



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room - 2nd Floor Norbert Hill Center
October 5, 2022
9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be Approved

1. September 21, 2022 LOC Meeting Minutes (pg. 2)

III. Current Business

1. Oneida Nation Assistance Fund Law (pg. 4)
2. Bay Pay Law Amendments (pg. 18)
3. Emergency Management Law Amendments (pg. 31)
4. Traffic Law (pg. 49)

IV. New Submissions

1. Oneida Personnel Commission Bylaws Amendments (pg. 52)
2. Furlough Law Amendments (pg. 81)

V. Additions

VI. Administrative Updates

1. E-Poll Results: Emergency Adoption of the Oneida Life Insurance Plan Law (pg. 95)

VII. Executive Session

VIII. Recess/Adjourn



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Microsoft Teams
September 21, 2022
9:00 a.m.

The September 21, 2022, Legislative Operating Committee meeting was held virtually on Microsoft Teams.

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

Others Present: Clorissa N. Santiago, Grace Elliot, Carolyn Salutz, Lawrence Barton, Rhiannon Metoxen, Kristal Hill, Peggy Van Gheem, Carl Artman, Kelly McAndrews, Eric Boulanger

I. Call to Order and Approval of the Agenda

David P. Jordan called the September 21, 2022, Legislative Operating Committee meeting to order at 9:00 a.m.

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

II. Minutes to be Approved

1. September 7, 2022 LOC Meeting Minutes

Motion by Marie Cornelius to approve the September 7, 2022, LOC meeting minutes and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

III. Current Business

1. Oneida Nation Assistance Fund Law

Motion by Jennifer Webster to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Marie Cornelius. Motion carried unanimously.

IV. New Submissions

1. Back Pay Law Amendments

Motion by Jennifer Webster to add the Back Pay Law Amendments to the Active Files List with Marie Cornelius as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

V. Additions



VI. Administrative Items

VII. Executive Session

VIII. Adjourn

Motion by Marie Cornelius to adjourn at 9:06 a.m.; seconded by Jennifer Webster. Motion carried unanimously.



Legislative Operating Committee
October 5, 2022

Oneida Nation Assistance Fund Law

Submission Date: 6/1/22	Public Meeting: 9/2/22
LOC Sponsor: Jennifer Webster	Emergency Enacted: 6/8/22

Summary: *This item was added to the Active Files List on June 1, 2022. On May 25, 2022, the Legislative Reference Office submitted a request for the development of an Oneida Nation Assistance Fund law, the purpose of which is to establish the Oneida Nation Assistance Fund as an approved program of the Nation to govern how the Nation provides financial assistance to its members, pursuant to the Oneida General Welfare law. On April 14, 2021, the Oneida Business Committee adopted resolution BC-04-14-21-D, Oneida Nation Assistance Fund, which created an approved program – the Oneida Nation Assistance Fund – for the purpose of providing for the general welfare of the Nation and its members by offering limited amounts of financial assistance to Tribal members requiring general welfare need assistance, who could attest to such need. The Oneida Nation Assistance Fund, as adopted through resolution BC-04-14-21-D, was specific to a disbursement for an application period of June 1, 2021, and September 1, 2021. This Law was added to the Active Files List to codify the Oneida Nation Assistance Fund. On June 8, 2022, the Oneida Business Committee adopted the Oneida Nation Assistance Fund law on an emergency basis through resolution BC-06-08-22-A. The emergency adoption of this law will expire on December 8, 2022.*

5/12/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss how resolution BC-04-14-21-D, Oneida Nation Assistance Fund, would not work for this year’s general welfare assistance payment to members and whether we should bring forward an Oneida Nation Assistance Fund law through emergency adoption to address this year’s GWA disbursement.

5/18/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Carl Artman, Ralinda Ninham-Lamberies, Rae Skenandore, Keith Doxtator, Jameson Wilson. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss the potential emergency adoption of the Oneida Nation Assistance Fund law – as well as review and discuss a proposed draft of this law.

6/1/22 LOC: Motion by Jennifer Webster to add the Oneida Nation Assistance Fund Law to the Active Files List with Jennifer Webster as the sponsor; seconded by Marie Summers. Motion carried unanimously.

Motion by Jennifer Webster to approve the Oneida Nation Assistance Fund law emergency adoption packet and forward to the Oneida Business Committee for consideration; seconded by Kirby Metoxen. Motion carried unanimously.

6/8/22 OBC: Motion by Marie Summers to adopt resolution entitled 06-08-22-A Emergency Adoption of the Oneida Nation Assistance Fund Law, seconded by David P. Jordan. Motion carried.

- 7/1/22:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Grace Elliot, Ralinda Ninham-Lamberies, Keith Doxtator, Jameson Wilson, Barbara Webster. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss the communication of the Oneida Nation Assistance Fund and the Elder Assistance Program, specifically how it relates to per capita, and to discuss the application submission period and disbursement timeframe resolutions.
- 7/6/22 LOC:** Motion by Marie Summers to approve the resolution, *Oneida Nation Assistance Fund Application Submission Period and Disbursement Timeframe for 2022*, with noted change and corresponding statement of effect and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.
- 7/13/22 OBC:** Motion by David P. Jordan to adopt resolution entitled 07-13-22-C *Oneida Nation Assistance Fund Application Submission Period and Disbursement Timeframe for 2022*, seconded by Jennifer Webster. Motion carried.
- 7/20/22 LOC:** Motion by Daniel Guzman King to approve the draft and legislative analysis for the Oneida Nation Assistance Fund law; seconded by Kirby Metoxen. Motion carried unanimously.
- 7/28/22:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King, Kirby Metoxen, Clorissa N. Santiago, Grace Elliott, Carolyn Salutz. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the public meeting notice and the GWA payment pictorial.
- 8/3/22 LOC:** Motion by Marie Summers to approve the public meeting packet, with updated public meeting notice, and forward the Oneida Nation Assistance Fund law to a public meeting to be held on September 2, 2022; seconded by Kirby Metoxen. Motion carried unanimously.
- 9/2/22:** *Public Meeting Held.* Present: David P. Jordan, Marie Summers, Clorissa N. Santiago, Justin Nishimoto, Jameson Wilson, Lawrence Barton, Carolyn Salutz, Kristal Hill, Grace Elliott, Rhiannon Metoxen, Kaylynn Gresham, Carl Artman, Michelle Myers. The public meeting for the Oneida Nation Assistance Fund law was held on Microsoft Teams. No individuals provided public comment during the public meeting.
- 9/12/22:** *Public Comment Period Closed.* One (1) submission of written comments was received during the public comment period.
- 9/21/22 LOC:** Motion by Jennifer Webster to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Marie Cornelius. Motion carried unanimously.
- 9/21/22:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King, Kirby Metoxen, Clorissa N. Santiago, Grace Elliott, Carolyn Salutz, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and consider the public comments received.

Next Steps:

- Approve the updated public comment review memorandum, draft, updated legislative analysis, and fiscal impact statement request memorandum, and forward to the Finance Department directing that a fiscal impact statement be submitted to the Legislative Operating Committee by October 19, 2022.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney *CMS*
DATE: October 5, 2022
RE: Oneida Nation Assistance Fund Law: Public Comment Review with LOC Consideration

On September 2, 2022, a public meeting was held regarding the proposed Oneida Nation Assistance Fund law (“the Law”). The public comment period was then held open until September 12, 2022. The Legislative Operating Committee reviewed and considered the public comments received on September 21, 2022. This memorandum is submitted as a review of the written comments received during the public comment period.

Comment 1 – Government Administrative Office:

Lisa Liggins (written): Please see the comments below regarding the Legislative Analysis associated with the Oneida Nation Assistance Fund law:

Lines 14, 36, 38-39 – “...Government Administration Office...” Correct to: “...Government Administrative Office...”

Thank you.
Lisa Liggins
Secretary
Oneida Business Committee

Response

The commenter requests that the legislative analysis be revised to provide the correct name of the Government Administrative Office. The legislative analysis will be updated to reflect this change.

LOC Consideration

The Legislative Operating Committee agrees that the legislative analysis needs to be updated to reflect the proper name of the Government Administrative Office.

Title 10. General Welfare Exclusion - Chapter 1003
ONEIDA NATION ASSISTANCE FUND

1003.1. Purpose and Policy
1003.2. Adoption, Amendment, Repeal
1003.3. Definitions
1003.4. Establishment

1003.5. Guidelines and Requirements
1003.6. Funding

1003.1. Purpose and Policy

1003.1-1. *Purpose.* The purpose of this law is to establish the Oneida Nation Assistance Fund to govern how the Nation provides financial assistance to its members, pursuant to the Oneida General Welfare law.

1003.1-2. *Policy.* It is the policy of the Nation to prioritize the general welfare needs of its members. The interests of the Nation are advanced when its members remain confident that their general welfare needs can be met.

1003.2. Adoption, Amendment, Repeal

1003.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__-__.

1003.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

1003.2-3. 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.

1003.2-4. 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.

1003.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

1003.3. Definitions

1003.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Approved program" means any program(s) to provide general welfare assistance that is intended to qualify as a General Welfare Exclusion, administered under specific guidelines, and is adopted by the Oneida Business Committee through resolution or law of the Nation in accordance with the Oneida General Welfare law.

(b) "Assistance" means benefits or payments under an approved program, which are paid to or on behalf of a recipient pursuant to this law. Assistance provided under an approved program shall not be considered income of the recipient.

(c) "Lavish" or "Extravagant" shall have the meaning determined by the Oneida Business Committee in its discretion and based on the circumstances, taking into account needs unique to the Nation as well as the social purpose being served by the particular assistance at hand, except as otherwise may be required for compliance with final guidance issued under 26 U.S.C. §139E following consultation between the Nation and the federal government.

(e) "Member" means an individual who is an enrolled member of the Nation.

(f) "Nation" means the Oneida Nation.

(g) "Recipient" means any member entitled to receive assistance in accordance with approved program requirements.

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42 **1003.4. Establishment**

43 1003.4-1. *Establishment.* The Oneida Nation Assistance Fund is hereby established as an
44 approved program of the Nation in accordance with the Oneida General Welfare law. The purpose
45 of the Oneida Nation Assistance Fund is to provide financial assistance to members of the Nation
46 to address the general welfare needs of members.

47 1003.4-2. *General Welfare Exclusion.* The Oneida Nation Assistance Fund meets the
48 requirements of the General Test as defined in the Oneida General Welfare law; General Criteria
49 as defined in I.R.S. Rev. Proc. 2014-35, section 5; and the requirements of the Tribal General
50 Welfare Exclusion Act of 2014, 26 U.S.C. §139E(b). The assistance provided through the Oneida
51 Nation Assistance Fund is:

- 52 (a) paid on behalf of the Nation;
53 (b) pursuant to an approved program of the Nation;
54 (c) does not discriminate in favor of members of the governing body of the Nation;
55 (d) available to any eligible member of the Nation who meets the guidelines of the
56 approved program;
57 (e) provided for the promotion of general welfare;
58 (f) not lavish or extravagant;
59 (g) not compensation for services; and
60 (h) not a per capita payment.

61

62 **1003.5. Guidelines and Requirements**

63 1003.5-1. *Eligibility.* The Oneida Nation Assistance Fund shall be open to any individual who
64 meets the following criteria:

- 65 (a) is a member of the Nation;
66 (b) is age eighteen (18) or older; and
67 (c) submits a completed application during the designated submission timeframe.

68 1003.5-2. *Distribution Period.* The Oneida Business Committee shall set forth through the
69 adoption of a resolution an application submission period and disbursement timeframe for a
70 distribution of assistance from the Oneida Nation Assistance Fund.

71 1003.5-3. *Application for Funds.* Any individual seeking assistance from the Oneida Nation
72 Assistance Fund shall submit an application.

73 (a) The Trust Enrollment Department shall make available an Oneida Nation Assistance
74 Fund application form and instructions.

75 (1) The application shall require, at a minimum, the following information:

- 76 (A) first, middle, and last name;
77 (B) date of birth;
78 (C) street address, city, state, zip code;
79 (D) phone number;
80 (E) e-mail address;
81 (F) enrollment number;
82 (G) bank account information for direct deposit if necessary;
83 (H) declaration from the applicant that their need exists, and all information
84 provided therein is accurate and in accordance with the laws of the Nation
85 and federal law; and
86 (I) signature of the applicant, electronic or handwritten, affirming the

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87 declaration.

88 (2) On the application the applicant shall designate the means by which they would
89 like to receive their disbursement of funds from the Oneida Nation Assistance Fund,
90 either through direct deposit or check.

91 (b) Applicants shall complete and return the Oneida Nation Assistance Fund application
92 form to the Trust Enrollment Department by the deadline set through resolution by the
93 Oneida Business Committee in order to be eligible for assistance from the Oneida Nation
94 Assistance Fund.

95 (1) The information provided in the Oneida Nation Assistance Fund application
96 form may be provided to any department, division, or personnel that processes the
97 applications.

98 1003.5-4. *Disbursement of Funds.* Assistance provided through the Oneida Nation Assistance
99 Fund shall be disbursed in accordance with the timeframe set through resolution by the Oneida
100 Business Committee. Funds from the Oneida Nation Assistance Fund may be disbursed through
101 direct deposit, or check, depending on the selection made on the application by the recipient.

102 1003.5-5. *Qualifying Expenditures.* The following types of expenses shall be considered
103 qualifying expenditures for use of assistance from the Oneida Nation Assistance Fund by the
104 recipient:

105 (a) costs relating to housing needs of principal residences such as:

106 (1) mortgage payments, rent payments, and down payments;

107 (2) enhancements for habitability of housing;

108 (3) basic housing repairs or rehabilitation;

109 (4) improvements to adapt housing for special health needs;

110 (b) costs for paying utility bills and charges, including, but not limited to, the following:

111 (1) water;

112 (2) electricity;

113 (3) gas;

114 (4) basic communication services such as:

115 (A) phone;

116 (B) internet; and

117 (C) cable;

118 (c) costs associated with education including, but not limited to:

119 (1) transportation to and from school;

120 (2) tutors;

121 (3) supplies for use in school activities and extra-curricular activities;

122 (4) providing tuition or room and board payments;

123 (5) providing for childcare for parents seeking employment or pursuing education;

124 (6) job counseling and interviewing expenses.

125 (d) costs associated with food security;

126 (e) costs associated with home care assistance;

127 (f) costs associated with vehicle payments, maintenance, repair, and insurance;

128 (g) costs associated with medical care and transportation, room, and board costs for
129 seeking medical care;

130 (h) funeral and burial expenses and expenses for attending wakes, funerals, burials,
131 bereavements, and subsequent honoring events; and

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132 (i) costs related to any other emergency circumstance.
133 1003.5-6. *Oversight*. The Trust Enrollment Department shall oversee the collection, review, and
134 permitted distribution of funds from the Oneida Nation Assistance Fund to the qualifying
135 recipients.

136 1003.5-7. *Records Maintenance*. The Trust Enrollment Department shall be responsible for
137 maintenance of records for the Oneida Nation Assistance Fund. The recipient shall retain receipts
138 for the expenditure of the funds associated with the Oneida Nation Assistance Fund.
139

140 **1003.6. Funding**

141 1003.6-1. *Funding Source*. The Oneida Nation Assistance Fund shall be funded through the
142 Nation’s annual budget, and by any other funding source deemed necessary by the Oneida
143 Business Committee.

144 1003.6-2. *Amount of Available Funding*. The Oneida Business Committee shall determine the
145 amount of assistance available to an eligible recipient from the Oneida Nation Assistance Fund
146 per any permitted distribution.

147
148 *End.*

149
150
151 _____
152 Emergency Adopted – BC-06-08-22-A
Adopted – BC-__-__-__-__



ONEIDA NATION ASSISTANCE FUND LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Law	<ul style="list-style-type: none"> ▪ Establish the Oneida Nation Assistance Fund as an approved program of the Nation in accordance with the Oneida General Welfare law. [10 O.C. 1003.4-1]. ▪ Provide how this program qualifies for general welfare exclusion. [10 O.C. 1003.4-2]. ▪ Provide the eligibility requirements for accessing assistance from the Oneida Nation Assistance Fund – which is that a person is a member of the Nation; age eighteen (18) or older; and submits a completed application during the designated submission timeframe. [10 O.C. 1003.5-1]. ▪ Provide the minimum requirements for the information that must be included on the application. [10 O.C. 1003.5-3]. ▪ Provide how and when funds from the Oneida Nation Assistance Fund are disbursed. [10 O.C. 1003.5-2, 1003.5-4]. ▪ Provide for the types of expenses that shall be considered qualifying expenditures for use of assistance from Oneida Nation Assistance Fund by the recipient. [10 O.C. 1003.5-5]. ▪ Provide information on the funding source and who determines that amount of available funding to an eligible participant. [10 O.C. 1003.6-1, 1003.6-2]. ▪ Provide that the Trust Enrollment Department is the department that has the responsibilities to administer the Oneida Nation Assistance Fund. [10 O.C. 1003.5-6, 1003.5-7].
Purpose	To establish the Oneida Nation Assistance Fund to govern how the Nation provides financial assistance to its members, pursuant to the Oneida General Welfare law. [10 O.C. 1003.1-1].
Affected Entities	Oneida Business Committee, Trust Enrollment Department
Public Meeting	A public meeting was held on September 2, 2022. The public comment period was then held open until September 12, 2022.
Fiscal Impact	A fiscal impact statement has not yet been requested.
Expiration of Emergency Legislation	The Oneida Nation Assistance Fund law was adopted on an emergency basis on June 8, 2022, through resolution BC-06-08-22-A. The emergency adoption of the Oneida Nation Assistance Fund law will expire on December 8, 2022.

SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A. Background.** The Oneida Nation Assistance Fund law (“the Law”) was adopted by the Nation on an
- 3 emergency basis on June 8, 2022, through resolution BC-06-08-22-A for the purpose of establishing
- 4 the Oneida Nation Assistance Fund to govern how the Nation provides financial assistance to its

5 members, pursuant to the Oneida General Welfare law. [10 O.C. 1003.1-1]. The emergency adoption
6 of the Law will expire on December 8, 2022.

- 7 **B.** The adoption of the Law on a permanent basis is now being sought by the Legislative Operating
8 Committee.
9

10 **SECTION 3. CONSULTATION AND OUTREACH**

- 11 **A.** Representatives from the following departments or entities participated in the development of this Law
12 and legislative analysis:

- 13 ▪ Oneida Law Office;
- 14 ▪ Government Administrative Office;
- 15 ▪ Finance Administration;
- 16 ▪ Trust Enrollments Department; and
- 17 ▪ Intergovernmental Affairs and Communications.

18 **SECTION 4. PROCESS**

- 19 **A.** The development of this Law has followed the process set forth in the Legislative Procedures Act
20 (LPA).
21

- 22 ▪ On June 1, 2022, the Legislative Operating Committee added the Law to its Active Files List.
- 23 ▪ On June 1, 2022, the Legislative Operating Committee approved the Oneida Nation Assistance
24 Fund law emergency adoption packet and forward to the Oneida Business Committee for
25 consideration.
- 26 ▪ On June 8, 2022, the Oneida Business Committee adopted the Law on an emergency basis
27 through the adoption of resolution BC-06-08-22-A entitled, *Emergency Adoption of the Oneida*
28 *Nation Assistance Fund Law*. The emergency adoption of the Law will expire on December 8,
29 2022.
- 30 ▪ On July 20, 2022, the Legislative Operating Committee approved the draft and legislative
31 analysis for the Oneida Nation Assistance Fund law.
- 32 ▪ On August 3, 2022, the Legislative Operating Committee approved the public meeting packet,
33 with updated public meeting notice, and forwarded the Oneida Nation Assistance Fund law to
34 a public meeting to be held on September 2, 2022.
- 35 ▪ On September 2, 2022, the public meeting was held on Microsoft Teams. No one provided
36 comments during this public meeting.
- 37 ▪ The public comment period was held open until September 12, 2022. One (1) submission of
38 written comments was received during the public comment period.
- 39 ▪ On September 21, 2022, the Legislative Operating Committee accepted the public comments
40 and the public comment review memorandum and deferred these items to a work meeting for
41 further consideration.

- 42 **B.** At the time this legislative analysis was developed the following work meetings had been held
43 regarding the development of this Law:

- 44 ▪ May 12, 2022: LOC work meeting.
- 45 ▪ May 18, 2022: LOC work meeting with the Oneida Law Office, Finance Administration,
46 Budget Analyst, Trust Enrollment Department, and Government Administrative Office.

- 47 ▪ July 1, 2022: LOC work meeting with the Finance Administration, Trust Enrollment
- 48 Department, Intergovernmental Affairs and Communications, and Government Administrative
- 49 Office.
- 50 ▪ July 28, 2022: LOC work meeting.
- 51 ▪ September 21, 2022: LOC work meeting.
- 52

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

54 **A. Purpose and Policy.** The purpose of this law is to establish the Oneida Nation Assistance Fund to
55 govern how the Nation provides financial assistance to members, pursuant to the Oneida General
56 Welfare law. [10 O.C. 1003.1-1]. It is the policy of the Nation to prioritize the general welfare needs
57 of its members. [10 O.C. 1003.1-2]. The interests of the Nation are advanced when its members remain
58 confident that their general welfare needs can be met. [10 O.C. 1003.1-2].

- 59 ▪ **Effect.** The overall purpose of this Law is to codify the Nation’s sovereign right to provide
60 assistance to Tribal members on a non-taxable basis through an approved program.

61 **B. Establishment.** This Law establishes the Oneida Nation Assistance Fund as an approved program of
62 the Nation in accordance with the Oneida General Welfare Law. [10 O.C. 1003.4-1]. The Oneida
63 Nation Assistance Fund meets the requirements of the General Test as defined in the Oneida General
64 Welfare law; General Criteria as defined in I.R.S. Rev. Proc. 2014-35, section 5; and the requirements
65 of the Tribal General Welfare Exclusion Act of 2014 26 U.S.C. §139E(b). [10 O.C. 1003.4-1].

66 **C. Guidelines and Requirements.** The Law provides guidelines and requirements for the Oneida Nation
67 Assistance Fund. The Oneida Nation Assistance Fund shall be open to any individuals who meet the
68 following criteria: is a member of the Nation; is age eighteen (18) or older; and submits a completed
69 application during the designated submission timeframe [10 O.C. 1003.5-1]. The Oneida Business
70 Committee shall set forth, through the adoption of a resolution, an application submission period and
71 disbursement timeframe for a distribution of assistance from the Oneida Nation Assistance Fund. [10
72 O.C. 1003.5-2]. Any individual seeking assistance from the Oneida Nation Assistance Fund shall
73 submit an application. [10 O.C. 1003.5-3]. The Trust Enrollment Department shall make available an
74 Oneida Nation Assistance Fund application form and instructions. [10 O.C. 1003.5-3(a)]. The Law
75 provides the minimum information that is required to be provided on the application. [10 O.C. 1003.5-
76 3(a)(1)(A)-(I)]. Assistance provided through the Oneida Nation Assistance Fund shall be disbursed in
77 accordance with the timeframe set through resolution by the Oneida Business Committee. [10 O.C.
78 1003.5-4]. Funds from the Oneida Nation Assistance Fund may be disbursed through direct deposit, or
79 check, depending on the selection made on the application by the recipient. [10 O.C. 1003.5-4].

80 **D. Qualifying Expenditures.** The Law provides that the following types of expenses shall be considered
81 qualifying expenditures for use of assistance from the Oneida Nation Assistance Fund by the recipient:

- 82 ▪ costs relating to housing needs of principal residences such as:
 - 83 ▪ mortgage payments, rent payments, and down payments;
 - 84 ▪ enhancements for habitability of housing;
 - 85 ▪ basic housing repairs or rehabilitation;
 - 86 ▪ improvements to adapt housing for special health needs;
- 87 ▪ costs for paying utility bills and charges, including, but not limited to, the following:
 - 88 ▪ water;
 - 89 ▪ electricity;
 - 90 ▪ gas;

- 91 ▪ basic communication services such as:
- 92 ▪ phone
- 93 ▪ internet; and
- 94 ▪ cable;
- 95 ▪ costs associated with education, including, but not limited to the following:
- 96 ▪ transportation to and from school;
- 97 ▪ tutors;
- 98 ▪ supplies for use in school activities and extra-curricular activities;
- 99 ▪ providing tuition or room and board payments;
- 100 ▪ providing for childcare for parents seeking employment or pursuing education;
- 101 ▪ job counseling and interviewing expenses;
- 102 ▪ costs associated with food security;
- 103 ▪ costs associated with home care assistance;
- 104 ▪ costs associated with vehicle payments, maintenance, repair, and insurance;
- 105 ▪ costs associated with medical care and transportation, room, and board costs for seeking
- 106 medical care;
- 107 ▪ funeral and burial expenses and expenses for attending wakes, funerals, burials,
- 108 bereavements, and subsequent honoring events; and
- 109 ▪ costs related to any other emergency circumstance [10 O.C. 1003.5-5].
- 110 **E. Oversight and Records Maintenance.** The Trust Enrollment Department shall oversee the collection,
- 111 review, and permitted distribution of funds from the Oneida Nation Assistance Fund to the qualifying
- 112 recipients and shall be responsible for maintenance of records for the Oneida Nation Assistance Fund.
- 113 [10 O.C. 1003.5-6, 1003.5-7]. The recipient shall retain receipts for the expenditure of the funds
- 114 associated with the Oneida Nation Assistance Program. [10 O.C. 1003.5-7].
- 115 **F. Funding.** The Oneida Nation Assistance Fund shall be funded through the Nation’s annual budget, and
- 116 by any other funding source deemed necessary by the Oneida Business Committee. [10 O.C. 1003.6-
- 117 1]. The Oneida Business Committee shall determine the amount of assistance available to an eligible
- 118 recipient from the Oneida Nation Assistance Fund per any permitted distribution. [10 O.C. 1003.6-2].
- 119

120 SECTION 6. EXISTING LEGISLATION

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

- 122 ▪ *Oneida General Welfare Law.* The Oneida General Welfare Law governs how the Nation
- 123 provides assistance to eligible members on a non-taxable basis, pursuant to the principles of
- 124 the General Welfare Exclusion to Indian Tribal governmental programs that provide benefits
- 125 to Tribal members. [10 O.C. 1001.1-1].
- 126 ▪ The Oneida Nation Assistance Fund is hereby established as an approved program of
- 127 the Nation in accordance with the Oneida General Welfare Law. [10 O.C. 1003.4-1].
- 128 The Oneida Nation Assistance Fund meets the requirements of the General Test as
- 129 defined in the Oneida General Welfare Law. [10 O.C. 1003.4-2].
- 130

131 SECTION 7. OTHER CONSIDERATIONS

132 **A. Deadline for Permanent Adoption of Legislation.** The emergency adoption of this Law will expire six

133 (6) months after adoption on December 8, 2022. The emergency legislation may be renewed for an

134 additional six (6) month period.

- 135 ▪ *Conclusion:* The Legislative Operating Committee will need to consider the development and
136 adoption of this Law on a permanent basis within the next six (6) to twelve (12) months.
- 137 A. ***Fiscal Impact.*** Under the Legislative Procedures Act, a fiscal impact statement is required for all
138 legislation except emergency legislation. [1 O.C. 109.6-1]. Fiscal Impact statements may be prepared
139 by any agency who may receive funding if the legislation is enacted, any agency who may administer
140 a program if the legislation is enacted, any agency who may have financial information concerning the
141 subject matter of the legislation, or by the Finance Office, upon request of the Legislative Operating
142 Committee. [1 O.C. 109.6-1(a)-(b)]. Oneida Business Committee resolution BC-10-28-20-A entitled,
143 *Further Interpretation of 'Fiscal Impact Statement' in the Legislative Procedures Act*, provides further
144 clarification on who the Legislative Operating Committee may direct complete a fiscal impact
145 statement at various stages of the legislative process, as well as timeframes for completing the fiscal
146 impact statement.
- 147 ▪ *Conclusion.* The Legislative Operating Committee has not yet directed that a fiscal impact
148 statement be completed.

149



TO: Keith Doxtator, Trust Enrollment Department Director
FROM: David P. Jordan, Legislative Operating Committee Chairman
DATE: October 5, 2022
RE: Oneida Nation Assistance Fund Law Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing the Oneida Nation Assistance Fund law. The Legislative Procedures Act requires that a fiscal impact statement be provided for all proposed legislation of the Nation. [1 O.C. 109.6-1]. The fiscal impact statement is an estimate of the total fiscal year financial effects associated with the proposed legislation, and should include:

- startup costs;
- personnel;
- office costs;
- documentation costs; and
- an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)].

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [1 O.C. 109.6-1].

Oneida Business Committee resolution BC-10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures Act*” provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that upon final approval of draft legislation by the LOC, the LOC may direct an entity to provide a neutral and unbiased fiscal impact statement to the LOC within ten (10) business days for inclusion in adoption materials.

On October 5, 2022, the Legislative Operating Committee approved the final draft of the proposed Oneida Nation Assistance Fund law. Therefore, the LOC is directing the Trust Enrollment Department to provide a fiscal impact statement on the proposed Oneida Nation Assistance Fund law by October 19, 2022.

A copy of the proposed Oneida Nation Assistance Fund law, as well as the legislative analysis, have been attached to this memorandum for your convenience.

Requested Action

Provide the LOC a fiscal impact statement of the proposed Oneida Nation Assistance Fund law by October 19, 2022.



Legislative Operating Committee
October 5, 2022

Back Pay Law Amendments

Submission Date: 9/21/22	Public Meeting: N/A
LOC Sponsor: Marie Cornelius	Emergency Enacted: N/A

Summary: *On August 14, 2022, during executive session, the Oneida Business Committee requested that the Legislative Operating Committee add the Back Pay law to the Active Files List, and to release the confidential memo to the Legislative Reference Office as a confidential document.*

9/14/22 OBC: Motion by Jennifer Webster to request the Legislative Operating Committee to add the Backpay Policy to the active files agenda and to release the confidential memo to the Legislative Reference Office as a confidential document, seconded by David P. Jordan. Motion carried.

9/21/22 LOC: Motion by Jennifer Webster to add the Back Pay Law Amendments to the Active Files List with Marie Cornelius as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

9/29/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Cornelius, Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the proposed draft of amendments to the Back Pay law.

Next Steps:

- Approve the draft of the proposed amendments to the Back Pay law and direct that a legislative analysis be completed.

Title 2. Employment – Chapter 206

~~BACK PAY~~

Tashakotikályahke? kayanl/hsla?

back pay law

BACK PAY AND REINSTATEMENT

~~206.1. Purpose and Policy~~

~~206.2. Adoption, Amendment, Appeal~~

~~206.3. Definitions~~

~~206.4. Back Pay Calculation~~

~~206.5. Back Pay Process~~

~~206.1. Purpose and Policy~~

~~206.2. Adoption, Amendment, Appeal~~

~~206.3. Definitions~~

~~206.4. Reinstatement~~

~~206.5. Back Pay Calculation~~

~~206.6. Back Pay Process~~

1
2 **206.1. Purpose and Policy**

3 206.1-1. Purpose. The purpose of this law is to set forth standards used in the reinstatement of a
4 wrongfully terminated employee and the calculation of back pay for all employees of the Nation
5 in accordance with the Nation’s law.

6 206.1-2. Policy. It is the policy of the Nation to have consistent and standard procedures for the
7 management of employee reinstatement and back pay.

8
9 **206.2. Adoption, Amendment, Appeal**

10 206.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-24-06-PP
11 and amended by resolutions BC-06-23-10-F, BC-08-13-14-C~~and~~, BC-10-26-16-A~~,~~ and BC- -
12 - - -.

13 206.2-2. This law may be amended or repealed by the Oneida Business Committee or the Oneida
14 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

15 206.2-3. Should a provision of this law or the application thereof to any person or circumstances
16 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
17 to have legal force without the invalid portions.

18 206.2-4. In the event of a conflict between a provision of this law and a provision of another law,
19 the provisions of this law shall control.

20 206.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

21
22 **206.3. Definitions**

23 206.3-1. This section shall govern the definitions of words and phrases used within this law. All
24 words not defined herein shall be used in their ordinary and everyday sense.

25 (a) “Appellate Court” means the branch of the Nation’s Judiciary delegated the authority
26 of final appeals within the Nation’s Judiciary, as authorized by Oneida General Tribal
27 Council resolution GTC-03-19-17-A in accordance with Article V of the Constitution and
28 Bylaws of the Oneida Nation.

29 ~~(a)~~(b) “Advocate” means a non-attorney person as provided by law and other person who
30 is admitted to practice law and is presented to the court as the representative or advisor to
31 a party.

32 ~~(b)~~(c) “Back pay” means money damages owed to the employee for a salary or wage to
33 compensate the employee as determined by the formulas set forth within this law.

34 ~~(c)~~(d) “Consequential damages” means damages that are not a direct and immediately

35 result of an act, but a consequence of the initial act, including but not limited to penalties
36 on early withdrawal of retirement account.

37 ~~(d) “Consultant” means a professional who is contracted externally whose expertise is~~
38 ~~provided on a temporary basis for a fee.~~

39 (e) “Earnings” includes vacation or personal time, shift differential, holiday pay, merit
40 increases, bonuses and incentives, employment benefits and income received during the
41 back pay period.

42 (f) “Employee” means any individual who is employed by the Nation and is subject to the
43 direction and control of the Nation with respect to the material details of the work
44 performed, or who has the status of an employee under the usual common law rules
45 applicable to determining the employer-employee relationship. “Employee” includes, but
46 is not limited to, an individual employed by any program or enterprise of the Nation, but
47 does not include elected or appointed officials, or individuals employed by a Tribally
48 Chartered Corporation.— For purposes of this law, individuals employed under an
49 employment contract as a limited term employee are employees of the Nation, not
50 consultants.

51 (g) “Involuntarily separated” means an employee removed from employment through
52 whatever means, other than a layoff, by the employer. This shall include, but is not limited
53 to, investigative leave, suspension or termination.

54 (h) "Judiciary" means Oneida Nation Judiciary, which is the judicial system that was
55 established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later
56 authorized to administer the judicial authorities and responsibilities of the Nation by
57 Oneida General Tribal Council resolution GTC-03-19-17-A in accordance with Article V
58 of the Constitution and Bylaws of the Oneida Nation.

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

60 (j) “Punitive damages” means monetary compensation awarded to an injured party that
61 goes beyond that which is necessary to compensate the individual for losses and that is
62 intended to punish the other party.

63 (k) “Reviewing party” means the area manager or the Trial Court.

64 (l) “Trial Court” means the Trial Court of the Oneida Nation Judiciary authorized to
65 administer the judicial authorities and responsibilities of the Nation by Oneida General
66 Tribal Council resolution GTC-03-19-17-A in accordance with Article V of the
67 Constitution and Bylaws of the Oneida Nation.

69 **206.4. Reinstatement**

70 206.4-1. Reinstatement to the Position the Employee was Terminated From. Should an employee's
71 appeal of a termination result in the termination being overturned, the reviewing party shall order
72 the employee be reinstated to the position from which the employee was wrongfully terminated.

73 (a) In accordance with section 206.4-3, in the event the position the employee was
74 terminated from has been eliminated or the employee is no longer eligible for the position
75 the employee was terminated from based on amendments to the position description, the
76 reviewing party shall order reinstatement to a position within the same division of the
77 organization the employee was terminated from that is comparable in wage to the position
78 the employee was terminated, to the extent it is available at the time of the reviewing party's
79 decision.

80 (b) Any order requiring the employee to be reinstated to a position comparable to the
81 position the employee was terminated from shall note the requirement that the Human

82 Resources Department shall make the determination that the employee is eligible for a
83 comparable position.

84 (c) If no comparable positions are available within the same division of the organization
85 the employee was terminated from that are comparable in wage to the position the
86 employee was terminated from, or if the employee is not eligible for the comparable
87 position, the order to reinstate shall be deemed satisfied and the back pay end date shall be
88 the date of the reviewing party's decision.

89 206.4-2. Requirement to Hold the Position Pending Litigation. When an employee is terminated
90 and thereafter appeals said termination, the disciplining supervisor may only fill the employee's
91 former position with an interim employee until the appeal has fully run its course, which includes
92 any appeal timelines to the area manager, the Trial Court, or the Appellate Court.

93 206.4-3. Amending the Position Description or Eliminating the Position Pending an Employee
94 Appeal. Notwithstanding the requirement to hold the terminated employee's position pending an
95 employee's appeal of their termination as provided in section 206.4-2, a supervisor or business unit
96 may amend the affected position description or eliminate the affected position while an
97 employment appeal is pending where such actions are required to meet the Nation's business and
98 employment needs. The determination to amend an affected position description or eliminate an
99 affected position shall be approved by the General Manager and the Human Resources Department
100 Executive Director.

101 **206.5. Back Pay Calculation**

102 206.4-1. Back Pay Limitations. Back pay shall only include the items identified calculations shall
103 be made using the employee's last wage in the position which they were terminated from. Back
104 pay, in all circumstances, shall be limited to the calculation set forth in this Section as they relate
105 to the employee-section. Back pay shall include and be subject to the following as it is related to
106 the employee:

107
108 (a) Vacation ~~and~~ Personal Time Accrual. Employees shall receive prorated credit for
109 vacation ~~and~~ personal time which would have accrued during the back pay period.

110 (1) Reinstated employees shall be credited for vacation ~~and~~ personal time. -If the
111 crediting of vacation ~~and~~ personal time would result in the employee exceeding
112 the accrual cap pursuant to the Nation's laws, rules and policies, then any amount
113 over that cap shall be provided as a cash payout. Non-reinstated employees shall
114 be paid out vacation ~~and~~ personal time in lieu of crediting personal ~~and~~ vacation
115 time.

116 (b) Shift Differential. Shift differential shall be included in the back pay amount to the
117 extent it is a part of the employee's regularly scheduled hours.

118 (c) Tips. If the employee received pooled tips at the time of involuntary separation, tips
119 shall be included in the total back pay amount at the same tip rate that other employees in
120 the same position and on the same shift received on the same dates.

121 (1) If the employee received individual tips at the time of involuntary separation,
122 the employee shall be ineligible for tips during the back pay period.

123 (d) Holiday Pay. Holiday pay shall be included in the back pay amount to the extent the
124 employee would have received such pay if the employee had not been involuntarily
125 separated.

126 (e) Merit Increases. The hourly rate used to calculate back pay shall be increased
127 according to the merit increase system ~~or~~ standard used by the employee's supervisor
128 during the back pay period and ~~will~~shall include any increases from Oneida Business

129 Committee or General Tribal Council directives.

130 (1) The effective date of the employee's merit increase shall be the same as the
131 effective date for other employees in the same department. ~~Retroactive increases~~
132 shall be calculated back to the retroactive date used for other employees in the same
133 department.

134 (2) The most recent performance review issued to the employee prior to being
135 involuntarily separated shall be used to determine the level of merit increase.
136 However, if the employee appealed the performance review to the Human Resource
137 Department Manager prior to involuntary separation, a method under the Nation's
138 laws, rules and policies shall be used to determine the merit increase.

139 (f) *Bonuses and Incentives.* All bonus and incentive payments for which the employee
140 would have been eligible during the back pay period shall be included in the total back pay
141 amount, except for non-monetary gifts distributed by the Nation to all employees (e.g.
142 winter gift) or other non-monetary benefits, such as clothing allowance.

143 (g) *Employment Benefits.* Employee benefits shall be subject to the provisions in this
144 section.

145 (1) *Insurance Benefits.* Coverage by the Nation for health insurance, dental
146 insurance, vision insurance, life insurance, long-term disability and short-term
147 disability coverage shall continue during an involuntary separation, except in the
148 event of a termination where the coverage ~~will~~shall discontinue. ~~The Nation shall~~
149 deduct the employee's share of premiums paid from any back pay award.

150 (A) If the employee's circumstances have changed during the back pay period
151 and such circumstances affect the employee's insurance needs, the employee
152 shall notify the Nation of such changes at the time of reinstatement.

153 (B) An employee who is reinstated shall sign a waiver from Purchased
154 Referred Care authorizing a review of the back pay period to determine if
155 Purchased Referred Care services were rendered. ~~If Purchased Referred Care~~
156 determines services were rendered during the back pay period, an employee
157 shall timely submit insurance information to Purchased Referred Care in
158 order for Purchased Referred Care to retroactively bill the insurance provider
159 to recoup funds for those services rendered during the back pay period.

160 (C) If the employee refuses to sign an authorization waiver from Purchased
161 Referred Care, the employee ~~will~~shall not be eligible to receive any back pay
162 award.

163 (2) *Flexible Benefit Plan Contributions.* If a terminated employee was contributing
164 to the Nation's flexible benefit plan at the time of termination, the status of the
165 employee's flex benefit plan shall be subject to the provisions of the Internal
166 Revenue Code.

167 (3) *Retirement Benefit Contributions.* In the event the employee was participating
168 in the Nation's retirement plan at the time of involuntary separation, the employee
169 shall be responsible for contacting the retirement plan administrator and
170 reactivating contributions.

171 (A) The employee may choose whether to have the employee's contribution
172 to the retirement plan that would have been made during the back pay period
173 deducted from the total back pay amount and deposited into the employee's
174 retirement account.

175 (B) If the employee was eligible for employer matching contributions at the

176 time of involuntary separation and the employee chooses to make a
177 contribution through back pay, the Nation shall contribute the employer
178 match into the employee's retirement account.

179 (C) If the employee was not participating in the Nation's retirement plan or
180 chooses not to make contributions through the back pay process, then the
181 Nation shall not make employer match contributions into the employee's
182 retirement account.

183 (h) *Income Received During the Back Pay Period.*

184 (1) *Unemployment Benefits.* Depending upon the unemployment compensation
185 financing option elected by the Nation, either:

186 (A) Any unemployment compensation paid by the Nation to the State of
187 Wisconsin for an involuntarily separated employee shall be deducted from
188 the employee's back pay award; or

189 (B) The employee is directly responsible for the reimbursement to the State
190 of Wisconsin. The Nation shall send a copy of the completed and signed
191 settlement agreement to the appropriate state department. The state then may
192 determine the amount, if any, of unemployment compensation benefits
193 received during the back pay period should be repaid.

194 (2) *Income Received Through Employment.* Except as provided in section 4206.5-
195 1(h)(2)(B), income earned by an employee during the back pay period shall be
196 deducted from the total back pay amount.

197 (A) The employee shall provide information to verify the amount of or lack
198 of earned income and sign an affidavit attesting to the amount of or lack of
199 earned income.

200 (B) If the employee worked an additional job prior to being involuntarily
201 separated and continued working in the same capacity, the income earned
202 from that employment shall not be deducted from the total back pay amount
203 to the extent that the income is consistent with pre-involuntary separation
204 earnings. Where the employee worked the additional job, the employee shall
205 provide information from the employer to verify the income earned before
206 and during the back pay period.

207 206.45-2. *Payments Not Allowed.* The Nation shall not include the following in any back pay
208 amount:

209 (a) Punitive damages;

210 (b) Consequential damages;

211 (c) Attorney's or advocate's fees;

212 (d) Time when the employee would not have been eligible to work; An employee is not
213 eligible to work in circumstances including, but not limited to, the following:

214 (1) When an employee is on layoff or furlough status at the time of termination;

215 (2) When a position is eliminated and/or inactive as part of the Nation's response
216 to a financial force majeure event including, but not limited to, responses to war,
217 global health pandemics, and/or any substantial loss of revenue or funding; and

218 (3) When an employee would otherwise not be eligible to work in the position from
219 which they were terminated in accordance with the position description based on
220 applicable grant requirements (where positions are grant funded), applicable,
221 Oneida laws, including, but not limited to, the Vehicle Driver Certification and
222 Fleet Management law and/or a criminal conviction;

(e) Monies normally paid for additional duties while working where an alternate employee assumed that function while the employee was involuntarily separated, unless the additional duties are a part of such involuntarily separated employee's regular schedule.

206.45-3. *Back Pay Period.* Calculation of back pay begins on the day the employee is involuntarily separated and ends on the day the employee is reinstated.

(a) If the employee is reinstated but refuses to return to work, the back pay period ends on the date reinstatement would have taken effect, but was refused by the employee.

(b) Back pay shall be calculated by taking the employee's average hours worked during the fifty-two (52) week period immediately preceding the date of the involuntary separation and divide that amount by the number of weeks worked.

(1) If the employment prior to the involuntary separation was less than fifty-two (52) weeks, the back pay shall be calculated by taking the employee's average hours worked and divide that amount by the number of weeks worked.

(2) If the involuntary separation period involves a fractional week, the indemnity shall be paid for each day of a fractional week at the rate of the average number of hours worked per day immediately prior to the involuntary separation. For the purposes of this section, immediately prior means the twelve (12) full work weeks immediately preceding the involuntary separation. Provided that, under extenuating circumstances related to business needs of the Nation wherein the Oneida Law Office determines that considering hours worked per day immediately prior would be unfair, an alternative reasonable timeframe may be used.

206.56. Back Pay Process

206.56-1. The Oneida Law Office shall develop necessary forms and procedures for the purpose of implementing this law.

206.56-2. Internal departments shall cooperate as necessary with the Oneida Law Office in providing information needed to assemble and prepare the back pay agreement.

206.56-3. A reasonable effort shall be made to complete the back pay agreement within thirty (30) calendar days, starting the day after the party to the grievance action provides to the Oneida Law Office a judgment ordering back pay or the results of an investigation or test showing the employee is cleared of any wrongdoing.

206.56-4. An employee not receiving back pay in accordance with the back pay agreement may seek enforcement by the Judiciary.

End.

Adopted - BC-5-24-06-PP

Amended - BC-06-23-10-F

Amended - BC-08-13-14-C

Amended - BC-10-26-16-A

Amended - BC- - - -

Title 2. Employment – Chapter 206
Tashakotikáyahke? kayanl/hsia?
back pay law
BACK PAY AND REINSTATEMENT

206.1. Purpose and Policy	206.5. Back Pay Calculation
206.2. Adoption, Amendment, Appeal	206.6. Back Pay Process
206.3. Definitions	
206.4. Reinstatement	

1
2 **206.1. Purpose and Policy**
3 206.1-1. *Purpose.* The purpose of this law is to set forth standards used in the reinstatement of a
4 wrongfully terminated employee and the calculation of back pay for all employees of the Nation
5 in accordance with the Nation’s law.
6 206.1-2. *Policy.* It is the policy of the Nation to have consistent and standard procedures for the
7 management of employee reinstatement and back pay.
8
9 **206.2. Adoption, Amendment, Appeal**
10 206.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-24-06-PP
11 and amended by resolutions BC-06-23-10-F, BC-08-13-14-C, BC-10-26-16-A, and BC-__-__-__-
12 __.
13 206.2-2. This law may be amended or repealed by the Oneida Business Committee or the Oneida
14 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
15 206.2-3. Should a provision of this law or the application thereof to any person or circumstances
16 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
17 to have legal force without the invalid portions.
18 206.2-4. In the event of a conflict between a provision of this law and a provision of another law,
19 the provisions of this law shall control.
20 206.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
21
22 **206.3. Definitions**
23 206.3-1. This section shall govern the definitions of words and phrases used within this law. All
24 words not defined herein shall be used in their ordinary and everyday sense.
25 (a) “Appellate Court” means the branch of the Nation’s Judiciary delegated the authority
26 of final appeals within the Nation’s Judiciary, as authorized by Oneida General Tribal
27 Council resolution GTC-03-19-17-A in accordance with Article V of the Constitution and
28 Bylaws of the Oneida Nation.
29 (b) “Advocate” means a non-attorney person as provided by law and other person who is
30 admitted to practice law and is presented to the court as the representative or advisor to a
31 party.
32 (c) “Back pay” means money damages owed to the employee for a salary or wage to
33 compensate the employee as determined by the formulas set forth within this law.
34 (d) “Consequential damages” means damages that are not a direct and immediately result
35 of an act, but a consequence of the initial act, including but not limited to penalties on early
36 withdrawal of retirement account.
37 (e) “Earnings” includes vacation or personal time, shift differential, holiday pay, merit

38 increases, bonuses and incentives, employment benefits and income received during the
39 back pay period.

40 (f) "Employee" means any individual who is employed by the Nation and is subject to the
41 direction and control of the Nation with respect to the material details of the work
42 performed, or who has the status of an employee under the usual common law rules
43 applicable to determining the employer-employee relationship. "Employee" includes, but
44 is not limited to, an individual employed by any program or enterprise of the Nation but
45 does not include elected or appointed officials, or individuals employed by a Tribally
46 Chartered Corporation. For purposes of this law, individuals employed under an
47 employment contract as a limited term employee are employees of the Nation, not
48 consultants.

49 (g) "Involuntarily separated" means an employee removed from employment through
50 whatever means, other than a layoff, by the employer. This shall include, but is not limited
51 to investigative leave, suspension or termination.

52 (h) "Judiciary" means Oneida Nation Judiciary, which is the judicial system that was
53 established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later
54 authorized to administer the judicial authorities and responsibilities of the Nation by
55 Oneida General Tribal Council resolution GTC-03-19-17-A in accordance with Article V
56 of the Constitution and Bylaws of the Oneida Nation.

57 (i) "Nation" means the Oneida Nation.

58 (j) "Punitive damages" means monetary compensation awarded to an injured party that
59 goes beyond that which is necessary to compensate the individual for losses and that is
60 intended to punish the other party.

61 (k) "Reviewing party" means the area manager or the Trial Court.

62 (l) "Trial Court" means the Trial Court of the Oneida Nation Judiciary authorized to
63 administer the judicial authorities and responsibilities of the Nation by Oneida General
64 Tribal Council resolution GTC-03-19-17-A in accordance with Article V of the
65 Constitution and Bylaws of the Oneida Nation.

66

67 **206.4. Reinstatement**

68 206.4-1. *Reinstatement to the Position the Employee was Terminated From.* Should an employee's
69 appeal of a termination result in the termination being overturned, the reviewing party shall order
70 the employee be reinstated to the position from which the employee was wrongfully terminated.

71 (a) In accordance with section 206.4-3, in the event the position the employee was
72 terminated from has been eliminated or the employee is no longer eligible for the position
73 the employee was terminated from based on amendments to the position description, the
74 reviewing party shall order reinstatement to a position within the same division of the
75 organization the employee was terminated from that is comparable in wage to the position
76 the employee was terminated, to the extent it is available at the time of the reviewing party's
77 decision.

78 (b) Any order requiring the employee to be reinstated to a position comparable to the
79 position the employee was terminated from shall note the requirement that the Human
80 Resources Department shall make the determination that the employee is eligible for a
81 comparable position.

82 (c) If no comparable positions are available within the same division of the organization
83 the employee was terminated from that are comparable in wage to the position the
84 employee was terminated from, or if the employee is not eligible for the comparable

85 position, the order to reinstate shall be deemed satisfied and the back pay end date shall be
86 the date of the reviewing party's decision.

87 206.4-2. *Requirement to Hold the Position Pending Litigation.* When an employee is terminated
88 and thereafter appeals said termination, the disciplining supervisor may only fill the employee's
89 former position with an interim employee until the appeal has fully run its course, which includes
90 any appeal timelines to the area manager, the Trial Court, or the Appellate Court.

91 206.4-3. *Amending the Position Description or Eliminating the Position Pending an Employee*
92 *Appeal.* Notwithstanding the requirement to hold the terminated employee's position pending an
93 employee's appeal of their termination as provided in section 206.4-2, a supervisor or business unit
94 may amend the affected position description or eliminate the affected position while an
95 employment appeal is pending where such actions are required to meet the Nation's business and
96 employment needs. The determination to amend an affected position description or eliminate an
97 affected position shall be approved by the General Manager and the Human Resources Department
98 Executive Director.

99

100 **206.5. Back Pay Calculation**

101 206.5-1. *Back Pay Limitations.* Back pay calculations shall be made using the employee's last
102 wage in the position which they were terminated from. Back pay, in all circumstances, shall be
103 limited to the calculation set forth in this section. Back pay shall include and be subject to the
104 following as it is related to the employee:

105 (a) *Vacation and Personal Time Accrual.* Employees shall receive prorated credit for
106 vacation and personal time which would have accrued during the back pay period.

107 (1) Reinstated employees shall be credited for vacation and personal time. If the
108 crediting of vacation and personal time would result in the employee exceeding the
109 accrual cap pursuant to the Nation's laws, rules and policies, then any amount over
110 that cap shall be provided as a cash payout. Non-reinstated employees shall be paid
111 out vacation and personal time in lieu of crediting personal and vacation time.

112 (b) *Shift Differential.* Shift differential shall be included in the back pay amount to the
113 extent it is a part of the employee's regularly scheduled hours.

114 (c) *Tips.* If the employee received pooled tips at the time of involuntary separation, tips
115 shall be included in the total back pay amount at the same tip rate that other employees in
116 the same position and on the same shift received on the same dates.

117 (1) If the employee received individual tips at the time of involuntary separation,
118 the employee shall be ineligible for tips during the back pay period.

119 (d) *Holiday Pay.* Holiday pay shall be included in the back pay amount to the extent the
120 employee would have received such pay if the employee had not been involuntarily
121 separated.

122 (e) *Merit Increases.* The hourly rate used to calculate back pay shall be increased
123 according to the merit increase system or standard used by the employee's supervisor
124 during the back pay period and shall include any increases from Oneida Business
125 Committee or General Tribal Council directives.

126 (1) The effective date of the employee's merit increase shall be the same as the
127 effective date for other employees in the same department. Retroactive increases
128 shall be calculated back to the retroactive date used for other employees in the same
129 department.

130 (2) The most recent performance review issued to the employee prior to being
131 involuntarily separated shall be used to determine the level of merit increase.

132 However, if the employee appealed the performance review to the Human Resource
133 Department Manager prior to involuntary separation, a method under the Nation's
134 laws, rules and policies shall be used to determine the merit increase.

135 (f) *Bonuses and Incentives.* All bonus and incentive payments for which the employee
136 would have been eligible during the back pay period shall be included in the total back pay
137 amount, except for non-monetary gifts distributed by the Nation to all employees (e.g.
138 winter gift) or other non-monetary benefits, such as clothing allowance.

139 (g) *Employment Benefits.* Employee benefits shall be subject to the provisions in this
140 section.

141 (1) *Insurance Benefits.* Coverage by the Nation for health insurance, dental
142 insurance, vision insurance, life insurance, long-term disability and short-term
143 disability coverage shall continue during an involuntary separation, except in the
144 event of a termination where the coverage shall discontinue. The Nation shall
145 deduct the employee's share of premiums paid from any back pay award.

146 (A) If the employee's circumstances have changed during the back pay period
147 and such circumstances affect the employee's insurance needs, the employee
148 shall notify the Nation of such changes at the time of reinstatement.

149 (B) An employee who is reinstated shall sign a waiver from Purchased
150 Referred Care authorizing a review of the back pay period to determine if
151 Purchased Referred Care services were rendered. If Purchased Referred Care
152 determines services were rendered during the back pay period, an employee
153 shall timely submit insurance information to Purchased Referred Care in
154 order for Purchased Referred Care to retroactively bill the insurance provider
155 to recoup funds for those services rendered during the back pay period.

156 (C) If the employee refuses to sign an authorization waiver from Purchased
157 Referred Care, the employee shall not be eligible to receive any back pay
158 award.

159 (2) *Flexible Benefit Plan Contributions.* If a terminated employee was contributing
160 to the Nation's flexible benefit plan at the time of termination, the status of the
161 employee's flex benefit plan shall be subject to the provisions of the Internal
162 Revenue Code.

163 (3) *Retirement Benefit Contributions.* In the event the employee was participating
164 in the Nation's retirement plan at the time of involuntary separation, the employee
165 shall be responsible for contacting the retirement plan administrator and
166 reactivating contributions.

167 (A) The employee may choose whether to have the employee's contribution
168 to the retirement plan that would have been made during the back pay period
169 deducted from the total back pay amount and deposited into the employee's
170 retirement account.

171 (B) If the employee was eligible for employer matching contributions at the
172 time of involuntary separation and the employee chooses to make a
173 contribution through back pay, the Nation shall contribute the employer
174 match into the employee's retirement account.

175 (C) If the employee was not participating in the Nation's retirement plan or
176 chooses not to make contributions through the back pay process, then the
177 Nation shall not make employer match contributions into the employee's
178 retirement account.

179 (h) *Income Received During the Back Pay Period.*

180 (1) *Unemployment Benefits.* Depending upon the unemployment compensation
181 financing option elected by the Nation, either:

182 (A) Any unemployment compensation paid by the Nation to the State of
183 Wisconsin for an involuntarily separated employee shall be deducted from
184 the employee's back pay award; or

185 (B) The employee is directly responsible for the reimbursement to the State
186 of Wisconsin. The Nation shall send a copy of the completed and signed
187 settlement agreement to the appropriate state department. The state then may
188 determine the amount, if any, of unemployment compensation benefits
189 received during the back pay period should be repaid.

190 (2) *Income Received Through Employment.* Except as provided in section 206.5-
191 1(h)(2)(B), income earned by an employee during the back pay period shall be
192 deducted from the total back pay amount.

193 (A) The employee shall provide information to verify the amount of or lack
194 of earned income and sign an affidavit attesting to the amount of or lack of
195 earned income.

196 (B) If the employee worked an additional job prior to being involuntarily
197 separated and continued working in the same capacity, the income earned
198 from that employment shall not be deducted from the total back pay amount
199 to the extent that the income is consistent with pre-involuntary separation
200 earnings. Where the employee worked the additional job, the employee shall
201 provide information from the employer to verify the income earned before
202 and during the back pay period.

203 206.5-2. *Payments Not Allowed.* The Nation shall not include the following in any back pay
204 amount:

205 (a) Punitive damages;

206 (b) Consequential damages;

207 (c) Attorney's or advocate's fees;

208 (d) Time when the employee would not have been eligible to work. An employee is not
209 eligible to work in circumstances including, but not limited to, the following:

210 (1) When an employee is on layoff or furlough status at the time of termination;

211 (2) When a position is eliminated and/or inactive as part of the Nation's response
212 to a financial force majeure event including, but not limited to, responses to war,
213 global health pandemics, and/or any substantial loss of revenue or funding; and

214 (3) When an employee would otherwise not be eligible to work in the position from
215 which they were terminated in accordance with the position description based on
216 applicable grant requirements (where positions are grant funded), applicable,
217 Oneida laws, including, but not limited to, the Vehicle Driver Certification and
218 Fleet Management law and/or a criminal conviction;

219 (e) Monies normally paid for additional duties while working where an alternate employee
220 assumed that function while the employee was involuntarily separated, unless the
221 additional duties are a part of such involuntarily separated employee's regular schedule.

222 206.5-3. *Back Pay Period.* Calculation of back pay begins on the day the employee is
223 involuntarily separated and ends on the day the employee is reinstated.

224 (a) If the employee is reinstated but refuses to return to work, the back pay period ends on
225 the date reinstatement would have taken effect, but was refused by the employee.

226 (b) Back pay shall be calculated by taking the employee's average hours worked during
 227 the fifty-two (52) week period immediately preceding the date of the involuntary separation
 228 and divide that amount by the number of weeks worked.

229 (1) If the employment prior to the involuntary separation was less than fifty-two
 230 (52) weeks, the back pay shall be calculated by taking the employee's average hours
 231 worked and divide that amount by the number of weeks worked.

232 (2) If the involuntary separation period involves a fractional week, the indemnity
 233 shall be paid for each day of a fractional week at the rate of the average number
 234 of hours worked per day immediately prior to the involuntary separation. For the
 235 purposes of this section, immediately prior means the twelve (12) full work weeks
 236 immediately preceding the involuntary separation. Provided that, under extenuating
 237 circumstances related to business needs of the Nation wherein the Oneida Law
 238 Office determines that considering hours worked per day immediately prior would
 239 be unfair, an alternative reasonable timeframe may be used.

241 **206.6. Back Pay Process**

242 206.6-1. The Oneida Law Office shall develop necessary forms and procedures for the purpose of
 243 implementing this law.

244 206.6-2. Internal departments shall cooperate as necessary with the Oneida Law Office in
 245 providing information needed to assemble and prepare the back pay agreement.

246 206.6-3. A reasonable effort shall be made to complete the back pay agreement within thirty (30)
 247 calendar days, starting the day after the party to the grievance action provides to the Oneida Law
 248 Office a judgment ordering back pay or the results of an investigation or test showing the employee
 249 is cleared of any wrongdoing.

250 206.6-4. An employee not receiving back pay in accordance with the back pay agreement may
 251 seek enforcement by the Judiciary.

252
 253 *End.*

255 Adopted - BC-5-24-06-PP

256 Amended - BC-06-23-10-F

257 Amended - BC-08-13-14-C

258 Amended - BC-10-26-16-A

259 Amended - BC- _ - _ - _



Legislative Operating Committee
October 5, 2022

Emergency Management Law Amendments

Submission Date: 7/6/22	Public Meeting: N/A
LOC Sponsor: Marie Summers	Emergency Enacted: 9/14/22

Summary: *During the June 24, 2022, Storm Emergency Debrief session between the Oneida Business Committee and the Emergency Management Director it was identified that amendments would be needed to the Emergency Management law to address the composition of the Oneida Emergency Planning Committee. Some of the positions identified in the ONEPC Bylaws are direct reports to the Oneida Business Committee or General Manager, or are employees of the Nation’s Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and Communications. Currently, section 105.15-3 of the Boards, Committees, and Commissions law provides that direct reports to the Oneida Business Committee or General Manager, or are employees of the Nation’s Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and Communications are ineligible to serve on an appointed or elected boards, committee, or commission of the Nation. An exemption to this prohibition needs to be included for the Oneida Nation Emergency Planning Committee since it is essential that direct reports and employees of those designated areas participate on this committee. The Oneida Business Committee adopted emergency amendments to the Emergency Management law on September 14, 2022, through the adoption of resolution BC-09-14-22-B. These emergency amendments will expire on March 14, 2022.*

7/6/22 LOC: Motion by Daniel Guzman King to add the Emergency Management law emergency amendments to the Active Files List with Marie Summers as the sponsor; seconded by Marie Summers. Motion carried unanimously.

7/18/22: *Work Meeting.* Present: David P. Jordan, Clorissa N. Santiago, Lisa Summers, Brooke Doxtator, Mark Powless, Kaylynn Gresham. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss a plan for addressing amendments to the Emergency Management law and the Oneida Nation Emergency Planning Committee Bylaws.

8/2/22: *Work Meeting.* Present: David P. Jordan, Clorissa N. Santiago, Lisa Summers, Brooke Doxtator, Mark Powless, Kaylynn Gresham. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss policy issues that need to be addressed in the amendments to the Emergency Management law and the Oneida Nation Emergency Planning Committee bylaws amendments.

8/25/22: *Work Meeting.* Present: David P. Jordan, Clorissa N. Santiago, Lisa Summers, Brooke Doxtator, Mark Powless, Kaylynn Gresham, Carolyn Salutz, Grace Elliot. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss the draft of proposed amendments to the Emergency Management law and accompanying resolution.

8/25/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Carolyn Salutz, Grace Elliot. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss the draft of proposed amendments to the Emergency Management law.

8/30/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King, Kirby Metoxen, Clorissa N. Santiago, Rhiannon Metoxen, Kristal Hill, Grace Elliot, Kaylynn Gresham. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the draft of proposed amendments to the Emergency Management law.

9/7/22 LOC: Motion by Kirby Metoxen to approve the Emergency Management law emergency amendments adoption packet and forward to the Oneida Business Committee for consideration; seconded by Marie Summers. Motion carried unanimously.

9/14/22 OBC: Motion by Lisa Liggins to adopt resolution entitled 09-14-22-B Emergency Amendments to the Emergency Management Law, seconded by Marie Cornelius. Motion carried.

Next Steps:

- Approve the draft of the proposed amendments to the Emergency Management law and direct that a legislative analysis be completed.

Title 3. Health and Public Safety – Chapter 302
Yotlihokté Olihwá:ke
Matters that are concerning immediate attention
EMERGENCY MANAGEMENT

- | | |
|---|--|
| 302.1. Purpose and Policy | 302.6. Entity Cooperation |
| 302.2. Adoption, Amendment, Conflicts | 302.7. Public Health Emergencies |
| 302.3. Definitions | 302.8. Proclamation of an Emergency |
| 302.4. Emergency Management Department | 302.9. Emergency Core Decision Making Team |
| 302.5. Oneida Nation Emergency Planning Committee <u>Management</u>
<u>Operations Team</u> | 302.10. Enforcement and Penalties |

302.1. Purpose and Policy

302.1-1. *Purpose.* The purpose of this law is to:

- (a) provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster;
- (b) provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations;
- (c) establish the use of the National Incident Management System (NIMS); and
- (d) designate authority and responsibilities for public health preparedness.

302.1-2. *Policy.* It is the policy of the Nation to provide:

- (a) a description of the emergency management network of the Nation;
- (b) authorization for specialized activities to mitigate hazardous conditions and for the preparation of the Nation’s emergency response plans, as well as to address concerns related to isolation and/or quarantine orders, emergency care, and mutual aid; and
- (c) for all expenditures made in connection with such emergency management activities to be deemed specifically for the protection and benefit of the inhabitants, property, and environment of the Reservation.

302.2. Adoption, Amendment, Repeal

302.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-15-98-A ~~and~~₂ amended by resolution BC-12-20-06-G, BC-05-13-09-F, ~~and~~ BC-03-10-21-A~~2~~, ~~and~~ BC-~~2~~ -~~2~~ -~~2~~.

302.2-2. This law may be amended or repealed by the Oneida Business Committee ~~and~~/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

302.2-3. 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.

302.2-4. 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.

302.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

302.3. Definitions

302.3-1. 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) “Biological agent” means an infectious disease or toxin that has the ability to adversely affect human health in a variety of ways, from mild allergic reactions to serious medical

- 39 conditions, and including death.
- 40 (b) “Communicable disease” means any disease transmitted from one person or animal to
- 41 another directly by contact with excreta or other discharges from the body, or indirectly via
- 42 substances or inanimate objects that may cause a public health emergency.
- 43 (c) “Community/Public Health Officer” means an agent of the Comprehensive Health
- 44 Division, or his or her designee(s), who is responsible for taking the appropriate actions in
- 45 order to prevent a public health emergency from occurring on the Reservation.
- 46 (d) “Comprehensive Health Division” means the Oneida Comprehensive Health Division,
- 47 which is authorized to issue compulsory vaccinations, require isolation, and quarantine
- 48 individuals in order to protect the public health.
- 49 (e) “Director” means the Director of the Nation’s Emergency Management Department.
- 50 (f) “Emergency” means a situation that poses an immediate risk to health, life, safety,
- 51 property, or environment which requires urgent intervention to prevent further illness,
- 52 injury, death, or other worsening of the situation.
- 53 (g) “Emergency Management Network” means the entities, volunteers, consultants,
- 54 contractors, outside agencies, and any other resources the Nation may use to facilitate inter-
- 55 agency collaboration, identify and share resources, and better prepare for local incidents
- 56 and large-scale disasters.
- 57 (h) “Emergency Response Plan” means the plan established to coordinate mitigation,
- 58 preparedness, response, and recovery activities for all emergency or disaster situations
- 59 within the Reservation.
- 60 (i) “Entity” means any agency, board, committee, commission, or department of the
- 61 Nation.
- 62 (j) “Fair Market Value” means the everyday cost of a product in an ordinary market,
- 63 absent of a disaster.
- 64 (k) “Isolation” means the separation of persons or animals presumably or actually infected
- 65 with a communicable disease, or that are disease carriers, for the usual period of
- 66 communicability of that disease in such places and under such conditions as will prevent
- 67 the direct or indirect transmission of an infectious agent to susceptible people or to those
- 68 who may spread the agent to others.
- 69 (l) “Nation” means the Oneida Nation.
- 70 (m) “National Incident Management System” or “NIMS” means the system mandated by
- 71 Homeland Security Presidential Directive 5 (HSPD 5) issued on February 28, 2003, that
- 72 provides a consistent nationwide approach for federal, state, local, and tribal governments
- 73 to work effectively and efficiently together to prepare for, prevent, respond to, and recover
- 74 from domestic incidents, regardless of cause, size, or complexity.
- 75 ~~(n) “Oneida Nation Emergency Planning Committee” means the committee that assists the~~
- 76 ~~Director in the implementation of this law.~~
- 77 ~~(n)~~ “Proclaim” means to announce officially and publicly.
- 78 ~~(p)~~ “Public Health Emergency” means the occurrence or imminent threat of an illness
- 79 or health condition which:
- 80 (1) is a quarantinable disease, or is believed to be caused by bioterrorism or a
- 81 biological agent; and
- 82 (2) poses a high probability of any of the following:
- 83 (A) a large number of deaths or serious or long-term disability among

84 humans; or
85 (B) widespread exposure to a biological, chemical, or radiological agent
86 that creates a significant risk of substantial future harm to a large number of
87 people.

88 (ep) “Quarantine” means the limitation of freedom of movement of persons or animals
89 that have been exposed to a communicable disease or chemical, biological, or radiological
90 agent, for a period of time equal to the longest usual incubation period of the disease or
91 until there is no risk of spreading the chemical, biological, or radiological agent. The
92 limitation of movement shall be in such manner as to prevent the spread of a communicable
93 disease or chemical, biological, or radiological agent.

94 (fq) “Reservation” means all land within the exterior boundaries of the Reservation of the
95 Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and
96 any lands added thereto pursuant to federal law.

97 (sr) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the
98 judicial system that was established by Oneida General Tribal Council resolution GTC-01-
99 07-13-B, and then later authorized to administer the judicial authorities and responsibilities
100 of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

101 (ts) “Vital resources” means food, water, equipment, sand, wood, or other materials
102 obtained for the protection of life, property, and/or the environment during a proclaimed
103 emergency.
104

105 **302.4. Emergency Management Department**

106 302.4-1. The Emergency Management Department shall be responsible for planning and
107 coordinating the response to a disaster or emergency that occurs within the boundaries of the
108 Reservation.

109 302.4-2. *Authority of the Director.* The Director shall be responsible for coordinating and
110 planning the operational response to an emergency and is hereby empowered to:

- 111 (a) organize and coordinate efforts of the emergency management network of the Nation;
- 112 (b) implement the Emergency Response Plan as adopted by the Oneida Business
113 Committee;
- 114 (c) facilitate coordination and cooperation between entities and resolve questions that may
115 arise among them;
- 116 (d) incorporate the HSPD 5 which requires all federal, state, local, and tribal governments
117 to administer the best practices contained in the NIMS;
- 118 (e) coordinate the development and implementation of the NIMS within the Nation;
- 119 (f) ensure that the following occurs:
 - 120 (1) an Emergency Response Plan is developed and maintained, and includes
121 training provisions for applicable personnel;
 - 122 (2) emergency resources, equipment, and communications systems are developed,
123 procured, supplied, inventoried, and accounted for;
- 124 (g) establish the line of authority as recorded in the Emergency Response Plan as adopted
125 by the Oneida Business Committee; and
- 126 (h) enter into mutual aid and service agreements with tribal, local, state, and federal
127 governments, subject to Oneida Business Committee approval.

128 302.4-3. *Action when an Emergency is Proclaimed.* In addition, in the event of a proclamation of
129 an emergency on the Reservation, the Director is hereby empowered:

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(a) to obtain vital resources and to bind the Nation for the fair market value thereof, upon approval of the Emergency Management purchasing agent, who is identified in the Emergency Response Plan. If a person or business refuses to provide the resource(s) required, the Director may commandeer resources for public use and bind the Nation for the fair market value thereof. In the event the purchasing agent is unavailable, the chain of command, as approved by the Oneida Business Committee, shall be followed.

(b) to require emergency activities of as many members of the Nation and/or employees as deemed necessary.

(c) to execute all of the ordinary powers of the Director, all of the special powers conferred by this law or by resolution adopted pursuant thereto, all powers conferred on the Director by any agreement approved by the Oneida Business Committee, and to exercise complete emergency authority over the Reservation.

(d) to coordinate with tribal, federal, state, and local authorities.

302.5. ~~Oneida Nation Emergency Planning Committee~~ Management Operations Team

302.5-1. ~~The Oneida Nation~~ Establishment and Composition. There is hereby established an Emergency ~~Planning Committee~~ Management Operations Team which shall consist of representatives from entities ~~and a community representative of the Nation~~ as identified ~~in the Oneida Nation Emergency Planning Committee bylaws as approved by the Oneida Business Committee.~~ Director.

302.5-2. Purpose. ~~The Oneida Nation~~ Emergency ~~Planning Committee~~ Management Operations Team shall meet as necessary ~~to, as determined by the Director, for the following purposes:~~

(a) assist the Director in drafting and maintaining the Emergency Response Plan; and

(b) assist the Director in ~~302.5-3. At the request of the Director, the Oneida Nation Emergency Planning Committee shall provide assistance to the Director in the implementation of the provisions of this law or any plan issued thereunder.~~

302.5-3. Expectations. Members of the Emergency Management Operations Team shall attend meetings, or send a designee in their absence, and comply with any training requirements set forth by the Director.

302.6. Entity Cooperation

302.6-1. All entities shall comply with reasonable requests from the Director relating to emergency planning, emergency operations, and federal mandate compliance.

302.6-2. The Nation may implement more strict policies or requirements than those issued by the Community/Public Health Officer.

302.7. Public Health Emergencies

302.7-1. In order to prevent a public health emergency, the Director and the Community/Public Health Officer shall take action to limit the spread of any communicable disease, in accordance with this law.

302.7-2. *Investigation of Communicable Disease.* If the Community/Public Health Officer suspects or is informed of the existence of any communicable disease, the Community/Public Health Officer shall investigate and make or cause examinations to be made, as are deemed necessary.

302.7-3. *Quarantinable Diseases.* The Community/Public Health Officer shall provide a list of quarantinable diseases specified in a resolution to be adopted by the Oneida Business Committee.

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176 302.7-4. *Authority of the Community/Public Health Officer.* The Community/Public Health
177 Officer shall act as necessary to protect the public including, but not limited to, the following
178 actions:

- 179 (a) Request the Director to take the necessary steps to have a public health emergency
180 proclaimed;
181 (b) Quarantine, isolate, or take other communicable disease control measures upon an
182 individual(s); and
183 (c) Issue any mandate, order, and/or require restrictions which may limit the spread of any
184 communicable disease to any individual, business, or the general population of the
185 Reservation.

186 302.7-5. *Quarantine and Isolation.* The Community/Public Health Officer shall immediately
187 quarantine, isolate, and/or take other communicable disease control measures upon an individual
188 if the Community/Public Health Officer receives a diagnostic report from a physician or a written
189 or verbal notification from an individual or his or her parent or caretaker that gives the
190 Community/Public Health Officer a reasonable belief that the individual has a communicable
191 disease that is likely to cause a public health emergency.

- 192 (a) If an individual is infected with a communicable disease and the Community/Public
193 Health Officer determines it is necessary to limit contact with the individual, all persons
194 may be forbidden from being in direct contact with the infected individual, except for those
195 persons having a special written permit from the Community/Public Health Officer.
196 (b) Any individual, including an authorized individual, who enters an isolation or
197 quarantine premises may be subject to isolation or quarantine under this law.
198 (c) When the Community/Public Health Officer deems it necessary that an individual be
199 quarantined, isolated, or otherwise restricted in a separate place, the Community/Public
200 Health Officer shall have that individual removed to such a designated place, if it can be
201 done without danger to the individual's health.

202 302.7-6. *Action when a Public Health Emergency is Proclaimed.* In addition, when a public health
203 emergency is proclaimed, the Community/Public Health Officer may do all of the following, as
204 necessary:

- 205 (a) organize the vaccination of individuals;
206 (1) The following types of individuals shall not be subject to a vaccination:
207 (A) an individual who the vaccination is reasonably likely to lead to serious
208 harm to the individual; and
209 (B) an individual, for reason of religion or conscience, refuses to obtain the
210 vaccination.
211 (b) isolate or quarantine individuals, including those who are unable or unwilling to receive
212 a vaccination; and
213 (c) prevent any individual, except for those individuals authorized by the
214 Community/Public Health Officer, from entering an isolation or quarantine premises.

215 302.7-7. The Oneida Police Department shall take enforcement action when necessary and work
216 with the Community/Public Health Officer to execute the Community/Public Health Officer's
217 orders and properly guard any place if quarantine, isolation, or other restrictions on communicable
218 disease are violated or intent to violate becomes apparent.

219 302.7-8. Expenses for necessary medical care, food, and other articles needed for an infected
220 individual shall be charged against the individual or whoever is liable for the individual's care and
221 support.

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223 **302.8. Proclamation of an Emergency**

224 302.8-1. *Proclamation of an Emergency.* The Oneida Business Committee shall be responsible
225 for proclaiming or ratifying the existence of an emergency and for requesting a gubernatorial or
226 presidential declaration.

227 (a) The Director may request that the Oneida Business Committee proclaim the existence
228 of an emergency. The Oneida Business Committee may proclaim the existence of an
229 emergency without a request from the Director, if warranted.

230 (b) In the event the Oneida Business Committee is unable to proclaim or ratify the
231 existence of an emergency, the Director may proclaim an emergency which shall be in
232 effect until such time the Oneida Business Committee can officially ratify this declaration.

233 302.8-2. No proclamation of an emergency by the Oneida Business Committee or the Director
234 may last for longer than sixty (60) days, unless the proclamation of emergency is extended by the
235 Oneida Business Committee.

236 302.8-3. *Management Network.* The emergency management network of the Reservation shall
237 be as specified in the Emergency Response Plan, as adopted by the Oneida Business Committee.

238 302.8-4. Emergency Briefings. Within forty-eight (48) hours of an emergency, the Director shall
239 prepare, or shall work in conjunction with the appropriate entity to prepare, an emergency briefing
240 to be presented to the Oneida Business Committee regarding the status of the emergency, actions
241 taken to address the emergency, and the activation of the Emergency Response Plan. The Oneida
242 Business Committee may direct the Director to provide additional emergency briefings.

243 ~~302.8-5. After Action Preliminary Emergency Assessment Report.~~ After an emergency has
244 subsided, the Director shall prepare, or shall work in conjunction with the appropriate entity to
245 prepare, ~~an after-action~~ a preliminary emergency assessment report to be presented to the Oneida
246 Business Committee, any interested entity, and the public. This report shall be presented to the
247 required parties no later than ~~sixty (60)~~ thirty (30) days after the emergency has subsided, unless an
248 extension is granted by the Oneida Business Committee.

249 302.8-6. After-Action Report. After an emergency has subsided, the Director shall prepare, or
250 shall work in conjunction with the appropriate entity to prepare, an after-action report to be
251 presented to the Oneida Business Committee, any interested entity, and the public. This report
252 shall be presented to the required parties no later than ninety (90) days after the emergency has
253 subsided, unless an extension is granted by the Oneida Business Committee.

254 ~~302.8-7. 302.8-5.~~ During a proclaimed emergency, the Conservation Department shall be
255 responsible for the care, disposal, and sheltering of all abandoned domestic animals and livestock.
256 The Conservation Department may delegate this responsibility to a contracted agency.

257

258 **302.9. Emergency Core Decision Making Team**

259 302.9-1. *Emergency Core Decision Making Team.* Upon the proclamation of an emergency under
260 this law, the Oneida Business Committee may establish an Emergency Core Decision Making
261 Team through the adoption of a motion. The motion shall identify the positions of the Nation which
262 shall make up the members of the Emergency Core Decision Making Team based on the type and
263 severity of emergency the Nation is experiencing.

264 302.9-2. *Delegation of Authority.* The Emergency Core Decision Making Team shall have
265 emergency authority to take the following actions:

266 (a) Notwithstanding any requirements of the Legislative Procedures Act, declare
267 exceptions to the Nation's laws during the emergency period which will be of immediate

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268 impact for the purposes of protecting the health, safety, and general welfare of the Nation's
 269 community, members, and employees; and
 270 (b) Notwithstanding any requirements in any policy, procedure, regulation, or standard
 271 operating procedures, declare exceptions to any policy, procedure, regulation, or standard
 272 operating procedure during the emergency period which will be of immediate impact for
 273 the purposes of protecting the health, safety, and general welfare of the Nation's
 274 community, members, and employees.

275 302.9-3. *Declarations.* All declarations made by the Emergency Core Decision Making Team
 276 shall:

- 277 (a) be written on the Nation's letterhead;
- 278 (b) provide the date the declaration was issued;
- 279 (c) contain a clear statement of the directives;
- 280 (d) provide the date the directive shall go into effect;
- 281 (e) be signed by the Oneida Business Committee Chairperson, or Vice Chairperson in the
 282 Chairperson's absence; and
- 283 (f) be posted on the Nation's website.

284 302.9-4. *Duration of Authority for Exceptions Declared by the Emergency Core Decision Making*
 285 *Team.* Any declaration made under the authority granted in this section shall be effective upon
 286 the date declared by the Emergency Core Decision Making Team and shall be effective for the
 287 duration of any proclaimed emergency, or for a shorter time period if identified.

288 302.9-5. *Notification to the Oneida Business Committee.* Within twenty-four (24) hours of a
 289 declaration being made, the Emergency Core Decision Making Team shall provide notification of
 290 the declaration to the Oneida Business Committee.

291 302.9-6. The Oneida Business Committee may modify, extend, or repeal any declaration or
 292 emergency action taken by the Emergency Core Decision Making Team.

293

294 **302.10. Enforcement and Penalties**

295 302.10-1. It shall be a violation of this law for any person to not comply with or willfully obstruct,
 296 hinder, or delay the implementation or enforcement of the provisions of this law or any plan issued
 297 thereunder, whether or not an emergency has been proclaimed.

298 302.10-2. *Citations.* An Oneida Police Department officer may issue a citation to any person who
 299 violates a provision of this law.

300 (a) A citation for a violation of this law shall be processed in accordance with the procedure
 301 contained in the Nation's laws and policies governing citations.

302 (b) The Oneida Business Committee shall adopt through resolution a citation schedule
 303 which sets forth specific fine amounts for violations of this law.

304 (c) The Trial Court shall have jurisdiction over any action brought under this law.

305 302.10-3. *Disciplinary Action.* An employee of the Nation who violates this law during their work
 306 hours or who refuses to follow the Emergency Response Plan may be subject to disciplinary action
 307 in accordance with the Nation's laws and policies governing employment.

308 (a) An employee of the Nation who is disciplined under this law may appeal the
 309 disciplinary action in accordance with the Nation's laws and policies governing
 310 employment.

311

312 *End.*

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- 314 Adopted - BC-07-15-98-A
- 315 Amended - BC-12-20-06-G
- 316 Emergency Amended – BC-04-30-09-A (Influenza A (H1N1))
- 317 Amended - BC-05-13-09-F
- 318 Emergency Amended – BC-03-17-20-E (COVID-19)
- 319 Extension of Emergency – BC-08-26-20-A
- 320 Amended – BC-03-10-21-A
- 321 Emergency Amended – BC-09-14-22-B
- 322 Amended – BC- - - -

Title 3. Health and Public Safety – Chapter 302
Yotlihokté Olihwá:ke
Matters that are concerning immediate attention
EMERGENCY MANAGEMENT

302.1. Purpose and Policy
302.2. Adoption, Amendment, Conflicts
302.3. Definitions
302.4. Emergency Management Department
302.5. Emergency Management Operations Team

302.6. Entity Cooperation
302.7. Public Health Emergencies
302.8. Proclamation of an Emergency
302.9. Emergency Core Decision Making Team
302.10. Enforcement and Penalties

302.1. Purpose and Policy

302.1-1. *Purpose.* The purpose of this law is to:

- (a) provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster;
- (b) provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations;
- (c) establish the use of the National Incident Management System (NIMS); and
- (d) designate authority and responsibilities for public health preparedness.

302.1-2. *Policy.* It is the policy of the Nation to provide:

- (a) a description of the emergency management network of the Nation;
- (b) authorization for specialized activities to mitigate hazardous conditions and for the preparation of the Nation’s emergency response plans, as well as to address concerns related to isolation and/or quarantine orders, emergency care, and mutual aid; and
- (c) for all expenditures made in connection with such emergency management activities to be deemed specifically for the protection and benefit of the inhabitants, property, and environment of the Reservation.

302.2. Adoption, Amendment, Repeal

302.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-15-98-A, amended by resolution BC-12-20-06-G, BC-05-13-09-F, BC-03-10-21-A, and BC-__-__-__-__.

302.2-2. This law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

302.2-3. 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.

302.2-4. 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.

302.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

302.3. Definitions

302.3-1. 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) “Biological agent” means an infectious disease or toxin that has the ability to adversely affect human health in a variety of ways, from mild allergic reactions to serious medical conditions, and including death.

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- 39 (b) “Communicable disease” means any disease transmitted from one person or animal to
40 another directly by contact with excreta or other discharges from the body, or indirectly via
41 substances or inanimate objects that may cause a public health emergency.
- 42 (c) “Community/Public Health Officer” means an agent of the Comprehensive Health
43 Division, or his or her designee(s), who is responsible for taking the appropriate actions in
44 order to prevent a public health emergency from occurring on the Reservation.
- 45 (d) “Comprehensive Health Division” means the Oneida Comprehensive Health Division,
46 which is authorized to issue compulsory vaccinations, require isolation, and quarantine
47 individuals in order to protect the public health.
- 48 (e) “Director” means the Director of the Nation’s Emergency Management Department.
- 49 (f) “Emergency” means a situation that poses an immediate risk to health, life, safety,
50 property, or environment which requires urgent intervention to prevent further illness,
51 injury, death, or other worsening of the situation.
- 52 (g) “Emergency Management Network” means the entities, volunteers, consultants,
53 contractors, outside agencies, and any other resources the Nation may use to facilitate inter-
54 agency collaboration, identify and share resources, and better prepare for local incidents
55 and large-scale disasters.
- 56 (h) “Emergency Response Plan” means the plan established to coordinate mitigation,
57 preparedness, response, and recovery activities for all emergency or disaster situations
58 within the Reservation.
- 59 (i) “Entity” means any agency, board, committee, commission, or department of the
60 Nation.
- 61 (j) “Fair Market Value” means the everyday cost of a product in an ordinary market,
62 absent of a disaster.
- 63 (k) “Isolation” means the separation of persons or animals presumably or actually infected
64 with a communicable disease, or that are disease carriers, for the usual period of
65 communicability of that disease in such places and under such conditions as will prevent
66 the direct or indirect transmission of an infectious agent to susceptible people or to those
67 who may spread the agent to others.
- 68 (l) “Nation” means the Oneida Nation.
- 69 (m) “National Incident Management System” or “NIMS” means the system mandated by
70 Homeland Security Presidential Directive 5 (HSPD 5) issued on February 28, 2003, that
71 provides a consistent nationwide approach for federal, state, local, and tribal governments
72 to work effectively and efficiently together to prepare for, prevent, respond to, and recover
73 from domestic incidents, regardless of cause, size, or complexity.
- 74 (n) “Proclaim” means to announce officially and publicly.
- 75 (o) “Public Health Emergency” means the occurrence or imminent threat of an illness or
76 health condition which:
- 77 (1) is a quarantinable disease, or is believed to be caused by bioterrorism or a
78 biological agent; and
- 79 (2) poses a high probability of any of the following:
- 80 (A) a large number of deaths or serious or long-term disability among
81 humans; or
- 82 (B) widespread exposure to a biological, chemical, or radiological agent
83 that creates a significant risk of substantial future harm to a large number of

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- 84 people.
- 85 (p) “Quarantine” means the limitation of freedom of movement of persons or animals that
86 have been exposed to a communicable disease or chemical, biological, or radiological
87 agent, for a period of time equal to the longest usual incubation period of the disease or
88 until there is no risk of spreading the chemical, biological, or radiological agent. The
89 limitation of movement shall be in such manner as to prevent the spread of a communicable
90 disease or chemical, biological, or radiological agent.
- 91 (q) “Reservation” means all land within the exterior boundaries of the Reservation of the
92 Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and
93 any lands added thereto pursuant to federal law.
- 94 (r) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the
95 judicial system that was established by Oneida General Tribal Council resolution GTC-01-
96 07-13-B, and then later authorized to administer the judicial authorities and responsibilities
97 of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.
- 98 (s) “Vital resources” means food, water, equipment, sand, wood, or other materials
99 obtained for the protection of life, property, and/or the environment during a proclaimed
100 emergency.

101 **302.4. Emergency Management Department**

102 302.4-1. The Emergency Management Department shall be responsible for planning and
103 coordinating the response to a disaster or emergency that occurs within the boundaries of the
104 Reservation.

105 302.4-2. *Authority of the Director.* The Director shall be responsible for coordinating and
106 planning the operational response to an emergency and is hereby empowered to:

- 107 (a) organize and coordinate efforts of the emergency management network of the Nation;
108 (b) implement the Emergency Response Plan as adopted by the Oneida Business
109 Committee;
110 (c) facilitate coordination and cooperation between entities and resolve questions that may
111 arise among them;
112 (d) incorporate the HSPD 5 which requires all federal, state, local, and tribal governments
113 to administer the best practices contained in the NIMS;
114 (e) coordinate the development and implementation of the NIMS within the Nation;
115 (f) ensure that the following occurs:
116 (1) an Emergency Response Plan is developed and maintained, and includes
117 training provisions for applicable personnel;
118 (2) emergency resources, equipment, and communications systems are developed,
119 procured, supplied, inventoried, and accounted for;
120 (g) establish the line of authority as recorded in the Emergency Response Plan as adopted
121 by the Oneida Business Committee; and
122 (h) enter into mutual aid and service agreements with tribal, local, state, and federal
123 governments, subject to Oneida Business Committee approval.

124 302.4-3. *Action when an Emergency is Proclaimed.* In addition, in the event of a proclamation of
125 an emergency on the Reservation, the Director is hereby empowered:

- 126 (a) to obtain vital resources and to bind the Nation for the fair market value thereof, upon
127 approval of the Emergency Management purchasing agent, who is identified in the
128 Emergency Response Plan. If a person or business refuses to provide the resource(s)
129

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130 required, the Director may commandeer resources for public use and bind the Nation for
131 the fair market value thereof. In the event the purchasing agent is unavailable, the chain of
132 command, as approved by the Oneida Business Committee, shall be followed.

133 (b) to require emergency activities of as many members of the Nation and/or employees
134 as deemed necessary.

135 (c) to execute all of the ordinary powers of the Director, all of the special powers conferred
136 by this law or by resolution adopted pursuant thereto, all powers conferred on the Director
137 by any agreement approved by the Oneida Business Committee, and to exercise complete
138 emergency authority over the Reservation.

139 (d) to coordinate with tribal, federal, state, and local authorities.
140

141 **302.5. Emergency Management Operations Team**

142 302.5-1. *Establishment and Composition.* There is hereby established an Emergency Management
143 Operations Team which shall consist of representatives from entities of the Nation as identified by
144 the Director.

145 302.5-2. *Purpose.* The Emergency Management Operations Team shall meet as necessary, as
146 determined by the Director, for the following purposes:

147 (a) assist the Director in drafting and maintaining the Emergency Response Plan; and

148 (b) assist the Director in the implementation of the provisions of this law or any plan issued
149 thereunder.

150 302.5-3. *Expectations.* Members of the Emergency Management Operations Team shall attend
151 meetings, or send a designee in their absence, and comply with any training requirements set forth
152 by the Director.
153

154 **302.6. Entity Cooperation**

155 302.6-1. All entities shall comply with reasonable requests from the Director relating to
156 emergency planning, emergency operations, and federal mandate compliance.

157 302.6-2. The Nation may implement more strict policies or requirements than those issued by the
158 Community/Public Health Officer.
159

160 **302.7. Public Health Emergencies**

161 302.7-1. In order to prevent a public health emergency, the Director and the Community/Public
162 Health Officer shall take action to limit the spread of any communicable disease, in accordance
163 with this law.

164 302.7-2. *Investigation of Communicable Disease.* If the Community/Public Health Officer
165 suspects or is informed of the existence of any communicable disease, the Community/Public
166 Health Officer shall investigate and make or cause examinations to be made, as are deemed
167 necessary.

168 302.7-3. *Quarantinable Diseases.* The Community/Public Health Officer shall provide a list of
169 quarantinable diseases specified in a resolution to be adopted by the Oneida Business Committee.

170 302.7-4. *Authority of the Community/Public Health Officer.* The Community/Public Health
171 Officer shall act as necessary to protect the public including, but not limited to, the following
172 actions:

173 (a) Request the Director to take the necessary steps to have a public health emergency
174 proclaimed;

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- 175 (b) Quarantine, isolate, or take other communicable disease control measures upon an
176 individual(s); and
177 (c) Issue any mandate, order, and/or require restrictions which may limit the spread of any
178 communicable disease to any individual, business, or the general population of the
179 Reservation.

180 302.7-5. *Quarantine and Isolation.* The Community/Public Health Officer shall immediately
181 quarantine, isolate, and/or take other communicable disease control measures upon an individual
182 if the Community/Public Health Officer receives a diagnostic report from a physician or a written
183 or verbal notification from an individual or his or her parent or caretaker that gives the
184 Community/Public Health Officer a reasonable belief that the individual has a communicable
185 disease that is likely to cause a public health emergency.

186 (a) If an individual is infected with a communicable disease and the Community/Public
187 Health Officer determines it is necessary to limit contact with the individual, all persons
188 may be forbidden from being in direct contact with the infected individual, except for those
189 persons having a special written permit from the Community/Public Health Officer.

190 (b) Any individual, including an authorized individual, who enters an isolation or
191 quarantine premises may be subject to isolation or quarantine under this law.

192 (c) When the Community/Public Health Officer deems it necessary that an individual be
193 quarantined, isolated, or otherwise restricted in a separate place, the Community/Public
194 Health Officer shall have that individual removed to such a designated place, if it can be
195 done without danger to the individual's health.

196 302.7-6. *Action when a Public Health Emergency is Proclaimed.* In addition, when a public health
197 emergency is proclaimed, the Community/Public Health Officer may do all of the following, as
198 necessary:

199 (a) organize the vaccination of individuals;

200 (1) The following types of individuals shall not be subject to a vaccination:

201 (A) an individual who the vaccination is reasonably likely to lead to serious
202 harm to the individual; and

203 (B) an individual, for reason of religion or conscience, refuses to obtain the
204 vaccination.

205 (b) isolate or quarantine individuals, including those who are unable or unwilling to receive
206 a vaccination; and

207 (c) prevent any individual, except for those individuals authorized by the
208 Community/Public Health Officer, from entering an isolation or quarantine premises.

209 302.7-7. The Oneida Police Department shall take enforcement action when necessary and work
210 with the Community/Public Health Officer to execute the Community/Public Health Officer's
211 orders and properly guard any place if quarantine, isolation, or other restrictions on communicable
212 disease are violated or intent to violate becomes apparent.

213 302.7-8. Expenses for necessary medical care, food, and other articles needed for an infected
214 individual shall be charged against the individual or whoever is liable for the individual's care and
215 support.

216

217 **302.8. Proclamation of an Emergency**

218 302.8-1. *Proclamation of an Emergency.* The Oneida Business Committee shall be responsible
219 for proclaiming or ratifying the existence of an emergency and for requesting a gubernatorial or
220 presidential declaration.

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221 (a) The Director may request that the Oneida Business Committee proclaim the existence
222 of an emergency. The Oneida Business Committee may proclaim the existence of an
223 emergency without a request from the Director, if warranted.

224 (b) In the event the Oneida Business Committee is unable to proclaim or ratify the
225 existence of an emergency, the Director may proclaim an emergency which shall be in
226 effect until such time the Oneida Business Committee can officially ratify this declaration.

227 302.8-2. No proclamation of an emergency by the Oneida Business Committee or the Director
228 may last for longer than sixty (60) days, unless the proclamation of emergency is extended by the
229 Oneida Business Committee.

230 302.8-3. *Management Network.* The emergency management network of the Reservation shall
231 be as specified in the Emergency Response Plan, as adopted by the Oneida Business Committee.

232 302.8-4. *Emergency Briefings.* Within forty-eight (48) hours of an emergency, the Director shall
233 prepare, or shall work in conjunction with the appropriate entity to prepare, an emergency briefing
234 to be presented to the Oneida Business Committee regarding the status of the emergency, actions
235 taken to address the emergency, and the activation of the Emergency Response Plan. The Oneida
236 Business Committee may direct the Director to provide additional emergency briefings.

237 302.8-5. *Preliminary Emergency Assessment Report.* After an emergency has subsided, the
238 Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, a
239 preliminary emergency assessment report to be presented to the Oneida Business Committee, any
240 interested entity, and the public. This report shall be presented to the required parties no later than
241 thirty (30) days after the emergency has subsided, unless an extension is granted by the Oneida
242 Business Committee.

243 302.8-6. *After-Action Report.* After an emergency has subsided, the Director shall prepare, or
244 shall work in conjunction with the appropriate entity to prepare, an after-action report to be
245 presented to the Oneida Business Committee, any interested entity, and the public. This report
246 shall be presented to the required parties no later than ninety (90) days after the emergency has
247 subsided, unless an extension is granted by the Oneida Business Committee.

248 302.8-7. During a proclaimed emergency, the Conservation Department shall be responsible for
249 the care, disposal, and sheltering of all abandoned domestic animals and livestock. The
250 Conservation Department may delegate this responsibility to a contracted agency.

251
252 **302.9. Emergency Core Decision Making Team**

253 302.9-1. *Emergency Core Decision Making Team.* Upon the proclamation of an emergency under
254 this law, the Oneida Business Committee may establish an Emergency Core Decision Making
255 Team through the adoption of a motion. The motion shall identify the positions of the Nation which
256 shall make up the members of the Emergency Core Decision Making Team based on the type and
257 severity of emergency the Nation is experiencing.

258 302.9-2. *Delegation of Authority.* The Emergency Core Decision Making Team shall have
259 emergency authority to take the following actions:

260 (a) Notwithstanding any requirements of the Legislative Procedures Act, declare
261 exceptions to the Nation's laws during the emergency period which will be of immediate
262 impact for the purposes of protecting the health, safety, and general welfare of the Nation's
263 community, members, and employees; and

264 (b) Notwithstanding any requirements in any policy, procedure, regulation, or standard
265 operating procedures, declare exceptions to any policy, procedure, regulation, or standard
266 operating procedure during the emergency period which will be of immediate impact for

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267 the purposes of protecting the health, safety, and general welfare of the Nation's
268 community, members, and employees.

269 302.9-3. *Declarations*. All declarations made by the Emergency Core Decision Making Team
270 shall:

- 271 (a) be written on the Nation's letterhead;
- 272 (b) provide the date the declaration was issued;
- 273 (c) contain a clear statement of the directives;
- 274 (d) provide the date the directive shall go into effect;
- 275 (e) be signed by the Oneida Business Committee Chairperson, or Vice Chairperson in the
276 Chairperson's absence; and
- 277 (f) be posted on the Nation's website.

278 302.9-4. *Duration of Authority for Exceptions Declared by the Emergency Core Decision Making*
279 *Team*. Any declaration made under the authority granted in this section shall be effective upon
280 the date declared by the Emergency Core Decision Making Team and shall be effective for the
281 duration of any proclaimed emergency, or for a shorter time period if identified.

282 302.9-5. *Notification to the Oneida Business Committee*. Within twenty-four (24) hours of a
283 declaration being made, the Emergency Core Decision Making Team shall provide notification of
284 the declaration to the Oneida Business Committee.

285 302.9-6. The Oneida Business Committee may modify, extend, or repeal any declaration or
286 emergency action taken by the Emergency Core Decision Making Team.

287

288 **302.10. Enforcement and Penalties**

289 302.10-1. It shall be a violation of this law for any person to not comply with or willfully obstruct,
290 hinder, or delay the implementation or enforcement of the provisions of this law or any plan issued
291 thereunder, whether or not an emergency has been proclaimed.

292 302.10-2. *Citations*. An Oneida Police Department officer may issue a citation to any person who
293 violates a provision of this law.

294 (a) A citation for a violation of this law shall be processed in accordance with the procedure
295 contained in the Nation's laws and policies governing citations.

296 (b) The Oneida Business Committee shall adopt through resolution a citation schedule
297 which sets forth specific fine amounts for violations of this law.

298 (c) The Trial Court shall have jurisdiction over any action brought under this law.

299 302.10-3. *Disciplinary Action*. An employee of the Nation who violates this law during their work
300 hours or who refuses to follow the Emergency Response Plan may be subject to disciplinary action
301 in accordance with the Nation's laws and policies governing employment.

302 (a) An employee of the Nation who is disciplined under this law may appeal the
303 disciplinary action in accordance with the Nation's laws and policies governing
304 employment.

305

306 *End.*

307

308 Adopted - BC-07-15-98-A

309 Amended - BC-12-20-06-G

310 Emergency Amended – BC-04-30-09-A (Influenza A (H1N1))

311 Amended - BC-05-13-09-F

312 Emergency Amended – BC-03-17-20-E (COVID-19)

313 Extension of Emergency – BC-08-26-20-A

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314 Amended – BC-03-10-21-A
315 Emergency Amended – BC-09-14-22-B
316 Amended – BC-__-__-__-__



Legislative Operating Committee

October 5, 2022

Traffic Law

Submission Date: 12/17/16	Public Meetings: n/a
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a

Summary: *This item was carried over from the previous two terms. On October 26, 2016, the Oneida Police Commission recommended that the Nation develop a traffic law as an exercise of the Nation’s sovereignty and jurisdiction following a community meeting that was held in response to a homicide investigation within the boundaries of the Reservation. The item was then placed on the AFL in December of 2016. On March 27, 2017, the General Tribal Council directed the Oneida Business Committee to create a traffic law. The proposed law could address such traffic matters as driving under the influence, driving without a valid license, reckless driving, speeding and seat belt/child restraint violations.*

10/7/20 LOC: Motion by Jennifer Webster to add the Traffic Law to the Active Files with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

10/21/20: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Kristen Hooker, Rhiannon Metoxen, Kristal Hill. This work meeting was held through Microsoft Teams. The purpose of this work meeting was to discuss legislative priorities relating to the Active Files List. This item was assigned a priority of “medium” by consensus of the LOC.

06/15/22 LOC: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Grace Elliott, Carolyn Salutz, Kristal Hill. The purpose of this meeting was to gather information from the LOC as to the intended scope and application of the Traffic law.

06/23/22 LOC: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Marie Summers, Clorissa N. Santiago, Grace Elliott, Carolyn Salutz. The purpose of this meeting was to discuss drafting options and mirroring to some degree WI Civil Traffic law was agreed upon for administrative effectiveness. Meeting with OPD and Kelly McAndrews are in the works.

6/30/22 LOC: *Work Meeting.* Present David P. Jordan, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Grace Elliott, Carolyn Salutz. The purpose of this meeting was to discuss the need for initial exemptions to the full application of Oneida civil offence adjudication due to the burden on police to conduct complex point calculations on the road during stops to determine whether an offence such as Operating Under the Influence is civil or criminal, along with outstanding detainment matters. The LOC decided that moving forward within parameters that are readily identifiable as civil matters by police during stops is the most clear and effective way to structure the initial Code.

7/14/22 LOC: *Work Meeting.* Present David P. Jordan, Daniel Guzman King, Jennifer Webster, Clorissa N. Santiago, Grace Elliott, Carolyn Salutz. The purpose of this meeting was to update the LOC on the work meeting with Chief Boulanger, Joel Maxam, and Kelly McAndrews. OPD had shared some implementation concerns with Grace which she relayed to the LOC including IT support, judiciary cohesion, and the administration of citations. Tribal control of roads is not an initial concern as existing regulatory standards are working. Discussion on bifurcation of single event stops where both civil and criminal charges originate will be ongoing. Next OPD meeting is scheduled for July 21st. Also, a meeting with the judiciary will be requested.

09/21/22 LOC: *Work Meeting.* Present David P. Jordan, Daniel Guzman King, Jennifer Webster, Kirby Metoxen, Marie Cornelius, Clorissa N. Santiago, Grace Elliott, Carolyn Salutz. The purpose of this meeting was for the LOC to decide if they would like to continue to allocate resources to the development of a Traffic Code and their decision was to downgrade the Traffic Code from a High priority to a Low priority.

Next Steps:

- Accept the memorandum as information.



TO: Legislative Operating Committee
FROM: Grace Elliott, Legislative Reference Office Staff Attorney
DATE: October 5, 2022
RE: Status of the Development of the Traffic Law

On Wednesday September 21, 2022, the Legislative Operating Committee (LOC) unanimously decided to halt the development of a Traffic Code and redesignate it from a High Priority to a Low Priority. In reaching this decision the LOC relied on memorandums provided by the Oneida Law Office, Intergovernmental Affairs and Communications and on behalf of the Oneida Police Department.

The Legislative Operating Committee added the Traffic law to its Active Files List on October 7, 2020. This item was carried over from the last two (2) legislative terms. On October 26, 2016, the Oneida Police Commission, in its quarterly report to the Oneida Business Committee, recommended development of a Traffic law as an exercise of the Nation's sovereignty and jurisdiction. The recommendation was based on input received at a community meeting in Site 2 by the Oneida Police Department and the Oneida Housing Authority due to a homicide investigation. The Oneida Business Committee then forwarded this request to the LOC, who originally placed the item on the AFL in December of 2016. On March 27, 2017, the General Tribal Council directed the Oneida Business Committee to create a Traffic law.

This term, the LOC met and discussed the development of the Traffic Code on 10/07/20, 10/21/20, 6/15/22, 6/23/22, 6/30/22, 7/14/22, and 9/21/22. Jennifer Webster is the LOC sponsor.

Since June 2022, the Legislative Reference Office has held numerous meetings with the following departments within the Oneida Nation, including the: Oneida Law Office, Police Department, Oneida Trial Court, and Intergovernmental Affairs and Communications. Additionally, the LRO reached out to gather information from tribal nations including Red Cliff, Lac Du Flambeau, Ho-Chunk, Leech Lake Band of Ojibwe, and Menomonie. One (1) introductory meeting was held with several staff members from the Wisconsin Department of Transportation.

In consideration of the information gathered and the memorandums provided by the Oneida Law Office, Intergovernmental Affairs and Communications, and the Oneida Police Department detailing the limited resources and the challenging external political climate, the LOC determined to reprioritize the Traffic law and halt further development until such a time the Nation is better prepared to develop and implement a Traffic law.

BC Work Session Topic Request

Choose one: New Item Follow-up

Work Session Date: 09/20/22

Topic Title: Discussion of Next Steps for the Oneida Personnel Commission

What is the objective/desired outcome?

For the OBC to determine next steps to address the stagnancy of the OPC.
Note: I will be out on travel for the September 20, 2022, BC Work Session and have briefed Chief Counsel and Chairman Hill on this item. Chairman Hill will present it at the work session.

Supporting Materials:

- | | |
|--------------------------|--------------------------------|
| 1. Memo | 4. Qualifications and Training |
| 2. Resolution 09-26-18-F | comparison to prior bylaws |
| 3. OPC bylaws | |

If any, which Direct Reports to the BC need to attend?

- | | |
|---|---|
| • | • |
| • | • |
| • | • |

Submitted by:

Lisa Liggins, Secretary
(Name, Title)


Instructions: Complete this form. E-mail the form and all supporting materials in a SINGLE *.pdf file to: BC_Work_Session@oneidation.org.

Exempt from the Open Records and Open Meetings law [§107.4-1.(g)], the open-ended format of the BC Work Session provides an opportunity to informally discuss and gather information about proposals which do not result in legislation, draft documents, ongoing matters or works in progress. The goal is to gain a more complete understanding of one or more topics, to achieve consensus, and facilitate coordination of legislative tasks, if needed. Members do not take official action or vote. Attendance is required for BC Members, Chief Counsel, and staff coordinating the meeting. *Updated 9/17/2020*



Internal Memorandum

TO: Oneida Business Committee

FROM: Lisa Liggins, Secretary 

DATE: September 13, 2022

RE: Discussion of Next Steps for the Oneida Personnel Commission

At the August 10, 2022, regular Oneida Business Committee meeting, a memo was provided in place of the OPC FY-2023 3rd quarter report which indicated that the Oneida Personnel Commission has held no regular meetings since January 2022 as there is no quorum and that the only Commissioner is Twylite Moore. Action was taken at that meeting to forward the discussion of next steps for the Oneida Personnel Commission to the September Business Committee Work Session.

The purpose of this correspondence is to provide you with an update on the status of the Oneida Personnel Commission (OPC) and provide information in order for the Oneida Business Committee (OBC) to determine the appropriate next steps to address the stagnancy of the OPC.

BACKGROUND

On April 11, 2018, the OBC adopted resolution BC-04-11-18-A, *Dissolution of Personnel Commission, Tolling all Timelines in Personnel Related Matters, and Directing the Development of Emergency Amendments to Existing Laws*, and resolution BC-04-11-18-B, *Creation of the Personnel Selection Committee*.

On August 27, 2018, in response to the Petition: G. Powless – Oneida Personnel Commission Dissolution, General Tribal Council (GTC) adopted a motion to “rescind the actions of the OBC related to the dissolution of the OPC, and to rescind the amendments related to the Blue Book from April 11, 2018 to today”.

On August 29, 2018, the OBC held an emergency meeting to identifying the next steps to implement the August 27, 2018, GTC motion in an effort to implement the directives in a clear and timely transition protecting employee's due process and adopted the a transition plan.

On September 12, 2018, the OBC adopted a motion to defer posting the OPC vacancies until the updated bylaws are presented and approved by the OBC.

On September 26, 2018, the OBC adopted resolution BC-09-26-18-F, *Rescission of the Dissolution of the Oneida Personnel Commission and Related Emergency Amendments in accordance with General Tribal Council's August 27, 2018, Directive*. The resolution, attached, provides details on how the OPC's responsibilities will be addressed until such time that the OPC is prepared to once again exercise its authority. Also, on September 26, 2018, a proposed draft of the bylaws was presented to the OBC for consideration. The OBC adopted a motion to defer the OPC bylaws to an OBC work session for further review and discussion.

On October 16, 2018, the OPC bylaws were discussed during the OBC work session where the decision was made to defer the OPC bylaws to a separate meeting between the Nation's Secretary, the Legislative Operating Committee (LOC) Chairman, and the Legislative Reference Office for more in-depth discussion and consideration of ideas.

On November 28, 2018, the LOC provided an update to the OBC on the progress of the OPC bylaws.

On January 9, 2019, the OBC adopted the OPC bylaws.

On October 23, 2019, the OBC adopted further amendments to the OPC bylaws (attached).

POSTING AND APPOINTMENTS – HISOTRY & CURRENT STATUS

On January 23, 2019, the Government Administrative Office (GAO) posted the vacancies for the OPC and continued to do so throughout the year.

At the beginning of 2020, the OPC had five (5) members:

- Carole Liggins,
- Sandra Skenadore,
- Carol Smith,
- Daniel Thomas¹ and
- Renee Zakhar.

¹ Daniel Thomas' term was expiring March 31, 2020, this vacancy was posted January 31, 2020. Twylite Moore's appointment was for this vacancy.

On March 11, 2020, the OBC appointed Twylite Moore to the OPC, however, Twylite was unable to take her oath of office due to the COVID-19 pandemic.

- On March 19, 2020, a COVID-19 there was a Core Decision Making Team Declaration for the Suspension of all non-emergent expenses & stipends and activity by certain boards, committees, and commissions. This declaration included the OPC.
- On April 8, 2020, the OPC was placed in temporary closure status by BC Resolution 04-08-20-B. This resolution also discontinued oaths of office.

While in temporary closure status Sandra Skenadore's term expired which resulted in one (1) regular position vacancy. This vacancy along with the five (5) Pro tem vacancies have been posted since May 2021.

In April of 2021, the OBC adopted BC Resolution 04-14-21-B, which authorized the boards, committee, and commissions to begin meeting virtually effective June 14, 2021, if needed.

On August 24, 2021, Twylite Moore was administered her oath of office. Ms. Moore is eligible to resume her term until March 31, 2025. At this point in time:

- One (1) regular position vacancy -- Five (5) Pro tem positions vacancies

On February 9, 2022, the OBC terminated the appointment of Carol Smith, this vacancy was posted immediately after her termination and has remained vacant due to no applicants.

- Two (2) regular position vacancies -- Five (5) Pro tem positions vacancies

On March 17, 2022, Carole Liggins submitted her resignation effective immediately.

- Three (3) regular position vacancies -- Five (5) Pro tem positions vacancies

On March 31, 2022, Renee Zakhar's term expired this vacancy was posted since February 2022, however, no applications have been received.

- Four (4) regular position vacancies -- Five (5) Pro tem positions vacancies

On April 14, 2022, the GAO presented this memorandum at the OBC work session. It was determined that we should continue the status quo with suggestions to announce the vacancies on Facebook Live and an article in the Kalihwisaks. The GAO has continued to post on the website, in the Kalihwisaks, and OBC members have noted various BCC vacancies on FB Live.

TRAINING

In accordance with their bylaws §1-7, the Commissioners must complete training prior to participating in any screenings, interviews and/or grievance hearings on behalf of the OPC.

The Training and Development Department from the Human Resources Area identified training for the OPC.

In the April 2022 report to the OBC, the GAO noted that the Commissioners are struggling to complete this training on their own and indicated that there hasn't been one (1) Commissioner who completed all the training for full certification² to date; the GAO asked the OBC to consider adding language to their motions when appointing members to the OPC that they need to receive full certification within 180 days of appointment.

NEXT STEPS

1. The GAO will continue to work on filling the vacant positions until a change in direction is provided by the OBC.
2. The OBC needs to discuss the status of the OPC and determine next steps and if any alternate solutions are feasible. Some suggestions/brainstorming ideas include:
 - a. Remove/change qualifications from bylaws
 - i. Is "Have a minimum of two (2) years supervisory experience along with hiring experience, an Associate Degree, or equivalent experience or education" qualification needed when the all the training is also required?
 - ii. Are there qualifications that are exclusionary to any community member?
 - b. Remove/change training requirement in bylaws
 - i. Are any of training requirements a barrier to get applicants?
 - c. Convert the OPC to an internal review board
 - i. GTC action may be needed
 - ii. Will need a lead assigned to head this option
 - iii. Will likely need Law Office involvement
 - iv. Could be similar to Audit Committee, with one community member

Note: I will be out on travel for the September 20, 2022, BC Work Session and have briefed Chief Counsel and Chairman Hill on this item. Chairman Hill will present it at the work session.

² Full certification allows members to participate in pre-screenings, interviews, and hearings.

Oneida Nation

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Rescission of the Dissolution of the Oneida Personnel Commission and Related Emergency Amendments in Accordance with General Tribal Council's August 27, 2018 Directive

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Personnel Selection Committee was created by the General Tribal Council to monitor the hiring process to protect against issues of nepotism, and to enforce Oneida and Indian preference; and
- WHEREAS,** in an effort to provide for a tribal employment system that is operated in an orderly and fair manner, the Oneida Business Committee re-designated the Personnel Selection Committee as the Oneida Personnel Commission through resolution BC-04-13-90-A; and
- WHEREAS,** resolution BC-04-13-90-A delegated the Oneida Personnel Commission the responsibility to generate personnel policies to be presented and recommended to the Oneida Business Committee for the Oneida Business Committee to review, take formal action to approve, disapprove, change and/or amend said personnel policy recommendations; and
- WHEREAS,** through resolution BC-05-12-93-J, the Oneida Business Committee, in conjunction with the Nation's Human Resources Department and the Oneida Personnel Commission, revised the Nation's Personnel Policies and Procedures to allow the Oneida Personnel Commission to serve as a grievance hearing body for employment matters; and
- WHEREAS,** the Oneida Personnel Commission then served the Oneida Nation as a hearing body for employee grievances, with appeals of those hearings authorized to be made to the Oneida Appeals Commission after its creation in 1991 by the General Tribal Council; and
- WHEREAS,** the Oneida Business Committee, through resolution BC-03-06-01-B, temporarily rescinded authority delegated to the Oneida Personnel Commission contained within the Oneida Personnel Policies and Procedures as it pertained to the role of the Oneida Personnel Commission as representatives of the community at large, the commissioners' responsibility to serve on the Screening Committee, the Interview Committee, the Personnel Screening Committee, and as the Grievance Hearing Body; and
- WHEREAS,** resolution BC-03-06-01-B required that the hiring process of the Nation continue without interruption under the auspices of the Human Resources Department, and that the Oneida

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Appeal Commission be delegated the first level hearing body for employment related actions as referenced in the Oneida Personnel Policies and Procedures; and

WHEREAS, although the Oneida Personnel Commission served the Nation as a hearing body for employee grievances since the early 1990s, except for the period when the Oneida Personnel Commissions' authority was temporarily rescinded, the Nation has been moving towards consolidating all hearing responsibilities to the Oneida Nation Judiciary; and

WHEREAS, the Oneida General Tribal Council adopted the Judiciary law as the next step in formalizing the hearing authority of the Oneida Nation in an independent judicial body; and

WHEREAS, the membership approved amendments to the Constitution which adopted Article V, Judiciary, which established "a judiciary to exercise the judicial authority of the Oneida Nation"; and

WHEREAS, the Oneida General Tribal Council adopted resolution GTC-03-19-17-A which designated the Oneida Judiciary as the judiciary authorized pursuant to Article V of the Constitution; and

WHEREAS, the Oneida Business Committee has presented reports, and the General Tribal Council has accepted such reports, regarding the consolidation of administrative hearing and judicial hearing responsibilities in the Judiciary for the purpose of increasing consistency in hearing processes, efficiency, and reducing overall costs to the Nation; and

WHEREAS, the Oneida Business Committee notified the Judiciary of its intention to consolidate all judicial functions and the Judiciary identified that it is prepared to accept such responsibilities; and

WHEREAS, the Oneida Business Committee has adopted amendments to laws that transferred the hearing authority of the Environmental Resources Board and the Land Commission to the Judiciary; and

WHEREAS, the Oneida Business Committee determined it was appropriate to begin consolidating employment related grievance hearings into the Judiciary as the number of current cases in the Oneida Personnel Commission was low and the costs of maintaining judicial hearing authorities continues to increase; and

WHEREAS, the Oneida Business Committee dissolved the Oneida Personnel Commission on April 11, 2018, through resolution BC-04-11-18-A in an effort to consolidate employment related grievance hearings into the Judiciary; and

WHEREAS, resolution BC-04-11-18-A required the Legislative Operating Committee to develop and present emergency legislative amendments to fully address the impact of this resolution by the April 25, 2018, Oneida Business Committee meeting for consideration of adoption; and

WHEREAS, resolution BC-04-11-18-A required that all personnel matters pending, scheduled, and for which timelines were running were hereby tolled until the emergency amendments could be brought forward by the Legislative Operating Committee regarding laws impacted by the dissolution of the Oneida Personnel Commission, with the tolling of time interpreted and applied in the best interests of the employee; and

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- WHEREAS,** although the Oneida Personnel Commission was dissolved, the Oneida Business Committee recognized the valuable service the Personnel Selection Committee provided in its original form before being expanded to include hearing authority; and
- WHEREAS,** the Oneida Business Committee determined that the valuable service the Personnel Selection Committee provided remained necessary in the hiring process, and therefore recreating the Personnel Selection Committee was in the best interest of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee recreated the Personnel Selection Committee on April 11, 2018, through resolution BC-04-11-18-B; and
- WHEREAS,** resolution BC-04-11-18-B provided that bylaws for the Personnel Selection Committee be placed on the May 23, 2018 Oneida Business Committee meeting agenda, and that the Human Resources Department consider not scheduling screening or interviews until the Personnel Selection Committee is created and members are appointed, provided that, the Human Resources Department may schedule screening and interviewing where it would be unreasonable to delay or further delay that action; and
- WHEREAS,** the Oneida Business Committee approved the Personnel Selection Committee bylaws on May 23, 2018; and
- WHEREAS,** the Oneida Business Committee adopted emergency amendments to the Military Service Employee Protection Policy, the Oneida Personnel Policies and Procedures, the Oneida Judiciary Rules of Civil Procedures, and the Employee Protection Policy on April 25, 2018, through resolutions BC-04-25-18-D, BC-04-25-18-E, BC-04-25-18-F, and BC-04-25-18-G; and
- WHEREAS,** the emergency amendments to the above mentioned laws replaced any reference to the Oneida Personnel Commission which referred to actions affecting employees involving adverse employment actions for which a hearing is authorized with a reference to the Judiciary – Trial Court, thereby transferring the hearing authority to the Judiciary – Trial Court; and
- WHEREAS,** the emergency amendments to the above mentioned laws replaced any reference to the Oneida Personnel Commission which referred to actions involving hiring, including screening and interviews, with a reference to the Personnel Selection Committee; and
- WHEREAS,** the Oneida Business Committee determined emergency adoption of the amendments to the Military Service Employee Protection Policy, the Oneida Personnel Policies and Procedures, the Oneida Judiciary Rules of Civil Procedures, and the Employee Protection Policy were necessary for the preservation of the public health, safety, or general welfare of the reservation population as required by the Legislative Procedures Act in order to ensure that the general welfare and due process rights of employees of the Nation were preserved in absence of the Oneida Personnel Commission; and
- WHEREAS,** the Oneida Business Committee adopted a plan for the process of transitioning cases from the Oneida Personnel Commission to the Judiciary – Trial Court through resolution BC-04-25-18-H;

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WHEREAS, resolution BC-04-25-18-H required that the Judiciary Trial Court utilize prior decisions of the Oneida Personnel Commission as precedent in its hearing and decision-making process, and that hearing procedures shall follow those set forth in the Oneida Judiciary Rules of Civil Procedure, provided that, in circumstances where the Oneida Personnel Policies and Procedures conflict with the Oneida Judiciary Rules of Civil Procedure, the deadlines in the Oneida Personnel Policies and Procedures shall govern; and

WHEREAS, resolution BC-04-25-18-H set forth a process to be used to transfer matters to the Judiciary from the Oneida Personnel Commission including:

1. All active cases for which at least one hearing had been held was transferred to the Judiciary Trial Court effective immediately.
 - a. The employee had, by close of business on May 11, 2018, to file a notice with the Judiciary Trial Court stating either they wish to maintain the current hearing body or have their case assigned to a judicial officer of the Trial Court and the Trial Court shall begin the hearing from the beginning, or at the request of the employee, continue the existing hearing with the judicial officer replacing the hearing body.
 - b. In all circumstances, the Judiciary was required to receive active case files and hearing records for active cases and begin management of the case.
2. All cases which had been accepted, but no hearing had yet been conducted or no hearing officers selected, had been transferred to the Judiciary Trial Court and a judicial officer of the Trial Court was assigned.
3. All cases which had been concluded and for which no appeal time remains, were transferred to the Records Management Department which worked with the Judiciary to assist in managing those records.
4. All matters filed, but for which no determination has been made regarding acceptance was immediately forwarded to the Judiciary Trial Court.
5. The Oneida Personnel Commission administration was required to deliver a complete record of all decisions of the Oneida Personnel Commission to the Judiciary and a copy to Records Management Department; and

WHEREAS, on May 14, 2018, the Petition: G. Powless – Oneida Personnel Commission Dissolution was submitted to the Business Committee Support Office by Gina Powless and was verified by the Trust Enrollment Department; and

WHEREAS, the petition requested General Tribal Council “to address the actions of the Oneida Business Committee’s (OBC) Dissolving the Oneida Personnel Commission (OPC) by BC Resolution #04-11-18-A, BC Resolution #04-11-18-B. The OBC has intentionally violated their authority, they do not have the right to make a decision to dissolve the OPC which was created and approved by General Tribal Council (GTC). The only body that can dissolve the OPC is GTC. The OBC has abused their power and directly violated the Oneida Constitution, their Oath of Office, Oneida’s Code of Ethics, the Oneida Blue Book, to name a few. The OBC has deliberately undermined the authority of GTC. The OBC has cited in their BC resolutions that there is an emergency, yet have not cited any real emergency. The GTC hereby rescinds the action of the OBC, by rescinding BC Resolutions: 04-11-18-A, 04-11-18-B, 04-25-18-D, 04-25-18-E, 04-25-18-E, 04-25-18-F,

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04-25-18-G, 04-25-18-H, placing the OPC back into the grievance and hiring practice, per the Oneida Blue Book, until GTC determines otherwise. Further, GTC takes corrective measures pertaining to the OBC, by suspending the OBC Members without pay that approved the mentioned Resolutions for a period of 90 days"; and

WHEREAS, the Oneida Business Committee accepted the verified Petition: G. Powless – Oneida Personnel Commission Dissolution on May 23, 2018, and directed that the petition be sent to the Law, Finance, Legislative Reference, and Direct Report Offices' for legal, financial, legislative, and administrative analyses to be completed, and that a General Tribal Council Meeting be scheduled for this matter on August 27, 2018; and

WHEREAS, the Petition: G. Powless – Oneida Personnel Commission Dissolution was presented to the General Tribal Council on August 27, 2018; and

WHEREAS, the General Tribal Council adopted a motion to “rescind the actions of the Oneida Business Committee related to the dissolution of the Oneida Personnel Commission, and to rescind the amendments related to the Blue Book from April 11, 2018 to today”; and

WHEREAS, the Oneida Business Committee held an emergency Oneida Business Committee Meeting on August 29, 2018, for the purpose of identifying the next steps to implement the August 27, 2018, GTC motion in an effort to implement the directives in a clear and timely transition protecting employee’s due process; and

WHEREAS, at the August 29, 2018, emergency Oneida Business Committee meeting the Oneida Business Committee adopted the transition steps outlined to implement the August 27, 2018, General Tribal Council action with two (2) noted additions: 1) under the "Judiciary" section, include a task for communication regarding the Indirect Contempt Order; and 2) under the "Business Committee" section, include a task to address the concerns regarding training; and

WHEREAS, the transition steps provided direction to the Legislative Operating Committee and the Legislative Reference Office, the Judiciary, the Treasurer and Finance Office, and the Oneida Business Committee on how to proceed with implementing General Tribal Council’s directive; and

WHEREAS, in recognition of the rescission of the dissolution of the Oneida Personnel Commission, on September 12, 2018, the Oneida Business Committee adopted a motion to terminate the appointments of the remaining members of the Oneida Personnel Commission: Carol Smith, Erik Krawczyk, Gary Smith, Gerald Decorah, Jason Martinez, Jennifer Hill, Patricia Powless, Pearl Webster, Sharon Alvarez, Stacey M. Nieto, Tina M Moore, and Yvonne Jourdan; and

WHEREAS, the Oneida Business Committee terminated the appointment of all Oneida Personnel Commission members under the authority granted by the Comprehensive Policy Governing Boards, Committees, and Commissions, and based the decision to terminate the appointments on the documentation submitted by members of the Oneida Personnel Commission, the decisions of the Judiciary, and the Oneida Business Committee’s findings before and after the dissolution of the Oneida Personnel Commission; and

WHEREAS, on September 12, 2018, the Oneida Business Committee adopted a motion which directed the Legislative Operating Committee to present the bylaws for the Oneida Personnel

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Commission at the next regular Oneida Business Committee meeting with updated qualifications to address the issue of understanding hearing authorities and responsibilities; and

WHEREAS, the Oneida Business Committee adopted a further motion to defer posting the vacancies for the Oneida Personnel Commission until the updated bylaws are presented and approved by the Oneida Business Committee.

Recognition of General Tribal Council's August 27, 2018 Directive

NOW THEREFORE BE IT RESOLVED, that this resolution formally recognizes for the record General Tribal Council's directive to rescind the actions of the Oneida Business Committee related to the dissolution of the Oneida Personnel Commission, and to rescind the related emergency amendments.

Rescission of the Dissolution of the Oneida Personnel Commission

NOW THEREFORE BE IT FURTHER RESOLVED, to recognize General Tribal Council's directive to rescind the dissolution of the Oneida Personnel Commission, resolution BC-04-11-18-A, which dissolved the Oneida Personnel Commission, is hereby formally repealed and the Oneida Personnel Commission is formally reinstated.

NOW THEREFORE BE IT FURTHER RESOLVED, that resolution BC-04-25-18-H, which sets forth a process to be used to transfer matters to the Judiciary from the Oneida Personnel Commission, is hereby repealed.

NOW THEREFORE BE IT FURTHER RESOLVED, the Oneida Business Committee requests the Human Resources Department consider not scheduling screening or interviews until a minimum number of members of the Oneida Personnel Commission can be appointed and sworn into office. Provided that, the Human Resources Department may schedule screening and interviewing where it would be unreasonable to delay or further delay that action and shall ensure that employment laws of the Oneida Nation are enforced in the selection process.

NOW THEREFORE BE IT FURTHER RESOLVED, once a minimum number of members of the Oneida Personnel Commission are appointed and sworn into office, the Human Resources Department shall provide administrative assistance to the Oneida Personnel Commission in regard to the hiring and selection of employees, which shall include, but is not limited to, scheduling pre-screens and interviews, and coordinating Oneida Personnel Commission members to conduct hiring and selection activities.

NOW THEREFORE BE IT FURTHER RESOLVED, in recognition of the time necessary to appoint members to the Oneida Personnel Commission and allow members to obtain the necessary required training, the Judiciary – Trial Court shall continue to hear employee grievance matters until the Oneida Personnel Commission is prepared to begin exercising hearing authority.

NOW THEREFORE BE IT FURTHER RESOLVED, the Judiciary – Trial Court shall develop and provide training and/or ensure training is provided to members of the Oneida Personnel Commission on hearing processes and procedures.

NOW THEREFORE BE IT FURTHER RESOLVED, the Oneida Personnel Commission shall be prepared to exercise hearing authority over employee grievance matters when the Oneida Personnel Commission

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informs the Oneida Business Committee that the minimum number of Oneida Personnel Commission members have been appointed and have obtained all required trainings.

NOW THEREFORE BE IT FURTHER RESOLVED, the Legislative Operating Committee shall provide updates on the progress of the Oneida Personnel Commission to the Oneida Business Committee on a bi-monthly basis, at the second Oneida Business Committee meeting of the month.

NOW THEREFORE BE IT FURTHER RESOLVED, the Nation's Human Resources Department shall draft an interpretation of Section V.D. of the Oneida Personnel Policies and Procedures which clarifies that in regard to employee grievance matters the term "Oneida Personnel Commission" shall be interpreted to mean the "Judiciary – Trial Court" until such time that the Oneida Personnel Commission informs the Oneida Business Committee that they are prepared to begin exercising hearing authority.

NOW THEREFORE BE IT FURTHER RESOLVED, once the Oneida Personnel Commission informs the Oneida Business Committee that they are prepared to begin exercising hearing authority, the following transition process shall be used to transfer matters from the Judiciary – Trial Court back to the Oneida Personnel Commission including:

1. All active cases for which at least one hearing has been held are transferred to the Oneida Personnel Commission effective immediately.
 - a. The employee shall have ten (10) business days to file a notice with the Judiciary - Trial Court stating either they wish to maintain his or her case at the Judiciary - Trial Court or have their case assigned to the Oneida Personnel Commission and the Oneida Personnel Commission shall begin the hearing from the beginning, or at the request of the employee, continue the existing hearing with the Oneida Personnel Commission replacing the Judiciary - Trial Court.
 - b. In all circumstances, the Oneida Personnel Commission shall receive active case files and hearing records for active cases and begin management of the case.
2. All cases which have been accepted, but no hearing has yet been conducted, shall be transferred to the Oneida Personnel Commission.
3. All cases which have been concluded and for which no appeal time remains, shall be transferred to the Records Management Department which will work with the Oneida Personnel Commission to assist in managing those records.
4. All matters filed, but for which no determination has been made regarding acceptance shall be immediately forwarded to the Oneida Personnel Commission.
5. The Judiciary's administration shall deliver a complete record of all decisions of the Judiciary – Trial Court to the Oneida Personnel Commission and a copy to Records Management Department.

NOW THEREFORE BE IT FURTHER RESOLVED, once the Oneida Personnel Commission begins exercising hearing authority, the Judiciary – Trial Court shall provide administrative support to the Oneida Personnel Commission in regard to employee grievance hearings, including, but not limited to, accepting filings, scheduling hearings, coordinating Oneida Personnel Commission members to serve as the hearing body, and providing a hearing room.

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NOW THEREFORE BE IT FURTHER RESOLVED, the Oneida Personnel Commission shall use the following employment grievance process in conjunction with the Oneida Personnel Policies and Procedures:

1. *Filing of a Complaint.*
 - a. Employee shall fill out a complaint for Personnel/Employment Action form and shall file the complaint with Judiciary – Trial Court on the behalf of the Oneida Personnel Commission.
 - b. Judiciary – Trial Court Clerk shall review complaint form for completion.
 - c. Judiciary – Trial Court Clerk shall send the Notice of Filing notification to the Human Resources Department, Equal Employment Opportunity Department, Immediate Supervisor, and Area Manager.

2. *Collection of Information.*
 - a. The Human Resources Department shall send all information the Area Manager used in making the decision to the Judiciary – Trial Court Clerk.
 - b. The Immediate Supervisor/Area Manager shall immediately notify the Employee Advocacy Department.

3. *Review of the Complaint.*
 - a. The Judiciary – Trial Court Clerk shall provide the information obtained to the Oneida Personnel Commission members selected to serve as the hearing body for the complaint, and the Oneida Personnel Commissioners shall review all the information submitted by the Petitioner and the Human Resources Department to determine if one or both conditions exist:
 - i. The decision of the Area Manager is clearly against the weight of the evidence; and/or
 - ii. Procedural irregularities were exhibited during the appeal process that were harmful to one of the parties to the grievance.
 - b. If Oneida Personnel Commission members selected to serve as the hearing body for the complaint finds one or both conditions exist, the Judiciary – Trial Clerk shall schedule a hearing and send notice to the parties.
 - c. If the Oneida Personnel Commission members finds that neither conditions exist, the Oneida Personnel Commission will issue a decision without a hearing.

4. *Hearing Procedure.*
 - a. If hearing is scheduled, The Judiciary – Trial Court Clerk shall send the hearing notice no later than five (5) business days prior to the hearing to all parties.
 - b. The order of presentation for the hearing shall be:
 - i. Plaintiff's opening statement;
 - ii. Defendant's opening statement;
 - iii. The Plaintiff's case;
 - iv. The Defendant's case;
 - v. Plaintiff's closing statement
 - vi. Defendant's closing statement
 - c. If new evidence which was previously unavailable is introduced at any point during the hearing process, the Oneida Personnel Commission hearing shall be suspended, and the case will be remanded to the Area Manager for reconsideration.
 - d. The Area Manager shall reconsider the decision in light of the new evidence and issue a decision within (3) working days. If the decision is overturned, the case would not come back for a hearing. If decision is affirmed, then the case will come back to the Oneida Personnel Commission to complete the hearing. This will only happen one time.

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Dissolution of the Personnel Selection Committee

NOW THEREFORE BE IT FURTHER RESOLVED, that resolution BC-04-11-18-B, which created the Personnel Selection Committee, is hereby repealed and the Personnel Selection Committee is hereby dissolved effective immediately.

NOW THEREFORE BE IT FURTHER RESOLVED, within five (5) business days of the adoption of this resolution the Oneida Business Committee shall provide the Personnel Selection Committee written notice of this dissolution.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Personnel Selection Committee shall have up to two (2) weeks from the date of the dissolution to close out any open business and forward all materials and records to the Business Committee Support Office for proper storage and disposal.

Rescission of the Emergency Amendments

NOW THEREFORE BE IT FURTHER RESOLVED, in recognition of General Tribal Council's directive to rescind the emergency amendments related to the dissolution of the Oneida Personnel Commission, resolution BC-04-25-18-D, which adopted emergency amendments to the Military Service Employee Protection Policy, is hereby repealed.

NOW THEREFORE BE IT FURTHER RESOLVED, the Military Service Employee Protection Policy adopted prior to the emergency amendments, through resolution BC-10-24-07-E, is hereby reinstated and effective immediately.

NOW THEREFORE BE IT FURTHER RESOLVED, in recognition of General Tribal Council's directive to rescind the emergency amendments related to the dissolution of the Oneida Personnel Commission, resolution BC-04-25-18-E, which adopted emergency amendments to the Oneida Personnel Policies and Procedures, is hereby repealed.

NOW THEREFORE BE IT FURTHER RESOLVED, the Oneida Personnel Policies and Procedures adopted prior to the emergency amendments, is hereby reinstated and effective immediately.

NOW THEREFORE BE IT FURTHER RESOLVED, in recognition of General Tribal Council's directive to rescind the emergency amendments related to the dissolution of the Oneida Personnel Commission, resolution BC-04-25-18-F, which adopted emergency amendments to the Oneida Judiciary Rules of Civil Procedure, is hereby repealed.

NOW THEREFORE BE IT FURTHER RESOLVED, the Oneida Judiciary Rules of Civil Procedure adopted prior to the emergency amendments, through resolution BC-04-24-14-A, is hereby reinstated and effective immediately.

NOW THEREFORE BE IT FURTHER RESOLVED, in recognition of General Tribal Council's directive to rescind the emergency amendments related to the dissolution of the Oneida Personnel Commission, resolution BC-04-25-18-G, which adopted emergency amendments to the Employee Protection Policy, is hereby repealed.

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NOW THEREFORE BE IT FURTHER RESOLVED, the Employee Protection Policy adopted prior to the emergency amendments, through resolution BC-02-25-15-C, is hereby reinstated and effective immediately.

NOW THEREFORE BE IT FURTHER RESOLVED, the Legislative Reference Office shall update the Oneida Register to reflect the proper versions of the Military Service Employee Protection Policy, the Oneida Judiciary Rules of Civil Procedures, and the Employee Protection Policy.

NOW THEREFORE BE IT FURTHER RESOLVED, the Human Resources Department shall update all sources to reflect the proper version of the Oneida Personnel Policies and Procedures.

Future Consolidation of Hearing Authority to the Judiciary

NOW THEREFORE BE IT FINALLY RESOLVED, the Oneida Business Committee recognizes the importance of continuing to pursue the consolidation of all hearing authority to the Judiciary in the future, in order to properly recognize and implement the Judiciary's purpose of administering the judicial authorities and responsibilities of the Nation.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 9 members were present at a meeting duly called, noticed and held on the 26th day of September, 2018; that the forgoing resolution was duly adopted at such meeting by a vote of 8 members for, 0 members against, and 0 members not voting*; and that said resolution has not been rescinded or amended in any way.



Lisa Summers, Secretary
Oneida Business Committee

*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."

ONEIDA PERSONNEL COMMISSION BY-LAWS

Article I. Authority

- 1-1. *Name.* The name of this entity shall be the Oneida Personnel Commission, and may be referred to as the OPC.
- 1-2. *Establishment.* The OPC was created by the Oneida General Tribal Council as the Personnel Selection Committee and renamed the Oneida Personnel Commission by the Oneida Business Committee through resolution BC-04-13-90-A. The Oneida Business Committee dissolved the Oneida Personnel Commission on April 11, 2018 through resolution BC-04-11-18-A. On August 27, 2018, the Oneida General Tribal Council rescinded the dissolution of the Oneida Personnel Commission and the OPC was recreated by the Oneida Business Committee through resolution BC-09-26-18-F.
- 1-3. *Authority.*
- (a) The OPC was created by the Oneida General Tribal Council to represent the Oneida community-at-large in the selection of the Nation's employees and to shield those employees from inconsistent and unfair treatment by:
 - (1) Protecting against issues of nepotism;
 - (2) Enforcing Oneida and Indian preference;
 - (3) Hearing and deciding appeals of disciplinary action filed by employees of the Nation; and
 - (4) Carrying out all other powers and duties delegated by the laws of the Nation, including, but not limited to, the Oneida Personnel Policies and Procedures.
 - (b) The OPC does not have authority to:
 - (1) Enter into contracts;
 - (2) Create policy or legislative rules; or
 - (3) Evaluate or rate a candidate on criteria qualifications unrelated to the following subject matter during candidate interviews:
 - (A) Oneida/Indian preference;
 - (B) Nepotism;
 - (C) Conflicts of interest;
 - (D) Veteran status; and
 - (E) Physical capacity requirements.
- 1-4. *Office.* The official mailing address of the OPC shall be:
 Oneida Personnel Commission
 P.O. Box 365
 Oneida, WI 54155
- 1-5. *Membership.*
- (a) *Number of Members.* The OPC shall be made up of five (5) members.

- (1) Each member shall hold office until his or her term expires, until his or her resignation, or until his or her appointment is terminated in accordance with the Boards, Committees and Commissions law.
 - (2) *Pro Tem Members.* The Oneida Business Committee may appoint up to five (5) Pro Tem members in accordance with the appointment process contained in the Boards, Committees and Commissions law.
 - (A) Pro Tem members shall serve the limited purpose of assisting with the hiring selection process and grievance hearing process in the event of an incumbent member's recusal based on a conflict of interest.
 - (B) The Pro Tem members shall meet the same qualification and training requirements as members of the Oneida Personnel Commission.
- (b) *Appointment.* Each member shall be appointed by the Oneida Business Committee in accordance with the Boards, Committees and Commissions law to serve a five (5) year term. The first term shall be staggered with one (1) member receiving a one (1) year term; one (1) member receiving a two (2) year term; one (1) member receiving a three (3) year term; one (1) member receiving a four (4) year term and one (1) member receiving a five (5) year term. Each appointment after the initial staggered terms shall receive a five (5) year term.
- (c) *Vacancies.*
- (1) *Filling of Vacancies.* Vacancies shall be filled in accordance with the Boards, Committees and Commissions law.
 - (2) *Resignation.* A member may resign at any time verbally at a meeting or by delivering written notice to the Oneida Business Committee Support Office and the OPC Chairperson or Chairperson's designee.
 - (A) *Effective Date of Resignation.* A resignation is effective upon acceptance by motion of a member's verbal resignation or upon delivery of the written notices.
 - (3) *Terms of Replacement Member.* A replacement member shall hold office through the unexpired portion of the term of the member whom he or she has replaced.
 - (A) A replacement member is defined as a member who fills a vacancy caused by resignation, removal or termination.
- (d) *Qualifications.* OPC members shall meet the following qualifications:
- (1) Be an enrolled member of the Oneida Nation;
 - (2) Be at least twenty-one (21) years of age;
 - (3) Shall not be an employee of the Nation;
 - (4) Be free of any and all direct conflicts of interest or appearances of conflict as defined under various laws and policies of the Nation, including, but not limited to, the oath of office, the Oneida Rules of Civil Procedure, the Oneida Personnel Policies and Procedures and other laws/policies regarding employment, the Code of Ethics, and the Boards, Committees and Commissions law; and
 - (5) Have a minimum of two (2) years supervisory experience along with

hiring experience, an Associate Degree, or equivalent experience or education.

- (e) *Duties and Responsibilities.* OPC members shall abide by the following:
- (1) Both formal and informal communications to any entity on behalf of the OPC must come from a member of the OPC through OPC directive. Specific policy governing all communications of the OPC may be set forth in an OPC Communications SOP to provide procedural guidance, consistent herewith, on determining when, how, and by which OPC member(s) communications are made;
 - (2) Uphold all laws and policies of the Nation, including, but not limited to, the Boards, Committees and Commissions law;
 - (3) Participate in the hiring selection process, including job description pre-screens and interviews, in accordance with the Oneida Personnel Policies and Procedures;
 - (4) Conduct grievance hearings in accordance with the Oneida Personnel Policies and Procedures and Oneida Business Committee resolution BC-03-13-19-C;
 - (A) The Oneida Judiciary Rules of Civil Procedure apply to proceedings conducted by the OPC, except where the Oneida Personnel Policies and Procedures are more specific, then those shall supersede.
 - (B) Appeals from OPC decisions to the Judiciary as authorized by the Nation's Judiciary law shall be governed by the Rules of Appellate Procedure.
 - (5) Be available for meetings, trainings, interviews, prescreening, reassignments, grievance hearings and other duties as needed;
 - (A) Three (3) unexcused absences to attend to such duties may be cause for the OPC to make a recommendation for termination to the Oneida Business Committee per section 1-6 of these bylaws.
 - (i) A member who fails to notify an OPC Officer, in writing, of his or her pending absence at least thirty (30) minutes before the start of the missed meeting shall be deemed unexcused.
 - (6) Exclusively use the official Oneida email address provided by the Nation upon appointment to the OPC ("Official Email") to conduct business electronically on behalf of the OPC; and
 - (7) *Dress Code.* Members are expected to be clean, well-groomed and dressed in business casual attire when conducting activities on behalf of the OPC, including, but not limited to, employee interviews and grievance hearings.
 - (A) By way of example, business casual attire does not include:
 - (i) Tattered jeans or shorts;
 - (ii) Shirts with language or graphics that are vulgar, sexually explicit, or otherwise offensive;
 - (iii) Attire that is revealing or provocative;

- (iv) Flip-flops or any type of loose footwear;
- (v) Sweat suits;
- (vi) See-through blouses or shirts;
- (vii) Sports bras, halter tops, or similar attire;
- (viii) Tank tops;
- (ix) Clothing that allows bare midriffs; and/or
- (x) Clothing that is ripped or stained.

1-6. *Termination.* An OPC member who violates these bylaws, or any other governing laws of the Nation, may have his or her appointment terminated in accordance with the Boards, Committees and Commissions law.

- (a) Any member whose appointment is terminated by the Oneida Business Committee after the adoption of these bylaws, as may be amended from time-to-time hereafter, shall not be eligible for re-appointment to the OPC for a minimum of five (5) years following his or her termination.
- (b) Recommendations to the Oneida Business Committee for termination of a member's appointment shall be determined by a majority vote of the members in attendance at an OPC meeting of an established quorum.

1-7. *Trainings.*

- (a) OPC members must complete the following training prior to participating in any screenings, interviews and/or grievance hearings on behalf of the OPC:
 - (1) Four (4) hours of e-Learning on interview certification and four (4) hours of orientation through the Oneida Human Resources Department, which shall include:
 - (A) EEO training;
 - (B) Training on laws, rules and regulations of the Nation; and
 - (C) Training on the Oneida Personnel Policies and Procedures.
 - (2) Training on the grievance process, which shall include:
 - (A) A presentation developed by the Oneida Judicial System on the Oneida Judiciary Rules of Civil Procedure, an estimated three (3) hours in length;
 - (B) Up to three (3) hours of training in formal opinion writing and the basics of evidence; and
 - (C) Two (2) hours of training in professional ethics, including issues of confidentiality.
 - (3) Any other training deemed necessary by the Oneida Business Committee.
- (b) After serving on the OPC for one (1) year, all OPC members shall either accumulate a minimum of eight (8) hours of training annually in the above subject matter or shall review annually the lessons and materials connected with the above subjects.
- (c) Completion of all training, including training under section 1-7(b), shall be confirmed by receipt of a certificate or some other written documentation and kept on file with the OPC.

- (d) Regardless of the number of trainings/conferences that he or she is required to attend, no member of the OPC shall be eligible to receive stipends for attending more than five (5) full days of mandatory trainings/conferences per year.

Article II. Officers

- 2-1. *Officers.* The Officer positions for the OPC shall consist of a Chairperson, a Vice-Chairperson and a Secretary.
- 2-2. *Responsibilities of the Chairperson.* The duties, responsibilities and limitations of the Chairperson are as follows:
- (a) Shall preside over all meetings of the OPC;
 - (b) Shall be a member of all subcommittees of the OPC, may call emergency meetings, and shall keep the OPC informed as to the business of the OPC;
 - (c) Shall, with the assistance of the Secretary, submit annual and semi-annual reports to the Oneida General Tribal Council as required by the Boards, Committees and Commissions law;
 - (d) Shall, with the assistance of the Secretary, submit quarterly reports to the Oneida Business Committee as required by the Boards, Committees and Commissions law;
 - (e) Shall attend or designate another OPC member to attend the Oneida Business Committee meeting where the OPC's quarterly report appears on the agenda; and
 - (f) Shall, with the assistance of the Secretary, forward notice of the meeting location, agenda and materials in the manner prescribed herein.
- 2-3. *Responsibilities of the Vice-Chairperson.* The duties, responsibilities and limitations of the Vice-Chairperson are as follows:
- (a) In the absence of the Chairperson, shall conduct meetings of the OPC and appoint a temporary Vice-Chairperson for those meetings; and
 - (b) Shall work with the Chairperson in all matters that concern the OPC.
- 2-4. *Responsibilities of the Secretary.* The duties, responsibilities and limitations of the Secretary are as follows:
- (a) Shall keep accurate minutes and/or assure that accurate minutes are kept of all OPC meetings as required by the Boards, Committees and Commissions law and as further prescribed herein;
 - (b) Along with the Chairperson, shall provide notice of regular, joint and emergency meetings, as well as agendas and materials, in the manner prescribed herein and as required under the Nation's Open Records and Open Meetings law;
 - (c) Shall act as custodian of the records;
 - (d) Shall attend to, or ensure proper attendance to, all correspondence and present to the OPC all official communications received by the OPC;
 - (e) Shall, along with the Chairperson, submit annual and semi-annual reports to the Oneida General Tribal Council, as well as quarterly reports to the

Oneida Business Committee, as required by the Boards, Committees and Commissions law;

- (f) In the event that both the Chairperson and Vice-Chairperson positions become vacant before the end of their terms, shall call meetings of the OPC to fill the vacancies and preside over those meetings for the sole purpose of conducting an election of new Officers, at which point the Chairperson, or Vice-Chairperson in the absence of the Chairperson, shall preside; and
- (g) Shall work with the Oneida Business Committee Support Office to administer the budget.

2-5. *Subcommittees.* Subcommittees of the OPC may be created and dissolved by the OPC when deemed necessary so long as in accordance with the Boards, Committees and Commissions law.

- (a) Members of a subcommittee created by the OPC shall not be eligible to receive stipends unless a specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

2-6. *Selection of Officers.*

- (a) Officers of the OPC shall be elected to serve a one (1) year term by majority vote of the members in attendance at the next regular or emergency OPC meeting of an established quorum following a vacancy of an Officer position.
- (b) A member may hold only one (1) Officer position per Officer term.
- (c) Each Officer shall hold his or her office until:
 - (1) The member resigns;
 - (2) The member has his or her appointment terminated in the manner set forth in the Boards, Committees and Commissions law; or
 - (3) The member has been dismissed from his or her Officer position by a majority vote of the members in attendance at an OPC meeting of an established quorum.

2-7. *Budgetary Sign-Off Authority and Travel.* The OPC shall follow the Nation's policies and procedures regarding purchasing, travel, and sign-off authority.

- (a) Levels of budgetary sign-off authority shall be as set forth in the manual titled, *Oneida Tribe of Indians of Wisconsin Purchasing Policies and Procedures*, for Area Directors/Enterprise Directors.
 - (1) All OPC Officers have sign-off authority and two (2) Officers shall be required to sign-off on all budgetary requests, except as follows:
 - (A) The Oneida Business Committee Support Office shall have sign-off authority over requests for stipends, travel per diem and business expense reimbursement.
- (b) The OPC shall approve a member's request to travel on behalf of the OPC by a majority vote of the members in attendance at a regular or emergency OPC meeting of an established quorum.
- (c) The OPC must review its budget on a monthly basis and have one or more members in attendance at all budget meetings.

2-8. *No Authorized Personnel.* The OPC shall not be authorized to hire personnel. The Oneida Business Committee Support Office and the Oneida Human Resources Department shall assist the OPC with administrative duties.

- (a) The Oneida Human Resources Department shall provide administrative assistance to the OPC in regard to the hiring and selection of employees, which shall include, but shall not be limited to, scheduling pre-screens and interviews, and coordinating OPC members to conduct hiring and selection activities.
- (b) The Oneida Human Resources Department shall provide administrative support to the OPC in regard to employee grievance hearings, including, but not limited to, accepting filings on behalf of the OPC, scheduling hearings, coordinating OPC members to serve as the hearing body, and providing a hearing room.

Article III. Meetings

3-1. *Regular Meetings.* Regular meetings shall occur on a monthly-basis. The regular meeting time, place and agenda shall be determined by the OPC at a regular meeting. If no alternative designation is made by the OPC, the regular meeting shall be the last Tuesday of every month.

- (a) Notice of meeting location, agenda and materials shall be provided by the Chairperson, with the assistance of the Secretary, to all members of the OPC in writing.
 - (1) Notice of meetings shall further be provided in accordance with the Nation's Open Records and Open Meetings law.
- (b) Meetings shall run in accordance with Robert's Rules of Order or another method approved by the Oneida Business Committee.

3-2. *Emergency Meetings.* Emergency meetings shall only be called when time sensitive issues require immediate action. Emergency meetings of the OPC may be called by the Chairperson or upon written request of any two (2) members. Notice of the meeting location, agenda and materials shall be forwarded by the Chairperson, with the assistance of the Secretary, to all members of the OPC in writing and via telephone call at least twenty-four (24) hours in advance of the emergency meeting.

- (a) Notice of emergency meetings shall further be provided in accordance with the Nation's Open Records and Open Meetings law.
- (b) Within seventy-two (72) hours after an emergency meeting, the OPC shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular meeting.

3-3. *Joint Meetings.* Joint meetings with the Oneida Business Committee shall be held in March and September of each year in the Oneida Business Committee Conference Room of the Norbert Hill Center upon approval of the Oneida Business Committee.

- (a) Notice of the joint meeting agenda, documents, and minutes shall be provided, and the joint meeting conducted, in accordance with resolution BC-03-27-19-D titled, Oneida Business Committee and Joint Meetings with Boards, Committees and Commissions – Definitions and Impact, as may be amended from time-to-time hereafter.

3-4. *Quorum.* A majority of the OPC members shall constitute a quorum for the transaction of business, one of which shall include the Chairperson, Vice-Chairperson or Secretary; provided, the Secretary is presiding over the meeting in accordance with 2-4(f) of these bylaws.

3-5. *Order of Business.* The regular meetings of the OPC shall follow the order of business as set out herein:

- (a) Call to Order
- (b) Roll Call
- (c) Approving of Previous Meeting Minutes
- (d) Reports
- (e) Old Business
- (f) New Business
- (g) Adjournment

3-6. *Voting.* Voting shall be in accordance with the simple majority vote of the members in attendance at an OPC meeting of an established quorum.

- (a) The Chairperson or presiding Officer shall vote only in the case of a tie.
- (b) The OPC is permitted to e-poll; provided, it does so in accordance with the procedures set forth in the Boards, Committees and Commissions law.

Article IV. Expectations

4-1. *Behavior of Members.* Members are expected to treat each other in accordance with the Nation's core values of The Good Mind as expressed by Onʌyote'a'ka, which includes:

- (a) Kahletsyalúsla. The heart felt encouragement of the best in each of us.
- (b) Kanolukhwásla. Compassion, caring, identity, and joy of being.
- (c) Ka'nikuhli'yó. The openness of the good spirit and mind.
- (d) Ka'tshatstásla. The strength of belief and vision as a People.
- (e) Kalihwi'yó. The use of the good words about ourselves, our Nation, and our future.
- (f) Twahwahtsílawayʌ. All of us are family.
- (g) Yukwatsístayʌ. Our fire, our spirit within each one of us.
- (h) *Enforcement.* A member who fails to treat other members in accordance with this section of the bylaws; fails to follow any other section of these bylaws and/or fails to adhere to any other governing laws of the Nation, may be subject to a recommendation for termination of his or her appointment from the OPC.

- (1) Appointed members of the OPC serve at the discretion of the Oneida Business Committee.

- (2) Upon the recommendation of a member of the Oneida Business Committee or a recommendation from the OPC, by majority vote of the members in attendance at an OPC meeting of an established quorum, a member may have his or her appointment terminated by the Oneida Business Committee in accordance with the Boards, Committees and Commissions law.
- 4-2. *Prohibition of Violence.* Intentionally violent acts committed by a member of the OPC that inflict, attempt to inflict, or threaten to inflict emotional or bodily harm on another person, or damage to property during a meeting or when acting in an official capacity are strictly prohibited and grounds for an immediate recommendation for termination of appointment from the OPC and/or the imposition of sanctions and/or penalties according to laws and policies of the Nation.
- 4-3. *Drug and Alcohol Use.* Use of alcohol and prohibited drugs by a member of the OPC when acting in his or her official capacity is strictly prohibited. Prohibited drugs are defined as marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.
- 4-4. *Social Media.* OPC members shall abide by the Nation's Social Media Policy and their oath of office when using social media while acting on behalf of or as a representative of the OPC.
- (a) OPC members shall further refrain from posting, attaching or writing anything relating to OPC business or activities on any social media outlet except for notices of meetings and notices of meeting cancellations.
- 4-5. *Conflict of Interest.* OPC members shall abide by all laws of the Nation governing conflicts of interest. Members must submit a Conflict of Interest Disclosure form upon their oath of office and annually thereafter.

Article V. Stipends and Compensation

- 5-1. *Stipends.* OPC members shall be eligible for the following stipends as set forth in and subject to these bylaws; the Boards, Committees and Commissions law; and resolution BC-05-08-19-B titled, Amending Resolution BC-09-26-18-D Boards, Committees and Commissions Law Stipends, as may be further amended from time-to-time hereafter:
- (a) One (1) monthly meeting stipend.
- (b) One (1) stipend per day for participating in interviews and/or job description pre-screens conducted by the Human Resources Department.
- (c) Stipends for holding grievance hearings.
- (d) Stipends for Judiciary hearings.

- (1) A member of the OPC may receive a stipend for attending an Oneida Judiciary hearing if that member is required to attend by official subpoena.
 - (e) Stipends for each full day of trainings/conferences that a member is required to attend by law, bylaws or resolution.
 - (f) A member shall receive a stipend for his or her attendance at a duly called joint meeting as defined under the Boards, Committees and Commissions law.
- 5-2. *Compensation.* Besides travel, per diem and business expense reimbursement authorized by the Boards, Committees and Commissions law, OPC members are not eligible for any other type of compensation for duties/activities they perform as members of the OPC.
- (a) OPC members shall not act in any other official or personal business capacity or on behalf of any other entity or individual while acting in the capacity of an OPC member or on behalf of the OPC.

Article VI. Records and Reporting

- 6-1. *Agenda Items.* Agendas shall be maintained in a consistent format as identified in Article III, section 3-5 of these bylaws.
- 6-2. *Minutes.* All minutes shall be typed in a consistent format created by the Oneida Business Committee Support Office and shall be submitted to the Oneida Business Committee Support Office within thirty (30) days after approval by the OPC.
- 6-3. *Attachments.* Handouts, attachments, memoranda and the like shall be attached to the corresponding minutes and the agenda and maintained electronically by the Oneida Business Committee Support Office.
- 6-4. *Oneida Business Committee Liaison.* The OPC shall regularly communicate with the Oneida Business Committee member who is its designated liaison. The frequency and method of communication shall be as agreed upon by the OPC and the liaison, but not less than required in any law or policy on reporting developed by the Oneida Business Committee or the Oneida General Tribal Council.
- 6-5. *Audio Recordings.* The OPC shall audio record all meetings of the OPC on a device supplied or approved by the Oneida Business Committee Support Office and shall submit the recordings to the Oneida Business Committee Support Office within two (2) business days of recording for purposes of maintaining the audio records.
- (a) Audio recordings of executive session portions of an OPC meeting are not required.

Article VII. Amendments

- 7-1. *Amendments.* The OPC may amend these bylaws upon a majority vote of the members in attendance at an OPC meeting of an established quorum.
- (a) Any amendments to these bylaws shall conform to the requirements of the Boards, Committees and Commissions law and any other policy of the Nation.
 - (b) Amendments to these bylaws must be approved by the Oneida Business Committee prior to implementation.
 - (c) The OPC shall review these bylaws no less than on an annual basis.

These By-laws, as amended and revised, are hereby approved by the Oneida Business Committee at a duly called meeting held on October 23, 2019, by the Secretary of the Oneida Business Committee's signature.



Lisa Summers, Secretary
Oneida Business Committee

Qualifications

2010 Bylaws	2019 Bylaws (Current)
1. An enrolled member of the Oneida Tribe of Indians of Wisconsin.	(1) Be an enrolled member of the Oneida Nation;
2. The entire combined Commission may not consist of more than two (2) members from anyone division of the Oneida Tribe, or less than seven (7) community members who are not employed by the Tribe.	(2) Be at least twenty-one (21) years of age;
3. Be free of any and all direct conflicts of interest or appearances of conflict as defined under various laws and policies of the Tribe, including but not limited to the oath of office, the OPPP, the Ethics Code, the Judicial Code and the Oneida Rules of Civil Procedure.	(3) Shall not be an employee of the Nation;
4. A member may not be an employee of the Human Resources Department, any advocacy group (department), or any other recognized hearing body within the Oneida Tribe, e.g. Personnel Relations Officers and Paralegals.	(4) Be free of any and all direct conflicts of interest or appearances of conflict as defined under various laws and policies of the Nation, including, but not limited to, the oath of office, the Oneida Rules of Civil Procedure, the Oneida Personnel Policies and Procedures and other laws/policies regarding employment, the Code of Ethics, and the Boards, Committees and Commissions law; and
5. Commissioners shall be available for meetings, training, interviews, prescreening, reassignments, grievance hearings and other duties as needed. Three (3) unexcused absences to attend to such duties may be reported to the OBC, if deemed appropriate by the OPC, as indicated in 1-4.f. below.	(5) Have a minimum of two (2) years supervisory experience along with hiring experience, an Associate Degree, or equivalent experience or education.
6. Both formal and informal communications with any entity by any commissioner on behalf of the OPC will be as directed by the Commission, or as routinely may be required by Officers. Specific policy governing all communications of the OPC may be set forth in an OPC Communications SOP which shall provide procedural guidance on determining when, how and by whom OPC communications are made.	

Training

2010 Bylaws	2019 Bylaws (Current)
<p>Training. All training shall be mandatory. Exceptions may be made for good cause shown. regarding specific training events, however, alternative training shall be provided that insures that all commissioners are equally knowledgeable of their duties and responsibilities. Such alternative training shall occur within the time frames specified in the OPC Training Plan. Failure to attend without formal exception for good cause may result in suspension of all further assignments and may be reported to the OBC if so determined and deemed appropriate by the O Pc.</p>	<p>(a) OPC members must complete the following training prior to participating in any screenings, interviews and/or grievance hearings on behalf of the OPC:</p> <ul style="list-style-type: none"> (1) Four (4) hours of e-Learning on interview certification and four (4) hours of orientation through the Oneida Human Resources Department, which shall include: <ul style="list-style-type: none"> (A) EEO training; (B) Training on laws, rules and regulations of the Nation; and (C) Training on the Oneida Personnel Policies and Procedures. (2) Training on the grievance process, which shall include: <ul style="list-style-type: none"> (A) A presentation developed by the Oneida Judicial System on the Oneida Judiciary Rules of Civil Procedure, an estimated three (3) hours in length; (B) Up to three (3) hours of training in formal opinion writing and the basics of evidence; and (C) Two (2) hours of training in professional ethics, including issues of confidentiality. (3) Any other training deemed necessary by the Oneida Business Committee. per year.
	<p>(b) After serving on the OPC for one (1) year, all OPC members shall either accumulate a minimum of eight (8) hours of training annually in the above subject matter or shall review annually the lessons and materials connected with the above subjects.</p>
	<p>(c) Completion of all training, including training under section 1-7(b), shall be confirmed by receipt of a certificate or some other written documentation and kept on file with the OPC.</p>
	<p>(d) Regardless of the number of trainings/conferences that he or she is required to attend, no member of the OPC shall be eligible to receive stipends for attending more than five (5) full days of mandatory trainings/conferences per year.</p>



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



AGENDA REQUEST FORM

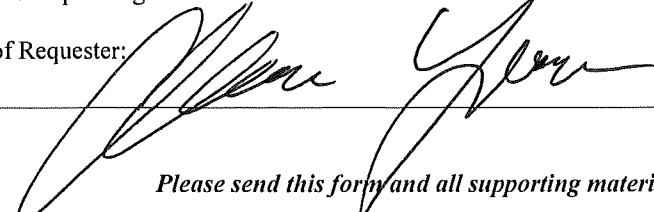
- 1) Request Date: September 30, 2022
- 2) Contact Person(s): Clorissa N. Leeman
Dept: Legislative Reference Office
Phone Number: (920) 869-4417 Email: csantia1@oneidanation.org
- 3) Agenda Title: Furlough Law Amendments
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
The LOC is currently amending the Layoff Policy. In discussions with HRD it was determined that it would provide greater clarification and avoid duplicative procedures in laws if the Furlough law was amended to address both furloughs and layoffs, and the standalone Layoff Policy be repealed.

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

- 1) Furlough Law 3) _____
- 2) _____ 4) _____

- 5) Please list any laws, policies or resolutions that might be affected:
Layoff Policy
- 6) Please list all other departments or person(s) you have brought your concern to:
Human Resources Department
- 7) Do you consider this request urgent? Yes No
If yes, please indicate why:

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

Signature of Requester: 

Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
P.O. Box 365
Oneida, WI 54155
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Title 2. Employment – Chapter 205 FURLOUGH

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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-02-09-22-A.

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

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

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

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

205.3. Definitions

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

- (a) “Acts of God” means an event or effect that can be neither anticipated nor controlled, including both acts of nature, such as floods and hurricanes, and acts of people, such as riots, strikes, and wars.
- (b) “Additional duties” means responsibilities of another position within the Nation that is not within an employee’s current scope of work.
- (c) “Authorized designee” means an employee identified by a Direct Report Level position to develop or assist in developing a furlough implementation plan when the individual

employed in the Direct Report Level position is unavailable or requests such assistance from that employee.

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

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

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

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

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

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

(j) “Nation” means the Oneida Nation.

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

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

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

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

205.4. Application

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

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

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

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

(c) In accordance with this section and subject to any express exceptions set forth herein, a furlough program shall be administered in a manner that affords preferential treatment to Oneida citizens and Indians in the following order, starting with those employees to be

given the highest level of preference when applying the provisions of this law:

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

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

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

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

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

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

205.5. Furlough Implementation Plan

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

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

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

- (A) Which positions within their respective department or division may qualify as a critical position;
 - (B) Which employees within their respective department or division may qualify for Indian preference and the corresponding level of preference that would apply under section 205.4-2 of this law;
 - (C) Which positions and/or employees within their respective department or division may be exempt from the application of Indian preference and the basis for said exemption;
 - (D) Whether any employees within their respective department or division may be interested in volunteering to be placed in furlough status in the event a furlough program is implemented; and
 - (E) Whether any positions within their respective department or division are capable of being adjusted to promote Indian preference when deciding which employees to place in furlough status.
- (2) The Human Resources Department shall submit its standard template to the Oneida Business Committee for approval by resolution prior to distributing it to the Direct Report Level positions and/or authorized designees for development in accordance herewith.
- (b) The Human Resources Department shall create a Standard Operating Procedure which sets forth how a furlough implementation plan shall be processed under this law once the standard template is approved by the Oneida Business Committee, that shall, at a minimum, address the following:
- (1) Distribution of the standard template to the Direct Report Level positions and/or their authorized designees;
 - (2) The process for Direct Report Level positions and/or authorized designees to follow upon receiving the standard template, including, but not limited to:
 - (A) How a furlough implementation plan shall be created using the standard template;
 - (B) How a furlough implementation plan shall be submitted to the Human Resources Department for approval; and
 - (C) The amount of time the Direct Report Level positions and/or their authorized designees have to submit their furlough implementation plans to the Human Resources Department upon receipt of the standard template.
 - (3) How the Human Resources Department will process furlough implementation plans for approval upon submission by the Direct Report Level positions and/or authorized designees; and
 - (4) How the Human Resources Department will notify the Direct Report Level positions and/or authorized designees of its decision to approve or reject their furlough implementation plan and, if rejected, the reason for the rejection and the process for resubmitting the furlough implementation plan for reconsideration.
- (c) Copies of approved furlough implementation plans shall be retained by the Human Resources Department, as well as the Direct Report Level positions and/or authorized designees, consistent with governing law.
- 205.5-2. *Furlough Implementation Plan Updates.* The furlough implementation plan, as well as

the standard template upon which it is developed, shall be updated as follows:

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

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

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

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

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

205.6. Furlough Implementation

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

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

(a) The resolution shall include the following:

(1) The basis for implementing the furlough program;

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

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

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

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

(b) *Ad Hoc Committee.* The Oneida Business Committee may, in its discretion, establish an ad hoc committee to assist in the implementation of a furlough program by, among other

actions, helping to identify which areas of the Nation should be subject to the furlough program and which positions, if any, should be deemed critical, when directed to by the Oneida Business Committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

that require immediate curtailment of activities within the organization.

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

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

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

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

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

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

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

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

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

205.7. Placing Employees in Furlough Status

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

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

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

(1) *Amendments.* The Oneida Business Committee, with assistance from the ad hoc

committee if so requested, may amend the list of identified critical positions as it deems necessary under the circumstances.

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

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

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

205.7-3. *Non-Critical Positions.* Directives from the Oneida Business Committee regarding employee furlough reductions, as set forth in the initial resolution or a subsequent resolution related thereto, shall be carried out by the Direct 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

position within a department or division exceeds the number of said employees to be placed in furlough status, the order of placement shall occur in the following order, beginning with the first category:

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

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

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

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

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

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

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

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

205.8. Furloughed Employees

205.8-1. Employees shall not perform any work for the Nation when off of work due to being placed in furlough status, which includes, but is not limited to, responding to work-related e-mail

and voicemail, as well as traveling on behalf of the Nation.

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

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

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

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

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

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

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

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

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

205.8-6. *Back Pay.* Except as 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;

- (C) Documented first generation Oneida descendants;
- (D) Indians; and
- (E) Non-Indians.

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

- (A) *Seniority.* Employees who have served the Nation as a regular status employee without a break in employment for the longest amount of time shall be given recall priority first;
- (B) *Veteran Status.* If employees remain after applying the priority for seniority, the remaining employees with veteran status shall be given recall priority over those with a more favorable performance evaluation; and
- (C) *Performance Evaluation.* If employees remain after applying the priority for veterans, the remaining employees with a more favorable performance evaluation shall be given recall priority over those with a less favorable performance evaluation.

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

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

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

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

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

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

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

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

205.10. Responsibilities of Direct Report Level and Supervisor Positions

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

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

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

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

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

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

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

205.11. Appeal

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

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

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

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

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

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

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

End.

Emergency Adoption – BC-10-15-13-A
Emergency Adoption Extension – BC-04-09-14-D
Adoption – BC-11-10-15-B
Adoption – BC-02-09-22-A

September 21, 2022 Legislative Operating Committee E-Poll Emergency Adoption of the Oneida Life Insurance Plan Law

E-POLL REQUEST: Emergency Adoption of the Oneida Life Insurance Plan Law



LOC

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

Cc: Rhiannon R. Metoxen; Kristal E. Hill; Clorissa N. Santiago

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Wed 9/21/2022 9:52 PM



Good Evening Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Oneida Life Insurance Plan law emergency adoption materials.

EXECUTIVE SUMMARY

Emergency adoption of the Oneida Life Insurance Plan law (the “Law”) is being sought to establish the Oneida Nation Assistance Fund as an approved program of the Nation to provide a death benefit through the Oneida Life Insurance Plan (OLIPP) for all eligible enrolled Oneida Nation members, pursuant to the Oneida General Welfare law. [10 O.C. 1004.1-1]. The Law will:

- Establish the Oneida Life Insurance Plan as an approved program of the Nation in accordance with the Oneida General Welfare law. [10 O.C. 1004.4-1];
- Provide how this program qualifies for general welfare exclusion. [10 O.C. 1004.4-2];
- Provide that all members of the Nation shall qualify for benefits from the Oneida Life Insurance Plan to be used for funeral expenses first, with any residual benefits distributed to a designated beneficiary. [10 O.C. 1004.5-1];
- Require that a member of the Nation complete the Oneida Trust Enrollment Committee approved beneficiary designation form and submit it to the Oneida Trust Enrollment Office, either online or in person at the Oneida Trust Enrollment Office, prior to their death in order to secure benefits from the Oneida Life Insurance Plan for their beneficiary. [10 O.C. 1004.5-2];
- Provide that funeral expenses shall be paid directly to the funeral home upon submission of a valid invoice, up to the limit of the Oneida Life Insurance Plan benefits, even if a designated beneficiary has not been designated – but the Oneida Life Insurance Plan residual benefits shall not be paid or claimed if the decedent did not designate a living beneficiary though the beneficiary designation form. [10 O.C. 1004.5-2(b), 1004.5-2(e)];
- Allow for a one hundred eighty (180) day grace period after the effective date of this law, where section 1004.5-2 shall not be enforced to permit members of the Nation to complete and submit the required beneficiary forms. [10 O.C. 1004.5-2(c)];
- Require that the Oneida Trust Enrollment Department be notified within one (1) year of the member of the Nation’s death in order to distribute the Oneida Life Insurance Plan benefits to the beneficiary. [10 O.C. 1004.5-3];
- Provide that the Trust Enrollment Department is the department that has the responsibilities to oversee and administer the Oneida Life Insurance Plan. [10 O.C. 1004.5-4];
- Provide rules related to the determination of death and status. [10 O.C. 1004.6-1];
- Prohibit a designated beneficiary who criminally and intentionally causes the death of the decedent from being entitled to any benefits passing under this law. [10 O.C. 1004.6-2];
- Provide how the Oneida Life Insurance Plan benefits shall be distributed. [10 O.C. 1004.6-3];
- Provide that the Oneida Life Insurance Plan shall be contingent on funding through the Nation’s annual budget. [10 O.C. 1004.7-1].

The Nation currently provides the Oneida Life Insurance Plan Plus, otherwise known as OLIPP, which consists of fifteen thousand (\$15,000) of life insurance benefits directly payable to a tribal member's designated beneficiaries. The Nation contracted with the company Epic to manage OLIPP. Epic collected relevant information regarding the decedent and beneficiaries and distributed OLIPP funds. Epic will cease this service offering and terminate its current contracts for this service, including with the Nation, on September 30, 2022. The Oneida Trust and Enrollment Committee determined the Oneida Trust and Enrollment Department could manage OLIPP in-house, yielding a cost savings to the Nation and expediting payments to the beneficiaries. The proposed Law will codify this benefit as an approved program under the Oneida General Welfare law. The Oneida Trust and Enrollment Department requests this proposed law be considered for emergency adoption as time is of the essence. The Oneida Trust and Enrollment Department seeks to commence the in-house management and oversight of OLIPP immediately after the Epic contract terminates on September 30, 2022.

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

The emergency adoption of this Law is necessary for the preservation of the general welfare of the Reservation population. The emergency adoption of this Law will ensure that the Oneida Trust Enrollment Department can commence the in-house management and oversight of the Oneida Life Insurance Plan immediately after the Epic contract terminates on September 30, 2022, in order to provide a smooth transition and uninterrupted service to the members of the Nation participating in the Oneida Life Insurance Plan and the beneficiaries that will emerge in the next fiscal year and beyond.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this Law would be contrary to public interest. The Epic contract for the management of OLIPP terminates on September 30, 2022, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Law can be adopted to address the management and oversight of the Oneida Life Insurance Plan by the Oneida Trust Enrollment Department prior to the termination date.

Attached to this e-poll please find the following materials:

- Emergency Adoption Memo;
- Resolution, *Emergency Adoption of the Oneida Life Insurance Plan Law*;
- Statement of effect;
- Legislative Analysis; and
- Oneida Life Insurance Plan law.

The LOC is now being asked to approve by e-poll the Oneida Life Insurance Plan law emergency adoption packet and forward to the Oneida Business Committee for consideration.

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is not until October 5, 2022, and it is intended that these materials be included on the agenda for the September 28, 2022, Oneida Business Committee meeting.

REQUESTED ACTION

- Approve the Oneida Life Insurance Plan law emergency adoption packet and forward to the Oneida Business Committee for consideration.

DEADLINE FOR RESPONSE

September 22, 2022 at 11:00 a.m.

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



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

E-POLL RESULTS:

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

RE: E-POLL REQUEST: Emergency Adoption of the Oneida Life Insurance Plan Law



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

Reply Reply All Forward ...
 Wed 9/21/2022 9:54 PM

Support

Jenny

Sent from my Galaxy

RE: E-POLL REQUEST: Emergency Adoption of the Oneida Life Insurance Plan Law



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

Reply Reply All Forward ...
 Wed 9/21/2022 10:11 PM

Support

RE: E-POLL REQUEST: Emergency Adoption of the Oneida Life Insurance Plan Law



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

Reply Reply All Forward ...
 Thu 9/22/2022 7:47 AM

Support

Approve: E-POLL REQUEST: Emergency Adoption of the Oneida Life Insurance Plan Law



Kirby W. Metoxen
 To ○ LOC

The sender responded: Approve.

Reply Reply All Forward ...
 Thu 9/22/2022 8:18 AM

RE: E-POLL REQUEST: Emergency Adoption of the Oneida Life Insurance Plan Law




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

Reply Reply All Forward ...
 Thu 9/22/2022 8:25 AM

Approve.



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson 
DATE: September 28, 2022
RE: Emergency Adoption of the Oneida Life Insurance Plan Law

Please find the following attached backup documentation for your consideration of the emergency adoption of the Oneida Life Insurance Plan law:

1. Resolution: Emergency Adoption of the Oneida Life Insurance Plan Law
2. Statement of Effect: Emergency Adoption of the Oneida Life Insurance Plan Law
3. Oneida Life Insurance Plan Law Legislative Analysis
4. Oneida Life Insurance Plan Law

Overview

Emergency adoption of the Oneida Life Insurance Plan law (the “Law”) is being sought to establish the Oneida Nation Assistance Fund as an approved program of the Nation to provide a death benefit through the Oneida Life Insurance Plan (OLIPP) for all eligible enrolled Oneida Nation members, pursuant to the Oneida General Welfare law. [10 O.C. 1004.1-1]. The Law will:

- Establish the Oneida Life Insurance Plan as an approved program of the Nation in accordance with the Oneida General Welfare law. [10 O.C. 1004.4-1];
- Provide how this program qualifies for general welfare exclusion. [10 O.C. 1004.4-2];
- Provide that all members of the Nation shall qualify for benefits from the Oneida Life Insurance Plan to be used for funeral expenses first, with any residual benefits distributed to a designated beneficiary. [10 O.C. 1004.5-1];
- Require that a member of the Nation complete the Oneida Trust Enrollment Committee approved beneficiary designation form and submit it to the Oneida Trust Enrollment Committee, either online or in person at the Oneida Trust Enrollment Office, prior to their death in order to secure benefits from the Oneida Life Insurance Plan for their beneficiary. [10 O.C. 1004.5-2];
- Provide that funeral expenses shall be paid directly to the funeral home upon submission of a valid invoice, up to the limit of the Oneida Life Insurance Plan benefits, even if a designated beneficiary has not been designated – but the Oneida Life Insurance Plan residual benefits shall not be paid or claimed if the decedent did not designate a living beneficiary though the beneficiary designation form. [10 O.C. 1004.5-2(b), 1004.5-2(e)];
- Allow for a one hundred eighty (180) day grace period after the effective date of this law, where section 1004.5-2 shall not be enforced to permit members of the Nation to complete and submit the required beneficiary forms. [10 O.C. 1004.5-2(c)];
- Require that the Oneida Trust Enrollment Department be notified within one (1) year of the member of the Nation’s death in order to distribute the Oneida Life Insurance Plan benefits to the beneficiary. [10 O.C. 1004.5-3];

- Provide that the Trust Enrollment Department is the department that has the responsibilities to oversee and administer the Oneida Life Insurance Plan. *[10 O.C. 1004.5-4]*;
- Provide rules related to the determination of death and status. *[10 O.C. 1004.6-1]*;
- Prohibit a designated beneficiary who criminally and intentionally causes the death of the decedent from being entitled to any benefits passing under this law. *[10 O.C. 1004.6-2]*;
- Provide how the Oneida Life Insurance Plan benefits shall be distributed. *[10 O.C. 1004.6-3]*;
- Provide that the Oneida Life Insurance Plan shall be contingent on funding through the Nation's annual budget. *[10 O.C. 1004.7-1]*.

The Nation currently provides the Oneida Life Insurance Plan Plus, otherwise known as OLIPP, which consists of fifteen thousand dollars (\$15,000) of life insurance benefits directly payable to a tribal member's designated beneficiaries. The Nation contracted with the company Epic to manage OLIPP. Epic collected relevant information regarding the decedent and beneficiaries and distributed OLIPP funds. Epic will cease this service offering and terminate its current contracts for this service, including with the Nation, on September 30, 2022. The Oneida Trust and Enrollment Committee determined the Oneida Trust and Enrollment Department could manage OLIPP in-house, yielding a cost savings to the Nation and expediting payments to the beneficiaries. The proposed Law will codify this benefit as an approved program under the Oneida General Welfare law. The Oneida Trust and Enrollment Department requests this proposed law be considered for emergency adoption as time is of the essence. The Oneida Trust and Enrollment Department seeks to commence the in-house management and oversight of OLIPP immediately after the Epic contract terminates on September 30, 2022.

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

The emergency adoption of this Law is necessary for the preservation of the general welfare of the Reservation population. The emergency adoption of this Law will ensure that the Oneida Trust Enrollment Department can commence the in-house management and oversight of the Oneida Life Insurance Plan immediately after the Epic contract terminates on September 30, 2022, in order to provide a smooth transition and uninterrupted service to the members of the Nation participating in the Oneida Life Insurance Plan and the beneficiaries that will emerge in the next fiscal year and beyond.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this Law would be contrary to public interest. The Epic contract for the management of OLIPP terminates on September 30, 2022, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Law can be adopted to address the management and oversight of the Oneida Life Insurance Plan by the Oneida Trust Enrollment Department prior to the termination date.

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

Requested Action

Approve the Resolution: Emergency Adoption of the Oneida Life Insurance Plan Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # Emergency Adoption of the Oneida Life Insurance Plan Law

- 1 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
2 recognized by the laws of the United States of America; and
3
- 4 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
5
- 6 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
7 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
8
- 9 **WHEREAS,** the Oneida Life Insurance Plan law (“the Law”) is being proposed for emergency adoption
10 in an effort to establish the Oneida Life Insurance Plan (OLIPP) as an approved program
11 of the Nation to govern how the Nation provides fifteen thousand dollars (\$15,000) of
12 financial assistance to eligible members of the Nation to pay for funeral expenses, with any
13 residual benefit amounts paid thereafter to the designated beneficiary; and
14
- 15 **WHEREAS,** the Law provides how the Oneida Life Insurance Plan qualifies for general welfare
16 exclusion; and
17
- 18 **WHEREAS,** the Law provides that all members of the Nation shall qualify for benefits from the Oneida
19 Life Insurance Plan to be used for funeral expenses first, with any residual benefits
20 distributed to a designated beneficiary; and
21
- 22 **WHEREAS,** the Law requires that a member of the Nation complete the Oneida Trust Enrollment
23 Committee approved beneficiary designation form and submit it to the Oneida Trust
24 Enrollment Committee, either online or in person at the Oneida Trust Enrollment Office,
25 prior to their death in order to secure benefits from the Oneida Life Insurance Plan for their
26 beneficiary; and
27
- 28 **WHEREAS,** the Law provides that funeral expenses shall be paid directly to the funeral home upon
29 submission of a valid invoice, up to the limit of the Oneida Life Insurance Plan benefits,
30 even if a designated beneficiary has not been designated – but the Oneida Life Insurance
31 Plan residual benefits shall not be paid or claimed if the decedent did not designate a living
32 beneficiary though the beneficiary designation form; and
33
- 34 **WHEREAS,** the Law allows for a one hundred eighty (180) day grace period after the effective date of
35 this law, where section 1004.5-2 shall not be enforced, to permit members of the Nation to
36 complete and submit the required beneficiary forms; and
37
- 38 **WHEREAS,** the Law requires that the Oneida Trust Enrollment Department be notified within one (1)
39 year of the member of the Nation’s death in order to distribute the Oneida Life Insurance
40 Plan benefits to the beneficiary; and
41
- 42 **WHEREAS,** the Law provides that the Trust Enrollment Department is the department that has the
43 responsibilities to oversee and administer the Oneida Life Insurance Plan; and
44

45 **WHEREAS,** the Law provides rules related to the determination of death and status; and
46
47 **WHEREAS,** the Law prohibit a designated beneficiary who criminally and intentionally causes the death
48 of the decedent from being entitled to any benefits passing under this law; and
49
50 **WHEREAS,** the Law provides how the Oneida Life Insurance Plan benefits shall be distributed; and
51
52 **WHEREAS,** the Law provides that the Oneida Life Insurance Plan shall be contingent on funding
53 through the Nation's annual budget; and
54
55 **WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact
56 legislation on an emergency basis when legislation is necessary for the immediate
57 preservation of the public health, safety, or general welfare of the Reservation population,
58 and the adoption of the legislation is required sooner than would be possible under the
59 Legislative Procedures Act; and
60
61 **WHEREAS,** emergency adoption of legislation is effective for a period of six (6) months, renewable by
62 the Oneida Business Committee for an additional six (6) month term; and
63
64 **WHEREAS,** the Nation currently provides the Oneida Life Insurance Plan Plus, otherwise known as
65 OLIPP, which consists of fifteen thousand dollars (\$15,000) of life insurance benefits
66 directly payable to a tribal member's designated beneficiaries; and
67
68 **WHEREAS,** the Nation contracted with the company Epic to manage OLIPP, by collecting relevant
69 information regarding the decedent and beneficiaries, and distribute OLIPP funds; and
70
71 **WHEREAS,** Epic will cease this service offering and terminate its current contracts for this service,
72 including with the Nation, on September 30, 2022; and
73
74 **WHEREAS,** the Oneida Trust and Enrollment Committee determined the Oneida Trust and Enrollment
75 Department could manage OLIPP in-house, yielding a cost savings to the Nation and
76 expediting payments to the beneficiaries; and
77
78 **WHEREAS,** the emergency adoption of this Law is necessary for the preservation of the general welfare
79 of the Reservation population, as the Law shall ensure that the Oneida Trust Enrollment
80 Department can commence the in-house management and oversight of the Oneida Life
81 Insurance Plan immediately after the Epic contract terminates on September 30, 2022, in
82 order to provide a smooth transition and uninterrupted service to the members of the Nation
83 participating in the Oneida Life Insurance Plan and the beneficiaries that will emerge in the
84 next fiscal year and beyond; and
85
86 **WHEREAS,** observance of the requirements under the Legislative Procedures Act for adoption of this
87 Law would be contrary to public interest since the Epic contract for the management of
88 OLIPP terminates on September 30, 2022, and the process and requirements of the
89 Legislative Procedures Act cannot be completed in time to ensure that the Law can be
90 adopted to address the management and oversight of the Oneida Life Insurance Plan by
91 the Oneida Trust Enrollment Department prior to the termination date.; and
92
93 **WHEREAS,** the Legislative Procedures Act does not require a public meeting or fiscal impact statement
94 when considering emergency legislation; and
95
96 **NOW THEREFORE BE IT RESOLVED,** the Oneida Business Committee hereby adopts, on an emergency
97 basis, the Oneida Life Insurance Plan law effective immediately.



Statement of Effect

Emergency Adoption of the Oneida Life Insurance Plan Law

Summary

This resolution adopts the Oneida Life Insurance Plan law on an emergency basis in order to establish the Oneida Life Insurance Plan as an approved program of the Nation to govern how the Nation provides fifteen thousand dollars (\$15,000) of financial assistance to eligible members of the Nation to pay for funeral expenses, with any residual benefit amounts paid thereafter to the designated beneficiary.

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

Date: September 21, 2022

Analysis by the Legislative Reference Office

This resolution adopts the Oneida Life Insurance Plan law (“the Law”) on an emergency basis. The purpose of the Law is to provide a death benefit through the Oneida Life Insurance Plan (OLIPP) for all eligible enrolled Oneida Nation members, pursuant to the Oneida General Welfare law. [10 O.C. 1004.1-1]. The Law will:

- Establish the Oneida Life Insurance Plan as an approved program of the Nation in accordance with the Oneida General Welfare law. [10 O.C. 1004.4-1];
- Provide how this program qualifies for general welfare exclusion. [10 O.C. 1004.4-2];
- Provide that all members of the Nation shall qualify for benefits from the Oneida Life Insurance Plan to be used for funeral expenses first, with any residual benefits distributed to a designated beneficiary. [10 O.C. 1004.5-1];
- Require that a member of the Nation complete the Oneida Trust Enrollment Committee approved beneficiary designation form and submit it to the Oneida Trust Enrollment Committee, either online or in person at the Oneida Trust Enrollment Office, prior to their death in order to secure benefits from the Oneida Life Insurance Plan for their beneficiary. [10 O.C. 1004.5-2];
- Provide that funeral expenses shall be paid directly to the funeral home upon submission of a valid invoice, up to the limit of the Oneida Life Insurance Plan benefits, even if a designated beneficiary has not been designated – but the Oneida Life Insurance Plan residual benefits shall not be paid or claimed if the decedent did not designate a living beneficiary through the beneficiary designation form. [10 O.C. 1004.5-2(b), 1004.5-2(e)];
- Allow for a one hundred eighty (180) day grace period after the effective date of this law, where section 1004.5-2 shall not be enforced to permit members of the Nation to complete and submit the required beneficiary forms. [10 O.C. 1004.5-2(c)];
- Require that the Oneida Trust Enrollment Department be notified within one (1) year of the member of the Nation’s death in order to distribute the Oneida Life Insurance Plan benefits to the beneficiary. [10 O.C. 1004.5-3];
- Provide that the Trust Enrollment Department is the department that has the responsibilities to oversee and administer the Oneida Life Insurance Plan. [10 O.C. 1004.5-4];

- Provide rules related to the determination of death and status. *[10 O.C. 1004.6-1]*;
- Prohibit a designated beneficiary who criminally and intentionally causes the death of the decedent from being entitled to any benefits passing under this law. *[10 O.C. 1004.6-2]*;
- Provide how the Oneida Life Insurance Plan benefits shall be distributed. *[10 O.C. 1004.6-3]*;
- Provide that the Oneida Life Insurance Plan shall be contingent on funding through the Nation's annual budget. *[10 O.C. 1004.7-1]*.

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

The Nation currently provides the Oneida Life Insurance Plan Plus, otherwise known as OLIPP, which consists of fifteen thousand dollars (\$15,000) of life insurance benefits directly payable to a tribal member's designated beneficiaries. The Nation contracted with the company Epic to manage OLIPP. Epic collected relevant information regarding the decedent and beneficiaries and distributed OLIPP funds. Epic will cease this service offering and terminate its current contracts for this service, including with the Nation, on September 30, 2022. The Oneida Trust and Enrollment Committee determined the Oneida Trust and Enrollment Department could manage OLIPP in-house, yielding a cost savings to the Nation and expediting payments to the beneficiaries. The proposed Law will codify this benefit as an approved program under the Oneida General Welfare law. The Oneida Trust and Enrollment Department requests this proposed law be considered for emergency adoption as time is of the essence. The Oneida Trust and Enrollment Department seeks to commence the in-house management and oversight of the Oneida Life Insurance Plan immediately after the Epic contract terminates on September 30, 2022.

The resolution provides that the emergency adoption of this Law is necessary for the preservation of the general welfare of the Reservation population. The emergency adoption of this Law will ensure that the Oneida Trust Enrollment Department can commence the in-house management and oversight of the Oneida Life Insurance Plan immediately after the Epic contract terminates on September 30, 2022, in order to provide a smooth transition and uninterrupted service to the members of the Nation participating in the Oneida Life Insurance Plan and the beneficiaries that will emerge in the next fiscal year and beyond.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this Law would be contrary to public interest. The Epic contract for the management of OLIPP terminates on September 30, 2022, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Law can be adopted to address the management and oversight of the Oneida Life Insurance Plan by the Oneida Trust Enrollment Department prior to the termination date.

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

Conclusion

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



EMERGENCY ADOPTION OF THE ONEIDA LIFE INSURANCE PLAN LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Law	<ul style="list-style-type: none">▪ Establish the Oneida Life Insurance Plan as an approved program of the Nation in accordance with the Oneida General Welfare law. [10 O.C. 1004.4-1].▪ Provide how this program qualifies for general welfare exclusion. [10 O.C. 1004.4-2].▪ Provide that all members of the Nation shall qualify for benefits from the Oneida Life Insurance Plan to be used for funeral expenses first, with any residual benefits distributed to a designated beneficiary. [10 O.C. 1004.5-1].▪ Require that a member of the Nation complete the Oneida Trust Enrollment Committee approved beneficiary designation form and submit it to the Oneida Trust Enrollment Committee, either online or in person at the Oneida Trust Enrollment Office, prior to their death in order to secure benefits from the Oneida Life Insurance Plan for their beneficiary. [10 O.C. 1004.5-2].▪ Provide that funeral expenses shall be paid directly to the funeral home upon submission of a valid invoice, up to the limit of the Oneida Life Insurance Plan benefits, even if a designated beneficiary has not been designated – but the Oneida Life Insurance Plan residual benefits shall not be paid or claimed if the decedent did not designate a living beneficiary through the beneficiary designation form. [10 O.C. 1004.5-2(b), 1004.5-2(e)].▪ Allow for a one hundred eighty (180) day grace period after the effective date of this law, where section 1004.5-2 shall not be enforced to permit members of the Nation to complete and submit the required beneficiary forms. [10 O.C. 1004.5-2(c)].▪ Require that the Oneida Trust Enrollment Department be notified within one (1) year of the member of the Nation’s death in order to distribute the Oneida Life Insurance Plan benefits to the beneficiary. [10 O.C. 1004.5-3].▪ Provide that the Trust Enrollment Department is the department that has the responsibilities to oversee and administer the Oneida Life Insurance Plan. [10 O.C. 1004.5-4].▪ Provide rules related to the determination of death and status. [10 O.C. 1004.6-1].▪ Prohibit a designated beneficiary who criminally and intentionally causes the death of the decedent from being entitled to any benefits passing under this law. [10 O.C. 1004.6-2].▪ Provide how the Oneida Life Insurance Plan benefits shall be distributed. [10 O.C. 1004.6-3].▪ Provide that the Oneida Life Insurance Plan shall be contingent on funding through the Nation’s annual budget. [10 O.C. 1004.7-1].

Purpose	To provide a death benefit of fifteen thousand dollars (\$15,000) through the Oneida Life Insurance Plan (OLIPP) for all eligible enrolled Oneida Nation members, pursuant to the Oneida General Welfare law. <i>[10 O.C. 1004.1-1]</i> .
Affected Entities	Oneida Trust Enrollment Department.
Public Meeting	A public meeting is not required for emergency legislation <i>[1 O.C. 109.8-1(b) and 109.9-5(a)]</i> .
Fiscal Impact	A fiscal impact statement is not required for emergency legislation <i>[1 O.C. 109.9-5(a)]</i> .
Expiration of Emergency Legislation	Emergency legislation expires six (6) months after adoption and may be renewed for an additional six (6) month period.

SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A. Background.** The Oneida Life Insurance law will be a new law adopted by the Nation on an emergency
- 3 basis for the purpose of providing a death benefit of fifteen thousand dollars (\$15,000) through the
- 4 Oneida Life Insurance Plan (OLIPP) for all eligible enrolled Oneida Nation members, pursuant to the
- 5 Oneida General Welfare law. *[10 O.C. 1004.1-1]*.
- 6 **B. Request for Emergency Adoption.** On August 17, 2022, the Legislative Operating Committee received
- 7 a request from the Oneida Law Office and the Oneida Trust Enrollment Committee for the adoption of
- 8 the Oneida Life Insurance Plan law on an emergency basis. The Nation currently provides the Oneida
- 9 Life Insurance Plan Plus, otherwise known as OLIPP, which consists of \$15,000 of life insurance
- 10 benefits directly payable to a tribal member’s designated beneficiaries. The Nation contracted with the
- 11 company Epic to manage OLIPP. Epic collected relevant information regarding the decedent and
- 12 beneficiaries and distributed OLIPP funds. Epic will cease this service offering and terminate its current
- 13 contracts for this service, including with the Nation, on September 30, 2022. The Oneida Trust and
- 14 Enrollment Committee determined the Oneida Trust and Enrollment Department could manage OLIPP
- 15 in-house, yielding a cost savings to the Nation and expediting payments to the beneficiaries. The
- 16 proposed OLIPP law will codify this benefit as an approved program under the Oneida General Welfare
- 17 law. The Oneida Trust and Enrollment Department requests this proposed law be considered for
- 18 emergency adoption as time is of the essence. The Oneida Trust and Enrollment Department seeks to
- 19 commence the in-house management and oversight of OLIPP immediately after the Epic contract
- 20 terminates on September 30, 2022. A smooth transition will ensure uninterrupted service the tribal
- 21 members participating in OLIPP and the beneficiaries that will emerge in the next fiscal year and
- 22 beyond.
- 23

SECTION 3. CONSULTATION AND OUTREACH

- 24
- 25 **A.** Representatives from the following departments or entities participated in the development of this Law
- 26 and legislative analysis:
- 27 ▪ Oneida Law Office.
- 28

SECTION 4. PROCESS

- 29
- 30 **C.** The adoption of this Law is being considered on an emergency basis. The Oneida Business Committee
- 31 may temporarily enact an emergency law where legislation is necessary for the immediate preservation
- 32 of public health, safety, or general welfare of the Reservation population and enactment of legislation
- 33 is required sooner than would be possible under this law. *[1 O.C. 109.9-5]*.

- 34 ▪ Emergency adoption of this Law is being pursued for the preservation of the general welfare of the
35 Reservation population. The emergency adoption of this Law will ensure that the Oneida Trust
36 Enrollment Department can commence the in-house management and oversight of OLIPP
37 immediately after the Epic contract terminates on September 30, 2022, in order to provide a smooth
38 transition and uninterrupted service to the members of the Nation participating in OLIPP and the
39 beneficiaries that will emerge in the next fiscal year and beyond.
- 40 ▪ Observance of the requirements under the Legislative Procedures Act for the adoption of this Law
41 would be contrary to public interest. The Epic contract for the management of OLIPP terminates
42 on September 30, 2022, and the process and requirements of the Legislative Procedures Act cannot
43 be completed in time to ensure that the Law can be adopted to address the management and
44 oversight of OLIPP by the Oneida Trust Enrollment Department prior to the termination date.
- 45 D. Emergency legislation typically expires six (6) months after adoption, with one (1) opportunity for a
46 six (6) month extension of the emergency legislation. [1 O.C. 109.9-5(b)].
- 47 E. The Legislative Procedures Act does not require a public meeting or fiscal impact statement when
48 considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact
49 statement will eventually be required when considering permanent adoption of this Law.
- 50 D. The following work meetings were held regarding the development of this law and legislative analysis:
- 51 ▪ August 25, 2022. LOC work meeting with the Oneida Law Office; and
52 ▪ September 21, 2022. LOC work meeting with the Oneida Law Office.
- 53

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

- 55 A. **Purpose and Policy.** The purpose of this law is to provide a death benefit through the Oneida Life
56 Insurance Plan for all eligible enrolled Oneida Nation members, pursuant to the Oneida General
57 Welfare law. [10 O.C. 1004.1-1]. The General Tribal Council, through resolution GTC-01-17-09-B,
58 approved the concept of the Oneida Life Insurance Plan Plus to replace the Oneida Burial Fund. The
59 General Tribal Council directed implementation of a benefit that pays fifteen thousand dollars
60 (\$15,000) to the designated beneficiary or beneficiaries of the deceased Oneida Nation member. The
61 payment of death benefits through OLIPP to designated beneficiaries of a deceased Oneida Nation
62 member is an exercise of self-governance crucial to the Oneida Nation's sovereignty, and health and
63 welfare of the community. [10 O.C. 1004.1-1(a)]. It is the policy of the Nation to care for its members
64 and their families even after their death. The Nation seeks to internalize the Oneida Life Insurance Plan
65 process to ensure equitable and expedient distribution to designated beneficiaries. [10 O.C. 1004.1-2].
- 66 ▪ **Effect.** The overall purpose of this Law is to codify the Nation's sovereign right to provide
67 assistance to Tribal members on a non-taxable basis through an approved program.
- 68 B. **Establishment.** This Law establishes the Oneida Life Insurance Plan as an approved program of the
69 Nation in accordance with the Oneida General Welfare law. [10 O.C. 1004.4-1]. The purpose of the
70 Oneida Life Insurance Plan is to provide fifteen thousand dollars (\$15,000) of financial assistance to
71 eligible members of the Nation to pay for funeral expenses, with any residual benefit amounts paid
72 thereafter to the designated beneficiary. *Id.* Funeral expenses include funeral planning; securing the
73 necessary permits and copies of death certificates; preparing the notices; sheltering the remains;
74 coordinating the arrangements with the cemetery, crematory or other third parties; transporting the
75 remains; embalming and other preparation; use of the funeral home for the viewing, ceremony or
76 memorial service; use of equipment and staff for a graveside service; use of a hearse or limousine; a
77 casket, outer burial container or alternate container; and cremation or interment. [10 O.C. 1004.3-1(e)].

78 The Oneida Life Insurance Plan meets the requirements of the General Test as defined in the Oneida
79 General Welfare law; General Criteria as defined in I.R.S. Rev. Proc. 2014-35. Section 5.01(1); and the
80 requirements of the Tribal General Welfare Exclusion Act of 2014, 26 U.S.C. §139E(b). [10 O.C.
81 1004.4-2].

82 **C. Eligibility.** The Law provides that all members of the Nation shall qualify for benefits from the Oneida
83 Life Insurance Plan to be used for funeral expenses first, with any residual benefits then distributed to
84 a designated beneficiary. [10 O.C. 1004.5-1].

85 **D. Designation of Beneficiary.** A member of the Nation is required to complete the Oneida Trust
86 Enrollment Committee approved beneficiary designation form and submit it to the Oneida Trust
87 Enrollment Committee, either online or in person at the Oneida Trust Enrollment Office, prior to their
88 death in order to secure benefits from the Oneida Life Insurance Plan for their beneficiary. [10 O.C.
89 1004.5-2]. Any Oneida Life Insurance Plan beneficiary designation form that has already been
90 submitted to the Oneida Trust Enrollment Department prior to the effective date of this law shall remain
91 valid. [10 O.C. 1004.5-2(a)]. Oneida Life Insurance Plan residual benefits shall not be paid or claimed
92 if the decedent did not designate a living beneficiary though the beneficiary designation form. [10 O.C.
93 1004.5-2(b)]. This provision of the Law shall not be enforced during the initial one hundred and eighty
94 (180) days after the effective date of this Law, thereby creating a one hundred eighty (180) day grace
95 period to permit members of the Nation to complete and submit designated beneficiary forms. [10 O.C.
96 1004.5-2(c)]. A parent or legal guardian may complete and submit a beneficiary designation form on
97 behalf of their minor child or ward. [10 O.C. 1004.5-2(d)]. Funeral expenses shall be paid directly to
98 the funeral home upon submission of a valid invoice, up to the limit of the Oneida Life Insurance Plan
99 benefits, even if a designated beneficiary has not been designated. [10 O.C. 1004.5-2(e)].

100 **E. Notice of Death.** The Oneida Trust Enrollment Department shall be notified within one (1) year of the
101 member of the Nation's death in order to distribute the Oneida Life Insurance Plan benefits to the
102 beneficiary. [10 O.C. 1004.5-3]. Oneida Life Insurance Plan claims made beyond the first anniversary
103 of the decedent's death shall not be processed for distribution. *Id.*

104 **F. Oversight.** The Trust Enrollment Department shall be delegated the oversight and management of the
105 Oneida Life Insurance Plan. [10 O.C. 1004.5-4].

106 **G. Evidence as to Passing or Status.** The Law provides the following rules relating to determination of
107 death and status are applicable: a certified or authenticated copy of a death certificate purporting to be
108 issued by an official or agency of the place where the death purportedly occurred is prima facie proof
109 of the fact, place, date and time of death, and the identity of the decedent; a certified or authenticated
110 copy of any record or report of a governmental agency, domestic or foreign, of a decedent's death; and
111 a person who is absent for a continuous period of seven (7) years, during which they have not been
112 heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is
113 presumed to be dead. Their death is presumed to have occurred at the end of the period unless there is
114 sufficient evidence for determining that death occurred earlier. [10 O.C. 1004.6-1].

115 **H. Effect of Homicide on Beneficiary Designation.** The Law provides that a designated beneficiary who
116 criminally and intentionally causes the death of the decedent shall not be entitled to any benefits passing
117 under this law. [10 O.C. 1004.6-2].

118 **I. Distribution.** The Law provides that the Oneida Life Insurance Plan benefits shall be distributed in the
119 following order: (1) Funeral expenses shall be paid to the funeral home pursuant to receipt of a valid
120 invoice therefrom; then residual benefits shall be paid to the designated beneficiary; and finally that

121 residual benefits shall escheat to the Nation if the decedent did not designate a beneficiary for the
122 Oneida Life Insurance Plan benefits in accordance with this law. [10 O.C. 1004.6-3].

123 **J. Funding.** The Oneida Life Insurance Plan shall be contingent on funding through the Nation’s annual
124 budget. [10 O.C. 1004.7-1].

125

126 **EXAMPLES**

127 **Example 1.** John Doe is an enrolled member of the Nation who designated his wife Jane Doe as his
128 beneficiary on the Oneida Nation Life Insurance Plan beneficiary designation form. John unfortunately
129 passes away. The funeral of John Doe will cost \$12,000. Jane Doe can provide the Oneida Trust Enrollment
130 Department the invoice from the funeral home, and the \$12,000 will be paid through the Oneida Life
131 Insurance Plan directly to the funeral home. After the funeral is paid, there is \$3,000 remaining of the
132 original \$15,000 Oneida Life Insurance Plan benefit. Since Jane is listed as John’s beneficiary, the
133 remaining \$3,000 of benefits will then be given to Jane Doe.

134

135 **Example 2.** John Doe is an enrolled member of the Nation who never found the time to fill out and submit
136 the Oneida Nation Life Insurance Plan beneficiary designation form. John unfortunately passes away. The
137 funeral of John Doe will cost \$12,000. Anyone can provide the Oneida Trust Enrollment Department the
138 invoice from the funeral home, and the \$12,000 will be paid through the Oneida Life Insurance Plan directly
139 to the funeral home. Since there is no beneficiary designated, the remaining \$3,000 of the original \$15,000
140 Oneida Life Insurance Plan benefit will go back to the Nation.

141

142 **SECTION 6. EXISTING LEGISLATION**

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

- 144 ▪ *Legislative Procedures Act.* The Legislative Procedures Act was adopted by the General Tribal
145 Council on January 7, 2013, for the purpose of providing a standard process for the adoption
146 of laws of the Nation which includes taking into account comments from members of the
147 Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].
- 148 ▪ The Legislative Procedures Act provides a process for the adoption of emergency
149 legislation when the legislation is necessary for the immediate preservation of the
150 public health, safety, or general welfare of the Reservation population and the
151 enactment or amendment of legislation is required sooner than would be possible under
152 this law. [1 O.C. 109.9-5].
 - 153 ▪ The Legislative Operating Committee is responsible for first reviewing the
154 emergency legislation and for forwarding the legislation to the Oneida
155 Business Committee for consideration. [1 O.C. 109.9-5(a)].
 - 156 ▪ The proposed emergency legislation is required to have a legislative analysis
157 completed and attached prior to being sent to the Oneida Business Committee
158 for consideration. [1 O.C. 109.9-5(a)].
 - 159 a. A legislative analysis is a plain language analysis describing the
160 important features of the legislation being considered and factual
161 information to enable the Legislative Operating Committee to make
162 informed decisions regarding legislation. A legislative analysis
163 includes a statement of the legislation’s terms and substance; intent of

- 164 the legislation; a description of the subject(s) involved, including any
165 conflicts with Oneida or other law, key issues, potential impacts of the
166 legislation and policy considerations. [1 O.C. 109.3-1(g)].
- 167 ▪ Emergency legislation does not require a fiscal impact statement to be
168 completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
 - 169 ▪ Upon the determination that an emergency exists the Oneida Business
170 Committee can adopt emergency legislation. The emergency legislation
171 becomes effective immediately upon its approval by the Oneida Business
172 Committee. [1 O.C. 109.9-5(b)].
 - 173 ▪ Emergency legislation remains in effect for a period of up to six (6) months,
174 with an opportunity for a one-time emergency law extension of up to six (6)
175 months. [1 O.C. 109.9-5(b)].
 - 176 ▪ Emergency adoption of this Law would conform with the requirements of the
177 Legislative Procedures Act.
 - 178 ▪ *Oneida General Welfare Law.* The Oneida General Welfare Law governs how the Nation
179 provides assistance to eligible members on a non-taxable basis, pursuant to the principles of
180 the General Welfare Exclusion to Indian Tribal governmental programs that provide benefits
181 to Tribal members. [10 O.C. 1001.1-1].
 - 182 ▪ The Oneida Life Insurance Plan Plus is hereby established as an approved program of
183 the Nation in accordance with the Oneida General Welfare Law. [10 O.C. 1003.4-1].
184 The Oneida Life Insurance Plan Plus meets the requirements of the General Test as
185 defined in the Oneida General Welfare Law. [10 O.C. 1003.4-2].

187 **SECTION 7. OTHER CONSIDERATIONS**

- 188 **A. *Deadline for Permanent Adoption of Legislation.*** The emergency adoption of this Law will expire six
189 (6) months after adoption. The emergency legislation may be renewed for an additional six (6) month
190 period.
- 191 ▪ *Conclusion:* The Legislative Operating Committee will need to consider the development and
192 adoption of this Law on a permanent basis within the next six (6) to twelve (12) months.
- 193 **B. *Fiscal Impact.*** A fiscal impact statement is not required for emergency legislation.
- 194 ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except
195 emergency legislation [1 O.C. 109.6-1].

196

Title 10. General Welfare Exclusion - Chapter 1004
ONEIDA LIFE INSURANCE PLAN

1004.1. Purpose and Policy	1004.6. Beneficiary Claim Process and Distribution
1004.2. Adoption, Amendment, Repeal	1004.7. Funding
1004.3. Definitions	
1004.4. Establishment	
1004.5. Qualifications, Designation of Beneficiary, and Notice	

1 **1004.1. Purpose and Policy**

2 1004.1-1. *Purpose.* The purpose of this law is to provide a death benefit through the Oneida Life
3 Insurance Plan (OLIPP) for all eligible enrolled Oneida Nation members, pursuant to the Oneida
4 General Welfare law.

5 (a) The General Tribal Council, through resolution GTC-01-17-09-B, approved the
6 concept of the Oneida Life Insurance Plan Plus to replace the Oneida Burial Fund. The
7 General Tribal Council directed implementation of a benefit that pays fifteen thousand
8 dollars (\$15,000) to the designated beneficiary or beneficiaries of the deceased Oneida
9 Nation member. The payment of death benefits through OLIPP to designated beneficiaries
10 of a deceased Oneida Nation member is an exercise of self-governance crucial to the
11 Oneida Nation’s sovereignty, and health and welfare of the community.

12 1004.1-2. *Policy.* It is the policy of the Nation to care for its members and their families even
13 after their death. The Nation seeks to internalize the Oneida Life Insurance Plan process to ensure
14 equitable and expedient distribution to designated beneficiaries.

15
16 **1004.2. Adoption, Amendment, Repeal**

17 1004.2-1. This law was adopted by the Oneida Business Committee on an emergency basis by
18 resolution BC-__-__-__-__.

19 1004.2-2. This law may be amended or repealed by the Oneida Business Committee or the General
20 Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

21 1004.2-3. Should a provision of this law or the application thereof to any person or circumstances
22 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
23 to have legal force without the invalid portions.

24 1004.2-4. In the event of a conflict between a provision of this law and a provision of another law,
25 the provisions of this law shall control.

26 1004.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

27
28 **1004.3. Definitions**

29 1004.3-1. This section shall govern the definitions of words and phrases used within this law. All
30 words not defined herein shall be used in their ordinary and everyday sense.

31 (a) "Approved program" means any program(s) to provide general welfare assistance that
32 is intended to qualify as a General Welfare Exclusion, administered under specific
33 guidelines, and is adopted by the Oneida Business Committee through resolution or law of
34 the Nation in accordance with the Oneida General Welfare law.

35 (b) "Benefit" means the fifteen thousand dollars provided (\$15,000) to pay for funeral
36 expenses of an enrolled member of the Nation, with any residual amounts paid thereafter
37 to the designated beneficiary.

38 (c) "Decedent" means the deceased person.

39 (d) "Designated Beneficiary" means any person(s) designated by the enrolled member of
40 the Nation, through the approved beneficiary designation form, to receive all or a portion
41 of the decedent’s Oneida Life Insurance Plan benefit.

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42 (e) “Funeral Expenses” means the cost of the funeral of the decedent accrued and invoiced
43 by the funeral home including, but not limited to, the following:

- 44 (1) funeral planning;
- 45 (2) securing the necessary permits and copies of death certificates;
- 46 (3) preparing the notices;
- 47 (4) sheltering the remains;
- 48 (5) coordinating the arrangements with the cemetery, crematory or other third
49 parties;
- 50 (6) transporting the remains;
- 51 (7) embalming and other preparation;
- 52 (8) use of the funeral home for the viewing, ceremony or memorial service;
- 53 (9) use of equipment and staff for a graveside service;
- 54 (10) use of a hearse or limousine;
- 55 (11) a casket, outer burial container or alternate container; and
- 56 (12) cremation or interment.

57 (f) “Nation” means the Oneida Nation.
58

59 **1004.4. Establishment**

60 1004.4-1. *Establishment*. The Oneida Life Insurance Plan is hereby established as an approved
61 program of the Nation in accordance with the Oneida General Welfare law. The purpose of the
62 Oneida Life Insurance Plan is to provide fifteen thousand dollars (\$15,000) of financial assistance
63 to eligible members of the Nation to pay for funeral expenses, with any residual benefit amounts
64 paid thereafter to the designated beneficiary.

65 1004.4-2. *General Welfare Exclusion*. The Oneida Life Insurance Plan meets the requirements of
66 the General Test as defined in the Oneida General Welfare law; General Criteria as defined in
67 I.R.S. Rev. Proc. 2014-35, Section 5.01(1); and the requirements of the Tribal General Welfare
68 Exclusion Act of 2014, 26 U.S.C. §139E(b).

69 (a) The assistance provided through the Oneida Life Insurance Plan is:

- 70 (1) paid on behalf of the Nation;
- 71 (2) pursuant to an approved program of the Nation;
- 72 (3) does not discriminate in favor of members of the governing body of the Nation;
- 73 (4) available to any eligible member of the Nation who meets the guidelines of the
74 approved program;
- 75 (5) provided for the promotion of general welfare;
- 76 (6) not lavish or extravagant;
- 77 (7) not compensation for services; and
- 78 (8) not a per capita payment.

79 (b) . I.R.S. Rev. Proc. 2014-35, section 5.02(2)(e)(iv) lists funeral, burial, and expenses
80 related to a death as Safe Harbor program for which need is presumed.
81

82 **1004.5. Qualifications, Designation of Beneficiary, and Notice**

83 1004.5-1. *Eligibility*. All members of the Nation shall qualify for benefits from the Oneida Life
84 Insurance Plan to be used for funeral expenses first, with any residual benefits distributed to a
85 designated beneficiary.

86 (a) Newly enrolled members of the Nation shall be covered the date their enrollment

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87 application is approved by Oneida Trust Enrollment Committee and Oneida Business
88 Committee.

89 (b) Members of the Nation that have relinquished their membership shall not be covered
90 from the date their relinquishment request is approved by the Oneida Trust Enrollment
91 Committee and Oneida Business Committee.

92 1004.5-2. *Designation of Beneficiary.* A member of the Nation shall complete the Oneida Trust
93 Enrollment Committee approved beneficiary designation form and submit it to the Oneida Trust
94 Enrollment Committee, either online or in person at the Oneida Trust Enrollment Office, prior to
95 their death in order to secure benefits from the Oneida Life Insurance Plan for their beneficiary.

96 (a) Any Oneida Life Insurance Plan beneficiary designation forms submitted prior to the
97 effective date of this law shall remain valid.

98 (b) Oneida Life Insurance Plan residual benefits shall not be paid or claimed if the decedent
99 did not designate a living beneficiary though the beneficiary designation form.

100 (c) This section shall not be enforced during the initial one hundred and eighty (180) days
101 after the effective date of this law, thereby creating a one hundred eighty (180) day grace
102 period to permit members of the Nation to complete and submit designated beneficiary
103 forms.

104 (d) A parent or legal guardian may complete and submit a beneficiary designation form
105 on behalf of their minor child or ward.

106 (e) Funeral expenses shall be paid directly to the funeral home upon submission of a valid
107 invoice, up to the limit of the Oneida Life Insurance Plan benefits, even if a designated
108 beneficiary has not been designated.

109 1004.5-3. *Notice of Death.* The Oneida Trust Enrollment Department shall be notified within one
110 (1) year of the member of the Nation's death in order to distribute the Oneida Life Insurance Plan
111 benefits to the beneficiary. Oneida Life Insurance Plan claims made beyond the first anniversary
112 of the decedent's death shall not be processed for distribution.

113 1004.5-4. *Oversight.* The Trust Enrollment Department shall be delegated the oversight and
114 management of the Oneida Life Insurance Plan.

115

116 **1004.6. Beneficiary Claim Process and Distribution**

117 1004.6-1. *Evidence as to Passing or Status.* In proceedings under this law, the following rules
118 relating to determination of death and status are applicable:

119 (a) A certified or authenticated copy of a death certificate purporting to be issued by an
120 official or agency of the place where the death purportedly occurred is prima facie proof
121 of the fact, place, date and time of death, and the identity of the decedent;

122 (b) A certified or authenticated copy of any record or report of a governmental agency,
123 domestic or foreign, of a decedent's death; and

124 (c) A person who is absent for a continuous period of seven (7) years, during which they
125 have not been heard from, and whose absence is not satisfactorily explained after diligent
126 search or inquiry is presumed to be dead. Their death is presumed to have occurred at the
127 end of the period unless there is sufficient evidence for determining that death occurred
128 earlier.

129 1002.6-2. *Effect of Homicide on Beneficiary Designation.* A designated beneficiary who
130 criminally and intentionally causes the death of the decedent shall not be entitled to any benefits
131 passing under this law.

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132 1002.6-3. *Distribution.* Oneida Life Insurance Plan benefits shall be distributed in the following
133 order:

134 (a) Funeral expenses shall be paid to the funeral home pursuant to receipt of a valid
135 invoice therefrom;

136 (b) Residual benefits shall be paid to the designated beneficiary;

137 (c) Residual benefits shall escheat to the Nation if the decedent did not designate a
138 beneficiary for the Oneida Life Insurance Plan benefits in accordance with this law.

139

140

141 **1004.7. Funding**

142 1004.7-1. *Funding Source.* The Oneida Life Insurance Plan shall be contingent on funding
143 through the Nation's annual budget.

144

145 *End.*

146

148 _____
Emergency Adopted – BC-__-__-__-__

October 2022

October 2022							November 2022						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
						1			1	2	3	4	5
2	3	4	5	6	7	8	6	7	8	9	10	11	12
9	10	11	12	13	14	15	13	14	15	16	17	18	19
16	17	18	19	20	21	22	20	21	22	23	24	25	26
23	24	25	26	27	28	29	27	28	29	30			
30	31												

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Sep 25	26	27	28	29	30	Oct 1
2	3 9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago	4	5 9:00am LOC Meeting (BC_Conf_Room) - LOC	6	7	8
9	10 9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago	11 1:00pm Furlough Law work meeting (Microsoft Teams Meeting) - Carolyn A.	12	13 9:00am Business Code Discussion 9:00am Business Code 1:30pm LOC Work Session	14	15
16	17 9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago	18	19 8:30am LOC Prep (Microsoft Teams Meeting); 9:00am LOC Meeting (BC_Conf_Room)	20	21	22
23	24 9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago	25	26	27 9:30am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	28	29
30	31 9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago	Nov 1	2	3	4	5