere to the provisions of this law that apply to employees of the Nation pending their recall back to work. There are no conflicts between the proposed amendments and the Nation’s Computer Resources Ordinance.
- Conflict of Interest [2 O.C. Chapter 217]. This law establishes specific limitations on the handling, as well as sharing, of information/materials that are confidential in nature or could be used by the Nation’s competitors and providers during negotiations to the Nation’s detriment. [2 O.C. 217.1-1]. It applies to the Nation’s employees, contractors, elected officials, officers, political appointees and appointed/elected members of the Nation’s boards, committees and commissions. [2 O.C. 217.1-1]. Employees who obtain outside employment while in furlough status under a program governed by the proposed Law will be required to still adhere to the provisions of this law that apply to employees of the Nation pending their recall back to work. There are no conflicts between the proposed amendments and the Nation’s Conflict of Interest law.
- Layoff Policy [2 O.C. Chapter 207]. This law establishes a fair, respectful policy for employee layoff and recall which enables Oneida Nation programs and enterprises to operate effectively and efficiently in varying economic conditions within the parameters of Oneida Nation Seventh Generation Mission, Priorities and Objectives. [2 O.C. 207.1-1]. There are no conflicts between the proposed amendments and the Nation’s Conflict of Interest law.
 - It is worth noting that the Layoff Policy is on the LOC’s Active Files List for amendment this term. Any gaps in the law or provisions that could be interpreted to conflict with the proposed amendments to this Law will be amended accordingly and consistently with the LOC’s policy/basis for placing both the Layoff Policy and Furlough Policy on the Active Files List for amendment.
- Personnel Policies and Procedures. The Personnel Policies and Procedures law provides employees with a ready source of information about employee related Oneida Nation policies and procedures that apply to all employees. [PPP, Section 1]. There are no conflicts between the proposed amendments and the Nation’s Personnel Policies and Procedures law.

SECTION 7. OTHER CONSIDERATIONS

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.

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~~ Application205.5. ~~Furlough~~ Plans

205.6. Supervisor Responsibilities

205.7. Appeal

205.5. Furlough Implementation Plan205.6. Furlough Implementation205.7. Placing Employees in Furlough Status205.8. Furloughed Employees205.9. Recall of Furloughed Employees205.10. Direct Report Level and Supervisor Responsibilities205.11. Appeal**205.1. Purpose and Policy**205.1-1. Purpose. The purpose of this ~~Policy~~law is to ~~enable~~:

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

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

(b) Establish a consistent and equitable process for implementation of a furlough program;
and

(c) Incorporate Indian preference into the furlough program and require that it be applied in accordance with this law.

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

205.2. Adoption, Amendment, Repeal

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

205.2-2. This ~~Policy~~law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

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

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

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

205.3. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(1) Emergency/Temp;~~

~~(2) Limited Term;~~

~~(3) Seasonal;~~

~~(4) Substitute/Relief;~~

~~(5) Youth Worker; and~~

~~(6) Student/Intern.~~

205.4. Application

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

(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

(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:

(1) The basis for implementing the furlough program;

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

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

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

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

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

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

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

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

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

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

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

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

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

the portions of this section that apply to such characterization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

205.7. Placing Employees in Furlough Status

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

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

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

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

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

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

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

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

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

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

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

(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

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~~ 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.

205.5 Furlough Plans

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

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

205.9. Recall of Furloughed Employees

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

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

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

~~_____ (A) Enrolled members of the Oneida Nation;~~

~~_____ (B) Oneida citizens eligible for enrollment in the Oneida Nation;~~

~~_____ (C) Documented first generation Oneida descendants;~~

~~_____ (D) Indians; and~~

~~_____ (E) Non-Indians.~~

~~(2) 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 the recall of those remaining employees in the following order, beginning with the first category:~~

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

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

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

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

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

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

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~~

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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561 *End.*

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

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

565 Adoption – BC-11-10-15-B_

566 Adoption – BC- - - -

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

205.1. Purpose and Policy
205.2. Adoption, Amendment, Repeal
205.3. Definitions
205.4. Application
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205.11. Appeal

205.1. Purpose and Policy

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

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

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

205.2. Adoption, Amendment, Repeal

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

205.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

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

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

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

205.3. Definitions

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

- (a) “Acts of God” means an event or effect that can be neither anticipated nor controlled, including both acts of nature, such as floods and hurricanes, and acts of people, such as riots, strikes, and wars.
- (b) “Additional duties” means responsibilities of another position within the Nation that is not within an employee’s current scope of work.

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

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

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

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

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

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

(i) “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.

(j) “Nation” means the Oneida Nation.

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

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

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

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

205.4. Application

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

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

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

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

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

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

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

205.4-3. *Equal Opportunity Employer.* Notwithstanding section 205.4-2, the Nation is an Equal Opportunity Employer that prohibits the application of this law and/or the implementation of a furlough program 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 of the Civil Rights Act of 1964.

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

- (a) The history behind Indian preference, including the role that the Bureau of Indian Affairs (“BIA”) had in its development;
- (b) 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; and
- (c) Examples of how Indian preference would apply in the event of a furlough program when deciding which employees of the Nation would be placed in furlough status, as well as the order in which they would be recalled, using methods to include, but not be limited to, hypotheticals and charting.

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

- (a) Be used as a means to resolve performance-related problems, grievance issues or to take the place of disciplinary actions;
- (b) Be administered or implemented in violation of this law or any other applicable laws/policies of the Nation; and/or
- (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

205.5-1. *Implementation Plan.* Within a reasonable time after this law goes into effect, all Direct Report Level positions, or their 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 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 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 authorized designees;

(2) The process for Direct Report Level positions and/or 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

(C) The amount of time the Direct Report Level positions and/or their 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 authorized designees; and

(4) How the Human Resources Department will notify the Direct Report Level positions and/or 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 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 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 need for a furlough program, a directive by resolution shall be given to the appropriate Direct Report Level positions, authorized designees, and any other individual or entity deemed necessary by the Oneida Business Committee.

(a) The resolution shall include the following:

(1) The basis for implementing the furlough program;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

205.7. Placing Employees in Furlough Status

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

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

(a) Critical positions shall be identified by the Oneida Business Committee, or ad hoc committee upon the Oneida Business Committee's directive and subject to its approval, within the furlough resolution referenced in section 205.6-2 of this law or as soon thereafter

as is reasonably possible under the circumstances in a subsequent resolution or motion.

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

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

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

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

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

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

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

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

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

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

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

(iii) 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.

(B) Once signed, the employee shall be provided with a copy for his or her 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.

(C) 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.

(3) *Indian Preference.* Absent an express exception and after application of sub-sections (1) and (2), 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:

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

(i) *Exceptions for 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 apply.

(4) *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:

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

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

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

(i) The most current performance evaluation in existence on the date the Oneida Business Committee adopts the furlough resolution at issue 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 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 voicemail, as well as traveling on behalf of the Nation.

(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.* 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.

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

205.8-4. *Benefits.* Employees placed in furlough status shall not use or accrue personal or vacation time 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 at issue, employees placed in furlough status shall continue to receive other benefits for which they were entitled to before the implementation of the furlough program throughout the period of time in which the furlough program is in place.

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

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

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

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

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

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

205.9. Recall of Furloughed Employees

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

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

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

(A) Enrolled members of the Oneida Nation;

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

(2) *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 the recall of those remaining employees in the following order, beginning with the first category:

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

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

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

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

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

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

205.10-1. *Generally.* Persons employed in Direct Report Level and supervisory positions with the Nation, along with any of their 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 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 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 department or division.

205.10-3. *Supervisor Responsibilities.* Upon directive from the appropriate Direct Report Level positions and/or authorized designees, supervisors shall be responsible to provide notice to those employees within their 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.

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

205.11. Appeal

205.11-1. An employee who has been placed in furlough status under this law may only appeal said placement if based on 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 authorized designee within ten (10) business days of the employees receipt of the 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 on the employee appealing the placement.

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

(1) The Direct Report Level position and/or authorized designee shall provide a written decision on the matter to the employee and the 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.

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

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523 *End.*

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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-__-__-__-__