

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](http://Oneida-nsn.gov/government/register/public%20meetings)

Send Public Comments to

LOC@oneidanation.org

Ask Questions here

LOC@oneidanation.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@oneidanation.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](http://oneida-nsn.gov/government/register/public%20meetings).



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"> ▪ 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"> ▪ 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)]. ▪ 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)]. ▪ 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)].
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 **SECTION 6. EXISTING LEGISLATION**

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

- 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**

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

- 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

83 **202.4. Application**

84 202.4-1. This law applies to all applicants for employment, whether external or internal, and all
85 employees during working hours, when on-call, and when operating a vehicle owned by the Nation
86 or a vehicle rented by the Nation.

87 202.4-2. An employee is prohibited from the use of prohibited drugs and alcohol during working
88 hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the
89 Nation.

90 202.4-3. An employee is prohibited from the use of intoxicants while on official business travel
91 while the conference or meeting is in session.

92 202.4-4. An employee is not exempted from this law if they travel to another state, territory or
93 country where the use of certain drugs is legal.

94

95 **202.5. Shared Responsibility**

96 202.5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation
97 and shared responsibility between the employer and an employee.

98 202.5-2. *Employee*. It is the employee’s responsibility to:

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

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

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

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

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

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

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

117 202.5-3. *Supervisor*. It is the supervisor’s responsibility to:

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

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

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

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

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

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.

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.*

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

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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

83 **202.4. Application**

84 202.4-1. This law applies to all applicants for employment, whether external or internal, and all
85 employees during working hours, when on-call, and when operating a vehicle owned by the Nation
86 or a vehicle rented by the Nation.

87 202.4-2. An employee is prohibited from the use of prohibited drugs and alcohol during working
88 hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the
89 Nation.

90 202.4-3. An employee is prohibited from the use of intoxicants while on official business travel
91 while the conference or meeting is in session.

92 202.4-4. An employee is not exempted from this law if they travel to another state, territory or
93 country where the use of certain drugs is legal.

94

95 **202.5. Shared Responsibility**

96 202.5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation
97 and shared responsibility between the employer and an employee.

98 202.5-2. *Employee.* It is the employee's responsibility to:

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

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

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

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

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

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

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

117 202.5-3. *Supervisor.* It is the supervisor's responsibility to:

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

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

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

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

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

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

352 **202.12. Re-hire**

353 202.12-1. A former employee that was terminated due to violations of this law shall provide, along
354 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.
359

360 **202.13. Other Potential Consequences**

361 202.13-1. The violation of this law may result in consequences to the employee beyond any
362 discipline or corrective action that may be taken. Other potential consequences include the
363 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.
374

375 **202.14. Confidentiality**

376 202.14-1. Information related to the application of this law is confidential. Access to this
377 information is limited to those who have a legitimate “need to know” in compliance with relevant
378 laws and personnel policies and procedures.

379 202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential
380 records which are separate from the employee’s clinical and personnel files. The employee may
381 request a copy of the employee’s records. The records may be requested by a third party in
382 accordance with the Oneida Nation’s laws, rules and policies governing employment.
383

384 **202.15. Communication**

385 202.15-1. HRD shall communicate this law to all employees to ensure all employees are aware of
386 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.*

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