



## LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room - 2<sup>nd</sup> Floor Norbert Hill Center

February 2, 2022

9:00 a.m.

This Legislative Operating Committee meeting will be closed to the public in accordance with Oneida Business Committee resolution BC-12-08-21-B, *Updating Public Gathering Guidelines During Public Health State of Emergency - COVID-19*.

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

### **II. Minutes to be Approved**

1. January 19, 2022 LOC Meeting Minutes (pg. 2)

### **III. Current Business**

1. Furlough Law Amendments (pg. 4)

### **IV. New Submissions**

### **V. Additions**

### **VI. Administrative Updates**

1. Legislative Operating Committee Fiscal Year 2022 First Quarter Report (pg. 61)

### **VII. Executive Session**

### **VIII. Recess/Adjourn**



**LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**  
Oneida Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
January 19, 2022  
9:00 a.m.

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

**Others Present:** Clorissa N. Santiago, Kristen Hooker, Carmen Vanlanen, Kristal Hill, Brooke Doxtator, Lawrence Barton, Rhiannon Metoxen (Microsoft Teams), Justin Nishimoto (Microsoft Teams), Rae Skenandore (Microsoft Teams), Amy Spears (Microsoft Teams), Eric Boulanger (Microsoft Teams), Katsitsiyo Danforth (Microsoft Teams), Chad Fuss (Microsoft Teams), Tina Jorgensen (Microsoft Teams), Shannon Davis (Microsoft Teams), Joy Salzwedel (Microsoft Teams)

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

David P. Jordan called the January 19, 2022, Legislative Operating Committee meeting to order at 9:00 a.m.

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

**II. Minutes to be Approved**

**1. December 15, 2021 LOC Meeting Minutes**

Motion by Marie Summers to approve the minutes of December 15, 2021 and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

**III. Current Business**

**1. Oneida Nation Arts Board Bylaws Amendments**

Motion by Jennifer Webster to accept the Oneida Nation Arts Board bylaws amendments and legislative analysis and forward the Oneida Nation Arts Board bylaws amendments to the Oneida Business Committee for consideration; seconded by Kirby Metoxen. Motion carried unanimously.

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

Motion by Kirby Metoxen to remove the Oneida Nation Emergency Planning Committee bylaws amendments from the Active Files List; seconded by Jennifer Webster. Motion carried unanimously.

**IV. New Submissions**

**V. Additions**



**VI. Administrative Items**

**VII. Executive Session**

**VIII. Adjourn**

Motion by Marie Summers to adjourn at 9:17 a.m.; seconded by Daniel Guzman King.  
Motion carried unanimously.



## Legislative Operating Committee February 2, 2022 Amendments to the Furlough Law

<b>Submission Date:</b> 10/7/2020	<b>Public Meeting:</b> Due to the COVID-19 pandemic, public meetings were suspended by declaration of the Nation's COVID-19 Core Decision Making Team. A public comment period was still offered in accordance with the Legislative Procedures Act and held open until 11/11/21.
<b>LOC Sponsor:</b> Marie Summers	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

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

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

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

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

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

**2/3/21:** *Work Meeting.* Present: David Jordan, Marie Summers, Daniel Guzman-King, Jennifer Webster, Rhiannon Metoxen, Kristal Hill, Clorissa Santiago, Kristen Hooker. This was a work

meeting held through Microsoft Teams. The purpose of the work meeting was to update the LOC on discussions had thus far with the workgroup regarding possible amendments to the Furlough law. The drafting attorney went through the draft line-by-line with the LOC to highlight where the workgroup was proposing amendments and to have the LOC flag additional changes it deems necessary. The next steps are for the drafting attorney to: (1) create a bullet-point of the initial policy decisions the LOC must make before detailed amendments can be developed in alignment therewith; and (2) schedule a follow-up meeting with the workgroup and LOC to afford the LOC an opportunity to hear from the workgroup before making said policy decisions.

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

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

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

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

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

- 7/8/21:** *Work Meeting.* Present: Barbara Kolitsch, Geraldine Danforth, Wendy Alvarez, Matthew Denny, James Petitjean (left early), Lucy Neville, Jessica Vandekamp, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of the meeting was to review the draft Furlough law amendments with the workgroup to see whether the members had any questions, concerns or suggested changes they wanted the LOC to consider. The next step is for the LRO attorney to update the draft with the workgroup's suggestions and bring it back to a LOC work meeting for consideration and possible approval to move forward with the public comment portion of the legislative process.
- 7/21/21:** *Work Meeting.* Present: David Jordan, Marie Summers, Jennifer Webster, Justin Nishimoto, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to go through the final draft of the Furlough law amendments and have the LOC consider the comments/suggestions from the workgroup meeting of July 8, 2021. The next steps are for the drafting attorney to: (1) update the draft based on the LOC's decisions during the meeting; (2) draft a legislative analysis on the amendments to the Furlough law; (3) draft the materials for the public meeting notice packet for the LOC to review during its next work meeting; and (4) add the public notice packet for the Furlough law amendments to the next LOC agenda for consideration and possible approval.
- 8/4/21 LOC:** Motion by Marie Summers to approve the Furlough law amendments draft and direct that a legislative analysis be prepared for consideration at the next LOC meeting; seconded by Kirby Metoxen. Motion carried unanimously.
- 8/18/21 LOC:** Motion by Kirby Metoxen to approve the draft amendments to the Furlough law and legislative analysis and defer to a work meeting; Seconded by Daniel Guzman-King. Motion carried unanimously.
- 8/18/21:** *Work Meeting.* Present: David Jordan, Marie Summers, Kirby Metoxen, Daniel Guzman-King, Kristen Hooker, Clorissa Santiago, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to go through the legislative analysis with the LOC and to have the LOC make policy decisions regarding the items listed under the "Other Considerations" section of the analysis. This next step is to have the Legislative Reference Office attorney put together numerous diagrams to assist the LOC with making said policy decisions during a follow-up work meeting.
- 8/26/21:** *Work Meeting.* Present: David Jordan, Marie Summers, Jennifer Webster, Daniel Guzman-King, Kristen Hooker, Clorissa Santiago, Kristen Hooker, Carmen VanLanen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to finish going through the legislative analysis with the LOC and to have them make certain policy decisions regarding portions of the section governing placement of employees in furlough status that were flagged in the "Consideration" section of the analysis. The next steps are for the drafting attorney to update the legislative analysis, along with the draft, to coincide with the LOC's decisions at the meeting and to prepare the public notice materials for approval of the LOC at an upcoming LOC meeting.
- 9/23/21:** *Work Meeting.* Present: David Jordan, Daniel Guzman-King, Jennifer Webster, Kirby Metoxen, Clorissa Santiago, Kristen Hooker, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to go through the changes that were made to the draft amendments following the LOC work session of August 26, 2021. The next step is for the drafting attorney to prepare the public meeting notice packet on the amendments to the Furlough law for inclusion on the next LOC meeting agenda.

**10/6/21 LOC:** Motion by Marie Summers to approve the Furlough law amendments public comment period notice and forward the Furlough law amendments to a public comment period to be held open until November 11, 2021; Seconded by Jennifer Webster. Motion carried unanimously.

**11/11/21:** *Public Comment Period Closes.* The public comment period for the permanent adoption of the amendments to the Furlough law closed on November 11, 2021. No written submissions of comments were received during this public comment period.

**11/17/21 LOC:** Motion by Marie Summers to accept the public comment period review memorandum; Seconded by Kirby Metoxen. Motion carried unanimously.

**12/1/21 LOC:** Motion by Jennifer Webster to approve the updated draft, legislative analysis, and the fiscal impact statement request memorandum and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by December 15, 2021; Seconded by Marie Summers. Motion carried unanimously.

**12/1/21:** *Work Meeting.* Present: David Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Jennifer Webster, Rhiannon Metoxen, Clorissa Santiago, Carmen Vanlanen, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of the meeting was to discuss the email from the Human Resources Department regarding the training requirements being proposed in the amendments to the Furlough law.

**12/14/21:** *Fiscal Impact Statement Received.* The Finance Department provided the fiscal impact statement for the proposed amendments to the Furlough law, with the impact being found to be “Indeterminate”.

**12/15/21:** *Work Meeting.* Present: David Jordan, Marie Summers, Jennifer Webster, Daniel Guzman-King, Kristal Hill, Clorissa Santiago, Kristen Hooker, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of this meeting was to discuss the request from the Finance Department to either have an additional six (6) weeks to complete the fiscal impact statement on the proposed amendments to the Furlough law or to accept the finding of “Indeterminate” as set forth in the fiscal impact statement that the Finance Department provided to the LOC on December 14, 2021. The next step is for the drafting attorney to send a follow-up communication to the Finance Department, informing it of the LOC’s decision to grant it an additional six (6) weeks to complete the fiscal impact statement.

### Next Steps:


- Approve the Furlough law amendments adoption packet and forward to the Oneida Business Committee for consideration.





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



TO: Oneida Business Committee  
 FROM: David P. Jordan, LOC Chairperson   
 DATE: February 9, 2022  
 RE: Adoption of the Amendments to the Furlough Law

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Please find the following attached backup documentation for your consideration of the proposed amendments to the Furlough law:

1. Resolution: Amendments to the Furlough Law
2. Statement of Effect: Amendments to the Furlough Law
3. Furlough Law Amendments Legislative Analysis
4. Furlough Law Amendments (Redline Draft)
5. Furlough Law Amendments (Clean Draft)
6. Furlough Law Amendments Fiscal Impact Statement

### *Overview*

The Nation's Furlough Policy, which will be referred to as the Furlough law ("Law") upon adoption of the proposed amendments, was established by the Oneida Business Committee ("OBC") on November 10, 2015, through adoption of resolution BC-11-10-15-B, to enable the Nation to implement a furlough as a tool to remedy an operating 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].

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. This will be the first time that the Law has been amended since its adoption in 2015; thus, along with the more substantive changes referenced above, the Law was updated to reflect the Nation's current legislative practices and customs that are less substantive in nature, such as replacing the word "Tribe" with "Nation" and re-formatting portions of the Law to comply with the requirements of the Legislative Procedures Act.

This resolution adopts amendments to the Furlough law which will:

- Incorporate Indian preference into the Law and require that it be applied to the Nation's furlough programs in accordance therewith [2 O.C. 205.1-1(c)];
- Add priority levels to govern the order for placing into furlough status and recalling back to work those employees who remain after the application of Indian preference [2 O.C. 205.7-3];
- Clarify the process for preparing, initiating and implementing a furlough program by, in pertinent part:



- Setting conditions and clear procedures, as well as express prohibitions, for when and how a furlough program may be initiated by the OBC [2 O.C. 205.5];
- Setting conditions and clear procedures for how a furlough program will be implemented by the Nation, once initiated [2 O.C. 205.6]; and
- Assigning responsibilities to specific persons/entities for carrying out certain activities in accordance with the Law [2 O.C. 205.10].
- Require that a furlough be initiated as either an emergency or administrative program and then carried out in accordance therewith [2 O.C. 205.6-3];
- Allow the OBC to establish an ad hoc committee, made up of employees of the Nation, to assist in the implementation of a furlough program [2 O.C. 205.6-2]; and
- Add more due process to the Law by:
  - Specifying how notice must be provided to employees of the Nation who are subject to a furlough program [2 O.C. 205.6-3];
  - Requiring the Human Resources Department to add training on Indian preference to its employee orientation program that includes, at a minimum:
    - 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 [2 O.C. 205.4-4].
  - Requiring Direct Report Level positions/supervisors, who are responsible under the Law for carrying out some or all of a furlough program, to undergo training on the application of the Law every two (2) years [2 O.C. 205.10-1]; and
  - Broadening the scope of claims that an employee placed in furlough status can bring on appeal under the Law [2 O.C. 205.11].

The LOC developed the amendments to the Law through collaboration with representatives from the Human Resources Department, General Manager – Retail, Employee Relations Department and Gaming Employee Services. The LOC held sixteen (16) work meetings on the development of this Law.

A public meeting, in accordance with the Legislative Procedures Act, was not held for the Law due to the COVID-19 pandemic. On March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State of Emergency*” regarding the COVID-19 pandemic which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. The Public Health State of Emergency has since been extended by the OBC until March 22, 2022, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, BC-05-12-21-A, BC-06-23-21-B, BC-07-28-21-N, BC-09-22-21-A, BC-11-24-21-F and BC-01-12-22-B.

Oneida Business Committee resolution BC-08-03-21-A, *Setting Public Gathering Guidelines during Public Health State of Emergency—COVID-19*, prohibits indoor and outdoor public gatherings when the COVID-19 infection rates within Brown or Outagamie Counties exceed “Low” as identified by the Wisconsin Department of Health Services. During the time of the development of this Law the infection rates within Brown and Outagamie Counties exceeded “Low.” The Nation’s COVID-19 Core Decision Making Team addressed the issue of not being able to safely hold public meetings through its March 27, 2020, declaration titled “*Suspension of Public Meetings under the Legislative Procedures Act*”. This declaration suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

Although no public meeting for the proposed Law was held in person, the public comment period was still held open until November 11, 2021, for the submission of written comments. No written comments were received during the public comment period.

**Requested Action**

Adopt the Resolution: Amendments to the Furlough Law

# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## BC Resolution # \_\_\_\_\_ Amendments to the Furlough Law

- 1  
2  
3 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe  
4 recognized by the laws of the United States of America; and  
5  
6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and  
7  
8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,  
9 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and  
10  
11 **WHEREAS,** the Nation's Furlough Policy, which will be referred to as the Furlough law ("Law") upon  
12 adoption of the proposed amendments, was established by the Oneida Business  
13 Committee ("OBC") on November 10, 2015, through adoption of resolution BC-11-10-15-  
14 B, to enable the Nation to implement a furlough as a tool to remedy an operating budget  
15 deficit when a decrease or lapse of revenue or funding and/or any other budget situation  
16 warranting an unpaid leave is identified; and  
17  
18 **WHEREAS,** on October 7, 2020, the Legislative Operating Committee ("LOC") added this item to the  
19 Active Files List to incorporate Indian preference into the Law, as well as provide clarity  
20 regarding certain other processes within the Law that were flagged for review following the  
21 recent furlough program that was implemented in response to the COVID-19 pandemic;  
22 and  
23  
24 **WHEREAS,** the LOC worked collaboratively with representatives from the Human Resources  
25 Department, General Manager – Retail, Employee Relations Department and Gaming  
26 Employee Services to develop the amendments to this Law; and  
27  
28 **WHEREAS,** the amendments to this Law incorporate Indian preference into the Law and require that it  
29 be applied to the Nation's furlough programs in accordance therewith; and  
30  
31 **WHEREAS,** the amendments to this Law add priority levels to govern the order for placing into furlough  
32 status and recalling back to work those employees who remain after the application of  
33 Indian preference; and  
34  
35 **WHEREAS,** the amendments to this Law clarify the process for preparing, initiating and implementing  
36 a furlough program, by, in pertinent part:
- 37 • Setting conditions and clear procedures, as well as express prohibitions, for when  
38 and how a furlough program may be initiated by the OBC;
  - 39 • Setting conditions and clear procedures for how a furlough program should be  
40 implemented by the Nation, once initiated; and
  - 41 • Assigning responsibilities to specific persons/entities for carrying out certain  
42 activities in accordance with the Law.  
43

- 44 **WHEREAS,** the amendments to this Law require that a furlough be initiated as either an emergency or  
 45 administrative program and then carried out in accordance therewith; and  
 46
- 47 **WHEREAS,** the amendments to this Law allow the OBC to establish an ad hoc committee, made up of  
 48 employees of the Nation, to assist in the implementation of a furlough program; and  
 49
- 50 **WHEREAS,** the amendments to this Law add more due process to the furlough programs by:  
 51
  - Specifying how notice must be provided to employees of the Nation who are
  - 52 subject to a furlough program;
  - 53 • Requiring the Human Resources Department to add training on Indian preference
  - 54 to its employee orientation program;
  - 55 • Requiring Direct Report Level positions/supervisors, who are responsible under
  - 56 the Law for carrying out some or all of a furlough program, to undergo training on
  - 57 the application of the Law every two (2) years; and
  - 58 • Broadening the scope of claims that an employee placed in furlough status can
  - 59 bring on appeal under the Law.  
 60
- 61 **WHEREAS,** in accordance with the Legislative Procedures Act, a legislative analysis and fiscal impact  
 62 statement were developed for the amendments to this Law; and  
 63
- 64 **WHEREAS,** a public meeting on the proposed amendments to this Law was not held in accordance  
 65 with the Legislative Procedures Act due to the COVID-19 pandemic; and  
 66
- 67 **WHEREAS,** on March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State of*  
 68 *Emergency*” regarding COVID-19 which declared a Public Health State of Emergency for  
 69 the Nation until April 12, 2020, which was then subsequently extended by the OBC until  
 70 March 22, 2022, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-  
 71 06-10-20-A, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, BC-11-10-  
 72 20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, BC-05-12-21-A,  
 73 BC-06-23-21-B, BC-07-28-21-N, BC-09-22-21-A, BC-11-24-21-F and BC-01-12-22-B; and  
 74
- 75 **WHEREAS,** resolution BC-08-03-21-A titled, *Setting Public Gathering Guidelines during Public Health*  
 76 *State of Emergency—COVID-19*, prohibits indoor and outdoor public gatherings when the  
 77 COVID-19 infection rates within Brown or Outagamie Counties exceed “Low” as identified  
 78 by the Wisconsin Department of Health Services; and  
 79
- 80 **WHEREAS,** on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a  
 81 “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration which  
 82 suspended the Legislative Procedures Act's requirement to hold a public meeting during  
 83 the public comment period for the duration of the Public Health State of Emergency, but  
 84 allows members of the community to still participate in the legislative process by submitting  
 85 written comments, questions, data, or input on proposed legislation to the Legislative  
 86 Operating Committee via e-mail during the public comment period; and  
 87
- 88 **WHEREAS,** although a public meeting was not held on the proposed amendments to this Law, the  
 89 public comment period was still held open until November 11, 2021, for the submission of  
 90 written comments and no individuals submitted written comments during the public  
 91 comment period; and  
 92
- 93 **NOW THEREFORE BE IT RESOLVED,** that the amendments to the Furlough law are hereby adopted and  
 94 shall become effective on February 23, 2022.  
 95



## **Statement of Effect**

### *Amendments to the Furlough Law*

#### **Summary**

This resolution adopts the amendments to the Nation's Furlough law.

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

*Date: February 9, 2022*

#### **Analysis by the Legislative Reference Office**

The Nation's Furlough Policy, which will be referred to as the Furlough law ("Law") upon adoption of the proposed amendments, was established by the Oneida Business Committee ("OBC") on November 10, 2015, through adoption of resolution BC-11-10-15-B, to enable the Nation to implement a furlough as a tool to remedy an operating 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].

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. This will be the first time that the Law has been amended since its adoption in 2015; thus, along with the more substantive changes referenced above, the Law was updated to reflect the Nation's current legislative practices and customs that are less substantive in nature, such as replacing the word "Tribe" with "Nation" and re-formatting portions of the Law to comply with the requirements of the Legislative Procedures Act.

This resolution adopts amendments to the Law which will:

- Incorporate Indian preference into the Law and require that it be applied to the Nation's furlough programs in accordance therewith [2 O.C. 205.1-1(c)];
- Add priority levels to govern the order for placing into furlough status and recalling back to work those employees who remain after the application of Indian preference [2 O.C. 205.7-3];
- Clarify the process for preparing, initiating and implementing a furlough program by, in pertinent part:
  - Setting conditions and clear procedures, as well as express prohibitions, for when and how a furlough program may be initiated by the OBC [2 O.C. 205.5];
  - Setting conditions and clear procedures for how a furlough program will be implemented by the Nation, once initiated [2 O.C. 205.6]; and
  - Assigning responsibilities to specific persons/entities for carrying out certain activities in accordance with the Law [2 O.C. 205.10].

- Require that a furlough be initiated as either an emergency or administrative program and then carried out in accordance therewith [2 O.C. 205.6-3];
- Allow the OBC to establish an ad hoc committee, made up of employees of the Nation, to assist in the implementation of a furlough program [2 O.C. 205.6-2]; and
- Add more due process to the Law by:
  - Specifying how notice must be provided to employees of the Nation who are subject to a furlough program [2 O.C. 205.6-3];
  - Requiring the Human Resources Department to add training on Indian preference to its employee orientation program that includes, at a minimum:
    - 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 [2 O.C. 205.4-4].
  - Requiring Direct Report Level positions/supervisors, who are responsible under the Law for carrying out some or all of a furlough program, to undergo training on the application of the Law every two (2) years [2 O.C. 205.10-1]; and
  - Broadening the scope of claims that an employee placed in furlough status can bring on appeal under the Law [2 O.C. 205.11].

The Legislative Procedures Act (“the LPA”) was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The LPA requires that for all proposed legislation both a legislative and fiscal analysis be developed. [1 O.C. 109.6 and 109.7]. The Furlough law amendments comply with these requirements.

The LPA also requires that there be an opportunity for public review during a public meeting and public comment period. [1 O.C. 109.8]. A public meeting for the amendments to the Law was not held due to the COVID-19 pandemic. In accordance with the Emergency Management and Homeland Security law, on March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State of Emergency*” regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. [3 O.C. 302.8-1]. The Public Health State of Emergency for the Nation has since been extended until March 22, 2022, by the Oneida Business Committee through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, BC-05-12-21-A, BC-06-23-21-B, BC-07-28-21-N, BC-09-22-21-A, BC-11-24-21-F and BC-01-12-22-B.

Oneida Business Committee resolution BC-08-03-21-A, Setting Public Gathering Guidelines during Public Health State of Emergency—COVID-19, prohibits indoor and outdoor public gatherings when the COVID-19 infection rates within Brown or Outagamie Counties exceed “Low” as identified by the Wisconsin Department of Health Services. During the time of the development of the amendments to this Law, the infection rates within Brown and Outagamie

Counties exceeded “Low.” The Nation’s COVID-19 Core Decision Making Team addressed the issue of not being able to safely hold public meetings through its March 27, 2020, declaration titled “Suspension of Public Meetings under the Legislative Procedures Act”. This declaration suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

Although a public meeting for the Furlough law amendments was not held, the public comment period was still held open until November 11, 2021. The Legislative Operating Committee did not receive any written submissions of comments during the public comment period.

Adoption of this resolution complies with the process and procedures of the LPA as it has been modified by the COVID-19 Team’s “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration.

This resolution provides that the amendments to the Furlough law would become effective on February 22, 2022, in accordance with the LPA. [1 O.C. 109.9-3].

### ***Conclusion***

Adoption of this resolution would not conflict with any of the Nation’s laws, as it complies with the Legislative Procedures Act as it has been modified by the COVID-19 Core Decision Making Team’s “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration.





## FURLOUGH LAW AMENDMENTS LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

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

Public Meeting	A public comment period was held open until November 11, 2021. A public meeting was not held in accordance with the Nation's COVID-19 Core Decision Making Team's declaration titled, <i>Suspension of Public Meetings under the Legislative Procedures Act</i> .
Fiscal Impact	The Finance Department provided a fiscal impact statement on December 15, 2021.

## 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 the 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 the amendments to this Law and the legislative analysis:
- 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 [1 O.C. 105]; Open Records and Open Meetings [1 O.C. 107]; Legislative Procedures Act [1 O.C. 109]; Budget Management and Control [1 O.C. 121]; Layoff Policy [2 O.C. 207]; Conflict of Interest [2 O.C. 217]; Emergency Management [3 O.C. 302]; Oneida Nation Gaming Ordinance [5 O.C. 501]; Indian Preference in Contracting [5 O.C. 502]; and the Nation's Personnel Policies and Procedures.
- 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. The amendments to this Law have followed the process as set forth in the Legislative Procedures Act ("LPA").
- On October 7, 2020, the Legislative Operating Committee added the Law to its Active Files List.
  - On August 4, 2021, the Legislative Operating Committee approved the draft amendments to the Law and directed that a legislative analysis be prepared for consideration at the next LOC meeting.

- On August 18, 2021, the Legislative Operating Committee approved the draft amendments to the Law, along with the legislative analysis.
- On October 6, 2021, the Legislative Operating Committee approved the Furlough law amendments public comment period notice and forwarded the Furlough law amendments to a public comment period to be held open until November 11, 2021.
- On November 11, 2021, the public comment period closed. No written submissions of comments were received during this public comment period.
- On November 17, 2021, the Legislative Operating Committee accepted the public comment period review memorandum recognizing no comments were received.
- On December 1, 2021, the Legislative Operating Committee approved updated drafts of the proposed amendments and legislative analysis. Additionally, the LOC approved the fiscal impact statement request memorandum for forwarding on to the Finance Department, directing that a fiscal impact statement be prepared and submitted to the LOC by December 15, 2021.
- The Finance Department provided a fiscal impact statement on December 14, 2021, finding the impact “Indeterminate” due to a lack of sufficient timing to perform a full assessment. The Finance Department indicated that it would need approximately six (6) more weeks to perform the full assessment, which the LOC granted on December 15, 2021, giving the Finance Department until January 26, 2022, to submit an updated fiscal impact statement.

**B. 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.
- December 1, 2021, a work meeting was held with the LOC.
- December 15, 2021, a work meeting was held with the LOC.

**C. COVID-19 Pandemic’s Effect on the Legislative Process.** The world is currently facing a pandemic of COVID-19. The COVID-19 outbreak originated in Wuhan, China and has spread to many other countries throughout the world, including the United States. The COVID-19 pandemic has resulted in high rates of infection and mortality, as well as vast economic impacts including effects on the stock market and the closing of all non-essential businesses. A public meeting for the proposed amendments to the Law was not held due to the COVID-19 pandemic, but a public comment period for the submission of written comments was held open.

- *Declaration of a Public Health State of Emergency.*
  - On March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State of Emergency*” regarding the COVID-19 pandemic which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

- The Public Health State of Emergency has since been extended until March 22, 2022, by the Oneida Business Committee through the adoption of resolutions: BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, BC-05-12-21-A, BC-06-23-21-B, BC-07-28-21-N, BC-09-22-21-A, BC-11-24-21-F and BC-01-12-22-B.
- *COVID-19 Core Decision Making Team Declaration: Suspension of Public Meetings under the Legislative Procedures Act.*
  - On March 27, 2020, the Nation’s COVID-19 Core Decision Making Team issued a “*Suspension of Public Meetings Under the Legislative Procedures Act*” declaration which suspended the Legislative Procedures Act’s requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
- *Oneida Business Committee Resolution BC-08-03-21-A, Setting Public Gathering Guidelines during Public Health State of Emergency – COVID-19.*
  - On August 3, 2021, the Oneida Business Committee adopted resolution BC-08-03-21-A titled, *Setting Public Gathering Guidelines during Public Health State of Emergency – COVID-19*, which provides that indoor and outdoor events shall be canceled when the infection rates within Brown or Outagamie Counties exceed “Low” as identified by the Wisconsin Department of Health Services. Both Brown and Outagamie Counties were and continue to be experiencing “High” rates of COVID-19 infections.
- *Conclusion.*
  - Although a public meeting was not held on the proposed amendments to the Law, a public comment period was still held open until November 11, 2021, in accordance with resolution BC-08-03-21-A and the Legislative Procedures Act as modified by the COVID-19 Core Decision Making Team’s “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration. No public comments were received during this public comment period.

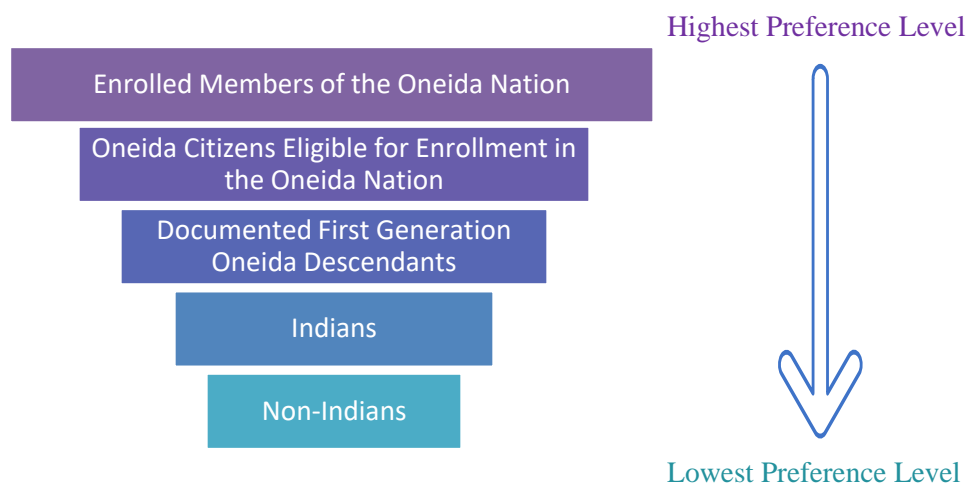
## SECTION 5. CONTENTS OF THE LEGISLATION

- 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:



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

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

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

- That, unless otherwise stated, the Law applies to all employees, as well as employment decisions, of the Nation that are governed, whether in whole or part, thereby [2 O.C. 205.4-1];
- That, but for Indian preference, the Nation is an Equal Opportunity Employer that prohibits the application of this Law and/or the implementation of a furlough program to occur in a manner that discriminates based on race, color, religion, sex, pregnancy, age, national origin, citizenship status, veteran status, physical or mental disability, genetic information and/or any other basis protected by the anti-discrimination provisions of Title VII [2 O.C. 205.4-3];
- That, the HRD will be responsible for introducing new employees of the Nation to the concept of Indian preference, as well as how it applies to the Nation's furlough programs, during its employee orientation training [2 O.C. 205.4-4]; and
  - Goal for Orientation. During the development of these amendments, the LOC wanted to ensure that new employees of the Nation were familiar with the concept of Indian preference, as well as the history behind it, and how it would be applied to one or more departments/divisions of the Nation during a furlough program before it happened, as opposed to first learning about the process during an actual program implementation.
- 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. Work-group 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,

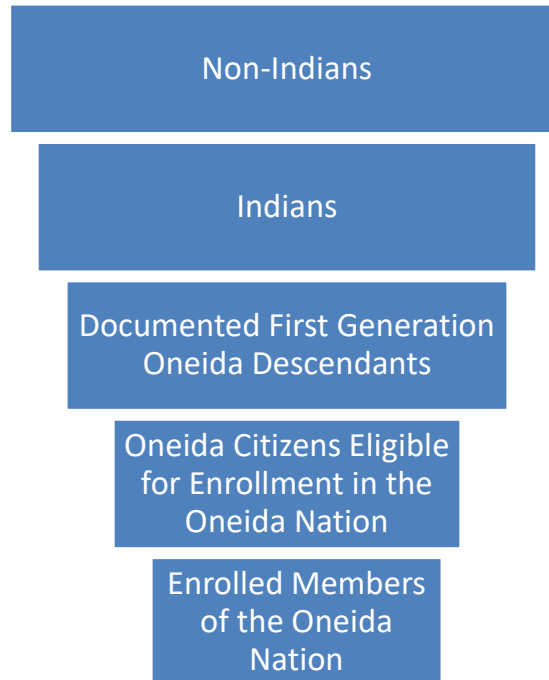
employees shall be selected for layoff, as opposed to placement in furlough status, consistent with the laws and policies of the Nation governing employee layoffs.”)].

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:

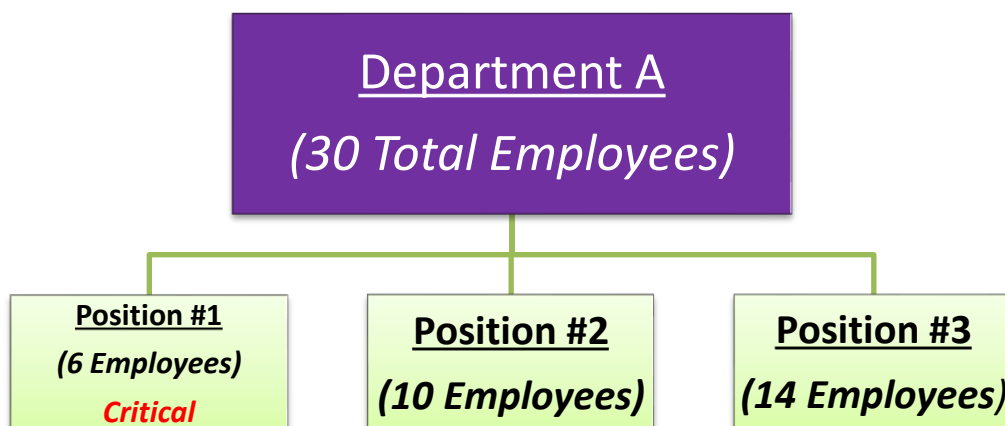
- **Critical Positions.** If the OBC, or the ad hoc committee per the OBC’s request and subject to its approval, has identified critical positions within an affected department/division, those positions would be exempt from placement into furlough status during the specific furlough program for which 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:

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



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



**Scenario Based on Hypothetical:** Position #1 is deemed critical, and thus, exempt from placement in furlough status. [2 O.C. 205.7-2]. This leaves Positions #2 and #3 subject to placement in furlough status per the OBC's directive. In accordance with the general requirement that placement in furlough status occur in a manner that adheres to Indian preference to the greatest extent without rendering Department A inoperable or unable to reasonably conduct business, the Direct Reports

Level position decides to cut five (5) employees from Position #2 and seven (7) employees from Position #3.

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

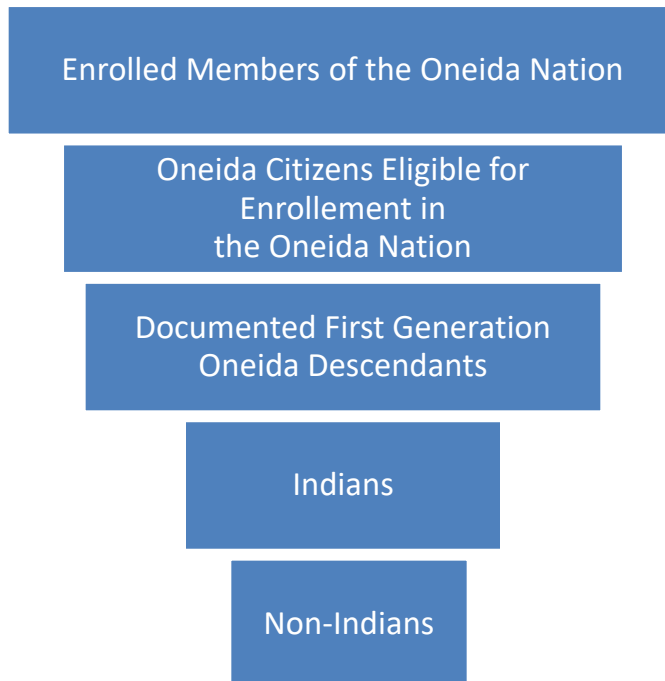
1. *Seniority.* Employees who have served the Nation as a regular status employee without a break in employment for the longest amount of time shall be afforded the highest level of retention priority;
2. *Veteran Status.* If employees remain after applying the priority for seniority, employees with 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 financially and contractually, employees will continue to receive benefits while in furlough status. And, if the employees who remain working are accruing 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.

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



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

- Volunteers. With respect to those employees who volunteered for placement in furlough status, the proposed Law makes clear that those employees who qualify for the preference and priority as set forth within this section will retain such preference/priority regardless of volunteering and will be given additional priority over others within the same preference and priority category who did not volunteer. [2 O.C. 205.9-1(b)].
- Notice of Recall and Responses. With respect to what is expected of employees placed in furlough status who are recalled back to work, the proposed Law now states:
  - A failure to respond to the notice of recall 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. [2 O.C. 205.9-2(b)].

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

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

## SECTION 6. RELATED LEGISLATION

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

- 560     ▪ Open Records and Open Meetings [1 O.C. Chapter 107]. This law sets the requirements for how  
561     meetings of the Nation’s governmental bodies shall be conducted, as well as how materials from  
562     that meeting shall be maintained and made available to the public. [1 O.C. 107.1 & 107.12]. Section  
563     107.9 of the Open Records and Open Meetings law governs the retention of records that are  
564     produced in the course of governmental business. [1 O.C. 107.9-1]. It provides, in pertinent part,  
565     that “[u]nless an alternate retention period is approved by the Oneida Business Committee for  
566     specific records and except as otherwise provided by law, all records shall be retained at least seven  
567     (7) years before destruction.” [1 O.C. 107.9-4]. The proposed amendments do not conflict with the  
568     portion of the Open Records and Open Meetings law that governs the release and retention of  
569     records.
- 570     ▪ Social Media Policy [2 O.C. Chapter 218]. This law regulates social media accounts, including  
571     how content is managed and published on behalf of the Nation. [2 O.C. 218.1-1]. Employees who  
572     obtain outside employment while in furlough status under a program governed by the proposed  
573     Law will be required to still adhere to the social media requirements that apply to employees of the  
574     Nation pending their recall back to work. There are no conflicts between the proposed amendments  
575     and the Nation’s Social Media Policy.
- 576     ▪ Computer Resources Ordinance [2 O.C. Chapter 215]. This law regulates the use of computer  
577     resources that are owned and operated by the Nation and, among other individuals, applies to  
578     employees of the Nation. [2 O.C. 215.1-1 & 215.3-1]. Employees who obtain outside employment  
579     while in furlough status under a program governed by the proposed Law will be required to still  
580     adhere to the provisions of this law that apply to employees of the Nation pending their recall back  
581     to work. There are no conflicts between the proposed amendments and the Nation’s Computer  
582     Resources Ordinance.
- 583     ▪ Conflict of Interest [2 O.C. Chapter 217]. This law establishes specific limitations on the handling,  
584     as well as sharing, of information/materials that are confidential in nature or could be used by the  
585     Nation’s competitors and providers during negotiations to the Nation’s detriment. [2 O.C. 217.1-  
586     1]. It applies to the Nation’s employees, contractors, elected officials, officers, political appointees  
587     and appointed/elected members of the Nation’s boards, committees and commissions. [2 O.C.  
588     217.1-1]. Employees who obtain outside employment while in furlough status under a program  
589     governed by the proposed Law will be required to still adhere to the provisions of this law that  
590     apply to employees of the Nation pending their recall back to work. There are no conflicts between  
591     the proposed amendments and the Nation’s Conflict of Interest law.
- 592     ▪ Layoff Policy [2 O.C. Chapter 207]. This law establishes a fair, respectful policy for employee  
593     layoff and recall which enables Oneida Nation programs and enterprises to operate effectively and  
594     efficiently in varying economic conditions within the parameters of Oneida Nation Seventh  
595     Generation Mission, Priorities and Objectives. [2 O.C. 207.1-1]. There are no conflicts between  
596     the proposed amendments and the Nation’s Conflict of Interest law.
  - 597         ○ It is worth noting that the Layoff Policy is on the LOC’s Active Files List for amendment  
598         this term. Any gaps in the law or provisions that could be interpreted to conflict with the  
599         proposed amendments to this Law will be amended accordingly and consistently with the  
600         LOC’s policy/basis for placing both the Layoff Policy and Furlough Policy on the Active  
601         Files List for amendment.
- 602     ▪ Personnel Policies and Procedures. The Personnel Policies and Procedures law provides employees  
603     with a ready source of information about employee related Oneida Nation polices and procedures  
604     that apply to all employees. [PPP, Section 1]. There are no conflicts between the proposed  
605     amendments and the Nation’s Personnel Policies and Procedures law.

## 607 **SECTION 7. OTHER CONSIDERATIONS**

### 608 **A. Fiscal Impact.**

- 609     ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation  
610     except emergency legislation. [1 O.C. 109.6-1].
- 611     ▪ Oneida Business Committee resolution BC-10-28-20-A titled, “*Further Interpretation of*  
612     ‘Fiscal Impact Statement’ in the Legislative Procedures Act,” provides further clarification on



613 who the Legislative Operating Committee may direct complete a fiscal impact statement at  
614 various stages of the legislative process, as well as timeframes for completing the fiscal impact  
615 statement.  
616 ■ On December 15, 2021, the Legislative Operating Committee received a fiscal impact  
617 statement for this Law from the Finance Department.  
618

## Title 2. Employment – Chapter 205 FURLOUGH ~~POLICY~~

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

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

### 205.1. Purpose and Policy

205.1-1. Purpose. -The purpose of this ~~Policy~~law is to ~~enable~~:

(a) Enable the TribeNation 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~~Acts of God” means an event or effect that can be neither anticipated

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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” ~~means~~ 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 ~~who is responsible for a Tribal Department~~department and/or ~~Division~~division of the Nation.

~~(b)~~ (f) “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.

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

~~(d)~~ (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 ~~a preference granted to retain an Oneida member employee over other non member employees 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.~~

~~(e)~~ (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 ~~a person~~an employee of the Nation who directly oversees the work and performance of an employee on a daily basis.

~~(f)~~ “Tribe” or “Tribal” (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.

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83 **205.4. Application**

84 205.4-1. Unless otherwise stated herein, this law shall apply to all employees of the Nation and  
85 all employment decisions of the Nation that are governed, whether in whole or in part, by this law.

86 205.4-2. Indian Preference. It is the intent of this law, and the policy of the Nation, that no  
87 employee who is Indian shall be furloughed so long as an employee, within the same department/  
88 division and position, who is non-Indian is still employed.

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

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

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

98 (1) Enrolled members of the Oneida Nation;

99 (2) Oneida citizens eligible for enrollment in the Oneida Nation;

100 (3) Documented first generation Oneida descendants;

101 (4) Indians; and

102 (5) Non-Indians.

103 **205.4-3.**

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

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

114 (a) The history behind Indian preference, including the role that the Bureau of Indian  
115 Affairs ("BIA") had in its development;

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

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

122 205.4-5. Prohibitions. Any furlough program of the Nation that is initiated in accordance with  
123 this law shall not:

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

126 (b) Be administered or implemented in violation of this law or any other applicable laws/

127 policies of the Nation; and/or

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

130 —  
131 **205.5. Furlough Implementation Plan**

132 ~~205.4-1.~~ 205.5-1. Implementation Plan. Within a reasonable time after this law goes into  
133 effect, all Direct Report Level positions, or their authorized designees, shall submit a furlough  
134 implementation plan to the Human Resources Department for approval.

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

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

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

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

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

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

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

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

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

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

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

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

170 (B) How a furlough implementation plan shall be submitted to the Human

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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 ~~necessity~~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.



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(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 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 ~~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



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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 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 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.

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(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 Report 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

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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 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 (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 subsections (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 constitute apply.

(4) *Other Priorities.* If, following application of Indian preference, employees

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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 ~~continuous service~~ 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 ~~Tribes~~ 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 ~~Tribes~~ 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 at issue, employees placed in furlough status shall continue

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to receive other benefits ~~during a furlough~~ 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.

205.4-7.8-5. *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 ~~placed in~~ furlough status; or

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

205.4-8. ~~6.~~ *Back Pay.* ~~Employees on furlough~~ Except as may be 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, 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;



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(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 ~~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 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

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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 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.

205.5-3. *Disciplinary Furlough.* Furloughs shall not be used for disciplinary reasons.

205.5-4. *Indian Preference.* Indian preference may not be used as a consideration in identifying employees to be furloughed.

205.5-5. All furlough plans shall be kept on file with the Human Resources Department.

## **205.6 Supervisor Responsibilities**

~~205.6-1.~~ Upon notification directive from the appropriate Direct Report Level position that furloughs are necessary, a supervisor shall:

(a) Identify positions and/or 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.

## **205.7 Appeal**

205.7-1. 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

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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 ~~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 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 ~~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.

End.

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Emergency Adoption – BC-10-15-13-A

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

Adoption – BC-11-10-15-B

Adoption – BC- - - -



## **Title 2. Employment – Chapter 205 FURLOUGH**

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

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

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### **205.1. Purpose and Policy**

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

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

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

### **205.2. Adoption, Amendment, Repeal**

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

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

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

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

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

### **205.3. Definitions**

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

- (a) “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

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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

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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:

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- 128 (A) Which positions within their respective department or division may  
129 qualify as a critical position;
- 130 (B) Which employees within their respective department or division may  
131 qualify for Indian preference and the corresponding level of preference that  
132 would apply under section 205.4-2 of this law;
- 133 (C) Which positions and/or employees within their respective department  
134 or division may be exempt from the application of Indian preference and  
135 the basis for said exemption;
- 136 (D) Whether any employees within their respective department or division  
137 may be interested in volunteering to be placed in furlough status in the event  
138 a furlough program is implemented; and
- 139 (E) Whether any positions within their respective department or division  
140 are capable of being adjusted to promote Indian preference when deciding  
141 which employees to place in furlough status.
- 142 (2) The Human Resources Department shall submit its standard template to the  
143 Oneida Business Committee for approval by resolution prior to distributing it to the  
144 Direct Report Level positions and/or authorized designees for development in  
145 accordance herewith.
- 146 (b) The Human Resources Department shall create a Standard Operating Procedure which  
147 sets forth how a furlough implementation plan shall be processed under this law once the  
148 standard template is approved by the Oneida Business Committee, that shall, at a minimum,  
149 address the following:
- 150 (1) Distribution of the standard template to the Direct Report Level positions and/or  
151 their authorized designees;
- 152 (2) The process for Direct Report Level positions and/or authorized designees to  
153 follow upon receiving the standard template, including, but not limited to:
- 154 (A) How a furlough implementation plan shall be created using the standard  
155 template;
- 156 (B) How a furlough implementation plan shall be submitted to the Human  
157 Resources Department for approval; and
- 158 (C) The amount of time the Direct Report Level positions and/or their  
159 authorized designees have to submit their furlough implementation plans to  
160 the Human Resources Department upon receipt of the standard template.
- 161 (3) How the Human Resources Department will process furlough implementation  
162 plans for approval upon submission by the Direct Report Level positions and/or  
163 authorized designees; and
- 164 (4) How the Human Resources Department will notify the Direct Report Level  
165 positions and/or authorized designees of its decision to approve or reject their  
166 furlough implementation plan and, if rejected, the reason for the rejection and the  
167 process for resubmitting the furlough implementation plan for reconsideration.
- 168 (c) Copies of approved furlough implementation plans shall be retained by the Human  
169 Resources Department, as well as the Direct Report Level positions and/or authorized  
170 designees, consistent with governing law.
- 171 205.5-2. *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

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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



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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 Report 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 subsections (1) and (2), above, when the remaining number of employees in the same

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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

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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 may be 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;

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(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.

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**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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522

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-\_\_-\_\_-\_\_-\_\_

# FINANCE ADMINISTRATION

## Fiscal Impact Statement



# MEMORANDUM

TO: Lawrence Barton, Chief Financial Officer

FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

DATE: December 13, 2021

RE: **Fiscal Impact of the Furlough Law**

## I. Estimated Fiscal Impact Summary

<b>Law:</b> Furlough Law		
<b>Implementing Agency</b>	Human Resource Department; the Oneida Business Committee; Oneida Nation employees in Direct Report Level and supervisory positions.	
<b>Estimated time to comply</b>	Indeterminate	
<b>Estimated Impact</b>	<b>Current Fiscal Year</b>	<b>10 Year Estimate</b>
<b>Total Estimated Fiscal Impact</b>	<b>Indeterminate</b>	<b>Indeterminate</b>

## II. Background

### A. Legislative History

This law was adopted by the Oneida Business Committee by resolution BC-11-10-15-B.

### B. Summary of Content

The amendment includes makes the following changes to the Furlough Law:  
 Adds Indian Preference as a consideration; revises the Furlough Plan to Furlough Implementation Plan and to include steps that must be taken before a Furlough program is implemented; adds Furlough Implementation identifying Supervisor Responsibilities; creates two types of Furlough plans Administrative or Emergency; adds a section Placing Employees in Furlough Status to provide direction and consistency in how employees are selected for placement in Furlough status; adds Furloughed Employees section to allow the OBC to continue providing certain



benefits to employees place in furlough on a case-by-case basis subject to funding constraints; adds Recall of Furloughed Employees to provide guidance on the process for recalling employees to work who were placed in Furloughed status; adds Responsibilities of Direct Report Level and Supervisor Positions identifying the training requirements upon adoption of the law and on-going for the Human Resource Department, Direct Level Positions, and Supervisor Positions.

### **III. Methodology and Assumptions**

A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The analysis was completed based on the information provided as of the date of this memo.

### **IV. Executive Summary of Findings**

- The Law will govern how the Nation implements a Furlough program.
- The Law will establish consistent and equitable process for implementation of a Furlough program.
- The Law will incorporate Indian Preference into the Furlough program and require that it be applied in accordance with the Law.

### **V. Agency**

The Law establishes training requirements for the Human Resource department and each impacted direct Report Level and supervisory positions. The Law requires the OBC to establish an ad hoc committee to assist in the implementation of furlough programs. The Law creates more due process which may require additional resources and implementation time. Due to the broad overarching requirements within the Law, the startup, personnel, office costs, documentation costs, and time necessary to implement the Law are indeterminate at this point in time.

**VI. Financial Impact**

The fiscal impact of the Law is indeterminate until the Human Resource Department, the Oneida Business Committee, each Direct Report Level, and supervisors have had an opportunity to assess the fiscal impact and implementation time for each respective area.

**VII. Recommendation**

Finance Department does not make a recommendation in regard to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of this legislation, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.

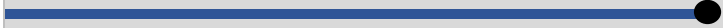

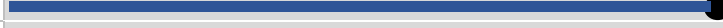
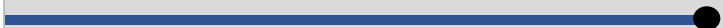

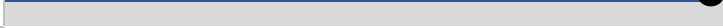










## Legislative Operating Committee FY2022 First Quarter Report

Active Files List As of 12/31/2021

Work completed October 1, 2021 – December 31, 2021

Name of Legislation	Development	Public Input	GTC/OBC Consideration or Adoption
Audit Committee Bylaws Amendments			
Budget Management and Control Law Amendments			
Business Corporations Law			
Children's Code Amendments			
Code of Ethics Law Amendments			
Community Support Fund Law Amendments			
Credit Collections Law Amendments			
Drug and Alcohol-Free Law for Elected and Appointed Officials			
Early Return to Work Law Emergency Amendments <i>Emerg. Expired 11/12/21</i>			
Election Law Emergency Amendments <i>Emerg. Expired 10/28/21</i>			
Elder Assistance Program Law			
Emergency Management and Homeland Security Law Amendments			
Endowments Law			
Environmental Review Law			
Fire Signs Law			
Furlough Law Amendments			
GTC Meeting Stipends Payment Policy Emergency Amendments <i>Emerg. Expired 4/8/21</i>			
Guardianship Law			
Industrial Hemp Law			
Investigative Leave Policy Amendments			
Law Enforcement Ordinance Amendments			
Layoff Policy Amendments			
Local Land Use Regulation Reimbursement Policy Repeal			
Marijuana Law			
Misappropriations of Funds Law			
Oneida General Welfare Law			
Oneida Higher Education Pandemic Relief Fund Law Emergency Amendments <i>Emerg. Expired 8/24/21</i>			
Oneida Land Trust Law			
Oneida Nation Arts Board Bylaws Amendments			
Oneida Nation Emergency Planning Committee Bylaws			
Oneida Nation Gaming Ordinance Emergency Amendments <i>Emerg. Expires 5/12/21</i>			
Oneida Personnel Policies and Procedures Emergency Amendments			

Oneida Worker's Compensation Law Emergency Amendments <i>Emerg. Expires 11/12/21</i>	
Oneida Trust Enrollment Committee Bylaws	
Pandemic Relief Assistance Law <i>Emerg. Expired 5/24/21</i>	
Pardon and Forgiveness Law Emergency Amendments <i>Emerg. Expires 4/28/22</i>	
Pardon and Forgiveness Screening Committee Bylaws Amendments	
Public Peace Law	
Real Property Law Amendments	
Recycling and Solid Waste Disposal Law Amendments	
Sanctions and Penalties Law	
Taxation Law	
Traffic Law	
Tribal Sovereignty in Data Research Law	
Wellness Court Law	
Workplace Violence Law Amendments	

## Legislative Operating Committee Action on Legislative Requests

During the FY22 First Quarter the Legislative Operating Committee added three (3) legislative items to its Active Files List. No requests were denied during the FY22 First Quarter.

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

On November 3, 2021, the Legislative Operating Committee added the Elder Assistance Program law to its Active Files List.

Then on November 17, 2021, the Legislative Operating Committee added the Tribal Sovereignty in Data Research law to its Active Files List.

On December 1, 2021, the Legislative Operating Committee added Oneida Nation Arts Board bylaws amendments to its Active Files List.

## FY21 First Quarter Legislative Accomplishments

The Legislative Operating Committee brought forward the following legislation for adoption or amendment during the FY22 First Quarter:

### **Pardon and Forgiveness Law Emergency Amendments Extension**

The purpose of the Pardon and Forgiveness law is to provide a fair, efficient, and formal process by which an individual may receive a pardon or forgiveness from the Nation, as well as define the duties and responsibilities of the Oneida Pardon and Forgiveness Screening Committee ("PFSC"), Oneida Business Committee, Secretary's Office, and other persons involved in the granting or denial of pardons and forgiveness. [1 O.C. 126.1-1]. Emergency amendments to the Pardon and Forgiveness law were sought to address the impact that the COVID-19 pandemic has had on the ability of the PFSC to process, as well as conduct hearings, on applications for a pardon or forgiveness in a fair and efficient manner as is required under the Pardon and Forgiveness law. Prior to the emergency amendments, the Pardon and Forgiveness law only allowed for hearings on an application for a pardon or forgiveness to be conducted in-person, at a location to be

determined by the PFSC. *[1 O.C. 126.8-1]*. The emergency amendments to the Pardon and Forgiveness law added an option for the PFSC to conduct its hearings virtually when it deems necessary. *[1 O.C. 126.8-1(a)]*.

The Oneida Business Committee adopted the emergency amendments to the Pardon and Forgiveness law on April 28, 2021, through resolution BC-04-28-21-A. The emergency amendments to the Pardon and Forgiveness law were set to expire on October 28, 2021.

The Oneida Business Committee extended the emergency amendments to the Pardon and Forgiveness law for an additional six (6) month period on October 27, 2021, through the adoption of resolution BC-10-27-21-A. The emergency amendments to the Pardon and Forgiveness law will now expire on April 28, 2022.

### **Oneida Nation Gaming Ordinance Emergency Amendments Extension**

Emergency amendments to the Oneida Nation Gaming Ordinance (“ONGO”) were sought to protect the Nation against exposure to litigation and/or legal claims relating to ONGO’s placement of the Gaming Security Department (“Security”) within the Nation’s organizational structure. Specifically, the emergency amendments removed an avenue for potential liability that has been raised with respect to Security being placed within the Oneida Police Department under section 501.9-1 of the law. *[5 O.C. 501.9-1]*. The emergency amendments to ONGO re-assigned Security to the Oneida Business Committee to expeditiously dispose of any legal risks associated with its current placement.

The Oneida Business Committee adopted the emergency amendments to ONGO on May 12, 2021, through resolution BC-05-12-21-D. The emergency amendments to the ONGO were set to expire on November 12, 2021.

The Oneida Business Committee extended the emergency amendments to ONGO for an additional six (6) month period on November 10, 2021, through the adoption of resolution BC-11-10-21-A. The emergency amendments to ONGO will now expire on May 12, 2022.

### **Budget Management and Control Law Emergency Amendments Extension**

The Budget Management and Control law sets forth the requirements to be followed by the Oneida Business Committee and Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval and to establish a triennial strategy planning process for the Nation’s budget. *[1 O.C. 121.1-1]*. On November 24, 2020, the Oneida Business Committee adopted emergency amendments to the Law in response to the COVID-19 pandemic to provide that in the event that the Nation proclaims an emergency, in accordance with the Emergency Management law, which prevents presentation and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation’s budget. *[1 O.C. 121.5-3(b)(1)]*. These emergency amendments were set to expire on May 24, 2021.

The Oneida Business Committee then adopted additional emergency amendments to the Budget Management and Control law on May 12, 2021, to address the Nation’s non-compliance with the budget development process and deadlines contained in the law. The emergency amendments to the Budget Management and Control law removed much of the details of the budget process,

requirements, and deadlines, and instead provided that the Treasurer shall develop the necessary guidelines and procedures, including specific deadlines, for the Nation's budget development process, to be reviewed and approved by the Oneida Business Committee. The Oneida Business Committee adopted the emergency amendments to the law on May 12, 2021, through resolution BC-05-12-21-C. The emergency amendments to the Budget Management and Control law were set to expire on November 12, 2021.

The Oneida Business Committee extended the emergency amendments to the Budget Management and Control law for an additional six (6) month period on November 10, 2021, through the adoption of resolution BC-11-10-21-B. The emergency amendments to the Budget Management and Control law will now expire on May 12, 2022.

### **Oneida Personnel Policies and Procedures Emergency Amendments**

Emergency amendments to the Oneida Personnel Policies and Procedures were sought to improve the Nation's hiring capacity and service delivery in the tight labor markets that have resulted from the COVID-19 pandemic. The emergency amendments to the Oneida Personnel Policies and Procedures made the following revisions to the law:

- Require that all applications for employment with the Nation be submitted online;
- Eliminate the requirement that a position vacancy be posted twice with the first posting open to enrolled members of the Nation only and the second posting open to the general public;
- Require that applicants who are enrolled members of the Oneida Nation be screened and interviewed prior to any other applicants;
- Allow for a supervisor to choose between the next two (2) ranked applicants if the first choice refuses the position offer;
- Require an employee who is transferred to continue serving in their present position until a replacement can be found, for a period up to thirty (30) days;
- Remove the requirement that an employee completes one (1) year of service to the Nation before being eligible for a transfer;
- Clarify that an employee shall be required to undergo an original probation period for three (3) months after being hired, transferred, or reassigned to a new position;
- Remove the provision that provided probationary employees be paid at five percent (5%) below the posted pay rate for the position; and
- Make other revisions throughout Section III of the Oneida Personnel Policies and Procedures to simplify and clarify language to make the hiring selection process more efficient.

The Oneida Business Committee adopted the emergency amendments to the Oneida Personnel Policies and Procedures on November 24, 2021, through the adoption of resolution BC-11-24-21-A. The emergency amendments to the Oneida Personnel Policies and Procedures will expire on May 24, 2021.

### **Adoption of the Oneida General Welfare Law**

The Oneida General Welfare law was adopted by the Oneida Business Committee on an emergency basis through resolution BC-08-12-20-D for the purpose of providing assistance on a non-taxable basis, to eligible Tribal members through approved programs that promote the general

welfare of the Nation including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment. [10 O.C. 1001.1-1, 1001.1-3, 1001.9-2]. The emergency adoption of the Oneida General Welfare law was set to expire on February 12, 2021.

Emergency amendments to the Oneida General Welfare law were then adopted by the Oneida Business Committee through resolution BC-02-10-21-B for the purpose of addressing how an approved program would be adopted by the Oneida Business Committee to allow for more flexibility and efficiency in addressing the needs of the Nation. The emergency amendment to the Oneida General Welfare law revised the definition of approved program to allow an approved program to be adopted by the Oneida Business Committee through resolution or law of the Nation. [10 O.C. 1001.3-1(a)]. Previously, an approved program could only be adopted by the Oneida Business Committee through a law of the Nation. These emergency amendments to the Oneida General Welfare law were set to expire on August 10, 2021.

On July 28, 2021, the Oneida Business Committee extended the emergency amendments for an additional six (6) month period through the adoption of resolution BC-07-28-21-M. A six (6) month extension of the emergency amendments to the Oneida General Welfare law was granted to provide additional time for the Legislative Operating Committee to process the adoption of permanent amendments to the Oneida General Welfare law. The emergency amendments to the Oneida General Welfare law were set to expire on February 10, 2022.

On December 8, 2021, the Oneida Business Committee adopted the Oneida General Welfare law on a permanent basis through the adoption of resolution BC-12-08-21-A.

### **Early Return to Work Law Emergency Amendments**

The emergency amendments to the Early Return to Work law expired on November 12, 2021.

### **Election Law Emergency Amendments**

The emergency amendments to the Election law expired on October 28, 2021.

### **Oneida Worker's Compensation Law Emergency Amendments**

The emergency amendments to the Oneida Worker's Compensation law expired on November 12, 2021.

## **FY22 First Quarter Administrative Accomplishments**

The Legislative Operating Committee brought forward the following administrative items for adoption or approval during the FY22 First Quarter:

### **Adoption of the Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT)**

The Leasing law was adopted for purposes of setting forth the Nation's authority to issue, review, approve, and enforce leases. [6 O.C. 602.1-1]. The Leasing law delegates authority to the Oneida Land Commission and Land Management to jointly develop rules related to obtaining residential, agricultural, or business leases. [6 O.C. 602.5-1]. Land Management is defined in the Leasing law as "the Division of Land Management or other entity responsible for entering into leases of tribal



land”. [6 O.C. 602.3-1(i)]. According to the Real Property law, the Comprehensive Housing Division is the entity responsible for processing all residential leases of Tribal land. [6 O.C. 601.9-1]. Therefore, the Comprehensive Housing Division is Land Management for purposes of the rulemaking authority delegated under the Leasing law.

The purpose of the Leasing law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (“the Rule”) is to increase the Nation’s land base while maintaining individual homeownership. Through the program, eligible homeowners can sell their land to the Nation and then enter into a residential lease with the Comprehensive Housing Division that will allow them to retain ownership of the improvements, as well as rights to the land upon which those improvements are located.

On September 1, 2021, the Legislative Operating Committee reviewed and certified the Rule, finding good cause under section 106.7-1(a) of the Administrative Rulemaking law to certify this Rule, despite being presented for certification outside of the time limits allowed by the Administrative Rulemaking law upon closure of the public comment period. This Rule was then adopted by the Oneida Business Committee on September 8, 2021. This Rule was then repealed by the Oneida Business Committee on October 13, 2021.

### **FY22 First Quarter Legislative Highlights**

The Legislative Operating Committee would like to highlight its work on the following legislative items during the FY22 First Quarter:

#### **Budget Management and Control Law Amendments**

The Legislative Operating Committee held eight (8) work meetings during the FY22 First Quarter on the development of amendments to the Budget Management and Control law. The work meetings were held in collaboration with the Treasurer, Finance Administration, and Budget Analyst. On November 3, 2021, the Legislative Operating Committee approved the Budget Management and Control law emergency amendments extension packet and forward the materials to the Oneida Business Committee for consideration, while also approving the draft of proposed permanent amendments to the Budget Management and Control law and directing that a legislative analysis be developed. On December 15, 2021, the Legislative Operating Committee approved the updated draft, legislative analysis, and public comment period notice, and forwarded the Budget Management and Control law amendments to a public comment period to be held open until February 2, 2022.

#### **Furlough Law Amendments**

The Legislative Operating Committee held two (2) work meetings during the FY22 First Quarter on the development of proposed amendments to the Furlough law. On October 6, 2021, the Legislative Operating Committee approved the Furlough law amendments public comment period notice and forwarded the Furlough law amendments to a public comment period to be held open until November 11, 2021. The public comments were received during the public comment period. On November 17, 2021, the Legislative Operating Committee accepted the public comment period review memorandum which identified no public comments were received. On December 1, 2021, the Legislative Operating Committee approved the updated draft, legislative analysis, and the fiscal impact statement request memorandum and forwarded the materials to the Finance Department

directing that a fiscal impact statement be prepared and submitted to the LOC by December 15, 2021. On December 14, 2021, the Finance Department provided the fiscal impact statement for the proposed amendments to the Furlough law, with the impact being found to be “indeterminate,” and requested additional time to provide a fiscal impact statement that provides a fiscal impact other than indeterminate. The Legislative Operating Committee then extended the Finance Department’s deadline to provide a fiscal impact statement to January 26, 2022.

### **Law Enforcement Ordinance Amendments**

The Legislative Operating Committee held three (3) work meetings during the FY22 First Quarter on the proposed amendments to the Law Enforcement Ordinance.

### **Layoff Policy Amendments**

The Legislative Operating Committee held one (1) work meeting during the FY22 First Quarter on the proposed amendments to the Layoff Policy.

### **Local Land Use Regulation Reimbursement Policy Repeal**

On October 6, 2021, the Legislative Operating Committee accept the public comment review memorandum which identified that there were no written comments received during the public comment period that was held open from August 18, 2021, until September 16, 2021.

### **Oneida Nation Gaming Ordinance Amendments**

The Legislative Operating Committee held five (5) work meetings during the FY22 First Quarter on the amendments to the Oneida Nation Gaming Ordinance. The work meetings were held in collaboration with the Oneida Gaming Commission, Oneida Police Department, Oneida Police Commission, Conservation Department, and the Environmental, Health, Safety, Land and Agriculture Division.

### **Oneida Personnel Policies and Procedures Emergency Amendments**

The Legislative Operating Committee held eight (8) work meetings during the FY22 First Quarter on the emergency amendments to the Oneida Personnel Policies and Procedures. The work meetings were held in collaboration with the Human Resources Department and the Oneida Business Committee.

### **Pardon and Forgiveness Law Emergency Amendments**

The Legislative Operating Committee held one (1) work meeting during the FY22 First Quarter on the extension of the emergency amendments to the Pardon and Forgiveness law.

### **Tribal Sovereignty in Data Research Law**

The Legislative Operating Committee held three (3) work meetings during the FY22 First Quarter on the Tribal Sovereignty in Data Research law.

## **FY22 First Quarter Legislative Operating Committee Meetings**

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

Due to the COVID-19 pandemic and the Nation's Public Health State of Emergency, the Legislative Operating Committee meetings were closed to the public during the FY22 First Quarter. Oneida Business Committee resolution BC-12-08-21-B, *Updating Public Gathering Guidelines during Public Health State of Emergency - COVID-19*, requires that Legislative Operating Committee meetings be closed to the public due to the Nation's Public Health State of Emergency when the following conditions cannot be met:

- When COVID-19 Case Activity rates are at or below low in Brown and Outagamie Counties, or the county in which the activity is being held, as identified on the Wisconsin Department of Health Services website for the most recent period.
- When COVID-19 Percent Positive rates are at or below low in Brown and Outagamie Counties, or the county in which the activity is being held, as identified on the Wisconsin Department of Health Services website for the most recent period.
- When COVID-19 Community Transmission Rates by ZIP Code Tabulation Area are at or below low in ZIP Codes 54155, 54301, 54302 and 54303, or the ZIP Code in which the activity is being held, as identified on the Wisconsin Department of Health Services website for the most recent period.

Employees of the Nation are provided the opportunity to attend the Legislative Operating Committee meeting through Microsoft Teams. An audio recording of the Legislative Operating Committee meeting is made available on the Nation's website after the meeting concludes. Any non-employee who would like to access the Legislative Operating Committee meeting through Microsoft Teams can provide their name, phone number or e-mail address to [LOC@oneidanation.org](mailto:LOC@oneidanation.org) by the close of business the day before a meeting of the Legislative Operating Committee to receive the link to the Microsoft Teams meeting. Additionally, any individual who has comments or questions regarding open session items on a Legislative Operating Committee meeting agenda may submit the comments or questions to [LOC@oneidanation.org](mailto:LOC@oneidanation.org) no later than the close of business the day prior to any Legislative Operating Committee meeting. Any comments received are noticed to the Legislative Operating Committee.

The Legislative Operating Committee held the following meetings during the FY22 First Quarter:

- October 6, 2021 – Regular meeting;
- October 20, 2021 – Regular meeting;
- November 3, 2021 – Regular meeting;
- November 17, 2021 – Regular meeting;
- December 1, 2021 – Regular meeting;
- December 15, 2021 – Regular meeting.

### Goals for FY22 First Quarter

During the FY22 Second Quarter the Legislative Operating Committee will focus its legislative efforts on the following matters:

1. Continued response to the COVID-19 pandemic;
2. Adoption of the Budget Management and Control law;
3. Adoption of the Furlough law;
4. Development of permanent amendments to the Oneida Nation Gaming Ordinance;
5. Development of the Wellness Court law; and

## 6. Development of the Oneida Elder Assistance Program law.

### Legislative Reference Office

The Legislative Reference Office's mission is to provide support for the Legislative Operating Committee in developing clear and consistent legislation that reflects the Nation's values, builds upon the Nation's strong foundation, and reaffirms our inherent sovereignty. The Legislative Reference Office is currently staffed by the following individuals:

- Clorissa N. Santiago, Senior Legislative Staff Attorney;
- Kristen Hooker, Legislative Staff Attorney; and
- Carmen Vanlanen, Legislative Analyst.

### Legislative Operating Committee Contact Information

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

- David Jordan, LOC Chairman  
[djordan1@oneidanation.org](mailto:djordan1@oneidanation.org)
- Kirby Metoxen, LOC Vice-Chairman  
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# February 2022

February 2022

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March 2022

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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jan 30	31	Feb 1	2 8:30am LOC Prep (BC_Conf_Room) - Clorissa N. Santiago 9:00am LOC Meeting (BC_Conf_Room) - LOC	3	4	5
6	7	8	9	10 1:30pm Healing to Wellness Court Law Work Meeting (Microsoft Teams Meeting) - Clorissa N.	11	12
13	14	15	16 8:30am LOC Prep (BC_Conf_Room) - Clorissa N. Santiago 9:00am LOC Meeting (BC_Conf_Room) - LOC	17	18	19
20	21	22	23	24 9:30am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	25	26
27	28	Mar 1	2	3	4	5