



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

- I. Call to Order and Approval of the Agenda**
  
- II. Minutes to be Approved**
  - 1. October 5, 2022 LOC Meeting Minutes (pg. 2)
  
- III. Current Business**
  - 1. Bay Pay Law Amendments (pg. 4)
  - 2. Emergency Management Law Amendments (pg. 28)
  
- IV. New Submissions**
  
- V. Additions**
  
- VI. Administrative Updates**
  
- VII. Executive Session**
  
- VIII. Recess/Adjourn**



**LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**  
Oneida Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
October 5, 2022  
9:00 a.m.

**Present:** David P. Jordan, Jennifer Webster, Daniel Guzman King

**Excused:** Marie Cornelius, Kirby Metoxen

**Others Present:** Clorissa N. Leeman, Grace Elliot, Carolyn Salutz, Shannon Davis, Rhiannon Metoxen (Microsoft Teams), Joy Salzwedel (Microsoft Teams), Justin Nishimoto (Microsoft Teams), Matt Denny (Microsoft Teams), Derrick King (Microsoft Teams)

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

David P. Jordan called the October 5, 2022, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to adopt the agenda as is; seconded by Daniel Guzman King. Motion carried unanimously.

**II. Minutes to be Approved**

**1. September 21, 2022 LOC Meeting Minutes**

Motion by Jennifer Webster to approve the September 21, 2022, LOC meeting minutes and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

**III. Current Business**

**1. Oneida Nation Assistance Fund Law**

Motion by Jennifer Webster to approve the updated public comment review memorandum, draft, updated legislative analysis, and fiscal impact statement request memorandum, and forward to the Trust Enrollment Department Director directing that a fiscal impact statement be submitted to the Legislative Operating Committee by October 19, 2022; seconded by Daniel Guzman King. Motion carried unanimously.

**2. Back Pay Law Amendments**

Motion by Jennifer Webster to approve the draft of the proposed amendments to the Back Pay law and direct that a legislative analysis be completed; seconded by Daniel Guzman King. Motion carried unanimously.



**3. Emergency Management Law Amendments**

Motion by Jennifer Webster to approve the draft of the proposed amendments to the Emergency Management law and direct that a legislative analysis be completed; seconded by Daniel Guzman King. Motion carried unanimously.

**4. Traffic Law**

Motion by Jennifer Webster to accept the memorandum as information; seconded by Daniel Guzman King. Motion carried unanimously.

**IV. New Submissions****1. Oneida Personnel Commission Bylaws Amendments**

Motion by Jennifer Webster to add the Oneida Personnel Commission Bylaws amendments to the Active Files List with David P. Jordan as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

**2. Furlough Law Amendments**

Motion by Jennifer Webster to add the Furlough amendments to the Active Files List with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

**V. Additions****VI. Administrative Items****1. E-Poll Results: Emergency Adoption of the Oneida Life Insurance Plan Law**

Motion by Daniel Guzman King to enter into the record the results of the September 21, 2022, e-poll entitled, Emergency Adoption of the Oneida Life Insurance Plan Law; seconded by Jennifer Webster. Motion carried unanimously.

**VII. Executive Session****VIII. Adjourn**

Motion by Jennifer Webster to adjourn at 9:16 a.m.; seconded by Daniel Guzman King. Motion carried unanimously.



Legislative Operating Committee  
October 19, 2022

# Back Pay Law Amendments

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

**10/5/22 LOC:** Motion by Jennifer Webster to approve the draft of the proposed amendments to the Back Pay law and direct that a legislative analysis be completed; seconded by Daniel Guzman King. Motion carried unanimously.

**10/13/22:** *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Marie Cornelius, Clorissa N. Leeman, Carolyn Salutz, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss an additional proposed amendments to the law.

**Next Steps:**

- Approve the updated draft and the legislative analysis.

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

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, 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

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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

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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 and either the General Manager, Gaming General Manager, Retail General  
99 Manager, or the highest position in the employee's chain of command for non-divisional  
100 employees.

101

## 102 **206.5. Back Pay Calculation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

177 (C) If the employee was not participating in the Nation's retirement plan or  
178 chooses not to make contributions through the back pay process, then the



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179 Nation shall not make employer match contributions into the employee's  
180 retirement account.

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

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

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

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

192 (2) *Income Received Through Employment.* Except as provided in section 206.5-  
193 1(h)(2)(B), income earned by an employee during the back pay period shall be  
194 deducted from the total back pay amount.

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

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

205 206.5-2. *Payments Not Allowed.* The Nation shall not include the following in any back pay  
206 amount:

207 (a) Punitive damages;

208 (b) Consequential damages;

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

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

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

213 (2) When a position is eliminated ~~and/or~~ inactive as part of the Nation's response  
214 to a financial force majeure event including, but not limited to ~~;~~:

215 ~~(A) responses to war;~~

216 ~~(B) global health pandemics;~~ and ~~or~~

217 ~~(C) 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 ~~from~~ in accordance with the position description based  
220 on:

221 ~~(A) applicable grant requirements (where positions are when the position is~~  
222 ~~grant funded);~~

223 ~~(B) applicable, Oneida laws, of the Nation~~ including, but not limited to, the  
224 Vehicle Driver Certification and Fleet Management law; and ~~or~~

225 ~~(C) a criminal conviction;~~

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(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.

206.5-3. *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.

## 206.6. Back Pay Process

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

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

206.6-3. 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.

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

*End.*

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Adopted - BC-05-24-06-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**

~~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~~

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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

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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.

#### 68 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

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

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

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

206.4-3. Amending the Position Description or Eliminating the Position Pending an Employee Appeal. Notwithstanding the requirement to hold the terminated employee's position pending an employee's appeal of their termination as provided in section 206.4-2, a supervisor or business unit may amend the affected position description or eliminate the affected position while an employment appeal is pending where such actions are required to meet the Nation's business and employment needs. The determination to amend an affected position description or eliminate an affected position shall be approved by the Human Resources Executive Director and either the General Manager, Gaming General Manager, Retail General Manager, or the highest position in the employee's chain of command for non-divisional employees.

### **206.5. Back Pay Calculation**

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

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

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

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

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

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

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

(e) Merit Increases. The hourly rate used to calculate back pay shall be increased according to the merit increase system or standard used by the employee's supervisor



129 during the back pay period and ~~will~~shall include any increases from Oneida Business  
130 Committee or General Tribal Council directives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

208 [206.45-2](#). *Payments Not Allowed.* The Nation shall not include the following in any back pay  
 209 amount:

210 (a) Punitive damages;

211 (b) Consequential damages;

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

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

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

216 (2) When a position is eliminated or inactive as part of the Nation's response to a  
 217 financial force majeure event including, but not limited to:

218 (A) responses to war;

219 (B) global health pandemics; and

220 (C) any substantial loss of revenue or funding; and

221 (3) When an employee would otherwise not be eligible to work in the position from  
 222 which they were terminated from in accordance with the position description based

223 on:

- 224 (A) applicable grant requirements when the position is grant funded;  
 225 (B) applicable laws of the Nation including, but not limited to, the Vehicle  
 226 Driver Certification and Fleet Management law; and  
 227 (C) a criminal conviction;

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

231 **206.45-3. Back Pay Period.** Calculation of back pay begins on the day the employee is  
 232 involuntarily separated and ends on the day the employee is reinstated.

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

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

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

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

249  
 250 **206.56. Back Pay Process**

251 **206.56-1.** The Oneida Law Office shall develop necessary forms and procedures for the purpose  
 252 of implementing this law.

253 **206.56-2.** Internal departments shall cooperate as necessary with the Oneida Law Office in  
 254 providing information needed to assemble and prepare the back pay agreement.

255 **206.56-3.** A reasonable effort shall be made to complete the back pay agreement within thirty (30)  
 256 calendar days, starting the day after the party to the grievance action provides to the Oneida Law  
 257 Office a judgment ordering back pay or the results of an investigation or test showing the employee  
 258 is cleared of any wrongdoing.

259 **206.56-4.** An employee not receiving back pay in accordance with the back pay agreement may  
 260 seek enforcement by the Judiciary.

261  
 262 *End.*

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264 Adopted - BC-05-24-06-PP

265 Amended - BC-06-23-10-F

266 Amended - BC-08-13-14-C

267 Amended - BC-10-26-16-A

268 Amended - BC- - - -



**Title 2. Employment – Chapter 206**  
**Tashakotikályahke? 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	

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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 **206.4. Reinstatement**

67 **206.4-1. *Reinstatement to the Position the Employee was Terminated From.*** Should an employee's  
68 appeal of a termination result in the termination being overturned, the reviewing party shall order  
69 the employee be reinstated to the position from which the employee was wrongfully terminated.

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

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

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

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 Human Resources Executive Director and either the  
98 General Manager, Gaming General Manager, Retail General Manager, or the highest position in  
99 the employee's chain of command for non-divisional employees.

100

### 101 **206.5. Back Pay Calculation**

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

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

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

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

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

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

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

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

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

131 (2) The most recent performance review issued to the employee prior to being

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

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

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

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

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

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

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

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

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

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

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

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

179 retirement account.

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

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

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

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

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

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

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

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

206 (a) Punitive damages;

207 (b) Consequential damages;

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

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

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

212 (2) When a position is eliminated or inactive as part of the Nation's response to a  
213 financial force majeure event including, but not limited to:

214 (A) responses to war;

215 (B) global health pandemics; and

216 (C) any substantial loss of revenue or funding; and

217 (3) When an employee would otherwise not be eligible to work in the position from  
218 which they were terminated from in accordance with the position description based  
219 on:

220 (A) applicable grant requirements when the position is grant funded;

221 (B) applicable laws of the Nation including, but not limited to, the Vehicle  
222 Driver Certification and Fleet Management law; and

223 (C) a criminal conviction;

224 (e) Monies normally paid for additional duties while working where an alternate employee  
225 assumed that function while the employee was involuntarily separated, unless the

226 additional duties are a part of such involuntarily separated employee's regular schedule.  
227 206.5-3. *Back Pay Period.* Calculation of back pay begins on the day the employee is  
228 involuntarily separated and ends on the day the employee is reinstated.

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

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

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

237 (2) If the involuntary separation period involves a fractional week, the indemnity  
238 shall be paid for each day of a fractional week at the rate of the average number  
239 of hours worked per day immediately prior to the involuntary separation. For the  
240 purposes of this section, immediately prior means the twelve (12) full work weeks  
241 immediately preceding the involuntary separation. Provided that, under extenuating  
242 circumstances related to business needs of the Nation wherein the Oneida Law  
243 Office determines that considering hours worked per day immediately prior would  
244 be unfair, an alternative reasonable timeframe may be used.  
245

246 **206.6. Back Pay Process**

247 206.6-1. The Oneida Law Office shall develop necessary forms and procedures for the purpose of  
248 implementing this law.

249 206.6-2. Internal departments shall cooperate as necessary with the Oneida Law Office in  
250 providing information needed to assemble and prepare the back pay agreement.

251 206.6-3. A reasonable effort shall be made to complete the back pay agreement within thirty (30)  
252 calendar days, starting the day after the party to the grievance action provides to the Oneida Law  
253 Office a judgment ordering back pay or the results of an investigation or test showing the employee  
254 is cleared of any wrongdoing.

255 206.6-4. An employee not receiving back pay in accordance with the back pay agreement may  
256 seek enforcement by the Judiciary.

257  
258 *End.*  
259

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260 Adopted - BC-05-24-06-PP  
261 Amended - BC-06-23-10-F  
262 Amended - BC-08-13-14-C  
263 Amended - BC-10-26-16-A  
264 Amended - BC-\_\_-\_\_-\_\_-\_\_



## BACK PAY LAW AMENDMENTS LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
<b>Intent of the Proposed Amendments</b>	<ul style="list-style-type: none"> <li>▪ Include a new section in the law which provides for the reinstatement of employee who had a termination overturned and addresses such issues as:               <ul style="list-style-type: none"> <li>▪ reinstatement of an employee to the position the employee was terminated from [2 O.C. 206.4-1];</li> <li>▪ requirement to hold a position pending litigation [2 O.C. 206.4-2];</li> <li>▪ amending the position description or eliminating the position pending an employee appeal [2 O.C. 206.4-3];</li> </ul> </li> <li>▪ Clarify that back pay calculations shall be made using the employee’s last wage in the position which they were terminated from [2 O.C. 206.5-1];</li> <li>▪ Clarify the circumstances in which an employee is not eligible to work, and therefore is not eligible for back pay [2 O.C. 206.5-2(d)].</li> </ul>
<b>Purpose</b>	The purpose of this law is to set forth standards used in the reinstatement of a wrongfully terminated employee and the calculation of back pay for all employees of the Nation in accordance with the Nation’s law. [2 O.C. 206.1-1].
<b>Affected Entities</b>	Oneida Law Office, General Manager, Gaming General Manager, Retail General Manager, Human Resources Department Executive Director, Oneida Nation Judiciary
<b>Public Meeting</b>	A public meeting has not yet been held.
<b>Fiscal Impact</b>	A fiscal impact statement has not yet been requested.

### SECTION 2. LEGISLATIVE DEVELOPMENT

**A. Background.** The Back Pay law was originally adopted by the Oneida Business Committee in 2006 through resolution BC-05-24-06-PP, and then amended through resolutions BC-06-23-10-F, BC-08-13-14-C, and BC-10-26-16-A. The purpose of the Back Pay law is to set forth standards used in the reinstatement of a wrongfully terminated employee and the calculation of back pay for all employees of the Nation in accordance with the Nation’s law. [2 O.C. 206.1-1]. It is the policy of the Nation to have consistent and standard procedures for the management of employee reinstatement and back pay. [2 O.C. 206.1-2].

**B. Request for Amendments.** On the September 14, 2022, the Oneida Business Committee adopted a motion to request the Legislative Operating Committee consider amendments to the Back Pay law. The Legislative Operating Committee added this legislative item to its Active Files List on September 21, 2022.

### SECTION 3. CONSULTATION AND OUTREACH

**A.** Representatives from the following departments or entities participated in the development of the amendments to the Back Pay law and this legislative analysis:

- Oneida Law Office.

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

- 19           ▪ Back Pay law;
- 20           ▪ Oneida Personnel Policies and Procedures;
- 21           ▪ Drug and Alcohol Free Workplace law;
- 22           ▪ Furlough law; and
- 23           ▪ Investigative Leave Policy.

24

## 25 **SECTION 4. PROCESS**

- 26 A. The development of the proposed amendments to the Back Pay law complies with the process set forth  
27 in the Legislative Procedures Act (LPA).
- 28           ▪ On September 14, 2022, the Oneida Business Committee adopted a motion to request the  
29 Legislative Operating Committee to add the Backpay Policy to the active files agenda and to  
30 release the confidential memo to the Legislative Reference Office as a confidential document.
  - 31           ▪ On September 21, 2022, the Legislative Operating Committee added the Law to its Active Files  
32 List.
  - 33           ▪ On October 5, 2022, the Legislative Operating Committee approved the draft of the proposed  
34 amendments to the Back Pay law and directed that a legislative analysis be developed.
- 35 B. At the time this legislative analysis was developed the following work meetings had been held  
36 regarding the development of the amendments to this Law:
- 37           ▪ September 29, 2022: LOC work session; and
  - 38           ▪ October 13, 2022: LOC work session.

39

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

- 41 A. *Reinstatement.* A new section added to the Law through these amendments addresses reinstatement  
42 of an employee who had a termination overturned. [2 O.C. 206.4]. This new section provides that  
43 should an employee's appeal of a termination result in the termination being overturned, the reviewing  
44 party shall order the employee be reinstated to the position from which the employee was wrongfully  
45 terminated. [2 O.C. 206.4-1]. In the event the position the employee was terminated from has been  
46 eliminated or the employee is no longer eligible for the position the employee was terminated from  
47 based on amendments to the position description, the reviewing party shall order reinstatement to a  
48 position within the same division of the organization the employee was terminated from that is  
49 comparable in wage to the position the employee was terminated, to the extent it is available at the time  
50 of the reviewing party's decision. [2 O.C. 206.4-1(a)]. Any order requiring the employee to be  
51 reinstated to a position comparable to the position the employee was terminated from shall note the  
52 requirement that the Human Resources Department shall make the determination that the employee is  
53 eligible for a comparable position. [2 O.C. 206.4-1(b)]. If no comparable positions are available within  
54 the same division of the organization the employee was terminated from that are comparable in wage  
55 to the position the employee was terminated from, or if the employee is not eligible for the comparable  
56 position, the order to reinstate shall be deemed satisfied and the back pay end date shall be the date of  
57 the reviewing party's decision. [2 O.C. 206.4-1(c)]. This new section also addresses the requirement to  
58 hold the position pending litigation by providing that when an employee is terminated and thereafter  
59 appeals said termination, the disciplining supervisor may only fill the employee's former position with  
60 an interim employee until the appeal has fully run its course, which includes any appeal timelines to  
61 the area manager, the Trial Court, or the Appellate Court. [2 O.C. 206.4-2]. Additionally, this section  
62 of the Law provides that notwithstanding the requirement to hold the terminated employee's position



63 pending an employee's appeal of their termination as provided in section 206.4-2, a supervisor or  
64 business unit may amend the affected position description or eliminate the affected position while an  
65 employment appeal is pending where such actions are required to meet the Nation's business and  
66 employment needs. [2 O.C. 206.4-3]. The determination to amend an affected position description or  
67 eliminate an affected position shall be approved by the Human Resources Department Executive  
68 Director and either the General Manager, Gaming General Manager, Retail General Manager, or the  
69 highest position in the employee's chain of command for non-divisional employees. *Id.*

70 ■ *Effect.* The overall purpose of this new section to the Law is to provide direction and clarification  
71 on how the reinstatement of an employee who had a termination overturned is handled, so that it  
72 can be handled in a consistent manner throughout the Nation.

73 **B. *Back Pay Calculations.*** The proposed amendments to the Law clarify that back pay calculations shall  
74 be made using the employee's last wage in the position which they were terminated from. [2 O.C.  
75 206.5-1].

76 ■ *Effect.* This provision of the Law clarifies how back pay is calculated.

77 **C. *Explanation of When an Employee is Not Eligible to Work.*** The Law provides that the Nation shall  
78 not include time when an employee would not have been eligible to work in the calculation of any back  
79 pay amount. [2 O.C. 206.5-2(d)]. The proposed amendments to the Law provides greater clarification  
80 by providing a list of examples of when an employee is not eligible to work, which includes such  
81 circumstances such as when an employee is on layoff or furlough status at the time of termination;  
82 when a position is eliminated or inactive as part of the Nation's response to a financial force majeure  
83 event including, but not limited to, responses to war, global health pandemics, and/or any substantial  
84 loss of revenue or funding; and when an employee would otherwise not be eligible to work in the  
85 position from which they were terminated in accordance with the position description based on  
86 applicable grant requirements when a position is grant funded, applicable laws of the Nation, including,  
87 but not limited to, the Vehicle Driver Certification and Fleet Management law, and a criminal  
88 conviction. [2 O.C. 206.5-2(d)(1)-(3)].

89 ■ *Effect.* This provision of the Law clarifies when it should be considered that an employee is not  
90 eligible to work, and therefore is not eligible for back pay.

## 91 **SECTION 6. EXISTING LEGISLATION**

92 **A. *Related Legislation.*** The following laws of the Nation are related to the Back Pay law:

94 ■ *Oneida Personnel Policies and Procedures.* The purpose of the Oneida Personnel Policies and  
95 Procedures is to provide for the Nation's employee related policies and procedures including  
96 recruitment, selection, compensation and benefits, employee relations, safety and health, program  
97 and enterprise rules and regulations, and record keeping.

98 ■ Section V.D of the Oneida Personnel Policies and Procedures specifically addresses  
99 complaints, disciplinary actions and grievances. Section V.D.6 provides that any employee  
100 who receives a disciplinary action which he/she believes is unfair may grieve the action.  
101 Section V.D.6.f.5 then provides that the Oneida Personnel Commission may: uphold the  
102 disciplinary action; or overturn the disciplinary action and either reinstate the employee with  
103 full back pay for any lost time or reinstate the employee without back pay.

- 104           ▪ The Back Pay law will now address the reinstatement of an employee who has a termination  
105           overtaken in section 206.4, as well as provide greater clarification on how back pay is  
106           calculated in section 206.5.
- 107           ▪ *Drug and Alcohol Free Workplace Law.* It is the policy of the Nation to establish a drug and  
108           alcohol-free workplace program that balances respect for individuals with the need to maintain an  
109           alcohol and drug-free environment. [2 O.C. 202.1-1].
- 110           ▪ The Drug and Alcohol Free Workplace law provides that it is the employee’s responsibility to  
111           cooperate with the requests made by Employee Health Nursing and the Medical Review  
112           Officer. [2 O.C. 202.5-2(e)]. An employee who fails to cooperate and does not contact the  
113           MRO within twenty-four (24) hours of receiving contact shall not receive back pay for any  
114           time between the date the MRO placed the call until the time the employee does return the call  
115           of the MRO. *Id.*
- 116           ▪ The Drug and Alcohol Free Workplace law provides that during drug and alcohol testing for  
117           reasonable suspicion, an employee shall be immediately removed from duty without pay at the  
118           time of initiation of the reasonable suspicion drug and alcohol testing and specimen collection  
119           until the employer is notified by Employee Health Nursing of negative results on both the drug  
120           and alcohol tests, or Medical Review Officer verified negative test results. [2 O.C. 202.10-2].  
121           If the employee is reinstated after confirmation of drug and alcohol testing results, back pay  
122           shall be provided in accordance with the Back Pay law. [2 O.C. 202.10-3].
- 123           ▪ *Furlough Law.* The purpose of the Furlough law is to enable the Nation to implement a furlough  
124           program in response to an interruption of governmental revenues or operations, insufficient treasury  
125           funds or other emergencies/ unplanned events as determined by the Oneida Business Committee in  
126           accordance with this law; establish a consistent and equitable process for implementation of a  
127           furlough program; and incorporate Indian preference into the furlough program and require that it  
128           be applied in accordance with this law. [2 O.C. 205.1-1].
- 129           ▪ The Furlough law provides that except when an employee successfully appeals being placed  
130           on furlough status in violation of this law, employees placed in furlough status shall not be  
131           eligible for back pay upon their return to work. [2 O.C. 205.8-6].
- 132           ▪ *Investigative Leave Policy.* The purpose of the Investigative Leave Policy is to address  
133           investigative leave for employees undergoing work-related investigations. [2 O.C. 208.1-1].
- 134           ▪ The Investigative Leave Policy provides that an employee placed on investigative leave shall  
135           not receive any wages or benefits unless placed in an alternative work assignment, and that if  
136           the employee refuses the alternative work assignment and is returned to work, the employee  
137           shall not receive any back pay or benefits. [2 O.C. 208.10-2].
- 138           ▪ The Investigative Leave Policy provides that an employee shall receive back pay and benefits  
139           for the time the employee was on investigative leave pursuant to the Back Pay law if all of the  
140           following occur: the employee was not offered an alternative work assignment when placed on  
141           investigative leave; the employee is returned to his or her position; and the employee is not  
142           disciplined based on the investigation. [2 O.C. 208.10-4].
- 143

## 144 **SECTION 7. OTHER CONSIDERATIONS**

- 145 **A. Fiscal Impact.** Under the Legislative Procedures Act, a fiscal impact statement is required for all  
146 legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-  
147 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*

148 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete  
149 a fiscal impact statement at various stages of the legislative process, as well as timeframes for  
150 completing the fiscal impact statement.

151     ▪ *Conclusion.* The Legislative Operating Committee has not yet directed that a fiscal impact  
152 statement be completed.

153



Legislative Operating Committee  
October 19, 2022

# Emergency Management Law Amendments

<b>Submission Date:</b> 7/6/22	<b>Public Meeting:</b> N/A
<b>LOC Sponsor:</b> Marie Cornelius	<b>Emergency Enacted:</b> 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.
- 10/4/22:** *Work Meeting.* Present: David P. Jordan, Clorissa N. Leeman, Louise Cornelius, Mark Powless, Melissa Alvarado, Derrick King, Kaylynn Gresham. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to begin discussion on the development of the Emergency Management Operations Team SOP as required by resolution BC-09-14-22-B.
- 10/5/22 LOC:** Motion by Jennifer Webster to approve the draft of the proposed amendments to the Emergency Management law and direct that a legislative analysis be completed; seconded by Daniel Guzman King. Motion carried unanimously.

**Next Steps:**

- Approve the legislative analysis of the Emergency Management law amendments.



## EMERGENCY MANAGEMENT LAW AMENDMENTS LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
<b>Intent of the Proposed Amendments</b>	<ul style="list-style-type: none"> <li>▪ Eliminate the Oneida Nation Emergency Planning Committee and replace it with an Emergency Management Operations Team. <i>[3 O.C. 302.5-1]</i>;</li> <li>▪ Provide that 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 Emergency Management Director. <i>[3 O.C. 302.5-3]</i>;</li> <li>▪ Require that within forty-eight (48) hours of an emergency, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, an emergency briefing to be presented to the Oneida Business Committee regarding the status of the emergency, actions taken to address the emergency, and the activation of the Emergency Response Plan. <i>[3 O.C. 302.8-4]</i>;</li> <li>▪ Allow the Oneida Business Committee to direct the Emergency Management Director to provide additional emergency briefings to the Oneida Business Committee. <i>[3 O.C. 302.8-4]</i>;</li> <li>▪ Require that within thirty (30) days of an emergency subsiding, unless additional time is granted by the Oneida Business Committee, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, a preliminary emergency assessment report to be presented to the Oneida Business Committee, any interested entity, and the public. <i>[3 O.C. 302.8-5]</i>;</li> <li>▪ Extend the amount of time for the Emergency Management Director to prepare and present an after-action report to the Oneida Business Committee, any interested entity, and the public, from sixty (60) days to ninety (90) days. <i>[3 O.C. 302.8-6]</i>.</li> </ul>
<b>Purpose</b>	To provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; to provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; to establish the use of the National Incident Management System (NIMS); and to designate authority and responsibilities for public health preparedness. <i>[3 O.C. 302.1-1]</i>
<b>Affected Entities</b>	Emergency Management Operations Team, Emergency Management Director, Oneida Business Committee
<b>Public Meeting</b>	A public meeting has not yet been held.
<b>Fiscal Impact</b>	A fiscal impact statement has not yet been requested.
<b>Expiration of Emergency Legislation</b>	Emergency legislation expires six (6) months after adoption and may be renewed for an additional six (6) month period. The emergency amendments to this law will expire on March 14, 2022.

1 **SECTION 2. LEGISLATIVE DEVELOPMENT**

2 **A. *Background.*** The Emergency Management law (“the Law”) was first adopted by the Oneida Business  
3 Committee on July 15, 1998,(formally known as the Emergency Management and Homeland Security  
4 law) and most recently amended on March 10, 2021. The Law provides for the development and  
5 execution of plans for the protection of residents, property, and the environment in an emergency or  
6 disaster; to provide for the direction of emergency management, response, and recovery on the  
7 Reservation; as well as coordination with other agencies, victims, businesses, and organizations; to  
8 establish the use of the National Incident Management System (NIMS); and to designate authority and  
9 responsibilities for public health preparedness. [3 O.C. 302.1-1].

10 **B. *Adoption of Emergency Amendments.*** On June 15, 2022, the Oneida Nation and surrounding areas  
11 experienced a severe thunderstorm, high winds and tornados affecting power, damaging homes and  
12 businesses, and impacting access through downed trees causing multiple buildings and much of the  
13 programs and services of the Nation to be negatively impacted through damage to buildings, lack of  
14 power and utilities, and inability of employees to come to work as a result of the same impact on their  
15 homes. The Oneida Business Committee declared an emergency resulting from the damages caused by  
16 the June 15, 2022, severe weather through the adoption of resolution BC-06-20-22-A, *Declaration of*  
17 *Emergency Resulting from the Damages Caused by the June 15, 2022, Severe Weather and Tornado.*  
18 On June 24, 2022, the Oneida Business Committee storm held an emergency debrief session with the  
19 Emergency Management Director, and in that meeting it was identified that amendments to the  
20 Emergency Management law would be needed to address the Oneida Nation Emergency Planning  
21 Committee, and the difficulties of composing this Team to meet the needs of the Nation for an  
22 emergency response. The Legislative Operating Committee added these amendments to its Active Files  
23 List on July 6, 2022, and determined that these amendments should be pursued on an emergency basis.

24 ■ The Oneida Nation Emergency Planning Committee assists the Emergency Management Director  
25 in drafting and maintaining the Emergency Response Plan, and at the request of the Emergency  
26 Management Director, the Oneida Nation Emergency Planning Committee shall provide assistance  
27 to the Emergency Management Director in the implementation of the provisions of this law or any  
28 plan issued thereunder. The Oneida Nation Emergency Planning Committee shall consist of  
29 representatives from entities and a community representative as identified in the Oneida Nation  
30 Emergency Planning Committee bylaws.

31 ■ Some of the positions identified in the Bylaws are direct reports to the Oneida Business Committee  
32 or General Manager, or are employees of the Nation’s Internal Audit Department, Finance  
33 Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and  
34 Communications. Currently, section 105.15-3 of the Boards, Committees, and Commissions law  
35 provides that direct reports to the Oneida Business Committee or General Manager, or are  
36 employees of the Nation’s Internal Audit Department, Finance Administration, Law Office,  
37 Business Committee Support Office, or Intergovernmental Affairs and Communications are  
38 ineligible to serve on an appointed or elected boards, committee, or commission of the Nation.  
39 Amendments to the Law are being sought to address the Oneida Nation Emergency Planning  
40 Committee since it is essential that direct reports and employees of those designated areas  
41 participate on this committee in order to achieve the best emergency response for the Nation.

42 ■ The emergency adoption of amendments to this Law were necessary for the preservation of the  
43 safety and general welfare of the Reservation population in order to ensure that the Nation can  
44 adequately respond to emergencies that occur by ensuring that there is an Emergency Management

45 Operations Team that can assist the Emergency Management Director in drafting and maintaining  
46 the Emergency Response Plan., as well as assist the Emergency Management Director in the  
47 implementation of the provisions of this law or any plan issued thereunder.

- 48 ■ Observance of the requirements under the Legislative Procedures Act for adoption of the  
49 emergency amendments to this Law were contrary to public interest since the process and  
50 requirements of the Legislative Procedures Act cannot be completed in time to ensure that the  
51 Emergency Management Operations Team can be established and prepared to aid in the emergency  
52 response prior to the next emergency occurring within the Nation.
- 53 ■ The Oneida Business Committee adopted emergency amendments to the Emergency Management  
54 law on September 14, 2022, through the adoption of resolution BC-09-14-22-B. The emergency  
55 amendments to the Emergency Management law will expire on March 14, 2022.

56

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

58 A. Representatives from the following departments or entities participated in the development of the  
59 emergency amendments to this Law and legislative analysis:

- 60 ■ Emergency Management Department;
- 61 ■ General Manager; and
- 62 ■ Government Administrative Office.

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

- 64 ■ Emergency Management law; and
- 65 ■ Boards, Committees, and Commissions law.

66

### 67 **SECTION 4. PROCESS**

68 A. The development of the proposed amendments to the Emergency Management law complies with the  
69 process set forth in the Legislative Procedures Act (LPA).

- 70 ■ On July 6, 2022, the Legislative Operating Committee added the Law to its Active Files List.
- 71 ■ On September 7, 2022, the Legislative Operating Committee approved the Emergency  
72 Management law emergency amendments adoption packet and forward these materials to the  
73 Oneida Business Committee for consideration.
- 74 ■ On September 14, 2022, the Oneida Business Committee adopted resolution BC-09-14-22-B  
75 entitled, *Emergency Amendments to the Emergency Management Law*.
- 76 ■ On October 5, 2022, the Legislative Operating Committee approved the draft of the proposed  
77 amendments to the Emergency Management law and directed that a legislative analysis be  
78 completed.

79 B. The Legislative Operating Committee has held the following work meetings specific to the proposed  
80 emergency amendments to this Law:

- 81 ■ July 18, 2022: Work Session with Governmental Administrative Office, General Manager, and  
82 Emergency Management Department.
- 83 ■ August 2, 2022: Work Session with Governmental Administrative Office, General Manager, and  
84 Emergency Management Department.
- 85 ■ August 25, 2022: Work Session with Governmental Administrative Office, General Manager, and  
86 Emergency Management Department.
- 87 ■ August 25, 2022: LOC work session.



- 88       ▪ August 30, 2022: LOC work session with the Emergency Management Department.
- 89       ▪ October 4, 2022: Work Session with Gaming General Manager and Staff, General Manager,
- 90       Finance Administration, and the Emergency Management Director.

91

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

93 **A. *Emergency Management Operations Team.*** Previously the Law provided that there be an Oneida  
94 Nation Emergency Planning Committee which consisted of representatives from entities and a  
95 community representative as identified in the Oneida Nation Emergency Planning Committee bylaws  
96 as approved by the Oneida Business. The proposed amendments to the Law eliminate the Oneida Nation  
97 Emergency Planning Committee and replace it with an Emergency Management Operations Team. [3  
98 *O.C. 302.5-1*]. The Emergency Management Operations Team consists of representatives from entities  
99 as identified by the Emergency Management Director. *Id.* The purpose of the Emergency Management  
100 Operations Team remains the same as the purpose of the Oneida Nation Emergency Planning  
101 Committee, which is to assist the Emergency Management Director in drafting and maintaining the  
102 Emergency Response Plan, as well as to assist the Emergency Management Director in the  
103 implementation of any provision of the Law or any plan issued thereunder. [3 *O.C. 302.5-2*].  
104 Additionally, a new provision added to the Law sets expectations for the Emergency Management  
105 Operations Team by providing the requirement that members attend meetings, or send a designee in  
106 their absence, and comply with any training requirements set forth by the Emergency Management  
107 Director. [3 *O.C. 302.5-3*].

- 108       ▪ ***Effect.*** The proposed amendments to the Law replace the Oneida Nation Emergency Planning  
109 Committee with the Emergency Management Operations Team. This revision demonstrates  
110 that the Nation is better suited with the Emergency Management Operations Team which exists  
111 not as a board, committee, or commission of the Nation, but instead as a network of different  
112 employee positions throughout the Nation that all have a responsibility to aid in the Nation's  
113 response to emergencies. This eliminates the previous difficulty in composing this Team to  
114 meet the needs of the Nation for an emergency response since a conflict with section 105.15-3  
115 of the Boards, Committees, and Commissions law no longer exists, and the direct reports and  
116 employees of those designated areas can now participate on this Emergency Management  
117 Operations Team to achieve the best emergency response for the Nation.

118 **B. *Emergency Briefings.*** A new provision was added to the Law which requires that within forty-eight  
119 (48) hours of an emergency, the Emergency Management Director shall prepare, or shall work in  
120 conjunction with the appropriate entity to prepare, an emergency briefing to be presented to the Oneida  
121 Business Committee regarding the status of the emergency, actions taken to address the emergency,  
122 and the activation of the Emergency Response Plan. [3 *O.C. 302.8-4*]. The Oneida Business Committee  
123 may then direct the Director to provide additional emergency briefings. *Id.*

- 124       ▪ ***Effect.*** The new provision ensures that the Emergency Management Director is briefing the  
125 Oneida Business Committee on the status of the emergency, actions taken to address the  
126 emergency, and the activation of the Emergency Response Plan so that the Oneida Business  
127 Committee stays informed on an emergency occurring within the Nation in an effort to make  
128 better policy decisions and provide greater communication to the community.

129 **C. *Preliminary Emergency Assessment Report.*** A new provision was added to the Law which requires  
130 that after an emergency has subsided, the Director shall prepare, or shall work in conjunction with the  
131 appropriate entity to prepare, a preliminary emergency assessment report to be presented to the Oneida

132 Business Committee, any interested entity, and the public. [3 O.C. 302.8-5]. This report is required to  
133 be presented to the parties no later than thirty (30) days after the emergency has subsided, unless an  
134 extension is granted by the Oneida Business Committee.

- 135     ▪ **Effect.** The new provision to the Law ensures the Emergency Management Director is  
136     providing the Oneida Business Committee, any interested entity, and the public with a  
137     preliminary report that reviews the Nation’s response to an emergency and identifies any areas  
138     in which the response could have been improved. Providing this information in a preliminary  
139     emergency assessment report allows the Nation to be best prepared in how to improve  
140     emergency response, in case an additional emergency occurs before the full analysis of a  
141     particular emergency response can be provided in the after-action report.

142 **D. Extension of the Timeframe for an After-Action Report.** Previously, the Law provided that after an  
143 emergency has subsided, the Emergency Director shall prepare, or shall work in conjunction with the  
144 appropriate entity to prepare, an after-action report to be presented to the Oneida Business Committee,  
145 any interested entity, and the public no later than sixty (60) days after the emergency has subsided,  
146 unless an extension is granted by the Oneida Business Committee. The amendments to the Law extend  
147 the timeframe for when an after-action report is required to be presented from sixty (60) days to ninety  
148 (90) days. [3 O.C. 302.8-6].

- 149     ▪ **Effect.** The amendments to the Law provide the Emergency Management Director additional  
150     time to prepare an after-action report to be presented to the Oneida Business Committee, any  
151     interested entity, and the public. The Emergency Management Director informed the  
152     Legislative Operating Committee that sixty (60) days is not a sufficient time allowance to  
153     complete this report, especially when there are times that information needs to be collected  
154     from other agencies to be included in the report.

## 155 SECTION 6. EXISTING LEGISLATION

156 **A. Related Legislation.** The following laws of the Nation are related to the emergency amendments to this  
157 Law:

- 159     ▪ **Legislative Procedures Act.** The Legislative Procedures Act was adopted by the General Tribal  
160     Council on January 7, 2013, for the purpose of providing a standard process for the adoption  
161     of laws of the Nation which includes taking into account comments from members of the  
162     Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].
  - 163         ▪ The Legislative Procedures Act provides a process for the adoption of emergency  
164         legislation when the legislation is necessary for the immediate preservation of the  
165         public health, safety, or general welfare of the Reservation population and the  
166         enactment or amendment of legislation is required sooner than would be possible under  
167         this law. [1 O.C. 109.9-5].
    - 168             ▪ The Legislative Operating Committee is responsible for first reviewing the  
169             emergency legislation and for forwarding the legislation to the Oneida  
170             Business Committee for consideration. [1 O.C. 109.9-5(a)].
    - 171             ▪ The proposed emergency legislation is required to have a legislative analysis  
172             completed and attached prior to being sent to the Oneida Business Committee  
173             for consideration. [1 O.C. 109.9-5(a)].

- 174 a. A legislative analysis is a plain language analysis describing the  
175 important features of the legislation being considered and factual  
176 information to enable the Legislative Operating Committee to make  
177 informed decisions regarding legislation. A legislative analysis  
178 includes a statement of the legislation’s terms and substance; intent of  
179 the legislation; a description of the subject(s) involved, including any  
180 conflicts with Oneida or other law, key issues, potential impacts of the  
181 legislation and policy considerations. [1 O.C. 109.3-1(g)].
- 182 ■ Emergency legislation does not require a fiscal impact statement to be  
183 completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
  - 184 ■ Upon the determination that an emergency exists the Oneida Business  
185 Committee can adopt emergency legislation. The emergency legislation  
186 becomes effective immediately upon its approval by the Oneida Business  
187 Committee. [1 O.C. 109.9-5(b)].
  - 188 ■ Emergency legislation remains in effect for a period of up to six (6) months,  
189 with an opportunity for a one-time emergency law extension of up to six (6)  
190 months. [1 O.C. 109.9-5(b)].
  - 191 ■ Adoption of these proposed emergency amendments conform with the requirements of  
192 the Legislative Procedures Act.
  - 193 ■ *Boards, Committees, and Commissions Law.* The Boards Committees and Commissions law  
194 governs boards, committees, and commissions of the Nation, including the procedures  
195 regarding the appointment and election of persons to boards, committees and commissions,  
196 creation of bylaws, maintenance of official records, compensation, and other items related to  
197 boards, committees and commissions. [1 O.C. 105.1-1].
    - 198 ■ The Boards, Committees, and Commissions law provides that direct reports to the  
199 Oneida Business Committee or General Manager, or are employees of the Nation’s  
200 Internal Audit Department, Finance Administration, Law Office, Business Committee  
201 Support Office, or Intergovernmental Affairs and Communications are ineligible to  
202 serve on an appointed or elected boards, committee, or commission of the Nation. [1  
203 O.C. 105.15-3].
    - 204 ■ The proposed amendments to the Law replace the Oneida Nation Emergency Planning  
205 Committee with the Emergency Management Operations Team to eliminate any  
206 conflict with section 105.15-3 of the Boards, Committees, and Commissions law.
- 207

## 208 SECTION 7. OTHER CONSIDERATIONS

- 209 A. *Deadline for Permanent Adoption of Legislation.* The emergency amendments to the Law will expire  
210 on March 14, 2022. The emergency legislation may be renewed for an additional six (6) month period.
- 211 ■ *Conclusion:* The Legislative Operating Committee will need to determine if the adoption of these  
212 amendments is necessary on a permanent basis, and if so, develop the permanent amendments to  
213 this Law within the next six (6) to twelve (12) months.
- 214 B. *Fiscal Impact.* Under the Legislative Procedures Act, a fiscal impact statement is required for all  
215 legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-  
216 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*  
217 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete

218 a fiscal impact statement at various stages of the legislative process, as well as timeframes for  
219 completing the fiscal impact statement.

220     ▪ *Conclusion.* The Legislative Operating Committee has not yet directed that a fiscal impact  
221         statement be completed.

222

223

**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. <del>Oneida Nation</del> Emergency <del>Planning Committee</del> <u>Management 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~~<sub>2</sub> 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.

222

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 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 *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- - - -

# October 2022

October 2022

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November 2022

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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) 10:00am Placement of the Internal	4	5 9:00am LOC Meeting (BC_Conf_Room) - LOC	6	7	8
9	10 10:00am Investigative Leave Policy Amendment 1:00pm Rulemaking Authority and	11 1:00pm Furlough Law work meeting (Microsoft Teams Meeting) - Carolyn A.	12	13 1:30pm LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	14	15
16	17 9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago	18	19 8:30am LOC Prep (Microsoft Teams) 9:00am LOC Meeting 1:30pm Oneida Personnel	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) 10:00am Drug and Alcohol Free	Nov 1	2	3	4	5