



**LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**  
Business Committee Conference Room - 2<sup>nd</sup> Floor Norbert Hill Center  
January 4, 2023  
9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be Approved**
  1. December 21, 2022 LOC Meeting Minutes (pg. 2)
- III. Current Business**
  1. Drug and Alcohol Free Workplace Law Amendments (pg. 4)
  2. Emergency Management Law Amendments (pg. 31)
- IV. New Submissions**
  1. Elder Abuse Code (pg. 47)
- 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  
December 21, 2022  
9:00 a.m.

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

**Others Present:** Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Brooke Doxtator, Nancy Barton, Ray Skenandore, Keith Doxtator, Joy Salzwedel (Microsoft Teams), Carl Artman (Microsoft Teams), Rhiannon Metoxen (Microsoft Teams), Kristal Hill (Microsoft Teams), Peggy Van Gheem (Microsoft Teams), Michelle Tipple (Microsoft Teams), Shannon Davis (Microsoft Teams), Tina Jorgenson (Microsoft Teams), Todd VandenHeuvel (Microsoft Teams), Kaylynn Gresham (Microsoft Teams), Eric Boulanger (Microsoft Teams)

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

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

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

**II. Minutes to be Approved**

**1. December 7, 2022 LOC Meeting Minutes**

Motion by Marie Cornelius to approve the December 7, 2022, LOC meeting minutes and forward to the Oneida Business Committee; seconded by Kirby Metoxen. Motion carried unanimously.

**III. Current Business**

**1. Drug and Alcohol Free Workplace Law Amendments**

Motion by Jennifer Webster to approve the legislative analysis of the Drug and Alcohol Free Workplace law amendments; seconded by Daniel Guzman King. Motion carried unanimously.

**2. Election Law Emergency Amendments**

Motion by Marie Cornelius to approve the Election law emergency amendments adoption packet and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.



**IV. New Submissions**

**1. Two Spirit Inclusion Law**

Motion by Marie Cornelius to add the Two Spirit Inclusion law to the Active Files List with Jennifer Webster as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

**V. Additions**

**VI. Administrative Items**

**VII. Executive Session**

**VIII. Adjourn**

Motion by Daniel Guzman King to adjourn at 9:40 a.m.; seconded by Marie Cornelius. Motion carried unanimously.



Legislative Operating Committee  
 January 4, 2023

# Drug and Alcohol Free Workplace Law Amendments

<b>Submission Date:</b> 9/7/22	<b>Public Meeting:</b> N/A
<b>LOC Sponsor:</b> Kirby Metoxen	<b>Emergency Enacted:</b> N/A

**Summary:** *On August 30, 2022, the Legislative Operating Committee received a request from the Human Resources Department to add the Drug and Alcohol Free Workplace law amendments to its Active Files List. It is the policy of the Nation to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. HRD indicated that with the Benton – Pre-Employment Drug Testing petition currently pending – which requests to remove or lower THC from the pre-employment drug testing requirements - they were directed by the Oneida Business Committee to work with the Oneida Law Office on potential proposed language to address this petition. HRD is requesting that the LOC now add this legislative item to the Active Files List so that the HRD can collaborate with the LOC on the consideration of potential amendments moving forward. The Legislative Operating Committee added this item to its Active Files List on September 7, 2022.*

**9/7/22 LOC:** Motion by Marie Summers to add the Drug and Alcohol Free Workplace law amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

**10/31/22:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Carl Artman, Peggy Van Gheem, Todd Vandenheuvell, Matt Denny, Nic Reynolds, Josh Cottrell, Wendy Alvarez, Louise Cornelius, Lucy Neville, Brenda Mendolla-Buckley, Fawn Rasmussen, Kristal Hill, Rhiannon Metoxen. The purpose of this work meeting is to begin the consideration of potential amendments to the Drug and Alcohol Free Workplace law by reviewing and discussing the options for amendments provided by the Oneida Law Office.

**11/15/22:** *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Jennifer Webster, Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Carl Artman, Peggy Van Gheem, Todd Vandenheuvell, Matt Denny, Nic Reynolds, Josh Cottrell, Wendy Alvarez, Lucy Neville, Lorna Skenandore, Chad Fuss, Fawn Rasmussen, Mary Cornelissen, Kristal Hill. The purpose of this work meeting was to continue the consideration of potential amendments to the Drug and Alcohol Free Workplace law by deciding on an option for amendments provided by the Oneida Law Office.

**12/1/22:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Cornelius, Daniel Guzman King, Clorissa N. Leeman, Grace Elliott, Carolyn Salutz, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the updated proposed language for the amendments, as well as the Waiver of Exemption of Positive THC Test Results for Pre-Employment Drug Testing resolution.

**12/7/2 LOC:** Motion by Jennifer Webster to approve the draft of the Drug and Alcohol Free Workplace law amendments and direct that a legislative analysis be completed; seconded by Daniel Guzman King. Motion carried unanimously.

**12/21/22 LOC:** Motion by Jennifer Webster to approve the legislative analysis of the Drug and Alcohol Free Workplace law amendments; seconded by Daniel Guzman King. Motion carried unanimously.

**Next Steps:**

- Approve the public meeting packet for the proposed amendments to the Drug and Alcohol Free Workplace law and schedule a public meeting to be held on February 15, 2022.

**ONEIDA NATION PUBLIC MEETING NOTICE****WEDNESDAY, FEBRUARY 15, 2023****12:15 pm****Norbert Hill Center-Business Committee Conference Room  
N7210 Seminary Rd., Oneida, Wisconsin****Find Public Meeting Materials at**

Oneida-nsn.gov/government/register/public meetings

**Send Public Comments to**

LOC@oneidationation.org

**Ask Questions here**

LOC@oneidationation.org

920-869-4417

**DRUG AND ALCOHOL FREE WORKPLACE LAW AMENDMENTS**

The purpose of the Drug and Alcohol Free Workplace law is to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. Amendments to this law are being proposed to provide that an external applicant's confirmed positive THC test result shall be exempted from the requirement of a negative drug test result for pre-employment eligibility in certain circumstances.

Individuals may attend the public meeting for the proposed amendments to the Drug and Alcohol Free Workplace law in person at the Norbert Hill Center, or virtually through Microsoft Teams. If you wish to attend the public meeting through Microsoft Teams please contact LOC@oneidationation.org.

If the Norbert Hill Center's Administrative Offices guidelines prohibits a public meeting from being held in person on February 15, 2023, based on the COVID-19 Community levels in Brown and Outagamie Counties, then the public meeting will be held solely on Microsoft Teams.

**PUBLIC COMMENT PERIOD CLOSSES WEDNESDAY, FEBRUARY 22, 2023**

During the public comment period, anyone may submit written comments, questions or input. Comments may be submitted to the Oneida Nation Secretary's Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, or e-mail.



For more information on the proposed amendments to the Drug and Alcohol Free Workplace law please review the public meeting packet at oneida-nsn.gov/government/register/public meetings.



# DRUG AND ALCOHOL FREE WORKPLACE LAW AMENDMENTS LEGISLATIVE ANALYSIS

## SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Amendments	<ul style="list-style-type: none"> <li>▪ Provide that an external applicant’s confirmed positive THC test result shall be exempted from the requirement of a negative drug test result for pre-employment eligibility in certain circumstances. [2 O.C. 202.8-4(a)].                             <ul style="list-style-type: none"> <li>▪ For Gaming positions, an external applicant receiving a confirmed positive test result for THC may qualify for employment if the position mandates a background check in accordance with 5 O.C. 501.10; the position mandates licensing in accordance with 5 O.C. 501.11; and the position does not require a commercial driver’s license or job-related driving. [2 O.C. 202.8-4(a)(1)].</li> <li>▪ For Non-Gaming positions, an external applicant receiving a confirmed positive test result for THC may qualify for employment if the position has not been identified as an employee position which waived the exemption for positive THC test results. [2 O.C. 202.8-4(a)(2)].</li> </ul> </li> <li>▪ Require the Oneida Business Committee to adopt through resolution a list of all the non-gaming employment positions that waive the exemption for positive THC test results. [2 O.C. 202.8-4(a)(2)(A)].</li> </ul>
Purpose	The purpose of this law is to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. [2 O.C. 202.1-2].
Affected Entities	Human Resources Department, Oneida Nation employees.
Public Meeting	A public meeting has not yet been held.
Fiscal Impact	A fiscal impact statement has not yet been requested.

## SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Background.** The Drug and Alcohol Free Workplace law was adopted by the Oneida Business Committee in 1994 through resolution BC-10-25-95-A and then amended through resolutions BC-10-20-99-A, BC-12-05-07-B, BC-12-11-13-F, and BC-04-12-17-C. The purpose of the Drug and Alcohol Free Workplace law is to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. [2 O.C. 202.1-2].
- B. Request for Amendments.** On August 30, 2022, the Legislative Operating Committee received a request from the Human Resources Department to add the Drug and Alcohol Free Workplace law amendments to its Active Files List. The Human Resources Department indicated that with the *Benton – Pre-Employment Drug Testing* petition currently pending – which requests to remove THC from the pre-employment drug testing requirements, they were directed by the Oneida Business Committee to work with the Oneida Law Office on potential proposed language to address this petition. The Legislative Operating Committee added this item to its Active Files List on September 7, 2022.

15 **SECTION 3. CONSULTATION AND OUTREACH**

- 16 A. Representatives from the following departments or entities participated in the development of the  
17 amendments to the Law and this legislative analysis:
- 18     ▪ Oneida Law Office;
  - 19     ▪ Human Resources Department;
  - 20     ▪ Gaming; and
  - 21     ▪ Employee Health Nursing.
- 22 B. The following laws were reviewed in the drafting of this analysis:
- 23     ▪ Drug and Alcohol Free Workplace law;
  - 24     ▪ Oneida Personnel Policies and Procedures.
- 25

26 **SECTION 4. PROCESS**

- 27 A. The development of the proposed amendments to the Drug and Alcohol Free Workplace law complies  
28 with the process set forth in the Legislative Procedures Act (LPA).
- 29     ▪ On September 7, 2022, the Legislative Operating Committee added the Law to its Active Files  
30 List.
  - 31     ▪ On December 7, 2022, the Legislative Operating Committee approved the draft of the proposed  
32 amendments to the Law and directed that a legislative analysis be developed.
  - 33     ▪ On December 21, 2022, the Legislative Operating Committee approved the legislative analysis.
- 34 B. At the time this legislative analysis was developed the following work meetings had been held  
35 regarding the development of the amendments to this Law:
- 36     ▪ October 31, 2022: LOC work meeting with the Oneida Law Office, Human Resources  
37 Department, and Gaming.
  - 38     ▪ November 15, 2022: LOC work meeting with the Oneida Law Office, Human Resources  
39 Department, and Gaming.
  - 40     ▪ December 1, 2022: LOC work session.
- 41

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

- 43 A. *Pre-Employment Drug Testing*. Currently, the Law provides that each employee, as a condition of  
44 employment, shall participate in pre-employment, reasonable suspicion, and follow-up testing upon the  
45 request of an appropriate authority, and that a negative test result is required for employment eligibility.  
46 The proposed amendments focus specifically on pre-employment drug testing and how positive THC  
47 test results are address by the Nation. The proposed amendments to the Law require that all external  
48 applicants participate in pre-employment drug testing, and that a negative drug test result shall be  
49 required for employment eligibility. [2 O.C. 202.8-4]. The Law then further provides that an external  
50 applicant’s confirmed positive THC test result shall be exempted from the requirement of a negative  
51 drug test result for employment eligibility in certain circumstances. [2 O.C. 202.8-4(a)]. For Gaming  
52 positions, an external applicant receiving a confirmed positive test result for THC may qualify for  
53 employment if the position mandates a background check in accordance with 5 O.C. 501.10; the  
54 position mandates licensing in accordance with 5 O.C. 501.11; and the position does not require a  
55 commercial driver’s license or job-related driving. [2 O.C. 202.8-4(a)(1)]. For Non-Gaming positions,  
56 an external applicant receiving a confirmed positive test result for THC may qualify for employment if  
57 the position has not been identified as an employee position which waived the exemption for positive



58 THC test results. [2 O.C. 202.8-4(a)(2)]. The Law then requires the Oneida Business Committee to  
59 adopt through resolution a list of all the non-gaming employment positions that waive the exemption  
60 for positive THC test results. [2 O.C. 202.8-4(a)(2)(A)]. The Law then maintains the requirement that  
61 each employee shall participate in reasonable suspicion and follow-up testing upon the request of an  
62 appropriate authority, and that a negative test result is required for unimpeded employment eligibility.  
63 [2 O.C. 202.8-5].

64 ■ *Effect.* The proposed amendments to the Law allow an individual who is seeking employment with  
65 the Nation to still be eligible to be hired if the individual tests positive for THC in most situations,  
66 unless the position the individual is seeking is in an area that has waived this exemption for positive  
67 THC test results.  
68

## 69 **SECTION 6. EXISTING LEGISLATION**

70 A. *Related Legislation.* The following laws of the Nation are related to the proposed amendments to the  
71 Law:

72 ■ *Oneida Personnel Policies and Procedures.* The purpose of the Oneida Personnel Policies and  
73 Procedures is to provide for the Nation’s employee related policies and procedures including  
74 recruitment, selection, compensation and benefits, employee relations, safety and health, program  
75 and enterprise rules and regulations, and record keeping.  
76 ■ Section V.D.3 of the Oneida Personnel Policies and Procedures provides that the Drug  
77 and Alcohol Free Workplace Policy shall govern disciplinary actions warranting  
78 termination for drug and alcohol related violations.

## 79 **SECTION 7. OTHER CONSIDERATIONS**

81 A. *Waiver of Exemption of Positive THC Test Results for Pre-Employment Drug Testing.* The proposed  
82 amendments to the Law require the Oneida Business Committee to adopt through resolution a list of  
83 all the non-gaming employment positions that waive the exemption for positive THC test results. [2  
84 O.C. 202.8-4(a)(2)(A)]. The Legislative Operating Committee has begun collaborating on the  
85 development of this resolution with the Human Resources Department and the Oneida Law Office.  
86 Thus far, the language included in the proposed resolution provides that the following non-gaming  
87 employment positions waive the exemption for positive THC test results: any position which requires  
88 a commercial driver’s license or where driving is a primary function or responsibility of the employee  
89 position; any position within Oneida Comprehensive Health Division; any position within the Oneida  
90 Police Department; and any position which requires regular contact with or control over children. This  
91 means that the above-mentioned positions do not allow a positive THC test result for pre-employment  
92 eligibility.

93 ■ *Conclusion.* The Legislative Operating Committee will need to prepare this resolution to be  
94 presented to the Oneida Business Committee for consideration of adoption when the proposed  
95 amendments are presented to the Oneida Business Committee.

96 B. *Fiscal Impact.* Under the Legislative Procedures Act, a fiscal impact statement is required for all  
97 legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-  
98 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*  
99 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete

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

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

104

**Title 2. Employment – Chapter 202**  
**DRUG AND ALCOHOL FREE WORKPLACE**

202.1. Purpose and Policy  
202.2. Adoption, Amendment, Repeal  
202.3. Definitions  
202.4. Application  
202.5. Shared Responsibility  
202.6. Prohibited Behavior  
202.7. Reasonable Suspicion  
202.8. Drug and Alcohol Testing

202.9. Refusal to Test  
202.10. Reasonable Suspicion Testing Waiting Period  
202.11. Consequences for Prohibited Behavior  
202.12. Re-hire  
202.13. Other Potential Consequences  
202.14. Confidentiality  
202.15. Communication

**202.1. Purpose and Policy**

202.1-1. *Purpose.* The Nation is committed to protecting the safety, health and well-being of all employees, and other individuals in the workplace. The Nation recognizes that alcohol abuse and drug use pose a significant health and safety threat to our customers and other employees. The Nation also recognizes that alcohol and drug abuse and addiction are treatable illnesses. The Nation realizes that early intervention and support may improve the success of rehabilitation.

202.1-2. *Policy.* It is the policy of the Nation to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. The Nation encourages employees to voluntarily seek help for their personal drug and alcohol-related problems.

**202.2. Adoption, Amendment, Repeal**

202.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-25-95-A and amended by resolutions BC-10-20-99-A, BC-12-05-07-B, BC-12-11-13-F-~~and~~, BC-04-12-17-C, and BC- - - - -.

202.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

202.2-3. 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.

202.2-4. 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.

202.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**202.3. Definitions**

202.3-1. 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) “Appropriate authority” means the Human Resources Department hiring representative, immediate supervisor, EHN, MRO, and/or ONEAP who requests the drug and/or alcohol testing for reasons of pre-employment, reasonable suspicion, and/or follow-up testing.

(b) “Business day” means Monday through Friday from 8:00am-4:30pm, excluding holidays recognized by the Nation.

(c) “Confirmed positive test result” means a lab-confirmed drug test that is verified by the MRO that exceeds the cut-off levels established by this law (levels established by the United States Department of Health and Human Services), confirmed saliva testing, confirmed evidential breath alcohol test results of 0.02 or greater; and/or refusal to test.

- 38 (d) “EHN” means the Oneida Employee Health Nursing Department.
- 39 (e) “Employee” means any individual who is employed by the Nation and is subject to the  
40 direction and control of the Nation with respect to the material details of the work performed,  
41 or who has the status of an employee under the usual common law rules applicable to  
42 determining the employer-employee relationship. “Employee” includes, but is not limited  
43 to; an individual employed by any program or enterprise of the Nation, but does not include  
44 elected or appointed officials, or individuals employed by a Tribally Chartered Corporation.  
45 For purposes of this law, individuals employed under an employment contract as a limited  
46 term employee are employees of the Nation, not consultants.
- 47 (f) “External applicant” means a person who is applying for a position and not currently  
48 employed by the Nation.
- 49 (g) “HRD” means the Human Resources Department and/or representatives performing  
50 Human Resources functions applicable to this law.
- 51 (h) “Internal applicant” means a person who is applying for a position who is currently  
52 employed by the Nation, this includes those employed under a temporary status.
- 53 (i) “MRO” means Medical Review Officer who is a licensed physician who is responsible  
54 for receiving and reviewing laboratory test results generated by an employer’s drug testing  
55 program and evaluating medical explanations for certain drug test results.
- 56 (j) “Nation” means the Oneida Nation.
- 57 (k) “NHTSA” means the National Highway Traffic Safety Administration.
- 58 (l) “ONEAP” means the Oneida Nation Employee Assistance Program which is a  
59 professional counseling program staffed by clinical social workers licensed by the State of  
60 Wisconsin which offers services to the Nation’s employees and family members.
- 61 (m) “Prohibited drug(s)” means marijuana, cocaine, opiates, amphetamines, phencyclidine  
62 (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance  
63 included in Schedules I through V, as defined by Section 812 of Title 21 of the United States  
64 Code. This also includes prescription medication or over-the-counter medicine used in an  
65 unauthorized or unlawful manner.
- 66 (n) “Return-to-Work Agreement” means an agreement, developed by an ONEAP counselor  
67 and signed by the employee and the ONEAP counselor, and the referring supervisor, which  
68 sets out the actions the employee needs to complete in order to return to work and remain  
69 employed.
- 70 (o) “SAMHSA” means the United States Department of Health and Human Services,  
71 Substance Abuse and Mental Health Services Administration.
- 72 (p) “Supervisor” means the immediate supervisor, or person who has taken on the role of  
73 supervisor due to an absence that is responsible for performance review, corrective action,  
74 and day-to-day assignments of duties.
- 75 (q) “Work-related accident” means an unexpected event involving an employee that occurs  
76 in the employee’s working environment or during an activity related to work, that:
- 77 (1) results in an injury to the employee or another person that may require medical  
78 intervention by a police officer or emergency medical technician, or treatment at a  
79 medical facility,
- 80 (2) results in death of the employee or another person, or
- 81 (3) involves any property damage.
- 82

**202.4. Application**

202.4-1. This law applies to all applicants for employment, whether external or internal, and all employees during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation.

202.4-2. An employee is prohibited from the use of prohibited drugs and alcohol during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation.

202.4-3. An employee is prohibited from the use of intoxicants while on official business travel while the conference or meeting is in session.

202.4-4. An employee is not exempted from this law if they travel to another state, territory or country where the use of certain drugs is legal.

94

**202.5. Shared Responsibility**

202.5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation and shared responsibility between the employer and an employee.

202.5-2. *Employee*. It is the employee's responsibility to:

(a) Be free from the effects of prohibited drugs, and/or alcohol during working hours, and/or when scheduled to be on-call.

(b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any prohibited drugs while working.

(c) Comply with drug and alcohol testing if directed to do so upon the request of an appropriate authority.

(d) Confidentially report suspicious behavior of an employee immediately to the supervisor of the employee in question.

(e) Cooperate with the requests made by EHN and the MRO. The employee shall return the call of the MRO within twenty-four (24) hours of the call being made to the employee. An employee who fails to cooperate and does not contact the MRO within twenty-four (24) hours of receiving contact shall not receive back pay for any time between the date the MRO placed the call until the time the employee does return the call of the MRO.

(f) Sign a consent form to be tested for alcohol and drugs when requested by an appropriate authority.

(g) Provide the appropriate information to EHN in the event a medical condition prevents the employee from properly completing drug and alcohol testing so alternative drug and alcohol testing measures can be taken by EHN.

202.5-3. *Supervisor*. It is the supervisor's responsibility to:

(a) Be familiar with this law and any related policies and procedures.

(b) Investigate reported suspicious behaviors while maintaining the confidentiality of the person who reported the suspicious behavior.

(c) Promptly intervene with an employee who is believed to be under the influence of prohibited drugs and/or alcohol.

(d) Monitor the employee under the influence of prescription and/or over-the-counter medications that could compromise the safety of the employee, fellow employees, or the public.

(e) Send the employee through the contracted transportation service for reasonable suspicion drug and alcohol testing.

127

- 128 (f) Take appropriate action as outlined by this law.  
129 (g) Sign the Return-to-Work Agreement along with the employee and ONEAP counselor  
130 that was developed by ONEAP.  
131 (h) Send a copy of the consent to submit to drug and alcohol testing form signed by the  
132 employee to EHN.

133 202.5-4. *Supervisor and Employee.* A supervisor or an employee that fails to adhere to the  
134 responsibilities of the supervisor or employee under this law may be subject to disciplinary action  
135 or other consequences as explained in section 202.13.

136 202.5-5. *Off-duty Use of Prohibited Drugs or Alcohol.* Off-duty use of prohibited drugs or alcohol  
137 may result in continued impairment during on-duty hours, which shall then constitute a violation of  
138 this law. It is the employee's responsibility to understand the consequences of off-duty use, and take  
139 steps to avoid the possibility of on-duty impairment. An employee who is called in for emergency  
140 or unplanned work, excluding those on-call, and has been using prohibited drugs or drinking  
141 alcoholic beverages prior to such a call, shall inform the employee's supervisor they cannot report,  
142 and shall continue to decline to report until the effects of the prohibited drugs or alcohol have left  
143 the employee's system. Such refusal to report shall not be viewed as improper, and disciplinary  
144 action shall not arise from such refusal.

145 202.5-6. *Use of Controlled Substances That May Affect Safety or Performance.* An employee who  
146 is taking or is under the influence of any controlled substances during working hours, including  
147 prescription medication or over the counter medication, which may affect the employee's job  
148 performance or safety of the employee, fellow employees, public, or assets of the Nation have the  
149 following obligations:

- 150 (a) The employee shall notify the employee's immediate supervisor about the use of the  
151 substance and possible work-related effects prior to commencing work.  
152 (b) Upon request, the employee may be required to obtain a written statement of any work  
153 restrictions or impact on performance or safety relating to the legal substances from the  
154 employee's physician or pharmacist.  
155 (c) An employee shall not sell or share his or her prescribed medications with any other  
156 person, and shall not take medications that are prescribed to another person.  
157 (d) It may be necessary for the employee's supervisor, area manager or EHN to consult with  
158 the employee's personal physician, pharmacist or an MRO, with the employee's approval  
159 or written authorization, to determine if the medication might impact the employee's  
160 ability to perform the employee's job, or pose a hazard to other employees or to the  
161 general public.  
162 (e) The employee's duties may be temporarily modified for up to one hundred eighty (180)  
163 days. Any modification of duties shall result in the appropriate modification of pay as  
164 established by the Human Resources Department.  
165

## 166 **202.6. Prohibited Behavior**

167 202.6-1. An applicant or employee of the Nation is in violation of this law if he or she:

- 168 (a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited  
169 drugs or alcohol while on duty. Notwithstanding section 202.11, any employee who is  
170 caught using, possessing or selling prohibited drugs shall be immediately terminated from  
171 employment with the Nation.

172 (b) Fails to inform his or her supervisor of being under the influence of prescription  
173 medication and/or over-the-counter medication(s) which may affect the employee's job  
174 performance or safety of the employee, fellow employees, public, or assets of the Nation.

175 (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses prescription  
176 medications.

177 (d) Refuses to test.

178 (e) Has a confirmed positive test result after completing a drug and/or alcohol test through  
179 EHN or a medical facility, or has a confirmatory test come back as positive.

## 180 181 **202.7. Reasonable Suspicion**

182 202.7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by  
183 personal observation and/or secondary reported observation that an employee may be under the  
184 influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee  
185 has taken or possess prohibited drugs or prescription medication that is not specifically prescribed  
186 to that employee. In order to make a reasonable suspicion determination, the supervisor shall  
187 evaluate the following:

188 (a) Specific observations concerning appearance, behavior, speech, or body odors of the  
189 employee consistent with possible drug use or alcohol misuse.

190 (b) The observations may include indications of the chronic and withdrawal effects of  
191 prohibited drugs or alcohol.

192 202.7-2. The supervisor shall document his or her observations and discuss the matter with the  
193 employee. During this discussion, the supervisor may ask the employee for proof of a prescription.  
194 The employee shall comply with this request. If after a discussion with the employee, the supervisor  
195 continues to suspect the employee may currently still be under the influence or reasonable suspicion  
196 is otherwise established, the supervisor shall refer the employee for reasonable suspicion drug and  
197 alcohol testing.

198 202.7-3. A supervisor's decision made in regard to the reasonable suspicion drug and alcohol testing  
199 of an employee is final. An employee shall not appeal or challenge a supervisor's determination for  
200 reasonable suspicion drug and alcohol testing.

## 201 202 **202.8. Drug and Alcohol Testing**

203 202.8-1. Drug and alcohol tests are forensic in nature, meaning they are performed to formalize  
204 conditions of employment as described in this law. To ensure the accuracy and fairness of this law,  
205 all drug and alcohol testing shall be conducted according to SAMHSA guidelines for Federal  
206 Workplace Drug Testing Programs.

207 202.8-2. EHN or its designee shall use Federal Drug Administration approved urine tests and  
208 NHTSA certified evidential breath testing devices or NHTSA certified saliva-screening devices,  
209 operated by technicians whose training terminology, procedures, methods, equipment, forms, and  
210 quality assurance comply with best practices.

211 (a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory  
212 which is certified by the U.S. Department of Health and Human Services using its  
213 confirmation methods and established cut-off levels. Laboratory-confirmed results shall  
214 undergo the verification process by a MRO.

215 (b) Confirmation breath alcohol testing shall be performed using an NHTSA certified  
216 evidential breath testing device.

217 (c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA  
218 certified saliva test.

219 202.8-3. If an employee is involved in a work-related accident, he or she shall immediately inform  
220 his or her supervisor of the accident.

221 202.8-4. ~~Each employee, as a condition of employment,~~All external applicants shall ~~participate in~~  
222 ~~pre-employment, reasonable suspicion, and follow-up drug testing upon the request of an appropriate~~  
223 ~~authority.~~ A negative drug test result shall be required for employment eligibility.

224 (a) Exemption for Positive THC Test Result. An external applicant's confirmed positive THC  
225 test result shall be exempted from the requirement of a negative drug test result for  
226 employment eligibility in the following circumstances:

227 (1) External Applicants for Gaming Positions. An external applicant receiving a  
228 confirmed positive test result for THC may qualify for employment if:

229 (A) the position mandates a background check in accordance with 5 O.C.  
230 501.10;

231 (B) the position mandates licensing in accordance with 5 O.C. 501.11; and

232 (C) the position does not require a commercial driver's license or job-related  
233 driving.

234 (2) External Applicants for Non-Gaming Positions. An external applicant receiving  
235 a confirmed positive test result for THC may qualify for employment if the position  
236 has not been identified as an employee position which waived the exemption for  
237 positive THC test results.

238 (A) The Oneida Business Committee shall adopt through resolution a list of  
239 all the non-gaming employment positions that waive the exemption for  
240 positive THC test results.

241 202.8-5. Each employee shall participate in reasonable suspicion and follow-up testing upon the  
242 request of an appropriate authority. A negative test result is required for unimpeded employment  
243 eligibility.

244 202.8-6. *Dilution of Test Results.* In cases where a drug test result is diluted, a positive dilute of the  
245 test result requires that the applicant or employee shall be given a confirmed positive test result,  
246 while a negative dilute of the test result requires retesting. EHN shall notify the applicant or  
247 employee of the required retesting.

248 (a) If the re-test results in a negative-dilute, the applicant or employee shall be given a  
249 negative test result.

250 (b) If the re-test results in a positive-dilute, then the applicant or employee shall be given a  
251 positive test result.

252

## 253 **202.9. Refusal to Test**

254 202.9-1. Refusal to test is prohibited behavior as defined in section 202.6. Refusal to test carries  
255 the same consequences as a confirmed positive test result. Examples of refusal to test include, but  
256 are not limited to:

257 (a) Substituting, adulterating (falsifying), or diluting the specimen.

258 (b) Refusal to sign the required forms.

259 (c) Refusal to cooperate in the testing process in such a way that prevents completion of  
260 accurate testing and as directed by the collector.

261 (d) Failing to remain at the testing site until the testing process is complete.



- 262 (e) Providing an insufficient sample of urine or breath.  
263 (f) Failing to test or to re-test.  
264 (g) Failing to appear within two (2) hours after an order or request is made for testing or re-  
265 testing.  
266 (h) Behaving in a confrontational or discourteous manner that disrupts the collection process.  
267

#### 268 **202.10. Reasonable Suspicion Testing Waiting Period**

269 202.10-1. This section applies only to current employees who meet the reasonable suspicion  
270 standard. It does not apply to applicants of the Nation.

271 202.10-2 During drug and alcohol testing for reasonable suspicion, an employee shall be  
272 immediately removed from duty without pay at the time of initiation of the reasonable suspicion  
273 drug and alcohol testing and specimen collection until the employer is notified by EHN of negative  
274 results on both the drug and alcohol tests, or MRO-verified negative test results.

275 202.10-3. When confirmation of test results are made available to the employer, the supervisor shall  
276 notify the employee by telephone and by certified mail using the contact information provided by  
277 the employee. The notice to the employee shall identify a reinstatement date if the test was  
278 confirmed negative, or applicable consequences if the test was confirmed positive. If the employee  
279 is reinstated, back pay shall be provided in accordance with the Back Pay law. However, if the  
280 employee fails to return to work on the assigned reinstatement date as instructed in the notice from  
281 the supervisor, the supervisor shall discipline the employee in accordance with the Nation's laws,  
282 rules and policies governing employment, unless an extension is granted in writing by the supervisor  
283 along with the reason for the extension. An employee who is ultimately terminated for failure to  
284 return to work on his or her assigned reinstatement date shall not be eligible for employment for one  
285 (1) year after the date of termination.  
286

#### 287 **202.11. Consequences for Prohibited Behavior**

288 202.11-1. Either an internal applicant or an external applicant may decline the position at any time  
289 before being directed to EHN or other designated testing site for the applicant's drug and alcohol  
290 testing.

291 202.11-2. *External Applicant.* If an external applicant fails to show at the testing site within the  
292 time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at  
293 section 202.6 that has been documented, the employment offer shall be withdrawn. An external  
294 applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the  
295 date of the urine drug screening test.

296 202.11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the time  
297 allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section  
298 202.6, the employment offer shall be withdrawn. The applicant shall be removed from duty and  
299 subject to respective consequences of this law. The applicant shall not be eligible for hiring  
300 consideration in a different position for one hundred eighty (180) days from the date of the urine  
301 drug screening test.

302 202.11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section 202.6-  
303 1, and/or fails to cooperate by not responding to contact from the MRO within ten (10) business days  
304 (which shall be deemed thereafter as a definite positive test), the employee shall be removed from  
305 duty and subject to the respective consequences of this law.

306 202.11-5. *Consequences.*

- 307 (a) *First Violation.*  
308 (1) Any employee who engages in prohibited behavior as defined in section 202.6  
309 for the first time shall be removed from duty without pay and shall receive a  
310 mandatory referral to ONEAP for an assessment. The ONEAP shall also determine  
311 if the employee shall be subject to return-to-duty/follow-up testing. If follow-up  
312 testing is required, the testing shall be at the employee's expense.  
313 (2) The employee shall sign a Return-to-Work Agreement and submit the agreement  
314 to his or her supervisor within ten (10) days or the employee shall be terminated and  
315 ineligible for re-hire for one (1) year.  
316 (A) When the supervisor signs the Return-to-Work Agreement the employee  
317 shall be placed back on the work schedule by the next regularly scheduled  
318 workday.  
319 (3) Failure to comply with the signed Return-to-Work Agreement shall result in the  
320 employee being terminated and ineligible for re-hire for one (1) year.
- 321 (b) *Second Violation.*  
322 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a  
323 second time within his or her lifetime of employment with the Nation shall be  
324 removed from duty without pay and shall receive a mandatory referral to ONEAP for  
325 an assessment.  
326 (2) The employee shall sign a Return-to-Work Agreement and submit it to the  
327 employee's supervisor for signature within ten (10) days or the employee shall be  
328 terminated and ineligible for re-hire for one (1) year. After a second violation the  
329 employee shall not be placed back on the work schedule until:  
330 (A) The employee receives approval from the ONEAP that they have  
331 demonstrated sufficient progress in a treatment program that would indicate  
332 the employee is drug and alcohol free within thirty (30) days of the employee  
333 being removed from duty; and  
334 (B) The employee completes a return-to-duty drug screening and alcohol test  
335 at a SAMHSA-certified facility at their own expense, which shall be negative  
336 within thirty (30) days of the employee being removed from duty;  
337 (C) The ONEAP notifies the supervisor of the employee's eligibility to return  
338 to work.  
339 (3) As a condition of continuing employment, the employee shall participate in  
340 follow-up testing with continued negative results as directed by the ONEAP and  
341 listed in the Return-to-Work Agreement. All follow-up testing shall be at the  
342 employee's expense.  
343 (4) Failure to comply with the Return-to-Work agreement or follow up testing shall  
344 result in the employee being terminated and ineligible for re-hire for one (1) year.
- 345 (c) *Third Violation.*  
346 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a  
347 third time in his or her lifetime of employment with the Nation shall be terminated.  
348 The employee shall not be eligible for employment unless he or she receives a  
349 forgiveness pursuant to the Pardon and Forgiveness law. An employee that receives  
350 forgiveness shall not be eligible for re-hire for one (1) year after the date of  
351 termination.

352  
353 **202.12. Re-hire**  
354 202.12-1. A former employee that was terminated due to violations of this law shall provide, along  
355 with the former employee’s application for employment, the following:  
356 (a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and  
357 (b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed  
358 within the last thirty (30) days. This drug screening and alcohol test shall be done at the  
359 former employee’s own expense.

360  
361 **202.13. Other Potential Consequences**

362 202.13-1. The violation of this law may result in consequences to the employee beyond any  
363 discipline or corrective action that may be taken. Other potential consequences include the  
364 following:  
365 (a) *Disqualification of Unemployment Benefits.* An employee who is terminated as a result  
366 of a violation of this law may be ineligible for unemployment benefits.  
367 (b) *Reduction of Workers Compensation Benefits.* An employee who incurs an injury in a  
368 work-related accident that occurred while engaged in a violation of this law may have any  
369 workers compensation benefits reduced.  
370 (c) *Criminal Penalties.* An employee whose conduct violates state or federal criminal laws  
371 may be referred to appropriate law enforcement for criminal prosecution.  
372 (d) *Liability for Accidents.* An employee whose conduct in violation of this law causes an  
373 accident may be held personally responsible for losses associated with the accident, and the  
374 employee may be required to pay for those losses.

375  
376 **202.14. Confidentiality**

377 202.14-1. Information related to the application of this law is confidential. Access to this  
378 information is limited to those who have a legitimate “need to know” in compliance with relevant  
379 laws and personnel policies and procedures.  
380 202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential  
381 records which are separate from the employee’s clinical and personnel files. The employee may  
382 request a copy of the employee’s records. The records may be requested by a third party in  
383 accordance with the Oneida Nation’s laws, rules and policies governing employment.

384  
385 **202.15. Communication**

386 202.15-1. HRD shall communicate this law to all employees to ensure all employees are aware of  
387 their role in supporting this law:  
388 (a) All employees shall be given information on how to access this law.  
389 (b) This law shall be reviewed in new employee orientation and other means, as deemed  
390 appropriate by HRD.  
391 (c) All employees shall sign an acknowledgment form stating they have received a copy of  
392 this law, have read and understand it, and agree to follow this law.

393  
394 *End.*

395  
396 See GTC-01-31-94-B  
397 Adopted – BC-08-17-94

- 398 Emergency Amended - BC-04-20-95-C
- 399 Adopted - BC-10-25-95-A (repealed previous versions)
- 400 Amended - BC-10-20-99-A
- 401 Amended - BC-12-05-07-B
- 402 Amended - BC-12-11-13-F
- 403 Emergency Amended - BC-10-26-16-D
- 404 Amended - BC-04-12-17-C
- 405 ~~Amended - BC- - - -~~
- 406

**Title 2. Employment – Chapter 202**  
**DRUG AND ALCOHOL FREE WORKPLACE**

202.1. Purpose and Policy  
202.2. Adoption, Amendment, Repeal  
202.3. Definitions  
202.4. Application  
202.5. Shared Responsibility  
202.6. Prohibited Behavior  
202.7. Reasonable Suspicion  
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202.9. Refusal to Test  
202.10. Reasonable Suspicion Testing Waiting Period  
202.11. Consequences for Prohibited Behavior  
202.12. Re-hire  
202.13. Other Potential Consequences  
202.14. Confidentiality  
202.15. Communication

- 1  
2 **202.1. Purpose and Policy**  
3 202.1-1. *Purpose.* The Nation is committed to protecting the safety, health and well-being of all  
4 employees, and other individuals in the workplace. The Nation recognizes that alcohol abuse and  
5 drug use pose a significant health and safety threat to our customers and other employees. The Nation  
6 also recognizes that alcohol and drug abuse and addiction are treatable illnesses. The Nation realizes  
7 that early intervention and support may improve the success of rehabilitation.  
8 202.1-2. *Policy.* It is the policy of the Nation to establish a drug and alcohol-free workplace program  
9 that balances respect for individuals with the need to maintain an alcohol and drug-free environment.  
10 The Nation encourages employees to voluntarily seek help for their personal drug and alcohol-  
11 related problems.  
12  
13 **202.2. Adoption, Amendment, Repeal**  
14 202.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-25-95-A  
15 and amended by resolutions BC-10-20-99-A, BC-12-05-07-B, BC-12-11-13-F, BC-04-12-17-C, and  
16 BC-\_\_-\_\_-\_\_-\_\_.  
17 202.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the  
18 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.  
19 202.2-3. Should a provision of this law or the application thereof to any person or circumstances be  
20 held as invalid, such invalidity shall not affect other provisions of this law which are considered to  
21 have legal force without the invalid portions.  
22 202.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
23 the provisions of this law shall control.  
24 202.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.  
25  
26 **202.3. Definitions**  
27 202.3-1. This section shall govern the definitions of words or phrases as used within this law. All  
28 words not defined herein shall be used in their ordinary and everyday sense.  
29 (a) “Appropriate authority” means the Human Resources Department hiring representative,  
30 immediate supervisor, EHN, MRO, and/or ONEAP who requests the drug and/or alcohol  
31 testing for reasons of pre-employment, reasonable suspicion, and/or follow-up testing.  
32 (b) “Business day” means Monday through Friday from 8:00am-4:30pm, excluding holidays  
33 recognized by the Nation.  
34 (c) “Confirmed positive test result” means a lab-confirmed drug test that is verified by the  
35 MRO that exceeds the cut-off levels established by this law (levels established by the United  
36 States Department of Health and Human Services), confirmed saliva testing, confirmed  
37 evidential breath alcohol test results of 0.02 or greater; and/or refusal to test.

- 38 (d) “EHN” means the Oneida Employee Health Nursing Department.
- 39 (e) “Employee” means any individual who is employed by the Nation and is subject to the  
40 direction and control of the Nation with respect to the material details of the work performed,  
41 or who has the status of an employee under the usual common law rules applicable to  
42 determining the employer-employee relationship. “Employee” includes, but is not limited  
43 to; an individual employed by any program or enterprise of the Nation, but does not include  
44 elected or appointed officials, or individuals employed by a Tribally Chartered Corporation.  
45 For purposes of this law, individuals employed under an employment contract as a limited  
46 term employee are employees of the Nation, not consultants.
- 47 (f) “External applicant” means a person who is applying for a position and not currently  
48 employed by the Nation.
- 49 (g) “HRD” means the Human Resources Department and/or representatives performing  
50 Human Resources functions applicable to this law.
- 51 (h) “Internal applicant” means a person who is applying for a position who is currently  
52 employed by the Nation, this includes those employed under a temporary status.
- 53 (i) “MRO” means Medical Review Officer who is a licensed physician who is responsible  
54 for receiving and reviewing laboratory test results generated by an employer’s drug testing  
55 program and evaluating medical explanations for certain drug test results.
- 56 (j) “Nation” means the Oneida Nation.
- 57 (k) “NHTSA” means the National Highway Traffic Safety Administration.
- 58 (l) “ONEAP” means the Oneida Nation Employee Assistance Program which is a  
59 professional counseling program staffed by clinical social workers licensed by the State of  
60 Wisconsin which offers services to the Nation’s employees and family members.
- 61 (m) “Prohibited drug(s)” means marijuana, cocaine, opiates, amphetamines, phencyclidine  
62 (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance  
63 included in Schedules I through V, as defined by Section 812 of Title 21 of the United States  
64 Code. This also includes prescription medication or over-the-counter medicine used in an  
65 unauthorized or unlawful manner.
- 66 (n) “Return-to-Work Agreement” means an agreement, developed by an ONEAP counselor  
67 and signed by the employee and the ONEAP counselor, and the referring supervisor, which  
68 sets out the actions the employee needs to complete in order to return to work and remain  
69 employed.
- 70 (o) “SAMHSA” means the United States Department of Health and Human Services,  
71 Substance Abuse and Mental Health Services Administration.
- 72 (p) “Supervisor” means the immediate supervisor, or person who has taken on the role of  
73 supervisor due to an absence that is responsible for performance review, corrective action,  
74 and day-to-day assignments of duties.
- 75 (q) “Work-related accident” means an unexpected event involving an employee that occurs  
76 in the employee’s working environment or during an activity related to work, that:
- 77 (1) results in an injury to the employee or another person that may require medical  
78 intervention by a police officer or emergency medical technician, or treatment at a  
79 medical facility,
- 80 (2) results in death of the employee or another person, or
- 81 (3) involves any property damage.
- 82

**202.4. Application**

202.4-1. This law applies to all applicants for employment, whether external or internal, and all employees during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation.

202.4-2. An employee is prohibited from the use of prohibited drugs and alcohol during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation.

202.4-3. An employee is prohibited from the use of intoxicants while on official business travel while the conference or meeting is in session.

202.4-4. An employee is not exempted from this law if they travel to another state, territory or country where the use of certain drugs is legal.

94

**202.5. Shared Responsibility**

202.5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation and shared responsibility between the employer and an employee.

202.5-2. *Employee*. It is the employee's responsibility to:

(a) Be free from the effects of prohibited drugs, and/or alcohol during working hours, and/or when scheduled to be on-call.

(b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any prohibited drugs while working.

(c) Comply with drug and alcohol testing if directed to do so upon the request of an appropriate authority.

(d) Confidentially report suspicious behavior of an employee immediately to the supervisor of the employee in question.

(e) Cooperate with the requests made by EHN and the MRO. The employee shall return the call of the MRO within twenty-four (24) hours of the call being made to the employee. An employee who fails to cooperate and does not contact the MRO within twenty-four (24) hours of receiving contact shall not receive back pay for any time between the date the MRO placed the call until the time the employee does return the call of the MRO.

(f) Sign a consent form to be tested for alcohol and drugs when requested by an appropriate authority.

(g) Provide the appropriate information to EHN in the event a medical condition prevents the employee from properly completing drug and alcohol testing so alternative drug and alcohol testing measures can be taken by EHN.

202.5-3. *Supervisor*. It is the supervisor's responsibility to:

(a) Be familiar with this law and any related policies and procedures.

(b) Investigate reported suspicious behaviors while maintaining the confidentiality of the person who reported the suspicious behavior.

(c) Promptly intervene with an employee who is believed to be under the influence of prohibited drugs and/or alcohol.

(d) Monitor the employee under the influence of prescription and/or over-the-counter medications that could compromise the safety of the employee, fellow employees, or the public.

(e) Send the employee through the contracted transportation service for reasonable suspicion drug and alcohol testing.

127

- 128 (f) Take appropriate action as outlined by this law.  
129 (g) Sign the Return-to-Work Agreement along with the employee and ONEAP counselor  
130 that was developed by ONEAP.  
131 (h) Send a copy of the consent to submit to drug and alcohol testing form signed by the  
132 employee to EHN.

133 202.5-4. *Supervisor and Employee.* A supervisor or an employee that fails to adhere to the  
134 responsibilities of the supervisor or employee under this law may be subject to disciplinary action  
135 or other consequences as explained in section 202.13.

136 202.5-5. *Off-duty Use of Prohibited Drugs or Alcohol.* Off-duty use of prohibited drugs or alcohol  
137 may result in continued impairment during on-duty hours, which shall then constitute a violation of  
138 this law. It is the employee’s responsibility to understand the consequences of off-duty use, and take  
139 steps to avoid the possibility of on-duty impairment. An employee who is called in for emergency  
140 or unplanned work, excluding those on-call, and has been using prohibited drugs or drinking  
141 alcoholic beverages prior to such a call, shall inform the employee’s supervisor they cannot report,  
142 and shall continue to decline to report until the effects of the prohibited drugs or alcohol have left  
143 the employee’s system. Such refusal to report shall not be viewed as improper, and disciplinary  
144 action shall not arise from such refusal.

145 202.5-6. *Use of Controlled Substances That May Affect Safety or Performance.* An employee who  
146 is taking or is under the influence of any controlled substances during working hours, including  
147 prescription medication or over the counter medication, which may affect the employee’s job  
148 performance or safety of the employee, fellow employees, public, or assets of the Nation have the  
149 following obligations:

- 150 (a) The employee shall notify the employee’s immediate supervisor about the use of the  
151 substance and possible work-related effects prior to commencing work.  
152 (b) Upon request, the employee may be required to obtain a written statement of any work  
153 restrictions or impact on performance or safety relating to the legal substances from the  
154 employee’s physician or pharmacist.  
155 (c) An employee shall not sell or share his or her prescribed medications with any other  
156 person, and shall not take medications that are prescribed to another person.  
157 (d) It may be necessary for the employee’s supervisor, area manager or EHN to consult with  
158 the employee’s personal physician, pharmacist or an MRO, with the employee’s approval  
159 or written authorization, to determine if the medication might impact the employee’s  
160 ability to perform the employee’s job, or pose a hazard to other employees or to the  
161 general public.  
162 (e) The employee’s duties may be temporarily modified for up to one hundred eighty (180)  
163 days. Any modification of duties shall result in the appropriate modification of pay as  
164 established by the Human Resources Department.  
165

## 166 **202.6. Prohibited Behavior**

167 202.6-1. An applicant or employee of the Nation is in violation of this law if he or she:

- 168 (a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited  
169 drugs or alcohol while on duty. Notwithstanding section 202.11, any employee who is  
170 caught using, possessing or selling prohibited drugs shall be immediately terminated from  
171 employment with the Nation.



172 (b) Fails to inform his or her supervisor of being under the influence of prescription  
173 medication and/or over-the-counter medication(s) which may affect the employee's job  
174 performance or safety of the employee, fellow employees, public, or assets of the Nation.

175 (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses prescription  
176 medications.

177 (d) Refuses to test.

178 (e) Has a confirmed positive test result after completing a drug and/or alcohol test through  
179 EHN or a medical facility, or has a confirmatory test come back as positive.

## 180 181 **202.7. Reasonable Suspicion**

182 202.7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by  
183 personal observation and/or secondary reported observation that an employee may be under the  
184 influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee  
185 has taken or possess prohibited drugs or prescription medication that is not specifically prescribed  
186 to that employee. In order to make a reasonable suspicion determination, the supervisor shall  
187 evaluate the following:

188 (a) Specific observations concerning appearance, behavior, speech, or body odors of the  
189 employee consistent with possible drug use or alcohol misuse.

190 (b) The observations may include indications of the chronic and withdrawal effects of  
191 prohibited drugs or alcohol.

192 202.7-2. The supervisor shall document his or her observations and discuss the matter with the  
193 employee. During this discussion, the supervisor may ask the employee for proof of a prescription.  
194 The employee shall comply with this request. If after a discussion with the employee, the supervisor  
195 continues to suspect the employee may currently still be under the influence or reasonable suspicion  
196 is otherwise established, the supervisor shall refer the employee for reasonable suspicion drug and  
197 alcohol testing.

198 202.7-3. A supervisor's decision made in regard to the reasonable suspicion drug and alcohol testing  
199 of an employee is final. An employee shall not appeal or challenge a supervisor's determination for  
200 reasonable suspicion drug and alcohol testing.

## 201 202 **202.8. Drug and Alcohol Testing**

203 202.8-1. Drug and alcohol tests are forensic in nature, meaning they are performed to formalize  
204 conditions of employment as described in this law. To ensure the accuracy and fairness of this law,  
205 all drug and alcohol testing shall be conducted according to SAMHSA guidelines for Federal  
206 Workplace Drug Testing Programs.

207 202.8-2. EHN or its designee shall use Federal Drug Administration approved urine tests and  
208 NHTSA certified evidential breath testing devices or NHTSA certified saliva-screening devices,  
209 operated by technicians whose training terminology, procedures, methods, equipment, forms, and  
210 quality assurance comply with best practices.

211 (a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory  
212 which is certified by the U.S. Department of Health and Human Services using its  
213 confirmation methods and established cut-off levels. Laboratory-confirmed results shall  
214 undergo the verification process by a MRO.

215 (b) Confirmation breath alcohol testing shall be performed using an NHTSA certified  
216 evidential breath testing device.

217 (c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA  
218 certified saliva test.

219 202.8-3. If an employee is involved in a work-related accident, he or she shall immediately inform  
220 his or her supervisor of the accident.

221 202.8-4. All external applicants shall participate in pre-employment drug testing. A negative drug  
222 test result shall be required for employment eligibility.

223 (a) *Exemption for Positive THC Test Result.* An external applicant's confirmed positive THC  
224 test result shall be exempted from the requirement of a negative drug test result for  
225 employment eligibility in the following circumstances:

226 (1) *External Applicants for Gaming Positions.* An external applicant receiving a  
227 confirmed positive test result for THC may qualify for employment if:

228 (A) the position mandates a background check in accordance with 5 O.C.  
229 501.10;

230 (B) the position mandates licensing in accordance with 5 O.C. 501.11; and

231 (C) the position does not require a commercial driver's license or job-related  
232 driving.

233 (2) *External Applicants for Non-Gaming Positions.* An external applicant receiving  
234 a confirmed positive test result for THC may qualify for employment if the position  
235 has not been identified as an employee position which waived the exemption for  
236 positive THC test results.

237 (A) The Oneida Business Committee shall adopt through resolution a list of  
238 all the non-gaming employment positions that waive the exemption for  
239 positive THC test results.

240 202.8-5. Each employee shall participate in reasonable suspicion and follow-up testing upon the  
241 request of an appropriate authority. A negative test result is required for unimpeded employment  
242 eligibility.

243 202.8-6. *Dilution of Test Results.* In cases where a drug test result is diluted, a positive dilute of the  
244 test result requires that the applicant or employee shall be given a confirmed positive test result,  
245 while a negative dilute of the test result requires retesting. EHN shall notify the applicant or  
246 employee of the required retesting.

247 (a) If the re-test results in a negative-dilute, the applicant or employee shall be given a  
248 negative test result.

249 (b) If the re-test results in a positive-dilute, then the applicant or employee shall be given a  
250 positive test result.

251

## 252 **202.9. Refusal to Test**

253 202.9-1. Refusal to test is prohibited behavior as defined in section 202.6. Refusal to test carries  
254 the same consequences as a confirmed positive test result. Examples of refusal to test include, but  
255 are not limited to:

256 (a) Substituting, adulterating (falsifying), or diluting the specimen.

257 (b) Refusal to sign the required forms.

258 (c) Refusal to cooperate in the testing process in such a way that prevents completion of  
259 accurate testing and as directed by the collector.

260 (d) Failing to remain at the testing site until the testing process is complete.

261 (e) Providing an insufficient sample of urine or breath.

- 262 (f) Failing to test or to re-test.  
263 (g) Failing to appear within two (2) hours after an order or request is made for testing or re-  
264 testing.  
265 (h) Behaving in a confrontational or discourteous manner that disrupts the collection process.  
266

#### 267 **202.10. Reasonable Suspicion Testing Waiting Period**

268 202.10-1. This section applies only to current employees who meet the reasonable suspicion  
269 standard. It does not apply to applicants of the Nation.

270 202.10-2 During drug and alcohol testing for reasonable suspicion, an employee shall be  
271 immediately removed from duty without pay at the time of initiation of the reasonable suspicion  
272 drug and alcohol testing and specimen collection until the employer is notified by EHN of negative  
273 results on both the drug and alcohol tests, or MRO-verified negative test results.

274 202.10-3. When confirmation of test results are made available to the employer, the supervisor shall  
275 notify the employee by telephone and by certified mail using the contact information provided by  
276 the employee. The notice to the employee shall identify a reinstatement date if the test was  
277 confirmed negative, or applicable consequences if the test was confirmed positive. If the employee  
278 is reinstated, back pay shall be provided in accordance with the Back Pay law. However, if the  
279 employee fails to return to work on the assigned reinstatement date as instructed in the notice from  
280 the supervisor, the supervisor shall discipline the employee in accordance with the Nation's laws,  
281 rules and policies governing employment, unless an extension is granted in writing by the supervisor  
282 along with the reason for the extension. An employee who is ultimately terminated for failure to  
283 return to work on his or her assigned reinstatement date shall not be eligible for employment for one  
284 (1) year after the date of termination.  
285

#### 286 **202.11. Consequences for Prohibited Behavior**

287 202.11-1. Either an internal applicant or an external applicant may decline the position at any time  
288 before being directed to EHN or other designated testing site for the applicant's drug and alcohol  
289 testing.

290 202.11-2. *External Applicant.* If an external applicant fails to show at the testing site within the  
291 time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at  
292 section 202.6 that has been documented, the employment offer shall be withdrawn. An external  
293 applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the  
294 date of the urine drug screening test.

295 202.11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the time  
296 allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section  
297 202.6, the employment offer shall be withdrawn. The applicant shall be removed from duty and  
298 subject to respective consequences of this law. The applicant shall not be eligible for hiring  
299 consideration in a different position for one hundred eighty (180) days from the date of the urine  
300 drug screening test.

301 202.11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section 202.6-  
302 1, and/or fails to cooperate by not responding to contact from the MRO within ten (10) business days  
303 (which shall be deemed thereafter as a definite positive test), the employee shall be removed from  
304 duty and subject to the respective consequences of this law.

305 202.11-5. *Consequences.*

306 (a) *First Violation.*

307 (1) Any employee who engages in prohibited behavior as defined in section 202.6  
308 for the first time shall be removed from duty without pay and shall receive a  
309 mandatory referral to ONEAP for an assessment. The ONEAP shall also determine  
310 if the employee shall be subject to return-to-duty/follow-up testing. If follow-up  
311 testing is required, the testing shall be at the employee's expense.

312 (2) The employee shall sign a Return-to-Work Agreement and submit the agreement  
313 to his or her supervisor within ten (10) days or the employee shall be terminated and  
314 ineligible for re-hire for one (1) year.

315 (A) When the supervisor signs the Return-to-Work Agreement the employee  
316 shall be placed back on the work schedule by the next regularly scheduled  
317 workday.

318 (3) Failure to comply with the signed Return-to-Work Agreement shall result in the  
319 employee being terminated and ineligible for re-hire for one (1) year.

320 (b) *Second Violation.*

321 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a  
322 second time within his or her lifetime of employment with the Nation shall be  
323 removed from duty without pay and shall receive a mandatory referral to ONEAP for  
324 an assessment.

325 (2) The employee shall sign a Return-to-Work Agreement and submit it to the  
326 employee's supervisor for signature within ten (10) days or the employee shall be  
327 terminated and ineligible for re-hire for one (1) year. After a second violation the  
328 employee shall not be placed back on the work schedule until:

329 (A) The employee receives approval from the ONEAP that they have  
330 demonstrated sufficient progress in a treatment program that would indicate  
331 the employee is drug and alcohol free within thirty (30) days of the employee  
332 being removed from duty; and

333 (B) The employee completes a return-to-duty drug screening and alcohol test  
334 at a SAMHSA-certified facility at their own expense, which shall be negative  
335 within thirty (30) days of the employee being removed from duty;

336 (C) The ONEAP notifies the supervisor of the employee's eligibility to return  
337 to work.

338 (3) As a condition of continuing employment, the employee shall participate in  
339 follow-up testing with continued negative results as directed by the ONEAP and  
340 listed in the Return-to-Work Agreement. All follow-up testing shall be at the  
341 employee's expense.

342 (4) Failure to comply with the Return-to-Work agreement or follow up testing shall  
343 result in the employee being terminated and ineligible for re-hire for one (1) year.

344 (c) *Third Violation.*

345 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a  
346 third time in his or her lifetime of employment with the Nation shall be terminated.  
347 The employee shall not be eligible for employment unless he or she receives a  
348 forgiveness pursuant to the Pardon and Forgiveness law. An employee that receives  
349 forgiveness shall not be eligible for re-hire for one (1) year after the date of  
350 termination.

351

**202.12. Re-hire**

202.12-1. A former employee that was terminated due to violations of this law shall provide, along with the former employee’s application for employment, the following:

- 355 (a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and
- 356 (b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed
- 357 within the last thirty (30) days. This drug screening and alcohol test shall be done at the
- 358 former employee’s own expense.

**202.13. Other Potential Consequences**

202.13-1. The violation of this law may result in consequences to the employee beyond any discipline or corrective action that may be taken. Other potential consequences include the following:

- 364 (a) *Disqualification of Unemployment Benefits.* An employee who is terminated as a result
- 365 of a violation of this law may be ineligible for unemployment benefits.
- 366 (b) *Reduction of Workers Compensation Benefits.* An employee who incurs an injury in a
- 367 work-related accident that occurred while engaged in a violation of this law may have any
- 368 workers compensation benefits reduced.
- 369 (c) *Criminal Penalties.* An employee whose conduct violates state or federal criminal laws
- 370 may be referred to appropriate law enforcement for criminal prosecution.
- 371 (d) *Liability for Accidents.* An employee whose conduct in violation of this law causes an
- 372 accident may be held personally responsible for losses associated with the accident, and the
- 373 employee may be required to pay for those losses.

**202.14. Confidentiality**

202.14-1. Information related to the application of this law is confidential. Access to this information is limited to those who have a legitimate “need to know” in compliance with relevant laws and personnel policies and procedures.

202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential records which are separate from the employee’s clinical and personnel files. The employee may request a copy of the employee’s records. The records may be requested by a third party in accordance with the Oneida Nation’s laws, rules and policies governing employment.

**202.15. Communication**

202.15-1. HRD shall communicate this law to all employees to ensure all employees are aware of their role in supporting this law:

- 387 (a) All employees shall be given information on how to access this law.
- 388 (b) This law shall be reviewed in new employee orientation and other means, as deemed
- 389 appropriate by HRD.
- 390 (c) All employees shall sign an acknowledgment form stating they have received a copy of
- 391 this law, have read and understand it, and agree to follow this law.

392  
393 *End.*

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395 See GTC-01-31-94-B  
396 Adopted – BC-08-17-94  
397 Emergency Amended - BC-04-20-95-C

- 398 Adopted - BC-10-25-95-A (repealed previous versions)
- 399 Amended - BC-10-20-99-A
- 400 Amended - BC-12-05-07-B
- 401 Amended - BC-12-11-13-F
- 402 Emergency Amended - BC-10-26-16-D
- 403 Amended - BC-04-12-17-C
- 404 Amended – BC-\_\_-\_\_-\_\_-\_\_
- 405



Legislative Operating Committee  
January 4, 2023

# Emergency Management Law Amendments

<b>Submission Date:</b> 7/6/22	<b>Public Meeting:</b> 12/13/22
<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, 2023.*

**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.
- 10/19/22 LOC:** Motion by Jennifer Webster to approve the legislative analysis of the Emergency Management law; seconded by Marie Cornelius. Motion carried unanimously.
- 11/2/22 LOC:** Motion by Kirby Metoxen to approve the public meeting packet and forward the Emergency Management law amendments to a public meeting to be held on December 13, 2022; seconded by Marie Cornelius. Motion carried unanimously.
- 11/4/22:** *Work Meeting.* Present: David P. Jordan, Clorissa N. Leeman, Louise Cornelius, Mark Powless, Kaylynn Gresham, Debra Powless, Chad Fuss, Lucy Neville, Lawrence Barton. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the draft of the Emergency Management Operations Team SOP.
- 12/13/22:** *Public Meeting Held.* Present: Kirby Metoxen, Clorissa N. Santiago, Carolyn Salutz, Brooke Doxtator, David P. Jordan (Microsoft Teams), Carrie Lindsey (Microsoft Teams), Joy Salzwedel (Microsoft Teams), Justin Nishimoto (Microsoft Teams), Rachel Fitzpatrick (Microsoft Teams), Tina Jorgensen (Microsoft Teams), Melanie Burkhart (Microsoft Teams), Grace Elliot (Microsoft Teams), Brenda Haen (Microsoft Teams), Debra Santiago (Microsoft Teams), Kristal Hill (Microsoft Teams), Matt Denny (Microsoft Teams), Ronald Vanschindel (Microsoft Teams), Wendy Alvarez (Microsoft Teams), Stefanie Reinke (Microsoft Teams), Jay Kennard (Microsoft Teams), Sidney White (Microsoft Teams). The public meeting for the Emergency Management law amendments was held in person in the Norbert Hill Center and on Microsoft Teams. No individuals provided public comment during the public meeting.



**12/14/22 OBC:** Motion by Jennifer Webster to approve the Oneida Nation Standard Operating Procedure (SOP) entitled Emergency Management Law – Emergency Management Operations Team with the addition of Chief Information Officer under 3.1 of the SOP, seconded by David P. Jordan. Motion carried.

**12/20/22:** *Public Comment Period Closed.* No submissions of written comments were received during the public comment period.

**Next Steps:**

- Accept the public comment review memorandum identifying no public comments were received.



TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Leeman, Legislative Reference Office, Senior Staff Attorney  
DATE: January 4, 2023  
RE: Emergency Management Law Amendments: Public Comment Review

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On December 13, 2022, a public meeting was held regarding the proposed amendments to the Emergency Management law (“the Law”). The public comment period was then held open until December 20, 2022. No written or oral public comments were received during the public meeting or public comment period. The public meeting draft and public meeting transcript are attached to this memorandum for review.



**LEGISLATIVE OPERATING COMMITTEE  
PUBLIC MEETING**

**Back Pay Law Amendments and Emergency Management Law Amendments**  
Norbert Hill Center Executive Conference Room and Microsoft Teams  
December 13, 2022 12:15 p.m.

**Present:** Kirby Metoxen, Clorissa N. Santiago, Carolyn Salutz, Brooke Doxtator, David P. Jordan (Microsoft Teams), Carrie Lindsey (Microsoft Teams), Joy Salzwedel (Microsoft Teams), Justin Nishimoto (Microsoft Teams), Rachel Fitzpatrick (Microsoft Teams), Tina Jorgensen (Microsoft Teams), Melanie Burkhart (Microsoft Teams), Grace Elliot (Microsoft Teams), Brenda Haen (Microsoft Teams), Debra Santiago (Microsoft Teams), Kristal Hill (Microsoft Teams), Matt Denny (Microsoft Teams), Ronald Vanschyndel (Microsoft Teams), Wendy Alvarez (Microsoft Teams), Stefanie Reinke (Microsoft Teams), Jay Kennard (Microsoft Teams), Sidney White (Microsoft Teams).

**Kirby Metoxen:** Good Afternoon. The time is 12:15 p.m. and today's date is Tuesday, December 13, 2022. I will now call to order the public meeting for both the proposed amendments to the Back Pay law and the proposed amendments to the Emergency Management law.

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. The LOC will review and consider all comments received during the public comment period. The LOC will respond to all comments received in a memorandum, which will be submitted in the meeting materials of a future LOC meeting.

All persons who wish to present oral testimony in person need to register on the sign in sheet at the back of the room. If you leave an email address on the sign in sheet, we can ensure you receive a copy of the public comment review memorandum. Individuals who wish to present oral testimony on Microsoft Teams, please raise your hand and you will be called on. If you leave an email address in the chat with your name, we can ensure you receive a copy of the public comment review memorandum.

Additionally, written comments may be submitted to the Nation's Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail, or fax as provided on the public meeting notice. These comments must be received by close of business on Tuesday, December 20, 2022.

In attendance from the LOC is the attorneys Clorissa and Carolyn, and myself, and our recorder Brooke.

The LOC may impose a time limit for all speakers pursuant to section 109.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of five (5) minutes per each topic. This time limit shall be applied equally to all persons.

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

We will now begin today's public meeting for the proposed amendments to the Back Pay law and proposed amendments to the Emergency Management law.

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.

The purpose of the Emergency Management law is to provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster.

Those who wish to speak please come to the microphone raise your hand. Please state your name and the law you will be commenting on. First up to speak is. . . Anybody out there raising their hand? I see nobody. So, we will wait until I think it's fifteen (15) minutes and if no one shows up, no one's here at this end as the public of interest.

They can hear us now. And we're still not seeing anybody registered with the hand raised to be called on, and no one has attended the meeting in person. We do have a sign down at the hall directing people to come into the BC conference room and also the front desk was notice that the meeting has moved from the BC Conference room to the Executive room. That's what this room is called, right, David? Executive room.

**David P. Jordan:** Correct.

**Kirby Metoxen:** I do see twelve (12) people on, registered on online in here. But nobody's raising their hand. And it's 12:21 p.m. We said we would wait fifteen (15) minutes. So, at 12:30 p.m., if no one shows up, no one raises their hand, we will call the meeting.

Question David, is this the first in person?

**David P. Jordan:** Nope, the second.

**Kirby Metoxen:** Second. Did we have anybody at the other one, do you know?

**David P. Jordan:** You'd have to ask Clorissa. I missed that when Daniel ran that one.

**Kirby Metoxen:** Clorissa, do you know?

**Clorissa N. Leeman:** *[inaudible]*

**Kirby Metoxen:** A couple. It seems to me I do remember we had maybe two (2) or three (3) at the last one. I guess I'm surprised that no one has showed because this is the first one on the Back Pay law, it's it affects employees. You know, we got over two thousand (2000) employees in the Tribe. So, you think they wanna, they would be interested in some of the laws that may affect them in the future. But we will wait.

I'm just looking for things to talk about. I think there's a chili taco or chili fry bread sale at the Parish Hall. Those that didn't get lunch today. Today is Buffalo chili and fry bread. Tomorrow is Indian tacos. And then I think on Friday is Indian Taco fundraiser at the Ho Chunk Nation office.

We're still waiting. If anybody has anything they'd like to comment, we still have about six (6) minutes left. If you would like to be called on, please raise your hand. I see someone joined us.

I just seen. I don't know how I did. Did somebody wakes their hand?

**David P. Jordan:** Wendy Alvarez did.

**Kirby Metoxen:** I see a hand button.

**David P. Jordan:** Wendy Alvarez, go ahead.

**Wendy Alvarez:** Hello I'm just wondering if it's possible to submit written comments on this after the meeting. Is that appropriate?

**Kirby Metoxen:** Yes, the written comment period will end on Tuesday, December 20th, 2022.

**Wendy Alvarez:** Thank you.

**Kirby Metoxen:** Yeah. On my end, David, I see hands, but I don't see a name.

**David P. Jordan:** I'll keep an eye open for it.

**Kirby Metoxen:** It's just kind of weird waiting for community members to attend the public meetings. I know in the past, before the pandemic, I'm guessing we'd have anywhere from five (5) to twelve (12), fifteen(15) people attend those meetings and at one time we were even serving dinner or bring a dish to pass down in the cafeteria, and that was always successful.

And I know they did extend the written period comment during the pandemic. I think it was you typically five (5) days after the in person community meetings and they extended it to ten (10) days. And in this case, are we extending it the ten (10) days? Yeah. Okay.

And I have 12:28 p.m., two (2) more minutes and it's a public meeting for both the proposed amendment to the back pay law and the proposed amendments to the Emergency Management law. Umm, we will leave our written comments are open and must be received by the close of business day on Tuesday, December 20th, 2022.

I still don't see any hands raised and no one has attended in person .The proposed, 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. And the purpose of the Emergency Management law is to provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster.

Those who wish to speak please come to the microphone, raise your hand. Please state your name and the law you will be commenting on.

And with that, we are winding down. I have one (1) minute left and still no hands raised and nobody attended in person. We still have the three (3) staff and myself in the BC Executive Conference room.

Okay, with there being no speakers the public meeting for the proposed amendments to the Back Pay law and the proposed amendments to the Emergency Management law is now closed at 12:30 p.m. Written comments may be submitted until the close of business day on Tuesday, December 20th, 2022. Thank you. Thank you, that's it, we are done. This meeting is adjourned.

**-End of Meeting-**

**Title 3. Health and Public Safety – Chapter 302**

**Yotlihokté Olihwá:ke**

*Matters that are concerning immediate attention*

**EMERGENCY MANAGEMENT**

302.1. Purpose and Policy

302.2. Adoption, Amendment, Conflicts

302.3. Definitions

302.4. Emergency Management Department

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

Operations Team

302.6. Entity Cooperation

302.7. Public Health Emergencies

302.8. Proclamation of an Emergency

302.9. Emergency Core Decision Making Team

302.10. Enforcement and Penalties

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**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- - - - -.

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

302.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

302.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

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

**302.3. Definitions**

302.3-1. This section shall govern the definitions of words or phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

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

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



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

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

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

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

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

### 105 **302.4. Emergency Management Department**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **302.6. Entity Cooperation**

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

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

### **302.7. Public Health Emergencies**

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

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

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

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

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

181 (b) Quarantine, isolate, or take other communicable disease control measures upon an  
 182 individual(s); and

183 (c) Issue any mandate, order, and/or require restrictions which may limit the spread of any  
 184 communicable disease to any individual, business, or the general population of the  
 185 Reservation.

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

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

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

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

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

205 (a) organize the vaccination of individuals;

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

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

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

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

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

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

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

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### **302.8. Proclamation of an Emergency**

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

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

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

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

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

302.8-4. *Emergency Briefings.* Within forty-eight (48) hours of an emergency, the 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. The Oneida Business Committee may direct the Director to provide additional emergency briefings.

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

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

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

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

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

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

(a) Notwithstanding any requirements of the Legislative Procedures Act, declare 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- - - -



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



### AGENDA REQUEST FORM

- 1) Request Date: 12/21/22
- 2) Contact Person(s): Tina Jorgensen  
Dept: GSD Administration  
Phone Number: 920-490-3904 Email: tjorgens@oneidation.org
- 3) Agenda Title: Develop and implement an Elder Abuse Code
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
The purpose of this request is to establish a Tribal law to protect the  
Elders of Oneida community from abuse, neglect, self-neglect, and  
exploitation.

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

- 1) www.neiji.org/codes 3) \_\_\_\_\_
- 2) Example - Ho-Chunk Nation Code 4) \_\_\_\_\_

- 5) Please list any laws, policies or resolutions that might be affected:  
\_\_\_\_\_
- 6) Please list all other departments or person(s) you have brought your concern to:  
Aging & Disability, ONCOA, Comprehensive Health, Oneida Judiciary
- 7) Do you consider this request urgent?     Yes     No  
If yes, please indicate why:  
\_\_\_\_\_

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

Signature of Requester:

Digitally signed by Tina Jorgensen, MS, RDN  
Date: 2022.12.21 12:35:21 -06'00'

*Please send this form and all supporting materials to:*

**LOC@oneidation.org**  
*or*  
**Legislative Operating Committee (LOC)**  
P.O. Box 365  
Oneida, WI 54155  
Phone 920-869-4376



|

**HO-CHUNK NATION CODE (HCC)**  
**TITLE 4 – CHILDREN, FAMILY, AND ELDER WELFARE CODE**  
**SECTION 1 – ELDER PROTECTION ACT OF 2001**

**ENACTED BY LEGISLATURE: JANUARY 9, 2001**

**LAST AMENDED AND RESTATED: MAY 4, 2004**

**CITE AS: 4 HCC § 1**

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## CHAPTER I – GENERAL PROVISIONS, POLICIES, AND DEFINITIONS

### 1. **Authority.**

a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

c. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

e. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

f. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.

g. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

h. Article V, Section 2(x) of the Constitution grants the Legislature the power to enact any other laws, ordinances, resolutions, and statutes necessary to exercise its legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers.

2. **Purpose.** The purpose of this Act is to establish Tribal law to protect the Elders of the Ho-Chunk Nation from abuse, neglect, self-neglect, and exploitation. The Ho-Chunk Nation honors, respects, and protects its Elders. Elders possess unique and irreplaceable stores of knowledge, skill, and experience that enhance and enrich the lives of the entire Nation. The interests of the Nation, now and in the future, are advanced when Elders can be confident they are protected from abuse, neglect, self-neglect, and exploitation and are free to fully participate in the activities and proceedings of the Nation.

3. **Scope.** This Act shall cover Elder abuse, neglect, self-neglect, and exploitation. However, the Nation recognizes that many Elders suffer the infirmities of aging and are in need of protective services. Therefore, the Ho-Chunk Nation Children and Family Services (CFS) may refer cases dealing with adult protective services, to the appropriate State or County agencies or organizations on a case by case basis until the Ho-Chunk Nation provides an Act to protect those individuals.

#### 4. **Declaration of Policy.**

a. The dignity and self-reliance of the Nation's Elders shall be acknowledged and respected by family members, the community, and employees of the Nation. The rights of each Elder shall be protected.

b. The Nation further recognizes that Elder abuse, neglect, self-neglect or exploitation, when the well-being and safety of an Elder is endangered, is serious.

c. The Nation shall establish services and assure their availability to all Elders when in need of them and to place the least possible restrictions on personal liberty and exercise of rights consistent with due process and protection from abuse, neglect, self-neglect, and exploitation.

d. The Legislature shall appropriate and provide adequate funding support as determined by the CFS program's needs to ensure the health, safety, and welfare of the Nation's Elders.

5. **Definitions.** Terms used in this Act have the following meaning:

a. "Abandonment" means the desertion or willful forsaking of an Elder which may include foregoing a duty of care.

b. "Abuse" means one or more of the following:

(1) The intentional or negligent infliction of bodily harm, unreasonable confinement, or intimidation causing mental anguish by any person, including a person having a special relationship with the Elder, e.g., a spouse, child, or other relative, or a caretaker; or

(2) The infliction of physical, emotional, or mental injury on an Elder, or sexual abuse or exploitation, including financial exploitation, of an Elder; or

(3) Attempting to cause or causing physical harm, bodily injury, or assault on an Elder or the Elder's family or caretaker; or

(4) Subjecting an Elder to deliberate verbal abuse, this may include: insulting, frightening, humiliating, threatening, and/or demeaning an Elder; or

(5) However, no person shall be deemed to be abused for the sole reason they are being furnished non-medical remedial treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment, or if the wishes of an Elder's Do Not Resuscitate (DNR) or Power of Attorney (POA) are being followed.

c. "Adult At-Risk" means any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or exploitation.

d. "Caretaker" means any of the following:

(1) A person who is required by Tribal law or custom or state law to provide care, services, or resources to an Elder;

(2) A person who voluntarily undertakes to provide care, services, or resources to an Elder;

(3) An institution or agency which voluntarily or is required by Tribal law or custom, state or federal law, or contract to provide care, services, or resources to an Elder;

(4) An employee of any institution or agency specified in paragraph (3), above.

e. “Court” means the Ho-Chunk Nation Trial Court.

f. “Elder” means any Ho-Chunk enrolled member who is sixty (60) years of age or more.

g. “Elder Protection Worker” means an employee of the Nation who is employed to help Elders.

h. “Emergency” is an unforeseen combination of circumstances that calls for immediate action without time for full deliberation.

i. “Emotional Abuse” means language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten frighten, or otherwise harass the individual to whom the conduct or language is directed.

j. “Exploitation” means the act of taking unjust advantage of an elder, financially or otherwise, for one’s own benefit.

k. “Family” means all of the customary family relationships recognized by the Nation, including extended family relationships.

l. “Guardian ad Litem” means a person appointed by the Court to represent the best interests of the Elder.

m. “Good Faith” means an honest belief or purpose and the lack of intent to defraud.

n. “Least Restrictive Alternative” means an approach which allows an Elder independence and freedom from intrusion consistent with the Elder’s needs by requiring that the least disruptive method of intervention be used when intervention is necessary to protect the Elder from harm.

o. “Neglect” means any of the following:

(1) Failure of a caregiver, as evidence by an act, omission, or course of conduct, to endeavor to secure or maintain adequate care, services, or supervision for an individual including food, clothing, shelter, or physical or mental health care, and creating significant risk or danger to the individual physical or mental health; or

(2) The interference with the delivery of necessary services or resources; or

(3) The failure to report abuse, neglect, self-neglect or exploitation of an Elder; or

(4) The failure to provide services or resources essential to the Elder’s practice of his or her customs, traditions, or religion; or

(5) The abandonment of an Elder by his or her family, guardian, or caretaker.

p. “Physical Abuse” means the intentional or reckless infliction of bodily harm.

q. “Power of Attorney” means a written document signed by an Elder and notarized giving another person the power to act in conducting the Elder’s business in the name of the Elder. There are three main types of powers of attorney:

(1) A Power of Attorney for Finances and Property covers all the Elder’s business activities, for example signing papers, title documents, contracts, or bank accounts;

(2) A Limited Power of Attorney grants powers limited to specific matters, for example selling a particular piece of real estate or handling specific bank accounts;

(3) A Power of Attorney for Health Care grants powers to individuals to make health care decisions on an Elder’s behalf should they become incapacitated.

r. “Protective/Preventative Services” may include any of the following:

(1) Outreach; or

(2) Identification of individuals in need of services; or

- (3) Information and referral for services necessary to assist the Elder; or
- (4) Coordination of services for individuals; or
- (5) Tracking and follow-up; or
- (6) Case Management.

s. “Retaliation” means taking any action against an individual for reporting Elder abuse, neglect, self-neglect, or exploitation, such as:

- (1) Threatening the person(s); or
- (2) Causing bodily harm; or
- (3) Causing termination, suspension, or reprimand by the employer; or
- (4) Damaging real or personal property; or
- (5) Defaming (libel and/or slander) the person(s); or
- (6) Harassing the person(s).

t. “Self-neglect” means a significant danger to an Elder’s physical or mental health because the Elder is responsible for his or her own care but fails to or is unwilling to obtain adequate care, including, food, shelter, clothing, or medical or dental care.

u. “Sexual Abuse” means abuse that consists of any kind of non-consensual sexual contact, including unwanted touching, sexual assault, and battery. It also includes unreasonable behavior toward an Elder of a sexual nature that causes physical, emotional, or mental injury to an Elder.

v. “Verbal Abuse” means abuse that stems from deliberate oral statements made toward an Elder which are meant to insult, frighten, humiliate, threaten, and/or to demean an Elder.

#### **6. Ho-Chunk Nation Division of Children and Family Services Elder Protection Workers.**

a. Elder Protection Workers shall be employed by CFS and shall execute the duties and powers enumerated in this Act.

b. CFS may cooperate with such state and community agencies as necessary to achieve the purposes of this Act. CFS may negotiate working agreements with other jurisdictions.

c. CFS shall maintain Standard Operating Procedures (SOPs) which implement this Act. These SOPs may be amended from time to time to keep up with changes in best practices and the laws of the Ho-Chunk Nation.

d. Duties. An Elder Protection Worker:

(1) Will receive a case from an assigning supervisor;

(2) Will initiate an investigation within twenty-four (24) business hours of the case assignment of all reported cases of the abuse, neglect, self-neglect, or exploitation of an Elder;

(3) Will offer services to an Elder;

(4) Will prepare with the Elder a plan for the delivery of services which provide the least restrictive alternatives consistent with the Elder's needs;

(5) Will inform the Elder the following:

(a) About the investigation;

(b) That before seeking entry into their home, the Elder has the right to refuse to allow an Elder Protection Worker into their home; the Elder Protection Worker shall also inform the Elder of the right of the Elder Protection Worker to seek a warrant to gain access;

(c) That the Elder has the right to refuse services; and

(d) That the Elder or the Elder Protection Worker can contact the local jurisdiction where the suspected abuse, neglect, self-neglect, or exploitation of an Elder occurred about a possible criminal offense.

## **7. Confidentiality and Penalty.**

a. **Name of Reporter.** The name of the person who reports abuse, neglect, self-neglect, or exploitation as required by this Act is confidential and shall not be released to any person unless the reporter consents to the release or unless the release is ordered by the Court. The Court may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the need to protect the Elder is found to be greater than the reporter's right to confidentiality. The reporter's name shall be released only to the extent as determined necessary to protect the Elder.

b. **Department Records.** Records of an investigation of Elder abuse are confidential unless ordered to be released pursuant to a court Order. Such records shall be open only to the Elder, unless the Elder consents to the release in writing. If the Executive Director of the Ho-Chunk Nation Department of Social Services, law enforcement officers, Court officials, coroner or medical examiner, or any other person has reason to believe that an Elder died as the result of abuse or neglect, the Court shall determine who has reasonable cause to have access to such records.

c. **Court Records.** Records of a Court hearing regarding Elder abuse, neglect, self-neglect, or exploitation are confidential. The Court shall keep court records as may be required by the Judge. Records in Elder cases shall be withheld from public inspection, but the Court records shall be open to inspection by the Elder, and either the Elder's private attorney or CFS if the case is brought by CFS.

d. **Penalty.** Any person who violates any provision of this section shall be subject to a civil penalty of up to \$100.00 per occurrence. The Court shall assess the penalty after petition, notice, opportunity for hearing, and a determination that a violation has occurred. In addition, if the violation is committed by an employee of the Nation, the person shall be subject to appropriate disciplinary action as allowed in the Nation's employment laws.

## CHAPTER II - REPORTING

**8. Duty to Report Abuse, Neglect, Self-Neglect, and Exploitation of an Elder.** Any person who has reasonable cause to suspect that an Elder has been abused, neglected, self-neglected, or exploited shall immediately report the abuse, neglect, self-neglect, or exploitation to the CFS Intake staff unless they have a privileged relationship with their patient or client. An individual with a privileged relationship must disclose information about their patient or client to appropriate officials if there is an emergency situation. The following individuals have a special duty in reporting abuse, neglect, self-neglect, or exploitation:



- a. The Elder's family or caretaker;
- b. Any employee or elected official of the Nation;
- c. Physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or other health care provider;
- d. Psychiatrist, psychologist, or psychological assistant;
- e. Any licensed or unlicensed social worker, professional counselor, or marriage and family therapist;
- f. Person employed in the mental or behavioral health profession;
- g. Person employed as a physical therapist, occupational therapist, or the assistants of such therapists;
- h. Law enforcement officer, probation officer, worker in a detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial Orders;
- i. Judge, attorney, court counselor, clerk of court, or judicial system official or staff.
- j. Any persons or agency, including their employees, with fiduciary responsibilities to an Elder such as accountants, property managers, financial advisors, or financial institutions.

9. **Anonymous Reports.** Except for those persons in Section 8 b-i, persons reporting Elder abuse, neglect, self-neglect, or exploitation may remain anonymous, except in the event of a court Order pursuant to Chapter I, Section 7(a) of this Act.

10. **Immunity from Liability.** Any person who in good faith reports suspected abuse, neglect, self-neglect, or exploitation of an Elder shall be immune from any legal action based on that person's report.

11. **Civil Violation and Penalty for Failing to Report.** Any person who is required by this Act to report suspected Elder abuse, neglect, self-neglect, or exploitation and fails to do so is subject to civil penalty not to exceed \$2,000. The Court shall assess the penalty only after petition, notice, an opportunity for hearing, and a determination that the person had a mandated duty to report, and failed to do so, as required by this Act. Further, the person failing to report is subject to any civil suit brought by or on behalf of the Elder for damages suffered as a result of the failure to report, notwithstanding any determination by the Court that the person failing to report violated this Act.

**12. Civil Violation and Penalty for a Report Made in Bad Faith.** Any person who makes a report of suspected abuse, neglect, self-neglect, or exploitation knowing it to be false is subject to a civil penalty not to exceed \$2,000. The Court shall assess the penalty only after petition, notice, an opportunity for hearing, and a determination that the person making the report knew the report to be false. Any person making a false report is subject to any civil suit for damages brought by or on behalf of the person(s) named as the Accused in the false report.

**13. Reports.** Reports of suspected Elder abuse, neglect, self-neglect, or exploitation shall be made to the CFS Intake Staff. The CFS Intake Staff member who takes an oral report shall immediately complete a written report. Anonymous reports shall be investigated as required by this Act. The following information should be part of the written report:

- a. The Elder's name, address or location, and telephone number;
- b. The name, address or location, and telephone number of the person(s) or agency suspected of abusing, neglecting, or exploiting the Elder;
- c. The nature and degree of the limitations of the Elder;
- d. The name, address or location, and telephone number of the Elder's caretaker;
- e. The name, address or location, and telephone number of witness(s);
- f. A description of the acts which are reported as abusive, neglectful, or exploitive;
- g. Any other information that the reporter believes might be helpful in establishing abuse, neglect, self-neglect, or exploitation;
- h. The written report should contain the name, address, and telephone number of the reporter for the purpose of CFS follow-up. Rules of anonymity shall be followed pursuant to Section 9.

### CHAPTER III – INVESTIGATION

#### **14. Investigations.**

- a. The Elder Protection Worker shall initiate an investigation within one (1) business day of receipt of a report.
- b. Written Investigative Report.

(1) A written investigative report shall be prepared and filed with the CFS Elder Protection Program. The investigative report will remain on file for a period of five (5) years, even if it is determined that there is insufficient evidence to pursue any legal action.

(2) When a report of abuse is found to have been made in bad faith, the investigative report shall be held and maintained as an inactive file for possible use in a civil violation investigation or proceeding pursuant to this Act.

(3) The investigative report shall contain the pertinent information obtained during the investigation, including the results of the Elder Protection Worker's interview, observations and assessments, and other facts.

(4) If substantiated, CFS may mediate a resolution of the presented situation or may forward the matter to the Ho-Chunk Nation Department of Justice (DOJ) for legal action.

c. Subpoena of Medical and Financial Records. The Court may issue subpoenas for the release of medical records and financial records upon motion for expedited consideration by the DOJ in order to facilitate investigations of reported Elder abuse, neglect, self-neglect, or exploitation. Upon hearing evidence, the Court must find reasonable grounds to believe that Elder abuse, neglect, self-neglect, or exploitation is occurring or has occurred in order to issue a subpoena.

#### **15. Interference with Investigation and Retaliation – Civil Penalty.**

a. No person shall interfere intentionally with a lawful investigation of suspected Elder abuse, neglect, self-neglect, or exploitation.

b. No person shall retaliate by any means against any person who has made a good faith report of suspected Elder abuse, neglect, self-neglect, or exploitation or who cooperates with an investigation of suspected Elder abuse, neglect, self-neglect, or exploitation.

c. Any person who violates the provisions of paragraph a or b above shall be stopped from partaking in such activity and shall be subject to a civil penalty of up to \$2,000 per occurrence. The Court shall assess the penalty only after petition, notice, an opportunity for hearing, and a determination that either interference or retaliation as set out in this section occurred. Further, notice of such determination shall be provided to the person's employer and appropriate licensing agencies. If the person violating the above provisions is an employee of the Nation, appropriate disciplinary action shall be imposed consistent with the Nation's Employment Relations Act, 6 HCC § 5.

**16. Criminal Investigation.** Any investigation and any other procedure allowed under this Act may continue even if a criminal investigation is undertaken. The CFS Elder Protection Program shall provide its cooperation with law enforcement to ensure the criminal investigation is not compromised.

#### CHAPTER IV – RIGHTS OF PARTIES

##### **17. Rights of Elders.**

a. An Elder has the right to be informed about an Elder abuse investigation before it begins unless an emergency exists, in which case, they shall be informed as soon as possible, but not later than one (1) business day after the investigation begins.

b. An Elder has the right to refuse to accept elder protective services (even if there is good cause to believe that the Elder has been or is being abused, neglected, self-neglected, or exploited) provided that the Elder is able to care for himself or herself and/or has the capacity to understand the nature of the services offered.

c. An Elder has the right to refuse an Elder Protection Worker entrance into their home and the Elder Protection Worker shall so inform the Elder of this right before seeking entry. The Elder Protection Worker shall also inform the Elder of the right of the Elder Protection Worker to seek a warrant to gain access.

d. The Elder has the right to be represented by counsel at his or her own expense at all proceedings.

(1) If the Elder seeks to proceed independently, then the Elder may retain private counsel to represent himself or herself at his or her own cost or proceed without counsel (pro se).

(2) If the Elder seeks to have the assistance of the CFS Elder Protection Program in filing the Petition, then CFS and the DOJ shall make a determination on whether a legal claim exists and then make a determination on how to proceed.

##### **18. Rights of the Accused.**

a. The accused may refuse for themselves, but not for the Elder, services offered by the CFS Elder Protection Program to help remedy the alleged abuse, neglect, or exploitation.

b. The accused may refuse to allow an Elder Protection Worker into their home and the Elder Protection Worker shall so inform the alleged accused of this right before seeking entry. The Elder Protection Worker shall also inform the accused of the right of the Elder Protection Worker to seek a warrant to gain access.

c. The accused has the right to be represented by counsel at his or her own expense at all proceedings.

## CHAPTER V- COURT PROCESS

### 19. Jurisdiction.

a. The Ho-Chunk Nation Trial Court is vested with the fullest jurisdiction permissible under applicable law. Personal jurisdiction includes, but is not limited to the following people:

(1) Members of the Ho-Chunk Nation; or

(2) Individuals personally served with a Petition or Summons on the Nation's lands; or

(3) Individuals who consent to the jurisdiction of the Court by entering a general appearance or filing a responsive document or by participating in the proceeding unless participation is for the purpose of contesting jurisdiction; or

(4) Any individual who resides on the Nation's lands with a Ho-Chunk Elder who is the subject of the proceeding; or

(5) Any individual who enters the Nation's lands to transact with a Ho-Chunk Elder or obtains access to a Ho-Chunk Elder's personal property who is the subject of the proceeding.

b. In every action under this Act, the Court shall retain continuing, exclusive jurisdiction over the Elder to the fullest extent permitted by law.

### 20. Petition.

a. An Elder may wish to Petition the matter before the Court under the Elder Protection Act. The Elder has the option of proceeding in one of two ways:

(1) The Elder may file the Petition on his or her own independently. The Elder shall file the Petition and present facts on his or her own behalf. The Elder may do this through the use of private counsel at his or her own expense or without counsel (*pro se*); or

(2) The Elder may seek to be assisted by and through CFS. If mediation or other non-legal recourse is not successful or feasible, then the DOJ shall file the Petition and present facts on behalf of the Nation for legal proceedings authorized or required by this Act,

provided the case is brought by the CFS Elder Protection Program.

b. CFS may file a Petition on behalf of the Elder on its own initiative.

c. The Petition shall contain the following:

(1) The name of the Elder. A supplemental document shall be filed with the Court containing the address of where the petitioner would like to receive notices from the court, the petitioner's telephone number(s), and e-mail address if available. This information shall be kept confidential.

(2) An allegation that:

(a) The respondent has abused, neglected, or exploited an Elder;

(b) The respondent has threatened to engage in abuse, neglect, or exploitation of an Elder;

(c) The Elder is self-neglecting himself or herself and intervention is necessary to protect the Elder.

(3) The name, mailing address, physical address, age of the accused, and his or her relationship to the Elder.

(4) A statement of facts that support the allegations presented.

d. Service of Process. Notice of the Elder Protection proceeding shall be made by personal service of the Petition and Summons at least ten (10) days prior to the Hearing on the Petition.

## 21. Hearing.

a. Hearing. A hearing on a Petition authorized or required by this Act shall be conducted with the purpose of protecting the Elder only when necessary and only to the extent shown by the facts and using the least restrictive alternatives.

(1) All rights, as set out specifically in this Act shall be enforced strictly during all proceedings.

(2) No hearing shall be held unless notice has been given to the Elder and other interested parties.

(3) The Elder and all other interested parties shall have the right and opportunity to be heard fully and to present evidence.

b. **Timing.** A Hearing on an Elder Protection Petition shall be held within forty-five (45) days of the filing of the Petition. If emergency protection is necessary an Elder Protective Restraining Order may be sought pursuant to the requirements within this Act.

c. **Court Proceedings.** A proceeding held pursuant to this Act will be closed and confidential. Persons who may attend are the parties, representatives of CFS, necessary Court officials, and attorneys for the parties. Other persons may appear only to testify.

d. **Burden of Proof.** The petitioner must provide one or more of the reasons listed as justification to bring the matter before the Court. The determination shall be made only after petition, notice, hearing, and proof by a preponderance of the evidence of abuse, neglect, self-neglect, or exploitation.

## CHAPTER VI- COURT ORDERS

### 22. **Orders.**

a. **Elder Protection Order.** The Court may rule from the bench and then issue a written statement of its findings in support of any Elder Protection Order within thirty (30) days of the Hearing.

b. No Elder Protection Order shall be issued until ten (10) days after the Petition has been served on all parties.

### 23. **Elder Protection Order.**

a. If the Court determines that an Elder has been abused, neglected, self-neglected, or exploited, the Court shall issue an Elder Protection Order which provides appropriate protection for the Elder. Such protection may include, but is not limited to the following:

(1) Removing the individual(s) who abused, neglected, or exploited an Elder from the Elder's home immediately; or

(2) Having CFS facilitate a move for the Elder from the place where the abuse, neglect, self-neglect, or exploitation has taken or is taking place; or

(3) Restraining the individual(s) who abused, neglected, or exploited the Elder from

having any form of contact with the Elder; or

(4) Restraining the individual(s) who has abused, neglected, or exploited the Elder from continuing such acts; or

(5) Requiring an Elder's family or caretaker or any other person with a fiduciary duty to the Elder to account for the Elder's funds and property; or

(6) Requiring any individual(s) who has abused, neglected, or exploited an Elder to pay restitution to the Elder for damages resulting from that individual(s)'s wrongdoing; or

(7) Appointing a representative or a guardian ad litem for the Elder; or

(8) Recommending that a representative payee be named; or

(9) Ordering compensation to be paid to the Elder. Said debt shall be garnished from the individual(s)'s per capita pursuant to the Nation's Claims Against Per Capita Ordinance, 2 HCC § 8, or through a general garnishment Order.

#### **24. Modification or Termination.**

a. If modification or termination of the Order is needed a Motion shall be filed by a party seeking the modification or termination.

b. Notice shall then be provided for the Motion Hearing. At the Motion Hearing the burden of proof will be on the motioning party to prove by clear and convincing evidence that such a modification or termination is in the best interests of the Elder or necessary for the protection of the Elder.

**25. Violation of Protection Orders.** Violation of Court Protection Orders by a respondent may be punished by a fine of not more than \$2,000. Said debt shall be a debt owed to the Nation and shall be collected as such pursuant to the Claims Against Per Capita Ordinance, 2 HCC § 8, or by a general garnishment Order.

### CHAPTER VII- ELDER PROTECTIVE RESTRAINING ORDERS – CIVIL PROCESS

#### **26. Purpose of Elder Protective Civil Restraining Orders.**



a. The purpose of authorizing Elder Protective Restraining Orders is to provide Elders with a process for obtaining restraining orders independent of contacting law enforcement officers to report a crime. Individuals applying for an Elder Protective Restraining Order should be referred to law enforcement in the event that an unreported crime has been committed.

b. The purpose of authorizing emergency Elder Protective Restraining Orders to be issued without prior notice to the respondent is to insure the immediate protection of the Elder.

## **27. General Procedure.**

a. No complaint need be filed and summons served in order to obtain an Elder Protective Restraining Order. An action under this section may be commenced only by a Petition being served on the respondent.

b. No filing fees are required for an Elder Protective Restraining Order.

c. The following people may file a Petition for an Elder Protective Restraining Order:

(1) Any person who alleges that he or she is or has been a victim of Elder abuse, neglect, or exploitation may file a Petition;

(2) Family or household members may file a Petition on behalf of an Elder who has been a victim of Elder abuse, neglect, or exploitation;

(3) CFS may file a Petition for an Elder Protective Restraining Order on behalf of an Elder who has been a victim of Elder abuse, neglect, or exploitation.

## **28. Petition.**

a. A Petition for an Elder Protective Restraining Order shall include:

(1) The name of the Elder;

(2) An allegation that:

(a) The respondent has abused, neglected, or exploited an Elder; or

(b) The respondent has threatened to engage in abuse, neglect, or exploitation of an Elder; or

(c) The respondent has interfered with an elder protection investigation or the delivery of elder protective services and, if continued, will make it difficult to determine whether abuse, neglect, or exploitation occurred or is likely to reoccur; or

(d) The respondent, based upon prior conduct, may interfere with an elder protection investigation or the delivery of elder protective services and if interference were to occur it would be difficult to determine whether abuse, neglect, or exploitation occurred or is likely to reoccur;

(3) The name, mailing address, physical address, age of the respondent, and his or her relationship to the Elder.

b. A supplemental document shall be filed with the Court containing the address of where the petitioner would like to receive notices from the court, the petitioner's telephone number(s), and e-mail address if available. This information shall be kept confidential.

c. A signed statement, or separate affidavit filed with the Petition, stating:

(1) In the petitioner's own words, the specific facts and circumstances of the alleged abuse, neglect, or exploitation of the Elder, including whether the Elder believes himself or herself to be in immediate danger of further abuse, neglect, or exploitation; or

(2) The specific facts and circumstances that led the petitioner to believe the respondent has, or will likely, interfere with either an elder protection investigation or the delivery of elder protective services.

d. A list of prior civil or criminal temporary restraining orders, injunctions, or no contact orders in other jurisdictions involving both the Elder and the respondent.

## **29. Temporary Elder Protective Restraining Order.**

a. An Elder Protective Restraining Order Petition shall be filed and served pursuant to Sections 27 and 28 above.

b. The Court may issue, upon its own motion or the motion of a party, a written, oral, or telephonic Temporary Elder Protective Restraining Order without notice to an alleged perpetrator when the Court finds reasonable cause to believe:

(1) That the Elder is in immediate danger based on credible evidence that the respondent has or is likely to interfere with an elder protection investigation or the delivery of elder

protective services; and

(2) That prior notice is likely to increase the danger to the Elder or other family or household member(s) or will impede upon an elder protection investigation or the delivery of elder protective services.

c. The Court may grant the following relief in a Temporary Elder Protective Restraining Order:

(1) Order the respondent to not commit or threaten to commit further acts of abuse, neglect, or exploitation of an Elder; or

(2) Order the respondent to not contact, harass, stalk, telephone, or otherwise communicate with the Elder, either directly or indirectly; or

(3) Order the respondent to avoid the residence of the Elder or any other location temporarily occupied by the Elder, or both; or

(4) Order the respondent not to interfere with the investigation of abuse, neglect, or exploitation of an Elder, the provision of services to the Elder, or otherwise harass or intimidate CFS workers or other individuals employed to carry out the goals of this subsection; or

(5) Order such other relief as the Court deems necessary to protect and provide for the safety of the Elder and any designated family or household member(s).

d. A Temporary Elder Protective Restraining Order is in effect until a hearing is held on the issuance of an Elder Protective Restraining Order pursuant to this Chapter.

e. Following entry of a Temporary Elder Protective Restraining Order, the Court shall:

(1) Set a date for a hearing to be held within fifteen (15) days after entry of a Temporary Elder Protective Restraining Order.

(a) The time for hearing may be extended upon the written consent of the parties or extended once for an additional fifteen (15) days upon the finding that the respondent was not served with a copy of the Temporary Elder Protective Restraining Order despite due diligence.

(2) Cause the Temporary Order to be served upon the respondent.

(3) Transmit a copy of the Temporary Order to any additional, appropriate law enforcement agencies or other agencies designated by the petitioner.

(4) The Court shall explain the contents of the Temporary Order to the Elder.

### **30. Elder Protective Restraining Order.**

a. An Elder Protective Restraining Order Petition shall be filed and served pursuant to Sections 27 and 28 above.

b. After the hearing on the Petition, whether or not the respondent appears, if the judge finds reasonable cause to believe that neglect, abuse, or exploitation of an Elder has occurred, is likely to occur, or may reoccur the Court may issue a non-temporary Elder Protective Restraining Order.

c. The Court may grant the following relief in an Elder Protective Restraining Order:

(1) Grant the relief as set forth in sections 29c (1) through (3) above; or

(2) Prohibit the respondent from harassing or intimidating CFS workers or other individuals employed to carry out the goals of this subsection; or

(3) Prohibit the respondent from intentionally preventing a CFS Elder Protection Worker from meeting, communicating, or being in visual or audio contact with the Elder; or

(4) Order any other relief deemed necessary and consistent with the purposes of this Act or any Traditional Cultural Disposition that may be consistent with and will reinforce the customs and traditions of the community.

d. If the Court issues an Elder Protective Restraining Order under this section the Court shall:

(1) Cause the non-emergency Order to be served on any of the parties who were not present;

(2) Make reasonable efforts to insure that the Elder Protective Restraining Order is understood by the Elder and the respondent, if present; and

(3) Transmit a copy of the Elder Protective Restraining Order to any additional

appropriate law enforcement agencies or other agencies designated by the Elder.

e. An Elder Protective Restraining Order issued pursuant to this section is effective according to its terms, but for not more than five (5) years.

(1) An Elder Protective Restraining Order may be renewed or rescinded by the Court prior to expiration pursuant to this chapter.

### **31. Request to Modify Order by Respondent Due to Lack of Notice.**

a. The respondent may request modification of an Elder Protective Restraining Order where he or she can show by a preponderance of the evidence that he or she did not receive adequate notice of the hearing for an Elder Protective Restraining Order.

b. Upon receiving the respondent's request, the Court shall set a hearing as soon as practicable, but not later than fifteen (15) days after the next day on which the Court is in session following the filing of the respondent's request. The Court Clerks shall send notice to the petitioner that the respondent is seeking a modification of the order.

c. The purpose of the hearing shall be for the Court to consider whether any less restrictive alternatives may be appropriate under the circumstances. The Court may modify an Order where the Order causes an unreasonable hardship upon the respondent, provided that the safety of the Elder or any family or household member protected by the Order is not jeopardized and remains the primary consideration.

### **32. Motion to Extend/Terminate/Modify Order.**

a. A Motion to extend, terminate, or modify an Elder Protective Restraining Order shall include:

(1) The name of the Elder;

(2) An allegation that:

(a) the respondent has abused, neglected, or exploited an Elder; or

(b) the respondent has threatened to engage in abuse, neglect, or exploitation of an Elder; or

(c) the respondent has interfered with an elder protection investigation or the delivery of elder protective services and, if continued, will make it difficult to determine whether abuse, neglect, or exploitation occurred or is likely to reoccur; or

(d) the respondent, based upon prior conduct, may interfere with an elder protection investigation or the delivery of elder protective services and if interference were to occur it would be difficult to determine whether abuse, neglect, or exploitation occurred or is likely to reoccur.

(3) The name, mailing address, physical address, age of the respondent, and his or her relationship to the Elder.

b. If the respondent is filing a Motion the Court Clerk shall send notice to the petitioner that the respondent is seeking a modification of the Order.

c. A signed statement or separate affidavit filed with the Motion stating in the movant's own words, the specific facts and circumstances that lead the movant to believe an extension, termination, or other modification(s) is warranted.

d. After the hearing on the Motion, whether or not the non-movant appears, if the judge finds reasonable cause to believe that a modification, termination, or extension is necessary, the Court shall:

(1) Cause the modified Order, or Termination Order, to be served on any of the parties who were not present;

(2) Make reasonable efforts to insure that the modified Elder Protective Restraining Order is understood by the Elder and the respondent, if present; and

(3) Transmit a copy of the modified Elder Protective Restraining Order, or Termination Order, to any additional appropriate law enforcement agencies or other agencies designated by the Elder.

## CHAPTER VIII- CONTEMPT AND SEVERABILITY

### 33. Disobedience – Contempt.

a. Any person summoned as herein provided, whom, without reasonable cause fails to appear may be proceeded against for contempt of court pursuant to the Ho-Chunk Nation Contempt Ordinance and the Court may cause a bench warrant to be issued to produce such a person in Court.

b. No one attending or testifying at an Elder Protection proceeding shall reveal information about the proceeding unless ordered to do so pursuant to a Court Order. Any person who violates this provision shall be subject to civil penalty of up to \$100.00 per occurrence. The Court shall assess the penalty after petition, notice, opportunity for hearing, and a determination that a

violation has occurred. In addition, if the violation is committed by an employee of the Nation, the person shall be subject to appropriate disciplinary action as allowed in the Nation's Employment Relations Act, 6 HCC § 5.

c. Harassment and intimidation of judicial officers, Department of Social Services staff, service processors, guardians ad litem, witnesses, and attorneys who are employed to carry out the goals of this Act may be grounds for contempt. Such behavior shall be classified as an obstruction of the authority, process, or order of the Court.

**34. Severability.** If any part or parts, or application of any part of this Act is held invalid, such holding shall not affect the validity of the remaining parts of this Act.

Legislative History:

6/19/00 Draft Elder Protection Act reviewed by Tribal Aging Unit (TAU) Advisory Board.

7/12/00 Draft Elder Protection Act reviewed by Administration Committee.

7/19/00 Draft Elder Protection Act reviewed/approved by TAU Advisory Board.

9/13/00 Draft Act reviewed by Administration Committee and forwarded to full Legislature.

9/19/00 Legislature posts for 45-day Public Review period.

11/14/00 Final review and comments by TAU Advisory Board.

1/9/01 Enacted by Legislative Resolution 01/09/01B.

3/3/04 Draft of Amended Act sent out for 45-day Public Review.

5/4/04 Amended and Restated by Legislative Resolution 5/4/04E regarding the issuance of subpoenas by the Trial Court.

3/22/11 Legislative Resolution 3-22-11 A places Elder Protection Act of 2001 out for forty-five day public comment.

5/17/11 Legislature makes motion to extends Public Review another (30) days per the TAU Elder's Advisory Board request.

8/8/11 Legislative Resolution 08-08-11F adopts the following amendments: Ch. I § 5 b. to include the term "financial exploitation" in the definition of Abuse; Ch. II § 8 adding "j."; Ch. V § 21 d. changing "clear and convincing" to "a preponderance of the evidence".

# January 2023

January 2023

Su	Mo	Tu	We	Th	Fr	Sa
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February 2023

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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jan 1, 23	2	3 10:00am Workplace Violence amendments work meeting (Microsoft Teams Meeting) -	4 8:30am LOC Prep (Microsoft Teams Meeting; 9:00am LOC Meeting (BC_Conf_Roo m) - LOC	5	6 9:00am Oneida Language Code Work Meeting with Cultural Heritage Department (Microsoft	7
8	9 10:00am OHE Compare Rule/Law Versions of Handbook (Rdg_Suite4_C onf) - Grace L. Elliott	10 9:00am Oneida Language Code Work Meeting with Oneida Language Department (Microsoft	11 8:30am Oneida Business Committee Meeting	12 10:00am LOC Work Session (Microsoft Teams 12:15pm PUBLIC MEETING: Oneida Personnel	13	14
15	16	17	18 8:30am LOC Prep (Microsoft Teams Meeting; 9:00am LOC Meeting (BC_Conf_Roo m) - LOC	19	20 11:00am Investigative Leave Policy (Microsoft Teams Meeting) - Grace L. Elliott	21
22	23	24	25	26 10:00am LOC Work Session (Microsoft Teams 1:00pm Drug and Alcohol Free Workplace Law	27	28
29	30	31	Feb 1	2	3	4