



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room - 2nd Floor Norbert Hill Center

March 1, 2023

9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be Approved

1. February 15, 2023 LOC Meeting Minutes (pg. 2)

III. Current Business

1. Emergency Management Law Amendments (pg. 4)
2. Election Law Emergency Amendments (pg. 39)
3. Oneida Personnel Policies and Procedures Amendments (pg. 80)

IV. New Submissions

1. Petition: L. Dallas – Alcohol and Drug Addiction Treatment Assistance (pg. 392)
2. Petition: L. Dallas – FY 2023 Budget (pg. 394)
3. Petition: L. Dallas – GTC Directive for OBC to Stay Out of Day to Day Business (pg. 396)
4. Petition: L. Zeise – Uncap All Employee Wages (pg. 398)

V. Additions

VI. Administrative Updates

VII. Executive Session

VIII. Recess/Adjourn



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
February 15, 2023
9:00 a.m.

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

Others Present: Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Brooke Doxtator, Keith Doxtator, Ray Skenandore, Tina Jorgenson (Microsoft Teams), Todd VandenHeuvel (Microsoft Teams), Justin Nishimoto (Microsoft Teams), Mark Powless (Microsoft Teams), Rhiannon Metoxen (Microsoft Teams), Kristal Hill (Microsoft Teams), Peggy Van Gheem (Microsoft Teams)

I. Call to Order and Approval of the Agenda

David P. Jordan called the February 15, 2023, Legislative Operating Committee meeting to order at 9:00 a.m.

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

II. Minutes to be Approved

1. February 1, 2023 LOC Meeting Minutes

Motion by Jennifer Webster to approve the February 1, 2023, LOC meeting minutes and forward to the Oneida Business Committee; seconded by Marie Cornelius. Kirby Metoxen abstained. Motion carried.

III. Current Business

1. Back Pay Law Amendments

Motion by Jennifer Webster to accept the updated public comment review memorandum; seconded by Marie Cornelius. Motion carried unanimously.

IV. New Submissions

1. Election Law Emergency Amendments

Motion by Jennifer Webster to add the Election law emergency amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Cornelius. Motion carried unanimously.

V. Additions



VI. Administrative Items

VII.

VIII. Executive Session

IX. Adjourn

Motion by Marie Cornelius to adjourn at 9:09 a.m.; seconded by Daniel Guzman King.

Motion carried unanimously.



Legislative Operating Committee
March 1, 2023

Emergency Management Law Amendments

Submission Date: 7/6/22	Public Meeting: 12/13/22
LOC Sponsor: Marie Cornelius	Emergency Enacted: 9/14/22

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

1/4/23 LOC: Motion by Jennifer Webster to accept the public comment review memorandum identifying no public comments were received; seconded by Marie Cornelius. Motion carried unanimously.

1/18/23 LOC: Motion by Jennifer Webster to approve the draft, legislative analysis, and fiscal impact statement review memorandum, and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by February 15, 2023; seconded by Marie Cornelius. Motion carried unanimously.

Next Steps:

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



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson
DATE: March 8, 2023
RE: Adoption of Amendments to the Emergency Management Law

Please find the following attached backup documentation for your consideration of the adoption of amendments to the Emergency Management law:

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

Overview

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. The emergency amendments to the Emergency Management law will expire on March 14, 2023. Amendments to the Emergency Management law is now ready to be considered for permanent adoption.

Amendments to the Emergency Management law are being sought to address the Nation's emergency response. The Emergency Management law provides for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; to provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; to establish the use of the National Incident Management System (NIMS); and to designate authority and responsibilities for public health preparedness. [3 O.C. 302.1-1].

The proposed amendments to the Emergency Management law will:

- Eliminate the Oneida Nation Emergency Planning Committee and replace it with an Emergency Management Operations Team. [3 O.C. 302.5-1];
- Provide that members of the Emergency Management Operations Team shall attend meetings, or send a designee in their absence, and comply with any training requirements set forth by the Emergency Management Director. [3 O.C. 302.5-3];
- Require that within forty-eight (48) hours of an emergency, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, an emergency briefing to be presented to the Oneida Business Committee regarding the status of the emergency, actions taken to address the emergency, and the activation of the Emergency Response Plan. [3 O.C. 302.8-4];

- Allow the Oneida Business Committee to direct the Emergency Management Director to provide additional emergency briefings to the Oneida Business Committee. [3 O.C. 302.8-4];
- Require that within thirty (30) days of an emergency subsiding, unless additional time is granted by the Oneida Business Committee, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, a preliminary emergency assessment report to be presented to the Oneida Business Committee, any interested entity, and the public. [3 O.C. 302.8-5];
- Extend the amount of time for the Emergency Management Director to prepare and present an after-action report to the Oneida Business Committee, any interested entity, and the public, from sixty (60) days to ninety (90) days. [3 O.C. 302.8-6].

The Legislative Operating Committee developed the proposed amendments to the Emergency Management law through collaboration with representatives from the Emergency Management Department, General Manager, and the Government Administrative Office. The Legislative Operating Committee held seven (7) work meetings on the development of the Emergency Management law.

The development of the amendments to the Emergency Management law complies with all processes and procedures required by the Legislative Procedures Act, including the development of a legislative analysis, a fiscal analysis, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

A public meeting on the proposed amendments to the Emergency Management law was held on December 13, 2022. No oral comments were provided during the public meeting. The public comment period was then held open until December 20, 2022. No submissions of written comments were received during the public comment period.

Requested Action

Adopt the Resolution: Amendments to the Emergency Management Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # Amendments to the Emergency Management Law

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Emergency Management law ("the Law") was adopted by the Oneida Business Committee through resolution BC-07-15-98-A and amended by resolutions BC-12-20-06-G, BC-05-13-09-F, and BC-03-10-21-A; and
- WHEREAS,** the purpose of the 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; provide for the direction of emergency management, response, and recovery on the Reservation, as well as coordination with other agencies, victims, businesses, and organizations; establish the use of the National Incident Management System; and designate authority and responsibilities for public health preparedness; and
- WHEREAS,** the Oneida Business Committee recently adopted emergency amendments to the Law on September 14, 2022, through the adoption of resolution BC-09-14-22-B in accordance with the emergency adoption process set forth by the Legislative Procedures Act; and
- WHEREAS,** the emergency amendments to the Law are set to expire on March 14, 2023; and
- WHEREAS,** the Legislative Operating Committee has developed permanent amendments to the Law for consideration by the Oneida Business Committee; and
- WHEREAS,** the amendments to the Law eliminate the Oneida Nation Emergency Planning Committee and replace it with an Emergency Management Operations Team, clarifying that this Team exists not as a board, committee, or commission of the Nation, but instead as a network of different employee positions throughout the Nation that all have a responsibility to aid in the Nation's response to emergencies; and
- WHEREAS,** the amendments to the Law provide that members of the Emergency Management Operations Team shall attend meetings, or send a designee in their absence, and comply with any training requirements set forth by the Emergency Management Director; and
- WHEREAS,** the amendments to the Law require that within forty-eight (48) hours of an emergency, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, an emergency briefing to be presented to the Oneida Business Committee regarding the status of the emergency, actions taken to address the emergency, and the activation of the Emergency Response Plan; and

WHEREAS, the amendments to the Law allow the Oneida Business Committee to direct the Emergency Management Director to provide additional emergency briefings to the Oneida Business Committee; and

WHEREAS, the amendments to the Law require that within thirty (30) days of an emergency subsiding, unless additional time is granted by the Oneida Business Committee, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, a preliminary emergency assessment report to be presented to the Oneida Business Committee, any interested entity, and the public; and

WHEREAS, the amendments to the Law extend the amount of time for the Emergency Management Director to prepare and present an after-action report to the Oneida Business Committee, any interested entity, and the public, from sixty (60) days to ninety (90) days; and

WHEREAS, the Legislative Operating Committee developed the proposed amendments to the Law through collaboration with representatives from the Emergency Management Department, General Manager, and the Government Administrative Office; and

WHEREAS, in accordance with the Legislative Procedures Act a legislative analysis and fiscal impact statement were completed for the proposed amendments to the Law; and

WHEREAS, a public meeting for the proposed amendments to this Law was held on December 13, 2022, and the public comment period for the amendments to this Law was held open until December 20, 2022; and

NOW THEREFORE BE IT RESOLVED, the Oneida Business Committee hereby adopts the amendments to the Emergency Management law which shall become effective on March 14, 2023.



Statement of Effect
Amendments to the Emergency Management Law

Summary

This resolution adopts amendments to the Emergency Management law to improve the Nation's responses to emergencies.

Submitted by: Clorissa N. Leeman, Senior Staff Attorney, Legislative Reference Office
Date: January 26, 2023

Analysis by the Legislative Reference Office

This resolution adopts amendments to the Emergency Management law. The Emergency Management law provides for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; to provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; to establish the use of the National Incident Management System (NIMS); and to designate authority and responsibilities for public health preparedness. [3 O.C. 302.1-1]. The amendments to the Emergency Management law will:

- Eliminate the Oneida Nation Emergency Planning Committee and replace it with an Emergency Management Operations Team. [3 O.C. 302.5-1];
- Provide that members of the Emergency Management Operations Team shall attend meetings, or send a designee in their absence, and comply with any training requirements set forth by the Emergency Management Director. [3 O.C. 302.5-3];
- Require that within forty-eight (48) hours of an emergency, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, an emergency briefing to be presented to the Oneida Business Committee regarding the status of the emergency, actions taken to address the emergency, and the activation of the Emergency Response Plan. [3 O.C. 302.8-4];
- Allow the Oneida Business Committee to direct the Emergency Management Director to provide additional emergency briefings to the Oneida Business Committee. [3 O.C. 302.8-4];
- Require that within thirty (30) days of an emergency subsiding, unless additional time is granted by the Oneida Business Committee, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, a preliminary emergency assessment report to be presented to the Oneida Business Committee, any interested entity, and the public. [3 O.C. 302.8-5];
- Extend the amount of time for the Emergency Management Director to prepare and present an after-action report to the Oneida Business Committee, any interested entity, and the public, from sixty (60) days to ninety (90) days. [3 O.C. 302.8-6].

Adoption of any legislation is required to comply with the Legislative Procedures Act ("the LPA"), which was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the

purpose of providing a standardized process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. The Emergency Management law amendments complied with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

A public meeting on the proposed amendments to the Emergency Management law was held on December 13, 2022. The public comment period was then held open until December 20, 2022. No public comments were received during the public meeting or public comment period.

The proposed amendments to the Emergency Management law will become effective on March 14, 2023.

Conclusion

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



EMERGENCY MANAGEMENT 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"> ▪ Eliminate the Oneida Nation Emergency Planning Committee and replace it with an Emergency Management Operations Team. [3 O.C. 302.5-1]; ▪ Provide that members of the Emergency Management Operations Team shall attend meetings, or send a designee in their absence, and comply with any training requirements set forth by the Emergency Management Director. [3 O.C. 302.5-3]; ▪ Require that within forty-eight (48) hours of an emergency, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, an emergency briefing to be presented to the Oneida Business Committee regarding the status of the emergency, actions taken to address the emergency, and the activation of the Emergency Response Plan. [3 O.C. 302.8-4]; ▪ Allow the Oneida Business Committee to direct the Emergency Management Director to provide additional emergency briefings to the Oneida Business Committee. [3 O.C. 302.8-4]; ▪ Require that within thirty (30) days of an emergency subsiding, unless additional time is granted by the Oneida Business Committee, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, a preliminary emergency assessment report to be presented to the Oneida Business Committee, any interested entity, and the public. [3 O.C. 302.8-5]; ▪ Extend the amount of time for the Emergency Management Director to prepare and present an after-action report to the Oneida Business Committee, any interested entity, and the public, from sixty (60) days to ninety (90) days. [3 O.C. 302.8-6].
Purpose	To provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; to provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; to establish the use of the National Incident Management System (NIMS); and to designate authority and responsibilities for public health preparedness. [3 O.C. 302.1-1]
Affected Entities	Emergency Management Operations Team, Emergency Management Director, Oneida Business Committee
Public Meeting	A public meeting was held on December 13, 2022. The public comment period was held open until December 20, 2022.
Fiscal Impact	A fiscal impact statement was provided by the Finance Administration on February 15, 2023.
Expiration of Emergency Legislation	Emergency legislation expires six (6) months after adoption and may be renewed for an additional six (6) month period. The emergency amendments to this law will expire on March 14, 2022.

SECTION 2. LEGISLATIVE DEVELOPMENT

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

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

- The Oneida Nation Emergency Planning Committee assists the Emergency Management Director in drafting and maintaining the Emergency Response Plan, and at the request of the Emergency Management Director, the Oneida Nation Emergency Planning Committee shall provide assistance to the Emergency Management Director in the implementation of the provisions of this law or any plan issued thereunder. The Oneida Nation Emergency Planning Committee shall consist of representatives from entities and a community representative as identified in the Oneida Nation Emergency Planning Committee bylaws.
- Some of the positions identified in the 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. Amendments to the Law are being sought to address the Oneida Nation Emergency Planning Committee since it is essential that direct reports and employees of those designated areas participate on this committee in order to achieve the best emergency response for the Nation.
- The emergency adoption of amendments to this Law were necessary for the preservation of the safety and general welfare of the Reservation population in order to ensure that the Nation can

adequately respond to emergencies that occur by ensuring that there is an Emergency Management Operations Team that can assist the Emergency Management Director in drafting and maintaining the Emergency Response Plan., as well as assist the Emergency Management Director in the implementation of the provisions of this law or any plan issued thereunder.

- Observance of the requirements under the Legislative Procedures Act for adoption of the emergency amendments to this Law were contrary to public interest since the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Emergency Management Operations Team can be established and prepared to aid in the emergency response prior to the next emergency occurring within the Nation.
- 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. The emergency amendments to the Emergency Management law will expire on March 14, 2023.

SECTION 3. CONSULTATION AND OUTREACH

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

- Emergency Management Department;
- General Manager; and
- Government Administrative Office.

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

- Emergency Management law; and
- Boards, Committees, and Commissions law.

SECTION 4. PROCESS

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

- On July 6, 2022, the Legislative Operating Committee added the Law to its Active Files List.
- On September 7, 2022, the Legislative Operating Committee approved the Emergency Management law emergency amendments adoption packet and forward these materials to the Oneida Business Committee for consideration.
- On September 14, 2022, the Oneida Business Committee adopted resolution BC-09-14-22-B entitled, *Emergency Amendments to the Emergency Management Law*.
- On October 5, 2022, the Legislative Operating Committee approved the draft of the proposed amendments to the Emergency Management law and directed that a legislative analysis be completed.
- On October 19, 2022, the Legislative Operating Committee approved the legislative analysis.
- On November 2, 2022, the Legislative Operating Committee approved the public meeting packet and forwarded the Emergency Management law amendments to a public meeting to be held on December 13, 2022.
- On December 13, 2022, the Legislative Operating Committee held a public meeting on the proposed amendments to the Law in the Norbert Hill Center's Executive Conference room as well as on Microsoft Teams. No one provided public comments during the public meeting. The public

comment period was held open until December 20, 2022. No written submissions of public comments were received during the public comment period.

- On January 4, 2023, the Legislative Operating Committee accepted the public comment review memorandum identifying no public comments were received.
- On January 18, 2023, the Legislative Operating Committee approved the draft, legislative analysis, and fiscal impact statement review memorandum, and forwarded these materials to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by February 15, 2023.
- On February 15, 2023, the Finance Administration provided the fiscal impact statement.

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

- July 18, 2022: Work Session with Governmental Administrative Office, General Manager, and Emergency Management Department.
- August 2, 2022: Work Session with Governmental Administrative Office, General Manager, and Emergency Management Department.
- August 25, 2022: Work Session with Governmental Administrative Office, General Manager, and Emergency Management Department.
- August 25, 2022: LOC work session.
- August 30, 2022: LOC work session with the Emergency Management Department.
- October 4, 2022: Work Session with Gaming General Manager and Staff, General Manager, Finance Administration, and the Emergency Management Director.
- November 4, 2022: Work session with Finance Administration, Gaming General Manager, Gaming Management, General Manager, Retail General Manager, Emergency Management Director.

SECTION 5. CONTENTS OF THE LEGISLATION

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

- ***Effect.*** The proposed amendments to the Law replace the Oneida Nation Emergency Planning Committee with the Emergency Management Operations Team. This revision demonstrates that the Nation is better suited with the Emergency Management Operations Team which exists not as a board, committee, or commission of the Nation, but instead as a network of different

- employee positions throughout the Nation that all have a responsibility to aid in the Nation's response to emergencies. This eliminates the previous difficulty in composing this Team to meet the needs of the Nation for an emergency response since a conflict with section 105.15-3 of the Boards, Committees, and Commissions law no longer exists, and the direct reports and employees of those designated areas can now participate on this Emergency Management Operations Team to achieve the best emergency response for the Nation.
- B. *Emergency Briefings.*** A new provision was added to the Law which requires that within forty-eight (48) hours of an emergency, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, an emergency briefing to be presented to the Oneida Business Committee regarding the status of the emergency, actions taken to address the emergency, and the activation of the Emergency Response Plan. [3 O.C. 302.8-4]. The Oneida Business Committee may then direct the Director to provide additional emergency briefings. *Id.*
- ***Effect.*** The new provision ensures that the Emergency Management Director is briefing the Oneida Business Committee on the status of the emergency, actions taken to address the emergency, and the activation of the Emergency Response Plan so that the Oneida Business Committee stays informed on an emergency occurring within the Nation in an effort to make better policy decisions and provide greater communication to the community.
- C. *Preliminary Emergency Assessment Report.*** A new provision was added to the Law which requires that after an emergency has subsided, the Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, a preliminary emergency assessment report to be presented to the Oneida Business Committee, any interested entity, and the public. [3 O.C. 302.8-5]. This report is required to be presented to the parties no later than thirty (30) days after the emergency has subsided, unless an extension is granted by the Oneida Business Committee.
- ***Effect.*** The new provision to the Law ensures the Emergency Management Director is providing the Oneida Business Committee, any interested entity, and the public with a preliminary report that reviews the Nation's response to an emergency and identifies any areas in which the response could have been improved. Providing this information in a preliminary emergency assessment report allows the Nation to be best prepared in how to improve emergency response, in case an additional emergency occurs before the full analysis of a particular emergency response can be provided in the after-action report.
- D. *Extension of the Timeframe for an After-Action Report.*** Previously, the Law provided that after an emergency has subsided, the Emergency 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 no later than sixty (60) days after the emergency has subsided, unless an extension is granted by the Oneida Business Committee. The amendments to the Law extend the timeframe for when an after-action report is required to be presented from sixty (60) days to ninety (90) days. [3 O.C. 302.8-6].
- ***Effect.*** The amendments to the Law provide the Emergency Management Director additional time to prepare an after-action report to be presented to the Oneida Business Committee, any interested entity, and the public. The Emergency Management Director informed the Legislative Operating Committee that sixty (60) days is not a sufficient time allowance to complete this report, especially when there are times that information needs to be collected from other agencies to be included in the report.

SECTION 6. EXISTING LEGISLATION

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

- *Legislative Procedures Act.* The Legislative Procedures Act was adopted by the General Tribal Council on January 7, 2013, for the purpose of providing a standard process for the adoption of laws of the Nation which includes taking into account comments from members of the Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].
- The Legislative Procedures Act provides a process for the adoption of emergency legislation when the legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population and the enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].
 - The Legislative Operating Committee is responsible for first reviewing the emergency legislation and for forwarding the legislation to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
 - The proposed emergency legislation is required to have a legislative analysis completed and attached prior to being sent to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
 - a. A legislative analysis is a plain language analysis describing the important features of the legislation being considered and factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. A legislative analysis includes a statement of the legislation's terms and substance; intent of the legislation; a description of the subject(s) involved, including any conflicts with Oneida or other law, key issues, potential impacts of the legislation and policy considerations. [1 O.C. 109.3-1(g)].
 - Emergency legislation does not require a fiscal impact statement to be completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
 - Upon the determination that an emergency exists the Oneida Business Committee can adopt emergency legislation. The emergency legislation becomes effective immediately upon its approval by the Oneida Business Committee. [1 O.C. 109.9-5(b)].
 - Emergency legislation remains in effect for a period of up to six (6) months, with an opportunity for a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].
- Adoption of these proposed emergency amendments conform with the requirements of the Legislative Procedures Act.
- *Boards, Committees, and Commissions Law.* The Boards Committees and Commissions law governs boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1].

- 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. [1 O.C. 105.15-3].
- The proposed amendments to the Law replace the Oneida Nation Emergency Planning Committee with the Emergency Management Operations Team to eliminate any conflict with section 105.15-3 of the Boards, Committees, and Commissions law.

SECTION 7. OTHER CONSIDERATIONS

- A. **Deadline for Permanent Adoption of Legislation.** The emergency amendments to the Law will expire on March 14, 2022. The emergency legislation may be renewed for an additional six (6) month period.
- *Conclusion:* The Legislative Operating Committee will need to determine if the adoption of these amendments is necessary on a permanent basis, and if so, develop the permanent amendments to this Law within the next six (6) to twelve (12) months.
- B. **Fiscal Impact.** Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures Act,*” provides further clarification on who the Legislative Operating Committee may direct complete a fiscal impact statement at various stages of the legislative process, as well as timeframes for completing the fiscal impact statement.
- *Conclusion.* The Legislative Operating Committee received a fiscal impact statement from the Finance Administration on February 15, 2023.

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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~~, amended by resolution BC-12-20-06-G, BC-05-13-09-F, ~~and~~ BC-03-10-21-A-, 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

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conditions, and including death.

(b) “Communicable disease” means any disease transmitted from one person or animal to another directly by contact with excreta or other discharges from the body, or indirectly via substances or inanimate objects that may cause a public health emergency.

(c) “Community/Public Health Officer” means an agent of the Comprehensive Health Division, or his or her designee(s), who is responsible for taking the appropriate actions in order to prevent a public health emergency from occurring on the Reservation.

(d) “Comprehensive Health Division” means the Oneida Comprehensive Health Division, which is authorized to issue compulsory vaccinations, require isolation, and quarantine individuals in order to protect the public health.

(e) “Director” means the Director of the Nation’s Emergency Management Department.

(f) “Emergency” means a situation that poses an immediate risk to health, life, safety, property, or environment which requires urgent intervention to prevent further illness, injury, death, or other worsening of the situation.

(g) “Emergency Management Network” means the entities, volunteers, consultants, contractors, outside agencies, and any other resources the Nation may use to facilitate inter-agency collaboration, identify and share resources, and better prepare for local incidents and large-scale disasters.

(h) “Emergency Response Plan” means the plan established to coordinate mitigation, preparedness, response, and recovery activities for all emergency or disaster situations within the Reservation.

(i) “Entity” means any agency, board, committee, commission, or department of the Nation.

(j) “Fair Market Value” means the everyday cost of a product in an ordinary market, absent of a disaster.

(k) “Isolation” means the separation of persons or animals presumably or actually infected with a communicable disease, or that are disease carriers, for the usual period of communicability of that disease in such places and under such conditions as will prevent the direct or indirect transmission of an infectious agent to susceptible people or to those who may spread the agent to others.

(l) “Nation” means the Oneida Nation.

(m) “National Incident Management System” or “NIMS” means the system mandated by Homeland Security Presidential Directive 5 (HSPD 5) issued on February 28, 2003, that provides a consistent nationwide approach for federal, state, local, and tribal governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.

~~(n) “Oneida Nation Emergency Planning Committee” means the committee that assists the Director in the implementation of this law.~~

~~(e)(n)~~ “Proclaim” means to announce officially and publicly.

~~(p)(o)~~ “Public Health Emergency” means the occurrence or imminent threat of an illness or health condition which:

(1) is a quarantinable disease, or is believed to be caused by bioterrorism or a biological agent; and

(2) poses a high probability of any of the following:

(A) a large number of deaths or serious or long-term disability among

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humans; or

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

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

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

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

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

302.4. Emergency Management Department

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

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

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

302.4-3. *Action when an Emergency is Proclaimed.* In addition, in the event of a proclamation of 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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302.7-4. *Authority of the Community/Public Health Officer.* The Community/Public Health Officer shall act as necessary to protect the public including, but not limited to, the following actions:

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

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

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

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

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

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

302.7-8. Expenses for necessary medical care, food, and other articles needed for an infected individual shall be charged against the individual or whoever is liable for the individual's care and 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~~ a 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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impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees; and

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

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

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

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

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

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

302.10. Enforcement and Penalties

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

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

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

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

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

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

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

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- - - -

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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, amended by resolution BC-12-20-06-G, BC-05-13-09-F, BC-03-10-21-A, and BC-__-__-__.

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

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

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

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

302.3. Definitions

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

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(b) “Communicable disease” means any disease transmitted from one person or animal to another directly by contact with excreta or other discharges from the body, or indirectly via substances or inanimate objects that may cause a public health emergency.

(c) “Community/Public Health Officer” means an agent of the Comprehensive Health Division, or his or her designee(s), who is responsible for taking the appropriate actions in order to prevent a public health emergency from occurring on the Reservation.

(d) “Comprehensive Health Division” means the Oneida Comprehensive Health Division, which is authorized to issue compulsory vaccinations, require isolation, and quarantine individuals in order to protect the public health.

(e) “Director” means the Director of the Nation’s Emergency Management Department.

(f) “Emergency” means a situation that poses an immediate risk to health, life, safety, property, or environment which requires urgent intervention to prevent further illness, injury, death, or other worsening of the situation.

(g) “Emergency Management Network” means the entities, volunteers, consultants, contractors, outside agencies, and any other resources the Nation may use to facilitate inter-agency collaboration, identify and share resources, and better prepare for local incidents and large-scale disasters.

(h) “Emergency Response Plan” means the plan established to coordinate mitigation, preparedness, response, and recovery activities for all emergency or disaster situations within the Reservation.

(i) “Entity” means any agency, board, committee, commission, or department of the Nation.

(j) “Fair Market Value” means the everyday cost of a product in an ordinary market, absent of a disaster.

(k) “Isolation” means the separation of persons or animals presumably or actually infected with a communicable disease, or that are disease carriers, for the usual period of communicability of that disease in such places and under such conditions as will prevent the direct or indirect transmission of an infectious agent to susceptible people or to those who may spread the agent to others.

(l) “Nation” means the Oneida Nation.

(m) “National Incident Management System” or “NIMS” means the system mandated by Homeland Security Presidential Directive 5 (HSPD 5) issued on February 28, 2003, that provides a consistent nationwide approach for federal, state, local, and tribal governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.

(n) “Proclaim” means to announce officially and publicly.

(o) “Public Health Emergency” means the occurrence or imminent threat of an illness or health condition which:

(1) is a quarantinable disease, or is believed to be caused by bioterrorism or a biological agent; and

(2) poses a high probability of any of the following:

(A) a large number of deaths or serious or long-term disability among humans; or

(B) widespread exposure to a biological, chemical, or radiological agent that creates a significant risk of substantial future harm to a large number of

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people.

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

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

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

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

302.4. Emergency Management Department

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

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

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

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

- (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)

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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. Emergency Management Operations Team

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

302.5-2. *Purpose.* The Emergency Management Operations Team shall meet as necessary, 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 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.

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

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

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

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

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

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

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

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

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

(a) organize the vaccination of individuals;

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

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

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

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

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

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

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

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.

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(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. *Preliminary Emergency Assessment Report.* After an emergency has subsided, the Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, a preliminary emergency assessment report to be presented to the Oneida Business Committee, any interested entity, and the public. This report shall be presented to the required parties no later than 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. 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 impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees; and

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

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

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

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

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

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

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

302.10. Enforcement and Penalties

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

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

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

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

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

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

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

End.

Adopted - BC-07-15-98-A

Amended - BC-12-20-06-G

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

Amended - BC-05-13-09-F

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

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

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

FINANCE ADMINISTRATION Fiscal Impact Statement



MEMORANDUM

To: David Jordan, LOC Chairman
 From: Keith Doxtator, CFO
 Date: February 7th, 2023
 RE: Emergency Management Law Amendments

I. Estimated Fiscal Impact Summary:

Law: Emergency Management		
Implementing Agency	Emergency Management Department	
Estimated Time to Comply	Upon adoption of the law	
Estimated Impact	Current Fiscal Year	Ten Year Estimate
Total Estimated Fiscal Impact		

II. Background:

The amendments to the Emergency Management law eliminates the Emergency Planning Committee and replaces it with an Emergency Management Operations Team. Additionally, these amendments detail Emergency Briefings and After-Action Reports assigning these responsibilities to the Director the of the Emergency Management Department.

III. Methodology and Assumptions:

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

This fiscal impact statement will review only the impact of the amendments, not the law in its entirety.

IV. Financial Impact:

Neither change presented, the Committee to Team, nor the reporting requirements present financial considerations. I have confirmed with the Emergency Management Director that no staff would need to be hired to fill out the Team, and that reporting requirements will fall wither current job duties.

V. Recommendation:

Finance Department can confirm these amendments do not produce a fiscal impact, and accordingly does not make a recommendation to adopt these amendments or not. We hope these disclosure help provide the Oneida Business Committee and General Tribal Council the information needed to render their decision.

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





Legislative Operating Committee
March 1, 2023

Election Law Emergency Amendments

Submission Date: 2/15/23	Public Meeting: N/A
LOC Sponsor: Kirby Metoxen	Emergency Enacted: N/A

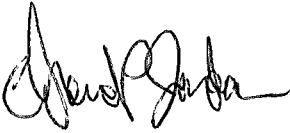
Summary: *On February 15, 2023, the Legislative Operating Committee received a request from the Oneida Election Board to consider emergency amendments to the Election law to ensure the 2023 General Election can be conducted in an efficient and lawful manner. The Nation's 2023 General Election is scheduled for July 15, 2023. The caucus for the 2023 General Election is scheduled for April 15, 2023. Section 102.10-2 of the Election Law requires that at least six (6) Election Board members sign the election totals on machine counted ballots. The Oneida Election Board provided that they do not have enough Oneida Election Board members to meet the requirement of section 102.10-2. The Oneida Election Board therefore made the request to amend the Election law on an emergency basis to reduce the number of Oneida Election Board members who are required to sign the election totals on machine counted ballots from six (6) to three (3). Then at the February 13, 2023, Oneida Election Board meeting the Election Board adopted a motion "that applicants do not turn in a petition with their application, and to request an emergency amendment to include that this request is due to the Public Health State of Emergency and due to the efficiency of the election process."*

2/15/23 LOC: Motion by Jennifer Webster to add the Election law emergency amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Cornelius. Motion carried unanimously.

Next Steps:

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



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson 
DATE: March 8, 2023
RE: Adoption of Emergency Amendments to the Election Law for the 2023 General Election

Please find the following attached backup documentation for your consideration of an emergency amendments to the Election law:

1. Resolution: Emergency Amendments to the Election Law for the 2023 General Election
2. Statement of Effect: Emergency Amendment to the Election Law for the 2023 General Election
3. Election law Emergency Amendments Legislative Analysis
4. Election law Emergency Amendments Draft (Redline)
5. Election law Emergency Amendments (Clean)

Overview

Emergency amendments to the Election law are being sought for the 2023 General Election. On February 15, 2023, the Legislative Operating Committee received a request from the Oneida Election Board to consider emergency amendments to the Election law to ensure the 2023 General Election can be conducted in an efficient and lawful manner. The Election law governs the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. [1 O.C. 102.1-1]. The emergency amendments to the Election law will:

- Allow any eligible member of the Nation to apply to be placed on the ballot for an election by submitting an official application form to the Nation's Secretary or designated agent, instead of requiring an individual to petition to be placed on the ballot by obtaining ten (10) signatures of qualified voters. [1 O.C. 102.6-3]; and
- Reduce the number of Election Board members required to sign the election totals from six (6) to three (3). [1 O.C. 102.10-2].

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

The emergency amendments to the Election law are necessary for the preservation of the general welfare of the Reservation population to ensure that the 2023 General Election can occur in an efficient and lawful manner. The 2023 General Election is scheduled for July 15, 2023. The caucus for the 2023 General Election is scheduled for April 15, 2023. Allowing an eligible member of the

Nation to apply to be placed on the ballot for an election instead of requiring a person to petition to be placed on the ballot by obtaining ten (10) signatures of qualified voters creates a more efficient and expedient application process, and eliminates the burden of public health and safety concerns as a result of a heightened cold, flu, and COVID-19 season. Additionally, the number of Election Board members required to sign the election totals is being reduced from six (6) to three (3) due to the Election Board's concern that there will not be enough Election Board members to meet the original requirement for six (6) members. The Election Board has provided that applications for the alternate positions have not yet been received, and although the Election Board will be reaching out to the people that were alternates for the 2022 Special Election, there are tentatively three (3) Election Board members that will have recuse themselves for the 2023 General Election.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of the amendments to the Election law would be contrary to public interest and the process and requirements of the Legislative Procedures Act cannot be completed in time to allow the proposed emergency amendments to be adopted and implemented prior to the April 15, 2023, caucus and the July 15, 2023, General Election.

The adoption of the emergency amendments to the Election law will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendments to the Election law will remain effective for six (6) months. The Legislative Procedures Act provides the possibility to extend the emergency amendment for an additional six (6) months, or until the emergency amendment expires or is permanently adopted. [1 O.C. 109.9-5(b)].

Requested Action

Adopt the Resolution: Emergency Amendments to the Election Law for the 2023 General Election

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # Emergency Amendments to the Election Law for the 2023 General Election

- 1 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
- 2 recognized by the laws of the United States of America; and
- 3
- 4 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- 5
- 6 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
- 7 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- 8
- 9 **WHEREAS,** the Election law ("the Law") was adopted by the General Tribal Council on June 19, 1993
- 10 for the purpose of governing the procedures for the conduct of orderly elections of the
- 11 Nation, and was most recently amended by the General Tribal Council through resolution
- 12 GTC-04-23-17-A; and
- 13
- 14 **WHEREAS,** the Oneida Election Board has requested emergency amendments to the Election law to
- 15 ensure the 2023 General Election and its pre-election activities can be conducted in an
- 16 efficient and lawful manner; and
- 17
- 18 **WHEREAS,** the 2023 General Election is scheduled for July 15, 2023, with a caucus date scheduled
- 19 for April 15, 2023; and
- 20
- 21 **WHEREAS,** as a result of the COVID-19 virus, in accordance with the authority granted to the OBC
- 22 under the Emergency Management law, on March 12, 2020, Chairman Tehassi Hill signed
- 23 a *Declaration of Public Health State of Emergency* which has since been extended to
- 24 March 19, 2023, through BC-03-26-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-
- 25 A, BC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, BC-11-10-20-A, BC-12-09-20-D, BC-
- 26 01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, and BC-05-12-21-A, BC-06-23-21-B, BC-07-
- 27 28-21-N, BC-09-22-21-A, BC-11-24-21-F, BC-01-12-22-B, BC-03-23-22-A, BC-05-11-22-
- 28 E, BC-07-13-22-F, BC-09-14-22-C, and BC-10-26-22-H, and may be extended while the
- 29 Nation continues dealing with the effects of the COVID-19 virus; and
- 30
- 31 **WHEREAS,** section 102.6-3 of the Law provides that any eligible member of the Nation not nominated
- 32 at the caucus is able to file a petition with no less than ten (10) signatures of qualified voters
- 33 to be placed on an election ballot; and
- 34
- 35 **WHEREAS,** the proposed emergency amendments to the Law will allow any eligible member of the
- 36 Nation to apply to be placed on the ballot for an election by submitting an official application
- 37 form to the Nation's Secretary or designated agent, instead of requiring an individual to
- 38 petition to be placed on the ballot by obtaining ten (10) signatures of qualified voters; and
- 39
- 40 **WHEREAS,** allowing an eligible member of the Nation to apply to be placed on the ballot for an election
- 41 instead of requiring a person to petition to be placed on the ballot by obtaining ten (10)
- 42 signatures of qualified voters creates a more efficient and expedient application process,
- 43 and eliminates the burden of public health and safety concerns as a result of a heightened
- 44 cold, flu, and COVID-19 season; and

45
46 **WHEREAS,** section 102.10-2 of the Law requires that at least six (6) Oneida Election Board members
47 sign the election totals of machine counted ballots, which shall include the tape signed by
48 the members of the Nation before the polls were opened per section 102.9-3(a); and
49
50 **WHEREAS,** the proposed emergency amendments to the Law will reduce the number of Election Board
51 members required to sign the election totals from six (6) to three (3); and
52
53 **WHEREAS,** reducing the number of Election Board members required to sign the election totals
54 addresses the Election Board's concerns that they will not have enough Oneida Election
55 Board members to meet the requirement of section 102.10-2 of the Law; and
56
57 **WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact
58 legislation on an emergency basis, to be in effect for a period of six (6) months, renewable
59 for an additional six (6) months; and
60
61 **WHEREAS,** emergency adoption of legislation is allowed when legislation is necessary for the
62 immediate preservation of the public health, safety, or general welfare of the Reservation
63 population, and the amendment of the legislation is required sooner than would be possible
64 under the Legislative Procedures Act; and
65
66 **WHEREAS,** the emergency adoption of the amendments to the Law are necessary for the preservation
67 of the general welfare of the Reservation population to ensure that the 2023 General
68 Election can occur in an efficient and lawful manner in accordance with the requirements
69 of the Election law; and
70
71 **WHEREAS,** observance of the requirements under the Legislative Procedures Act for adoption of these
72 amendments would be contrary to public interest and the process and requirements of the
73 Legislative Procedures Act cannot be completed in time to allow the proposed
74 amendments to be adopted and implemented prior to the April 15, 2023, caucus and the
75 July 15, 2023 General Election; and
76
77 **WHEREAS,** the Legislative Procedures Act does not require a public meeting or fiscal impact statement
78 when considering emergency legislation; and
79
80 **NOW THEREFORE BE IT RESOLVED,** the Oneida Business Committee hereby adopts the emergency
81 amendment to the Election Law effective immediately.



Statement of Effect

Emergency Amendments to the Election Law for the 2023 General Election

Summary

This resolution adopts emergency amendments to the Election law ensure the 2023 General Election and its pre-election activities can be conducted in an efficient and lawful manner.

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

Date: February 16, 2023

Analysis by the Legislative Reference Office

This resolution adopts emergency amendments to the Election law. The Election law governs the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. [1 O.C. 102.1-1]. The emergency amendments to the Election law will:

- Allow any eligible member of the Nation to apply to be placed on the ballot for an election by submitting an official application form to the Nation's Secretary or designated agent, instead of requiring an individual to petition to be placed on the ballot by obtaining ten (10) signatures of qualified voters. [1 O.C. 102.6-3]; and
- Reduce the number of Election Board members required to sign the election totals from six (6) to three (3). [1 O.C. 102.10-2].

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

The 2023 General Election is scheduled for July 15, 2023, with a caucus scheduled for April 15, 2023. The Oneida Election Board requested emergency amendments to the Election law to ensure that the 2023 General Election can be conducted in an efficient and lawful manner.

Section 102.6-3 of the Law provides that any eligible member of the Nation not nominated at the caucus is able to file a petition with no less than ten (10) signatures of qualified voters to be placed on an election ballot. Allowing an eligible member of the Nation to apply to be placed on the ballot for an election instead of requiring a person to petition to be placed on the ballot by obtaining ten (10) signatures of qualified voters to create a more efficient and expedient application process, as well as eliminate the burden of public health and safety concerns as a result of a heightened cold, flu, and COVID-19 season. As a result of the COVID-19 virus, in accordance with the authority granted to the OBC under the Emergency Management law, on March 12, 2020, Chairman Tehassi

Hill signed a *Declaration of Public Health State of Emergency* which set into place the necessary authority, should action need to be taken, and allows the Oneida Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. [3 O.C. 302.8-1]. The Public Health State of Emergency has since been extended to March 19, 2023, through BC-03-26-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, and BC-05-12-21-A, BC-06-23-21-B, BC-07-28-21-N, BC-09-22-21-A, BC-11-24-21-F, BC-01-12-22-B, BC-03-23-22-A, BC-05-11-22-E, BC-07-13-22-F, BC-09-14-22-C, and BC-10-26-22-H. [3 O.C. 302.8-2]. This Public Health State of Emergency may be extended while the Nation continues dealing with the effects of the COVID-19 virus.

Section 102.10-2 of the Law requires that at least six (6) Oneida Election Board members sign the election totals of machine counted ballots, which shall include the tape signed by the members of the Nation before the polls were opened per section 102.9-3(a). The reduction of the number of Election Board members required to sign the election totals from six (6) to three (3) was made due to the Election Board's concern that there will not be enough Election Board members to meet the original requirement for six (6) members.

The resolution provides that the emergency amendment to the Election law is necessary for the preservation of the general welfare of the Reservation population to ensure that the 2023 General Election can occur in an efficient and lawful manner in accordance with the requirements of the Election law. Additionally, observance of the requirements under the LPA for the adoption of the amendment to the Election law would be contrary to public interest and the process and requirements of the Legislative Procedures Act cannot be completed in time to allow the proposed amendments to be adopted and implemented prior to the April 15, 2023, caucus and the July 15, 2023 General Election.

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

Conclusion

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



ELECTION LAW EMERGENCY 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">Allow any eligible member of the Nation to apply to be placed on the ballot for an election by submitting an official application form to the Nation's Secretary or designated agent, instead of requiring an individual to petition to be placed on the ballot by obtaining ten (10) signatures of qualified voters. [1 O.C. 102.6-3]; andReduce the number of Election Board members required to sign the election totals of machine counted ballots from six (6) to three (3) members. [1 O.C. 102.10-2].
Purpose	To govern the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. [1 O.C. 102.1-1]
Affected Entities	Oneida Nation Election Board.
Public Meeting	A public meeting is not required for emergency legislation. [1 O.C. 109.8-1(b) and 109.9-5(a)].
Fiscal Impact	A fiscal impact statement is not required for emergency legislation. [1 O.C. 109.9-5(a)].
Expiration of Emergency Legislation	Emergency legislation expires six (6) months after adoption and may be renewed for an additional six (6) month period.

SECTION 2. LEGISLATIVE DEVELOPMENT

A. Background. The Election law was first adopted on June 19, 1993, and most recently amended by the General Tribal Council on April 23, 2017. The Law governs the procedures for the conduct of orderly elections of the Nation. [1 O.C. 102.1-1].

B. Request for Emergency Amendments. On February 15, 2023, the Legislative Operating Committee received a request from the Oneida Election Board to consider emergency amendments to the Election law to ensure the 2023 General Election can be conducted in an efficient and lawful manner.

- The Nation's 2023 General Election is scheduled for July 15, 2023. The caucus for the 2023 General Election is scheduled for April 15, 2023.
- Section 102.10-2 of the Election Law requires that at least six (6) Election Board members sign the election totals on machine counted ballots. The Oneida Election Board provided that they do not have enough Oneida Election Board members to meet the requirement of section 102.10-2. The Oneida Election Board therefore made the request to amend the Election law on an emergency basis to reduce the number of Oneida Election Board members who are required to sign the election totals on machine counted ballots from six (6) to three (3).
- Then at the February 13, 2023, Oneida Election Board meeting the Election Board adopted a motion "that applicants do not turn in a petition with their application, and to request an emergency amendment to include that this request is due to the Public Health State of Emergency and due to the efficiency of the election process."

- The Legislative Operating Committee determined these amendments should be pursued on an emergency basis for the immediate preservation of the general welfare of the Reservation population.

SECTION 3. CONSULTATION AND OUTREACH

- Representatives from the following departments or entities participated in the development of this Law and legislative analysis:
 - Oneida Election Board.

SECTION 4. PROCESS

- B.** These amendments are being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency legislation where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the Reservation population and enactment or amendment of legislation is required sooner than would be possible under this law. *[1 O.C. 109.9-5]*.
- The emergency adoption of amendments to this Law are necessary for the preservation of the general welfare of the Reservation population in order to ensure that the 2023 General Election can occur in an efficient and lawful manner.
 - Observance of the requirements under the Legislative Procedures Act for adoption of the emergency amendments to this Law would be contrary to public interest and the process and requirements of the Legislative Procedures Act cannot be completed in time to allow the proposed emergency amendments to be adopted and implemented prior to the April 15, 2023, caucus and the July 15, 2023, General Election.
- C.** The emergency amendments will expire six (6) months after adoption, with one (1) opportunity for a six (6) month extension of the emergency amendments. *[1 O.C. 109.9-5(b)]*.
- D.** The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation. *[1 O.C. 109.9-5(a)]*. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of this Law.
- E.** The Legislative Operating Committee added these emergency amendments to the Active Files List on February 15, 2023.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. *Application Process to be Placed on Ballot.*** In the currently effective version of the Law, any eligible member of the Nation may petition to be placed on a ballot. *[1 O.C. 102.6-3]*. Each petitioner not nominated at the caucus, or an individual nominated at the caucus but not present to accept the nomination, is required to file a petition form containing the signatures of at least ten (10) qualified voters as well as the endorsee's printed name and address, date of birth, Oneida Nation enrollment number. A qualified voter is an enrolled member of the Nation who is eighteen (18) years of age or older. *[1 O.C. 102.3-20]*. The proposed amendments to the Law remove the requirement for an eligible member of the Nation to petition to be placed on the ballot and obtain signatures, and instead simply requires that in order to be placed on the ballot an eligible member submits an application form that consists of information that satisfies the minimum requirements for eligible candidates as described in section 102.5-2 of the Law. *[1 O.C. 102.6-3(a)-(b)]*. Obtaining signatures of qualified voters is no

longer required. The requirement that applications be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus remains the same as the current deadline for petitions. [1 O.C. 102.6-3(c)]. The location to drop-off petitions applications shall be identified in the mailing identifying the caucus date. *Id.* The proposed emergency amendments provide that the Nation's Secretary is then responsible for forwarding all applications to the Election Board Chairperson the next business day following the close of application submissions, as is currently provided for in the Law for petitions. [1 O.C. 102.6-3(d)].

- *Effect.* The caucus for the 2023 General Election is scheduled for April 15, 2023. Allowing an eligible member of the Nation to apply to be placed on the ballot for an election instead of requiring a person to petition to be placed on the ballot by obtaining ten (10) signatures of qualified voters creates a more efficient and expedient application process, as well as eliminates the burden of public health and safety concerns as a result of a heightened cold, flu, and COVID-19 season. All applications to be placed on the ballot will be due to the Nation's Secretary by Friday, April 21, 2023.
- As a result of the COVID-19 virus, in accordance with the authority granted to the OBC under the Emergency Management law, on March 12, 2020, Chairman Tehassi Hill signed a Declaration of Public Health State of Emergency which has since been extended to March 19, 2023, through BC-03-26-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, and BC-05-12-21-A, BC-06-23-21-B, BC-07-28-21-N, BC-09-22-21-A, BC-11-24-21-F, BC-01-12-22-B, BC-03-23-22-A, BC-05-11-22-E, BC-07-13-22-F, BC-09-14-22-C, and BC-10-26-22-H, and may be extended while the Nation continues dealing with the effects of the COVID-19 virus

B. Election Board Members Signature on Machine Counted Ballots. The proposed amendments lower the number of Oneida Election Board members that are required sign the election totals for machine counted ballots, which includes the tape signed by the members of the Nation before the polls were opened, from six (6) to three (3). [1 O.C. 102.10-2].

- *Effect.* This emergency amendment was made to the Law based on the Election Board's concern that there will not be enough Election Board members to meet the original requirement of section 102.10-2 for six (6) members to sign the election totals. The Election Board has provided that applications for the alternate positions have not yet been received, and although the Election Board will be reaching out to the people that were alternates for the 2022 Special Election, there are tentatively three (3) Election Board members that will have recuse themselves for the 2023 General Election.

SECTION 6. EXISTING LEGISLATION

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

- *Legislative Procedures Act.* The Legislative Procedures Act was adopted by the General Tribal Council on January 7, 2013, for the purpose of providing a standard process for the adoption of laws of the Nation which includes taking into account comments from members of the Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].

- The Legislative Procedures Act provides a process for the adoption of emergency legislation when the legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population and the enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].
 - The Legislative Operating Committee is responsible for first reviewing the emergency legislation and for forwarding the legislation to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
 - The proposed emergency legislation is required to have a legislative analysis completed and attached prior to being sent to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
 - a. A legislative analysis is a plain language analysis describing the important features of the legislation being considered and factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. A legislative analysis includes a statement of the legislation's terms and substance; intent of the legislation; a description of the subject(s) involved, including any conflicts with Oneida or other law, key issues, potential impacts of the legislation and policy considerations. [1 O.C. 109.3-1(g)].
 - Emergency legislation does not require a fiscal impact statement to be completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
 - Upon the determination that an emergency exists the Oneida Business Committee can adopt emergency legislation. The emergency legislation becomes effective immediately upon its approval by the Oneida Business Committee. [1 O.C. 109.9-5(b)].
 - Emergency legislation remains in effect for a period of up to six (6) months, with an opportunity for a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].
- Adoption of these proposed emergency amendments would conform with the requirements of the Legislative Procedures Act.

SECTION 7. OTHER CONSIDERATIONS

- A. *Deadline for Permanent Adoption of Legislation.*** The adoption of emergency amendments to the Law expires six (6) months after adoption. The emergency legislation may be renewed for an additional six (6) month period.
- *Conclusion:* The Legislative Operating Committee will need to determine if the adoption of these amendments is necessary on a permanent basis, and if so, develop the permanent amendments to this Law within the next six (6) to twelve (12) months.
- B. *Fiscal Impact.*** A fiscal impact statement is not required for emergency legislation.
- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

Title 1. Government and Finances - Chapter 102**ELECTION****Onayote'a'ká· Tho Ni· Yót Tsi? Ayethiyataláko Tsi? Kayanl'hsila***People of the Standing Stone how it is we will appoint them the kind of laws we have*

102.1. Purpose and Policy

102.2. Adoption, Amendment, Repeal

102.3. Definitions

102.4. Election Board

102.5. Candidate Eligibility

102.6. Selection of Candidates

102.7. Notice of Polling Places

102.8. Registration of Voters

102.9. Election Process

102.10. Tabulating and Securing Ballots

102.11. Election Outcome and Ties

102.12. Elections

102.13. Oneida Nation Constitution and By-law Amendments

102.1. Purpose and Policy

102.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. Because of the desire for orderly and easily understood elections, there has not been an allowance made for write-in candidates on ballots.

102.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

102.2. Adoption, Amendment, Repeal

102.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-98-A ~~and~~, amended by resolutions GTC-01-04-10-A, BC-02-25-15-C and GTC-04-23-17-A, ~~and~~ emergency amended by resolution BC- - - -.

102.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding amendments to this law and policies adopted regarding implementation of this law are to be presented to the Business Committee who shall then adopt or forward action(s) to the General Tribal Council for adoption.

102.2-3. 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.

102.2-4. 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.

102.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

102.3. Definitions

102.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

102.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

102.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for acceptance on a ballot.

102.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding holidays of the Nation.

102.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to support or reject a particular candidate of the Nation including, without limitation, advertising, rallying, public speaking, or other communications with members of the Nation.

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102.3-6. “Candidate” shall mean a ~~petitioner or~~ nominee or applicant for an elected position whose name is placed on the ballot by the Election Board after successful application.

102.3-7. “Clerk” shall mean the election official who identifies proper registration for the purpose of determining voter eligibility.

102.3-8. “Close of business” shall mean 4:30 p.m. Monday through Friday.

102.3-9. “Conflict of Interest” shall mean any interest, whether it be personal, financial, political or otherwise, in which a Nation elected official, employee, consultant, appointed or elected, member of any board, committee or commission, or their immediate relatives, friends or associates, or any other person with whom they have contact, that conflicts with any right of the Nation to property, information, or any other right to own and operate its enterprises, free from undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in any law or policy of the Nation.

102.3-10. “Election” shall mean every primary and election.

102.3-11. “General election” shall mean the election held every three (3) years in July to elect the Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the Business Committee and may include contests for elected boards, committees and commissions positions.

102.3-12. “Judge” shall mean the election official who informs and advises the Chairperson of discrepancies, complaints and controversy regarding voter eligibility.

102.3-13. “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

102.3-14. “Lot drawing” shall mean the equal chance method used to select a candidate as the winner of an elected position, in the case of a tie between two (2) or more candidates.

102.3-15. “Nation” means the Oneida Nation.

102.3-16. “Nation’s newspaper” shall mean the Kalihwisaks, or any other newspaper operated by the Nation for the benefit of transmitting news to members of the Nation, which is designated by the Election Board as a source for election related news.

102.3-17. “Oneida Police Officer” shall mean an enrolled member of the Oneida Nation who is a police officer on any police force.

102.3-18. “Private property” shall mean any lot of land not owned by the Nation, a residential dwelling or a privately owned business within the boundaries of the Reservation.

102.3-19. “Prominent locations” shall mean the polling places, main doors of the Norbert Hill Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the SEOTS building and all One-Stop locations.

102.3-20. “Qualified voter” shall mean an enrolled member of the Nation who is eighteen (18) years of age or older.

102.3-21. “Rejected Ballots” shall mean those ballots which are rejected by the vote tabulating machine.

102.3-22. “Spoiled Ballot” shall mean a ballot which contains a voter error or is otherwise marred and is not tabulated.

102.3-23. “Teller” shall mean the election official in charge of collecting and storing of all ballots.

102.4. Election Board

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Section A. Establishment, Composition and Election

102.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.

102.4-2. The Election Board shall consist of nine (9) elected members. All members shall be elected to terms of three (3) years, not to exceed two (2) consecutive terms.

102.4-3. *Recusal.* An Election Board member shall recuse himself/herself from participating as an Election Board member in any pre-election, election day, or post-election activities while he or she is an ~~petitioner~~, applicant or candidate in any election or there is otherwise a conflict of interest.

102.4-4. *Removal.* Removal of members shall be pursuant to the Oneida Removal Law. A member who is removed from the Election Board shall be ineligible to serve on the Board for three (3) years from the time he or she is removed from the Election Board.

102.4-5. *Vacancies.* Any vacancy in an unexpired term shall be filled by appointment by the Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed to correspond with the pre-election activities and the needs of the Election Board.

102.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

102.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to the Election Board, as recommended by the Election Board, to assist with election day and pre-election activities.

102.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in the By-laws of the Election Board, to preside over the meetings. This selection shall be carried out at the first meeting of the Election Board following an election. The Chairperson shall then ask the Election Board to select a Vice-Chairperson and Secretary.

Section B. Duties of the Election Board

102.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.

- (a) The Election Board shall be in charge of all registration and election procedures; and
- (b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

Section C. Specific Duties of Officers and Election Board Members

102.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:

- (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 102.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.
- (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.
- (c) Secretary: Shall keep a record of the meetings and make them available to the Nation's Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.
- (d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment

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Department personnel in the registration process, and assist the Chairperson as directed in conducting the election. Clerks cannot be currently employed by the Trust Enrollment Department.

(e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.

(f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between members of the Nation and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

Section D. Compensation Rates

102.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee. The Election Board shall have a budget, approved through the Nation's budgeting process.

102.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

102.5. Candidate Eligibility

Section A. Requirements

102.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted by-laws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.

102.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:

- (a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.
- (b) be a qualified voter on the day of the election.
- (c) provide proof of physical residency as required for the position for which they have been nominated or for which they have ~~petitioned~~applied. Proof of residency may be through one (1) or more of the following:
 - (1) a valid Wisconsin driver's license;
 - (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;
 - (3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

102.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election.

102.5-4. Applications ~~and petitions where the applicant was not nominated during caucus~~ shall be filed by presenting the information to the Nation's Secretary, or designated agent, during normal business hours, 8:00 a.m. to 4:30 p.m. Monday through Friday, within five (5) business days after the caucus. No mailed, internal Nation mail delivery, faxed or other delivery method shall be accepted.

102.5-5. The names of the candidates and the positions sought shall be a public record and made

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available to the public upon the determination of eligibility by the Election Board or the Board's designated agent.

Section B. Eligibility Review

102.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal. At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall select the hearing body. The hearing shall be held within two (2) business days of receipt of the appeal. The applicant shall be notified by phone of time and place of the hearing. The decision of the hearing body shall be sent via certified mail or hand delivery within two (2) business days of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the Judiciary on an accelerated schedule.

102.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a nominated or ~~petitioned~~ an applied for position shall be notified by certified mail return receipt requested. The notice shall provide the following information:

- (a) Position for which they were considered
- (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
- (c) A brief summary explaining why the applicant was found to be ineligible.
- (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or other delivery method will be accepted.

Section C. Campaign Financing

102.5-8. Contributions:

- (a) Solicitation of Contributions by Candidates.
 - (1) Candidates shall only accept contributions from individuals who are members of the Nation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.
 - (2) Candidates shall not solicit or accept contributions in any office or business/facility of the Nation.
- (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

102.5-9. Campaign Signs and Campaigning:

- (a) Placement of campaign signs:
 - (1) Campaign signs shall not be posted or erected on any property of the Nation except for private property with the owner/tenant's permission.
 - (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.
 - (3) No campaign sign shall project beyond the property line into the public right of way.
- (b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.

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(c) Employees of the Nation shall not engage in campaigning for offices of the Nation during work hours. The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.

(d) Enforcement. The Zoning Administrator shall cause to be removed any campaign signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.

(e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

Section D. Candidate Withdrawal

102.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.

102.5-11 After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.

102.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.

102.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.

102.5-14. *Candidate Withdrawal After Winning an Election.*

(a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

102.6. Selection of Candidates

Section A. Setting of Caucus

102.6-1. The Election Board shall be responsible for calling a caucus before any election is held. The caucus for the general election shall be held at least ninety (90) calendar days prior to the election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior to the election date. In a general election year, caucuses shall be combined so that candidates for the Business Committee and elected boards, committees and commissions are nominated at the same caucus.

102.6-2. The procedures for the caucus shall be as follows:

(a) Candidates shall be nominated from the floor.

(b) Candidates present at the caucus will accept/decline their nomination at the caucus. Candidates nominated at the caucus, but not present to accept the nomination, shall be required to follow the ~~petition~~ application process.

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(c) Nominations shall consist of the following positions: Chairperson, Vice-Chairperson, Treasurer, Secretary, Council Member and other elected positions as required by by-laws or creating documents of a board, committee, or commission.

Section B. Petition Application

102.6-3. Any eligible member of the Nation may apply petition to be placed on a ballot according to the following procedures:

(a) ~~Each petitioner, not nominated at caucus, shall file a petition containing endorsee's original signatures; photocopies shall not be accepted~~ Applicants .

(b) ~~Petitioners~~ shall use an official petition application form as designated by this law which may be obtained in the Office of the Nation's Secretary or from the mailing for that caucus.

(c) The petition application form shall consist of ~~each endorsee's:~~

(1) ~~printed name and address;~~

(2) ~~date of birth;~~

(3) ~~Oneida Nation Enrollment Number; and~~

(4) ~~signature.~~

(d) ~~Petitioners shall obtain not less than ten (10) signatures of qualified voters as defined under this law~~ information that satisfies the minimum requirements for eligible candidates, as described in section 102.5-2 of this law.

(e) ~~Petitions~~ Applications shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus. The location to drop-off petitions applications shall be identified in the mailing identifying the caucus date.

(f) The Nation's Secretary shall forward all petitions applications to the Election Board Chairperson the next business day following the close of petition application submissions.

(g) ~~The Election Board shall have the Trust Enrollment Department verify all signatures contained on the petition.~~

102.6-4. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

102.7. Notice of Polling Places

102.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of the Nation's businesses/facilities.

102.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.

102.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing.

102.7-4. Notice of the election shall be placed in the Nation's newspaper.

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102.8. Registration of Voters

Section A. Requirements

102.8-1. *Registration of Voters.* All enrolled members of the Nation, who are eighteen (18) years of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the Oneida Nation Constitution.

Section B. Identification of Voters

102.8-2. All voters must present one of the following picture identifications in order to be able to vote:

- (a) Oneida Nation I.D.
- (b) Drivers License.
- (c) Other I.D. with name and photo.

Section C. Registration Procedures

102.8-3. Voters shall physically register, on the day of the election, at the polls.

102.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election Officials during the voting period.

102.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration Form containing the voter's following information:

- (a) name and maiden name (if any);
- (b) current address;
- (c) date of birth; and
- (d) enrollment number.

Section D. Qualification/Verification of Voter Eligibility

102.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote, the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with the Trust Enrollment Department personnel who are registering voters, to decide the voting member's eligibility currently being questioned and shall make such decisions from the facts available, whether the applicant is, in fact, qualified/verifiable under the Oneida Nation Constitution, Article III Section 2, to vote in the Nation's elections.

102.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of the voter shall be written next to a numbered list which corresponds to the numbered and sealed envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they desire to challenge the decision made by the Election Officials. The Election Board shall make a final decision, within five (5) business days of receiving the appeal and shall report this decision in the final report sent to the Oneida Business Committee.

102.9. Election Process

Section A. Polling Places and Times

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102.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections shall be held in the month of July on a date set by the General Tribal Council. The General Tribal Council shall set the election date at the January annual meeting, or at the first GTC meeting held during a given year. Special Elections shall be set in accordance with 102.12-6.

102.9-2. Elections shall be held in an Oneida Nation facility(s) as determined by the Election Board.

102.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.

(a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four

(4) members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.

102.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.

102.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such that there is an area with at least two sides and a back enclosure.

102.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of the voting area, excluding private property.

102.9-7. No one causing a disturbance shall be allowed in the voting area.

102.9-8. Election Board members may restrict the voting area to qualified voters only. This restriction is in the interest of maintaining security of the ballots and voting process.

Section B. Ballot Box

102.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and shall be locked until counting at the close of polls. Provided that, with electronic ballot counting, the ballots may be placed within the ballot counting machine as they are received.

Section C. Spoiled Ballots

102.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

102.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."

102.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) calendar days following finalization of any challenge of the election, at the Records Management Department.

Section D. Rejected Ballots

102.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

(a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 102.9-10 through 102.9-12.

(b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

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102.10. Tabulating and Securing Ballots

Section A. Machine Counted Ballots

102.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.

102.10-2. At least ~~six (6)~~three (3) Election Board members shall sign the election totals, which shall include the tape signed by the members of the Nation before the polls were opened per section 102.9-3(a).

Section B. Manually Counted Ballots

102.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.

102.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall be secured in a sealed container for transportation to the ballot counting location. The sealed ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.

102.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.

102.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

Section C. Securing Ballots

102.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

102.11. Election Outcome and Ties

Section A. Election Results Announcement

102.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain the following statement:

"The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"

102.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation's newspaper, the tentative results of an election.

Section B. Tie

102.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of

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the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.

102.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.

(a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.

(b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.

(c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

Section C. Recount Procedures

102.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the office of the Nation's Secretary, or noticed designated agent, within five (5) business days after the election. Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.

102.11-6. The Election Board shall respond by the close of business on the fifth (5th) day after the request regarding the results of the recount. Provided that, no recount request need be honored where there have been two (2) recounts completed as a result of a request either as a recount of the whole election results, or of that sub-section.

102.11-7. All recounts shall be conducted manually with, if possible, the original Election Officials and Oneida Police Officer present, regardless of the original type of counting process. Manual recounts may, at the discretion of the Election Officials, be of the total election results, or of the challenged sub-section of the election results.

102.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed container with the ballots from the Records Management Department and transporting it to the ballot recounting location.

102.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election Board Chairperson and an Oneida Police Officer shall witness the recount.

102.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be

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counted until two (2) final tallies are equal in back to back counting and the total count of ballots reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.

(a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.

(b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

Section D. Challenges and Declaration of Results

102.11-11. *Challenges.* Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.

(a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.

(b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.

102.11-12. *The Final Report.* The Election Board shall forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:

(a) Total number of persons voting.

(b) Total votes cast for each candidate by subsection of the ballot.

(c) List of any ties and final results of those ties, including the method of resolution.

(d) List of candidates elected and position elected to.

(e) Number of spoiled ballots.

(f) Cost of the election, including the compensation paid to each Election Board member.

102.11-13. *Declaration of Results.* The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.

102.11-14. Candidates elected to the Business Committee shall resign from any salaried position effective prior to taking a Business Committee oath of office

102.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.

(a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

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102.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

102.12. Elections*Section A. Primary Elections; Business Committee*

102.12-1. When a primary is required under 102.12-2, it shall be held on a Saturday at least sixty (60) calendar days prior to the election.

102.12-2. There shall be a primary election for Business Committee positions whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-large council member positions.

(a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.

(b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.

(c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.

102.12-3. The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary by the [petitioning application](#) deadline set for the primary.

102.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 102.5-11 and 102.5-12 shall be followed, including the requirement to print a notice in the Nation's newspaper if time lines allow.

Section B. Special Elections

102.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as defined in this law, may be placed on the same ballot as the subject matter of an election.

102.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business Committee as recommended by the Election Board or as ordered by the Judiciary in connection with an election challenge.

102.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the Special Election.

102.12-8. In the event of an emergency, the Election Board may reschedule the election, provided that no less than twenty-four (24) hours notice of the rescheduled election date is given to the voters, by posting notices in the prominent locations.

Section C. Referendums

102.12-9. Registered voters may indicate opinions on any development, law or resolution, proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special referendum election.

(a) Referendum elections in which a majority of the qualified voters who cast votes shall

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be binding on the Business Committee to present the issue for action/decision at General Tribal Council.

(b) Referendum requests may appear on the next called for election.

(c) Referendum questions are to be presented to the Nation's Secretary, in writing, at the caucus prior to election, regarding issues directly affecting the Nation or general membership.

Section D. Initiation of Special Elections

102.12-10. Special Elections may be initiated by a request or directive of the General Tribal Council or the Oneida Business Committee.

102.12-11. Special Election may be requested by a member of the Nation to the Business Committee or General Tribal Council.

102.12-12. All Special Elections shall follow rules established for all other elections. This includes positions for all Boards, Committees and Commissions.

102.13. Oneida Nation Constitution and By-law Amendments

102.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.

(a) Qualified voters may request a petition form from the Office of the Nation's Secretary.

(b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures currently required for a petition submittal, which shall be ten percent (10%) of all members qualified to vote on the date the petition form is requested from the Office of the Nation's Secretary. When the Nation's Secretary receives the calculation from the Trust Enrollment Department, the Nation's Secretary shall provide the requester with the petition form and the number of signatures that are currently required.

(c) Such petitions shall be circulated with all supporting materials and submitted a minimum of ninety (90) days prior to the election at which the proposed amendment is to be voted upon. If a petition includes supporting materials in addition to the petition form, each qualified voter signing the petition shall also acknowledge that the supporting materials were available for review at the time he or she signed the petition by initialing where required on the petition form.

(d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment Department for verification of signatures and to the Election Board to provide notice that the petition may need to be placed on an upcoming ballot.

(e) If the petition is verified by the Trust Enrollment Department to contain signatures from at least ten percent (10%) of all qualified voters, the Election Board shall make an official announcement of the proposed amendments to the Oneida Nation Constitution at least sixty

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(60) days prior to the election at which the proposed amendments are to be voted on.

102.13-2. The Election Board shall place any proposed amendments to the Oneida Nation Constitution that meet the requirements contained in 102.13-1 on the ballot at the next general election. Provided that, the Oneida Business Committee or General Tribal Council may order a special election be held to consider the proposed amendments. In such circumstances, the Election Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot at the next special election.

102.13-3. The Election Board shall publish any proposed amendments by publishing a sample ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently posted in each polling place and at administrative offices of the Nation and shall also be published in official Oneida media outlets, which the Oneida Business Committee shall identify by resolution. For the purposes of this section, Oneida administrative offices means the location where the Oneida Business Committee conducts business.

102.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a true and impartial statement and is written in such a manner that does not create prejudice for or against the proposed amendment.

102.13-5. Pursuant to Article VI, Section 3 of the Oneida Nation Constitution, proposed amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that amendment shall become part of the Constitution and By-laws, and shall abrogate or amend existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission of the final election report.

102.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the amendment receiving the highest affirmation vote prevails.

End.

Adopted - June 19, 1993

Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)

Presented for Adoption of 1997 Revisions - GTC-7-6-98-A

Amended- October 11, 2008 (General Tribal Council Meeting)

Amended-GTC-01-04-10-A

Amended – BC-02-25-15-C

Amended – GTC-04-23-17-A

Emergency Amended – BC-03-17-20-B

Emergency Amended – BC-05-13-20-H

Emergency Amended – BC-06-24-20-B (Expired at Conclusion of 2020 General Election)

Emergency Amended – BC-04-28-21-B (Expired)

Emergency Amended – BC-07-13-22-E

Emergency Amended – BC-12-28-22-B

Emergency Amended – BC- - - -

Title 1. Government and Finances - Chapter 102**ELECTION****Onayote'a'ká· Tho Ni· Yót Tsi? Ayethiyataláko Tsi? Kayanl'hsila***People of the Standing Stone how it is we will appoint them the kind of laws we have*

102.1. Purpose and Policy

102.2. Adoption, Amendment, Repeal

102.3. Definitions

102.4. Election Board

102.5. Candidate Eligibility

102.6. Selection of Candidates

102.7. Notice of Polling Places

102.8. Registration of Voters

102.9. Election Process

102.10. Tabulating and Securing Ballots

102.11. Election Outcome and Ties

102.12. Elections

102.13. Oneida Nation Constitution and By-law Amendments

102.1. Purpose and Policy

102.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. Because of the desire for orderly and easily understood elections, there has not been an allowance made for write-in candidates on ballots.

102.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

102.2. Adoption, Amendment, Repeal

102.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-98-A, amended by resolutions GTC-01-04-10-A, BC-02-25-15-C and GTC-04-23-17-A, and emergency amended by resolution BC-__-__-__.

102.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding amendments to this law and policies adopted regarding implementation of this law are to be presented to the Business Committee who shall then adopt or forward action(s) to the General Tribal Council for adoption.

102.2-3. 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.

102.2-4. 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.

102.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

102.3. Definitions

102.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

102.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

102.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for acceptance on a ballot.

102.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding holidays of the Nation.

102.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to support or reject a particular candidate of the Nation including, without limitation, advertising, rallying, public speaking, or other communications with members of the Nation.

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102.3-6. “Candidate” shall mean a nominee or applicant for an elected position whose name is placed on the ballot by the Election Board after successful application.

102.3-7. “Clerk” shall mean the election official who identifies proper registration for the purpose of determining voter eligibility.

102.3-8. “Close of business” shall mean 4:30 p.m. Monday through Friday.

102.3-9. “Conflict of Interest” shall mean any interest, whether it be personal, financial, political or otherwise, in which a Nation elected official, employee, consultant, appointed or elected, member of any board, committee or commission, or their immediate relatives, friends or associates, or any other person with whom they have contact, that conflicts with any right of the Nation to property, information, or any other right to own and operate its enterprises, free from undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in any law or policy of the Nation.

102.3-10. “Election” shall mean every primary and election.

102.3-11. “General election” shall mean the election held every three (3) years in July to elect the Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the Business Committee and may include contests for elected boards, committees and commissions positions.

102.3-12. “Judge” shall mean the election official who informs and advises the Chairperson of discrepancies, complaints and controversy regarding voter eligibility.

102.3-13. “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

102.3-14. “Lot drawing” shall mean the equal chance method used to select a candidate as the winner of an elected position, in the case of a tie between two (2) or more candidates.

102.3-15. “Nation” means the Oneida Nation.

102.3-16. “Nation’s newspaper” shall mean the Kalihwisaks, or any other newspaper operated by the Nation for the benefit of transmitting news to members of the Nation, which is designated by the Election Board as a source for election related news.

102.3-17. “Oneida Police Officer” shall mean an enrolled member of the Oneida Nation who is a police officer on any police force.

102.3-18. “Private property” shall mean any lot of land not owned by the Nation, a residential dwelling or a privately owned business within the boundaries of the Reservation.

102.3-19. “Prominent locations” shall mean the polling places, main doors of the Norbert Hill Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the SEOTS building and all One-Stop locations.

102.3-20. “Qualified voter” shall mean an enrolled member of the Nation who is eighteen (18) years of age or older.

102.3-21. “Rejected Ballots” shall mean those ballots which are rejected by the vote tabulating machine.

102.3-22. “Spoiled Ballot” shall mean a ballot which contains a voter error or is otherwise marred and is not tabulated.

102.3-23. “Teller” shall mean the election official in charge of collecting and storing of all ballots.

102.4. Election Board

Section A. Establishment, Composition and Election

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102.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.

102.4-2. The Election Board shall consist of nine (9) elected members. All members shall be elected to terms of three (3) years, not to exceed two (2) consecutive terms.

102.4-3. *Recusal.* An Election Board member shall recuse himself/herself from participating as an Election Board member in any pre-election, election day, or post-election activities while he or she is an applicant or candidate in any election or there is otherwise a conflict of interest.

102.4-4. *Removal.* Removal of members shall be pursuant to the Oneida Removal Law. A member who is removed from the Election Board shall be ineligible to serve on the Board for three (3) years from the time he or she is removed from the Election Board.

102.4-5. *Vacancies.* Any vacancy in an unexpired term shall be filled by appointment by the Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed to correspond with the pre-election activities and the needs of the Election Board.

102.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

102.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to the Election Board, as recommended by the Election Board, to assist with election day and pre-election activities.

102.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in the By-laws of the Election Board, to preside over the meetings. This selection shall be carried out at the first meeting of the Election Board following an election. The Chairperson shall then ask the Election Board to select a Vice-Chairperson and Secretary.

Section B. Duties of the Election Board

102.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.

- (a) The Election Board shall be in charge of all registration and election procedures; and
- (b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

Section C. Specific Duties of Officers and Election Board Members

102.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:

- (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 102.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.
- (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.
- (c) Secretary: Shall keep a record of the meetings and make them available to the Nation's Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.
- (d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment Department personnel in the registration process, and assist the Chairperson as directed in

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conducting the election. Clerks cannot be currently employed by the Trust Enrollment Department.

(e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.

(f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between members of the Nation and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

Section D. Compensation Rates

102.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee. The Election Board shall have a budget, approved through the Nation's budgeting process.

102.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

102.5. Candidate Eligibility

Section A. Requirements

102.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted by-laws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.

102.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:

- (a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.
- (b) be a qualified voter on the day of the election.
- (c) provide proof of physical residency as required for the position for which they have been nominated or for which they have applied. Proof of residency may be through one (1) or more of the following:
 - (1) a valid Wisconsin driver's license;
 - (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;
 - (3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

102.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election.

102.5-4. Applications shall be filed by presenting the information to the Nation's Secretary, or designated agent, during normal business hours, 8:00 a.m. to 4:30 p.m. Monday through Friday, within five (5) business days after the caucus. No mailed, internal Nation mail delivery, faxed or other delivery method shall be accepted.

102.5-5. The names of the candidates and the positions sought shall be a public record and made available to the public upon the determination of eligibility by the Election Board or the Board's designated agent.

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Section B. Eligibility Review

102.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal. At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall select the hearing body. The hearing shall be held within two (2) business days of receipt of the appeal. The applicant shall be notified by phone of time and place of the hearing. The decision of the hearing body shall be sent via certified mail or hand delivery within two (2) business days of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the Judiciary on an accelerated schedule.

102.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a nominated or an applied for position shall be notified by certified mail return receipt requested. The notice shall provide the following information:

- (a) Position for which they were considered
- (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
- (c) A brief summary explaining why the applicant was found to be ineligible.
- (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or other delivery method will be accepted.

Section C. Campaign Financing

102.5-8. Contributions:

- (a) Solicitation of Contributions by Candidates.
 - (1) Candidates shall only accept contributions from individuals who are members of the Nation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.
 - (2) Candidates shall not solicit or accept contributions in any office or business/facility of the Nation.
- (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

102.5-9. Campaign Signs and Campaigning:

- (a) Placement of campaign signs:
 - (1) Campaign signs shall not be posted or erected on any property of the Nation except for private property with the owner/tenant's permission.
 - (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.
 - (3) No campaign sign shall project beyond the property line into the public right of way.
- (b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.

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(c) Employees of the Nation shall not engage in campaigning for offices of the Nation during work hours. The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.

(d) Enforcement. The Zoning Administrator shall cause to be removed any campaign signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.

(e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

Section D. Candidate Withdrawal

102.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.

102.5-11 After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.

102.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.

102.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.

102.5-14. Candidate Withdrawal After Winning an Election.

(a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

102.6. Selection of Candidates

Section A. Setting of Caucus

102.6-1. The Election Board shall be responsible for calling a caucus before any election is held. The caucus for the general election shall be held at least ninety (90) calendar days prior to the election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior to the election date. In a general election year, caucuses shall be combined so that candidates for the Business Committee and elected boards, committees and commissions are nominated at the same caucus.

102.6-2. The procedures for the caucus shall be as follows:

(a) Candidates shall be nominated from the floor.

(b) Candidates present at the caucus will accept/decline their nomination at the caucus. Candidates nominated at the caucus, but not present to accept the nomination, shall be required to follow the application process.

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(c) Nominations shall consist of the following positions: Chairperson, Vice-Chairperson, Treasurer, Secretary, Council Member and other elected positions as required by by-laws or creating documents of a board, committee, or commission.

Section B. Application

102.6-3. Any eligible member of the Nation may apply to be placed on a ballot according to the following procedures:

(a) Applicants shall use an official application form as designated by this law which may be obtained in the Office of the Nation's Secretary or from the mailing for that caucus.

(b) The application form shall consist of information that satisfies the minimum requirements for eligible candidates. as described in section 102.5-2 of this law.

(c) Applications shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus. The location to drop-off applications shall be identified in the mailing identifying the caucus date.

(d) The Nation's Secretary shall forward all applications to the Election Board Chairperson the next business day following the close of application submissions.

102.6-4. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

102.7. Notice of Polling Places

102.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of the Nation's businesses/facilities.

102.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.

102.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing.

102.7-4. Notice of the election shall be placed in the Nation's newspaper.

102.8. Registration of Voters

Section A. Requirements

102.8-1. *Registration of Voters.* All enrolled members of the Nation, who are eighteen (18) years of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the Oneida Nation Constitution.

Section B. Identification of Voters

102.8-2. All voters must present one of the following picture identifications in order to be able to vote:

(a) Oneida Nation I.D.

(b) Drivers License.

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(c) Other I.D. with name and photo.

Section C. Registration Procedures

102.8-3. Voters shall physically register, on the day of the election, at the polls.

102.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election Officials during the voting period.

102.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration Form containing the voter's following information:

(a) name and maiden name (if any);

(b) current address;

(c) date of birth; and

(d) enrollment number.

Section D. Qualification/Verification of Voter Eligibility

102.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote, the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with the Trust Enrollment Department personnel who are registering voters, to decide the voting member's eligibility currently being questioned and shall make such decisions from the facts available, whether the applicant is, in fact, qualified/verifiable under the Oneida Nation Constitution, Article III Section 2, to vote in the Nation's elections.

102.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of the voter shall be written next to a numbered list which corresponds to the numbered and sealed envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they desire to challenge the decision made by the Election Officials. The Election Board shall make a final decision, within five (5) business days of receiving the appeal and shall report this decision in the final report sent to the Oneida Business Committee.

102.9. Election Process

Section A. Polling Places and Times

102.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections shall be held in the month of July on a date set by the General Tribal Council. The General Tribal Council shall set the election date at the January annual meeting, or at the first GTC meeting held during a given year. Special Elections shall be set in accordance with 102.12-6.

102.9-2. Elections shall be held in an Oneida Nation facility(s) as determined by the Election Board.

102.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.

(a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four (4) members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.

102.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open,

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and until the counting of ballots is completed, and tentative results posted.

102.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such that there is an area with at least two sides and a back enclosure.

102.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of the voting area, excluding private property.

102.9-7. No one causing a disturbance shall be allowed in the voting area.

102.9-8. Election Board members may restrict the voting area to qualified voters only. This restriction is in the interest of maintaining security of the ballots and voting process.

Section B. Ballot Box

102.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and shall be locked until counting at the close of polls. Provided that, with electronic ballot counting, the ballots may be placed within the ballot counting machine as they are received.

Section C. Spoiled Ballots

102.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

102.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."

102.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) calendar days following finalization of any challenge of the election, at the Records Management Department.

Section D. Rejected Ballots

102.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

(a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 102.9-10 through 102.9-12.

(b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

102.10. Tabulating and Securing Ballots

Section A. Machine Counted Ballots

102.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.

102.10-2. At least three (3) Election Board members shall sign the election totals, which shall include the tape signed by the members of the Nation before the polls were opened per section 102.9-3(a).

Section B. Manually Counted Ballots

102.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.

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102.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall be secured in a sealed container for transportation to the ballot counting location. The sealed ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.

102.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.

102.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

Section C. Securing Ballots

102.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

102.11. Election Outcome and Ties

Section A. Election Results Announcement

102.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain the following statement:

"The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"

102.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation's newspaper, the tentative results of an election.

Section B. Tie

102.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.

102.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.

(a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.

(b) On the date and at the time and place the drawing was noticed, the Election Board

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Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.

(c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

Section C. Recount Procedures

102.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the office of the Nation's Secretary, or noticed designated agent, within five (5) business days after the election. Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.

102.11-6. The Election Board shall respond by the close of business on the fifth (5th) day after the request regarding the results of the recount. Provided that, no recount request need be honored where there have been two (2) recounts completed as a result of a request either as a recount of the whole election results, or of that sub-section.

102.11-7. All recounts shall be conducted manually with, if possible, the original Election Officials and Oneida Police Officer present, regardless of the original type of counting process. Manual recounts may, at the discretion of the Election Officials, be of the total election results, or of the challenged sub-section of the election results.

102.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed container with the ballots from the Records Management Department and transporting it to the ballot recounting location.

102.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election Board Chairperson and an Oneida Police Officer shall witness the recount.

102.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be counted until two (2) final tallies are equal in back to back counting and the total count of ballots reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.

(a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.

(b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

Section D. Challenges and Declaration of Results

102.11-11. *Challenges.* Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed.

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Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.

(a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.

(b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.

102.11-12. *The Final Report.* The Election Board shall forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:

(a) Total number of persons voting.

(b) Total votes cast for each candidate by subsection of the ballot.

(c) List of any ties and final results of those ties, including the method of resolution.

(d) List of candidates elected and position elected to.

(e) Number of spoiled ballots.

(f) Cost of the election, including the compensation paid to each Election Board member.

102.11-13. *Declaration of Results.* The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.

102.11-14. Candidates elected to the Business Committee shall resign from any salaried position effective prior to taking a Business Committee oath of office

102.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.

(a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

102.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

102.12. Elections

Section A. Primary Elections; Business Committee

102.12-1. When a primary is required under 102.12-2, it shall be held on a Saturday at least sixty (60) calendar days prior to the election.

102.12-2. There shall be a primary election for Business Committee positions whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-large council member positions.

(a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.

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(b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.

(c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.

102.12-3. The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary by the application deadline set for the primary.

102.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 102.5-11 and 102.5-12 shall be followed, including the requirement to print a notice in the Nation's newspaper if time lines allow.

Section B. Special Elections

102.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as defined in this law, may be placed on the same ballot as the subject matter of an election.

102.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business Committee as recommended by the Election Board or as ordered by the Judiciary in connection with an election challenge.

102.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the Special Election.

102.12-8. In the event of an emergency, the Election Board may reschedule the election, provided that no less than twenty-four (24) hours notice of the rescheduled election date is given to the voters, by posting notices in the prominent locations.

Section C. Referendums

102.12-9. Registered voters may indicate opinions on any development, law or resolution, proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special referendum election.

(a) Referendum elections in which a majority of the qualified voters who cast votes shall be binding on the Business Committee to present the issue for action/decision at General Tribal Council.

(b) Referendum requests may appear on the next called for election.

(c) Referendum questions are to be presented to the Nation's Secretary, in writing, at the caucus prior to election, regarding issues directly affecting the Nation or general membership.

Section D. Initiation of Special Elections

102.12-10. Special Elections may be initiated by a request or directive of the General Tribal Council or the Oneida Business Committee.

102.12-11. Special Election may be requested by a member of the Nation to the Business Committee or General Tribal Council.

102.12-12. All Special Elections shall follow rules established for all other elections. This includes

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positions for all Boards, Committees and Commissions.

102.13. Oneida Nation Constitution and By-law Amendments

102.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.

(a) Qualified voters may request a petition form from the Office of the Nation's Secretary.

(b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures currently required for a petition submittal, which shall be ten percent (10%) of all members qualified to vote on the date the petition form is requested from the Office of the Nation's Secretary. When the Nation's Secretary receives the calculation from the Trust Enrollment Department, the Nation's Secretary shall provide the requester with the petition form and the number of signatures that are currently required.

(c) Such petitions shall be circulated with all supporting materials and submitted a minimum of ninety (90) days prior to the election at which the proposed amendment is to be voted upon. If a petition includes supporting materials in addition to the petition form, each qualified voter signing the petition shall also acknowledge that the supporting materials were available for review at the time he or she signed the petition by initialing where required on the petition form.

(d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment Department for verification of signatures and to the Election Board to provide notice that the petition may need to be placed on an upcoming ballot.

(e) If the petition is verified by the Trust Enrollment Department to contain signatures from at least ten percent (10%) of all qualified voters, the Election Board shall make an official announcement of the proposed amendments to the Oneida Nation Constitution at least sixty

(60) days prior to the election at which the proposed amendments are to be voted on.

102.13-2. The Election Board shall place any proposed amendments to the Oneida Nation Constitution that meet the requirements contained in 102.13-1 on the ballot at the next general election. Provided that, the Oneida Business Committee or General Tribal Council may order a special election be held to consider the proposed amendments. In such circumstances, the Election Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot at the next special election.

102.13-3. The Election Board shall publish any proposed amendments by publishing a sample ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently posted in each polling place and at administrative offices of the Nation and shall also be published in official Oneida media outlets, which the Oneida Business Committee shall identify by

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resolution. For the purposes of this section, Oneida administrative offices means the location where the Oneida Business Committee conducts business.

102.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a true and impartial statement and is written in such a manner that does not create prejudice for or against the proposed amendment.

102.13-5. Pursuant to Article VI, Section 3 of the Oneida Nation Constitution, proposed amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that amendment shall become part of the Constitution and By-laws, and shall abrogate or amend existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission of the final election report.

102.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the amendment receiving the highest affirmation vote prevails.

End.

Adopted - June 19, 1993

Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)

Presented for Adoption of 1997 Revisions - GTC-7-6-98-A

Amended- October 11, 2008 (General Tribal Council Meeting)

Amended-GTC-01-04-10-A

Amended – BC-02-25-15-C

Amended – GTC-04-23-17-A

Emergency Amended – BC-03-17-20-B

Emergency Amended – BC-05-13-20-H

Emergency Amended – BC-06-24-20-B (Expired at Conclusion of 2020 General Election)

Emergency Amended – BC-04-28-21-B (Expired)

Emergency Amended – BC-07-13-22-E

Emergency Amended – BC-12-28-22-B

Emergency Amended – BC-__-__-__-__



Legislative Operating Committee
March 1, 2023

Oneida Personnel Policies and Procedures Amendments

Submission Date: 2/6/19	Public Meeting: 1/12/23
LOC Sponsor: Marie Summers	Emergency Enacted: 11/24/21, 5/11/22, 11/7/22

Summary: *This item was carried over from last term. This request for amendments to the Oneida Personnel Policies and Procedures was added to the AFL in February 2019. The purpose of the Oneida Personnel Policies and Procedures is to provide the various procedures and policies governing employee related matters including recruitment, selection, compensation and benefits, employee relations, safety and health, rules and regulations, recordkeeping, and privacy and confidentiality. The Nation's Human Resources Department requested amendments to the Oneida Personnel Policies and Procedures to address investigative enforcement. Amendments are being sought to delegate authority to investigators to put employees on investigative leave (as opposed to just the supervisor of the employee), and discipline employees. An amendment was also sought so that if terminated, an employee would be ineligible for employment with the Nation, but may request forgiveness after five (5) years. This item was added to the AFL in conjunctions with a request for amendments to the Investigative Leave Policy and the Workplace Violence law. On April 10, 2019, the Oneida Business Committee directed the LOC to complete the legislative process to remove section IV(A)(5)(n) regarding Trade Back for Cash from the Personnel Policies and Procedures. On August 18, 2021, the Legislative Operating Committee considered a request for amendments to the Oneida Personnel Policies and Procedures from the Human Resources Department to address the selection policy in an effort to update the Personnel Policies & Procedures using current interpretations, language and technology to improve minimize the time to hire employees from post to hire in a tight labor market. The Legislative Operating Committee determined these amendments should be pursued on an emergency basis for the immediate preservation of the general welfare of the Reservation population. The Oneida Business Committee adopted emergency amendments to the Oneida Personnel Policies and Procedures to address the selection policies on November 24, 2021, through the adoption of resolution BC-11-24-21-A. The emergency amendments will expire on May 24, 2022. The Oneida Business Committee adopted additional emergency amendments to the Oneida Personnel Policies and Procedures to clarify inconsistencies that arose as a result of the last emergency amendments on May 11, 2022, through the adoption of resolution BC-05-11-22-A. The emergency amendments will now expire on November 11, 2022. The Oneida Business Committee extended the emergency amendments to the Oneida Personnel Policies and Procedures for an additional six (6) month period on November 7, 2022, through the adoption of resolution BC-11-07-22-A. The emergency amendments to the Oneida Personnel Policies and Procedures will now expire on May 11, 2023.*

10/7/20 LOC: Motion by Jennifer Webster to add the Oneida Personnel Policies and Procedures Amendments to the Active Files List with Marie Summers as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

8/18/21 LOC: Motion by Marie Summers to accept the information provided in the request [*request for amendments to the Oneida Personnel Policies and Procedures to address the revision of the HRD Manager Title*] as FYI; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Marie Summers to accept for emergency LOC process [*request for amendments to the Oneida Personnel Policies and Procedures to address the selection process*] with Marie Summers as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

9/13/21: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Clorissa N. Santiago, Carmen Vanlanen, Geraldine Danforth, Todd Vandenheuvel, Barbara Kolitsch, Josh Cottrell, Nic Reynolds, Wendy Alvarez, Kristal Hill, Matt Denny, Rhiannon Metoxen, Melinda K. Danforth, Rita Reiter. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the proposed emergency amendments to the Oneida Personnel Policies and Procedures submitted by the HRD Department.

9/15/21: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Jennifer Webster, Kirby Metoxen, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Rhiannon Metoxen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the proposed emergency amendments to the Oneida Personnel Policies and Procedures submitted by the HRD Department.

10/12/21: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Jennifer Webster, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Rhiannon Metoxen, Kristal Hill, Todd Vandenheuvel, Josh Cottrell, Nic Reynolds, Wendy Alvarez, Matt Denny, Melinda K. Danforth, Rita Reiter. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss with HRD the LOC's proposed emergency amendments to the Oneida Personnel Policies and Procedures.

10/18/21: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Jennifer Webster, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Todd Vandenheuvel, Josh Cottrell, Wendy Alvarez, Matt Denny, Rita Reiter. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to continue reviewing and discussing with HRD the LOC's proposed emergency amendments to the Oneida Personnel Policies and Procedures.

10/21/21: *Work Meeting.* Present: Clorissa N. Santiago, Carmen Vanlanen, Wendy Alvarez. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to work on clarifying the internal job posting section of the Personnel Policies and Procedures.

10/25/21: *Work Meeting.* Present: Daniel Guzman King, Jennifer Webster, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Todd Vandenheuvel, Josh Cottrell, Wendy Alvarez, Dana Thyssen, Lucy Neville, Nic Reynolds. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review an updated draft of the proposed emergency amendments to the Oneida Personnel Policies and Procedures.

11/4/21: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Jennifer Webster, Marie Summers, Lisa Liggins, Brandon Yellowbird Stevens, Tehassi Hill, Cristina Danforth, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen, Todd Vandenheuvel, Lucy Neville, Nic Reynolds, Rita Reiter, and Matthew Denny. This was a work meeting held through Microsoft Teams. The purpose of this work meeting with the officers of the Oneida Business Committee and Human Resources Department was to discuss the potential for emergency amendments to the Oneida Personnel Policies and Procedures and whether the emergency legislation standard provided in the LPA has been met.

- 11/9/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Kristen Hooker, Carmen Vanlanen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the updated proposed emergency amendments.
- 11/17/21 LOC:** Motion by Kirby Metoxen to approve Oneida Personnel Policies and Procedures emergency amendments adoption packet and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.
- 11/24/21 OBC:** Motion by Brandon Stevens to adopt resolution 11-24-21-A Emergency Amendments to the Oneida Personnel Policies and Procedures - Selection Policy, seconded by Lisa Liggins. Motion carried.
- 11/30/21:** *Work Meeting.* Present: Clorissa N. Santiago, Todd Vandenheuvel, Matthew Denny. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss some questions HRD had on the implementation of the emergency amendments.
- 12/15/21:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Kristen Hooker, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss a strategy on how to move forward the permanent adoption of amendments to this Law.
- 2/21/22:** *Work Meeting.* Present: Clorissa N. Santiago, Todd Vandenheuvel. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to briefly discuss the purpose of next Thursday's work meeting between the LOC and HRD.
- 2/24/22:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen, Todd Vandenheuvel, Nic Reynolds, Matthew Denny, Josh Cottrell, Wendy Alvarez. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to begin discussions on a potential plan for permanent amendments to the Oneida Personnel Policies and Procedures. The LOC and HRD discussed and began determining a ranking of potential issues to be amended in the Oneida Personnel Policies and Procedures to be addressed through phased amendments.
- 4/20/22:** *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Marie Summers, Jennifer Webster, Clorissa N. Santiago, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss a plan for brining minor additional emergency amendments to the Oneida Personnel Policies and Procedures to the May 4, 2022, LOC meeting.
- 5/4/22 LOC:** Motion by Marie Summers to approve the Oneida Personnel Policies and Procedures emergency amendments adoption packet and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.
- 5/11/22 OBC:** Motion by Jennifer Webster to adopt resolution entitled 05-11-22-A Additional Emergency Amendments to the Oneida Personnel Policies and Procedures - Selection Policy, seconded by Lisa Liggins. Motion carried.
- 6/8/22 OBC:** Motion by Kirby Metoxen to support the designation of June 19 as an Oneida Nation paid holiday for the Juneteenth National Independence Day and forward to the Legislative Operating Committee for review, seconded by David P. Jordan. Motion carried.

6/15/22 LOC: Motion by Kirby Metoxen to accept the request as information to be discussed during the current development of amendments to the Oneida Personnel Policies and Procedures; seconded by Jennifer Webster. Motion carried unanimously.

7/15/22: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Clorissa N. Santiago, Kristal Hill, Todd Vandenheuvel, Nic Reynolds, Matthew Denny, Wendy Alvarez, Grace Elliott, Carolyn Salutz. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review two options for how to approach the permanent amendments to the Oneida Personnel Policies and Procedures.

8/31/22: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Jennifer Webster, Clorissa N. Santiago, Todd Vandenheuvel, Nic Reynolds, Matthew Denny, Wendy Alvarez, Josh Cottrell, Whitney Wheelock, Grace Elliott, Carolyn Salutz, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to continue the discussion of permanent amendments to the Oneida Personnel Policies and Procedures and identify other areas within the law that should be amended in addition to Section III.

10/19/22: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Jennifer Webster, Kirby Metoxen, Marie Cornelius, Clorissa N. Leeman, Todd Vandenheuvel, Nic Reynolds, Matthew Denny, Wendy Alvarez, Josh Cottrell, Whitney Wheelock, Grace Elliott, Carolyn Salutz, Rhiannon Metoxen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the draft of proposed permanent amendments to the Oneida Personnel Policies and Procedures.

11/2/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Clorissa N. Leeman, Todd Vandenheuvel, Nic Reynolds, Matthew Denny, Wendy Alvarez, Josh Cottrell, Whitney Wheelock, Grace Elliott, Carolyn Salutz, Rhiannon Metoxen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to continue reviewing the draft of proposed permanent amendments to the Oneida Personnel Policies and Procedures.

11/3/22: *E-Poll Conducted.* This e-poll was titled, "Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures." The requested action of this e-poll was to approve the Oneida Personnel Policies and Procedures emergency amendments extension packet and forward to the Oneida Business Committee for consideration. This e-poll was approved by David P. Jordan, Kirby Metoxen, Marie Cornelius, Jennifer Webster, and Daniel Guzman King.

11/7/22: *OBC E-Poll Conducted.* This e-poll was titled, "Adopt the resolution entitled Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures." The requested action of this e-poll was to adopt the resolution entitled, Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures. This e-poll was approved by Daniel Guzman King, David P. Jordan, Kirby Metoxen, Brandon Stevens, Jennifer Webster.

11/23/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Marie Cornelius, Daniel Guzman King, Clorissa N. Leeman, Todd Vandenheuvel, Matthew Denny, Josh Cottrell, Whitney Wheelock, Grace Elliott, Carolyn Salutz. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the updated draft of proposed permanent amendments to the Oneida Personnel Policies and Procedures.

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 discuss

potential timelines for bringing the proposed amendments to the General Tribal Council for consideration.

12/7/22 LOC: Motion by Jennifer Webster to approve the draft of the Oneida Personnel Policies and Procedures amendments, the legislative analysis, and the public meeting notice with updated date, and forward the Oneida Personnel Policies and Procedures amendments to a public meeting to be held on January 12, 2023; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Marie Cornelius to enter into the record the results of the November 3, 2022, e-poll entitled, Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures; seconded by Jennifer Webster. Motion carried unanimously.

1/12/23: *Public Meeting Held.* Present: Jennifer Webster, Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Bonnie Pigman, Microsoft Teams: Daniel Guzman King, Terri Schiltz, Nicholas Metoxen, Whitney Wheelock, Rita Reiter, Lora Danforth. Stefanie Reinke, Wendy Alvarez, Laurel Meyerspooner, Peggy Van Gheem, Tina Jorgensen, Chad Fuss, Sidney White, Louise Cornelius, Kelly McAndrews, Lori Metoxen, Laura Laitinen-Warren, Karen Smith, Kathe Cornelius, Artley Skenandore, Michelle Hill, Melanie Burkhart, Michelle Tipple, Jessica Vandekamp, Kelly Skenandore-Holtz, Reynold Danforth, Henrietta Cornelius, Racquel Hill, Gregory Matson, Lavina Cornelius, Lisa Rauschenbach, Grace Delgado, Mark Powless, Eric Boulanger, Matthew J. Denny, Debra Santiago, Kara Melchert, Debra Danforth, Lori Hill, Kristal Hill, Carrie Lindsey, Todd Vanden Heuvel, Trina Schuyler, Gunladunt Webster, Sharon Mousseau, Monica Doxtator, Michelle Braaten, Mari Kriescher, Kristen Jorgenson-Dann, Joy Salzwedel, Michelle Demmin, Lucy Neville, Danielle White, Mary Graves. The public meeting for the proposed amendments to the Oneida Personnel Policies and Procedures was held in person in the Norbert Hill Center and on Microsoft Teams. Seven (7) individuals provided public comment during the public meeting.

1/19/23: *Public Comment Period Closed.* Fourteen (14) submissions of written comments were received during the public comment period.

Next Steps:

- Accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration.

HANDOUT

TO: Legislative Operating Committee (LOC)
 FROM: Clorissa N. Leeman, Legislative Reference Office, Senior Staff Attorney
 DATE: March 1, 2023
 RE: Oneida Personnel Policies and Procedures Amendments: Public Comment Review



On January 12, 2023, a public meeting was held regarding the proposed amendments to the Oneida Personnel Policies and Procedures (“the Law”). The public comment period was then held open until January 19, 2023. This memorandum is submitted as a review of the comments received during the public meeting and public comment period. The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

Comments 1 through 5 – Definition of Immediate Family:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

2. Funeral Leave (Work Standard, 8-2-11)

a. All regular employees will be given a five (5) day leave without loss of pay for funeral services for immediate family. Immediate family includes:

Husband	Mother	Brother	Great-grandparent
Wife	Father	Sister	Great-grandchildren
Mother-in-law	Son	Grandparents	
Spouse’s great-grandparents		Father-in-law	Daughter
Grandchild	Spouse’s grandparents		Daughter-in-law
Sister-in-law	Brother-in-law		

b. Five (5) day leave for other persons will be given only if the employee is responsible for making funeral arrangements, subject to prior approval of supervisor.

c. All other funeral leave will be limited to three (3) hours with pay subject to the notification and approval of the immediate supervisor.

Tina Jorgensen (oral): Tina Jorgensen. I have a couple of questions and then two comments. I want to know, well one of, one thing that is not included in the current Personnel Policies and Procedures for immediate family definition does not include aunt and uncle. And I believe that as an important part of our families. So, I feel this should be added to the Personnel Policies and Procedures.

Tina Jorgensen (written): Funeral leave – Aunts and uncles are considered with high regard in families and play a role in a child’s life traditionally. Aunt and Uncle should be added to the immediate family list for funeral leave.

Lisa Rauschenbach (written): Other Changes: Aunt/Uncle should be included in immediate family. It should also be clear if step-children, grand-children and parents are included in the immediate family.

Mark Powless (written):

726 a. All regular employees will be given a three (3) five (5) day leave without loss of pay for

727 funeral services for immediate family. Immediate family includes:

728 Husband Mother Brother Great-grandparent

729 Wife Father Sister Great-grandchildren

730 Mother-in-law Son Grandparent Spouse's great-grandparents

731 Father-in-law Daughter Grandchild Spouse's grandparents

732 Daughter-in-law Sister-in-law Brother-in-law

- Extend the definition of 'immediate family' to include Aunts and Uncles

Jessica Vandekamp (written): 3. Funeral Leave

- Add other relationships, such as; step-, adopted, civil unions, life partner.

Response

The commenters requests that the definition for "immediate family" included in section IV.D.2.a of the Law be expanded.

Currently, the Law discusses immediate family in regard to funeral leave, and provides that all regular employees will be given a five (5) day leave without loss of pay for funeral services for immediate family, which includes the following individuals:

- Husband;
- Wife;
- Mother;
- Father;
- Brother;
- Sister;
- Son;
- Daughter;
- Grandparent;
- Great-grandparent;
- Grandchild;
- Great-grandchild;
- Mother-in-law;
- Father-in-law;
- Daughter-in-law;
- Son-in-law;
- Sister-in-law;
- Brother-in-law;
- Spouse's grandparents; and
- Spouse's great-grandparents.

The Legislative Operating Committee may make one of the following considerations in regard to these comments:

1. The definition of immediate family as provided for in section IV.D.2.a of the Law shall remain as currently drafted.
2. The definition of immediate family as provided for in section IV.D.2.a of the Law should be expanded. The Legislative Operating Committee will need to determine how to expand the definition of immediate family, and whether it should include aunts or uncles, step-family, or life partners.

LOC Consideration

Comments 6 through 9 – Support of Funeral Leave Provisions:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

2. Funeral Leave (Work Standard, 8-2-11)

a. All regular employees will be given a five (5) day leave without loss of pay for funeral services for immediate family. Immediate family includes:

Husband	Mother	Brother	Great-grandparent
Wife	Father	Sister	Great-grandchildren
Mother-in-law	Son	Grandparents	
Spouse's great-grandparents	Father-in-law	Daughter	
Grandchild	Spouse's grandparents	Daughter-in-law	
Sister-in-law	Brother-in-law		

b. Five (5) day leave for other persons will be given only if the employee is responsible for making funeral arrangements, subject to prior approval of supervisor.

c. All other funeral leave will be limited to three (3) hours with pay subject to the notification and approval of the immediate supervisor.

Artley Skenandore (oral): Uh, just a, a statement relative to reading the executive summary. I did want to acknowledge the a, the bereavement expansion from three (3) to five (5) year, uhh three (3) days to five (5) days as a, as a very appropriate response to assist in the uh, in the development of our community overall. And looking across the country, many, many tribal nations are walking along this same path, and it certainly should be something that the rest of corporate America should look at relative to offering that opportunity of encouragement to support families. So, I just wanted to acknowledge that and make mention of uhh, that's a step in the, in a good direction for our community.

Lisa Rauschenbach (written): Positive Changes: Extending funeral time from 3 days to 5 days.

Jessica Vandekamp (written): 3. Funeral Leave

- Agree with 5 days for immediate family.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section IV.D.2., Leaves

The current OPPP allow regular employees a three-day leave of absence upon the death of an immediate family member or, upon approval of a supervisor, upon the death of other persons if the employee is responsible for funeral arrangements. (OPPP Section IV.D.2.) The proposed amendments extend the length of funeral leave in both cases to five days. (OPPP Amendments, Draft 1, lines 527-536)

In all other circumstances, the current OPPP provide up to one day of funeral leave. (OPPP IV.D.2.c.) The proposed amendments shorten permissible leave to three hours when the employee is neither an immediate family member nor responsible for funeral arrangements of the deceased. (OPPP Amendments, Draft 1, lines 537-538) Proposed changes to the Leaves section of the OPPP present no legal issues.

Response

Overall, the commenters express support for, or do not identify any issues with, the proposed amendments to Section IV.D.2. of the Law regarding funeral leave.

There is no action needed by the Legislative Operating Committee based on these comments.

LOC Consideration**Comment 10 – Expansion of Funeral Leave for Assisting with a Funeral:****SECTION IV - COMPENSATION AND BENEFITS****D. LEAVES****2. Funeral Leave (Work Standard, 8-2-11)**

- a. All regular employees will be given a five (5) day leave without loss of pay for funeral services for immediate family. Immediate family includes:**

Husband	Mother	Brother	Great-grandparent
Wife	Father	Sister	Great-grandchildren
Mother-in-law	Son	Grandparents	
Spouse's great-grandparents	Father-in-law	Daughter	
Grandchild	Spouse's grandparents	Daughter-in-law	
Sister-in-law	Brother-in-law		

- b. Five (5) day leave for other persons will be given only if the employee is responsible for making funeral arrangements, subject to prior approval of supervisor.**

- c. All other funeral leave will be limited to three (3) hours with pay subject to the notification and approval of the immediate supervisor.**

Jessica Vandekamp (written): 3. Funeral Leave

- Consider adding: an employee who works the funeral (prepares & serves food, etc.).

Response

The commenter requests that the Legislative Operating Committee consider adding a provision to the Law that expands the amount of funeral leave provided to an employee who works the funeral, such as someone who prepares and serves food.

Currently, Section IV.D.2.b of the Law provides that five (5) day leave for persons not the immediate family of the deceased will be given only if the employee is responsible for making funeral arrangements, subject to prior approval of supervisor. If not making funeral arrangements and not a member of the immediate family, section IV.D.2.c of the Law limits paid funeral leave to three (3) hours.

The Legislative Operating Committee may determine whether the Law should be expanded to address an employee who is not necessarily responsible for making funeral arrangements for the deceased, but is still assisting with the funeral in some capacity. The Legislative Operating Committee may make one of the following considerations in regard to these comments:

1. The provisions on funeral leave as provided for in section IV.D.2 of the Law shall remain as currently drafted.
2. The provisions on funeral leave as provided for in section IV.D.2 of the Law should be expanded to address an employee who is not necessarily responsible for making funeral arrangements for the deceased, but is still assisting with the funeral in some capacity. The Legislative Operating Committee will need to determine how to address the funeral leave of an employee who assists with a funeral.

LOC Consideration

Comments 11 through 12 – Maternity Leave:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

4. Maternity Leave

- a. Maternity leave will be granted for a period of six (6) weeks without pay.**
 - 1) An employee may elect to cover any portion of this time by using accumulated sick days.**
 - 2) Any maternity-related absences for longer than six (6) weeks must be taken as a medical leave of absence.**

Jessica Vandekamp (written): 4. Maternity Leave • Add: to allow up to 12 weeks for maternity leave

Mark Powless (written):

757 4. Maternity Leave

758 a. Maternity leave will be granted for a period of six (6) weeks without pay.

759 1) An employee may elect to cover any portion of this time by using accumulated
760 sick days.

761 2) Any maternity-related absences for longer than six (6) weeks must be taken as a
762 medical leave of absence.

• To be reflective of our cultural values and high regard for our women and the family unit, provide paid maternity leave. This will help to reduce stress for our families and allow attention to focus on the newborn. Our community is our workforce and our workforce is our community.

Response

The commenters requests that the Nation reconsider how maternity leave is addressed in section IV.D.4.a of the Law. One commenter requests that the leave of six (6) weeks without pay be extended to twelve (12) weeks. The other commenter requests that maternity leave be paid to better reflect the Nation's cultural values and high regard for women and children.

Currently the Law provides that maternity leave will be granted for a period of six (6) weeks without pay. [OPPP Section IV.D.4.a.]. An employee may elect to cover any portion of this time by using accumulated sick days. [OPPP Section IV.D.4.a.1.]. Any maternity-related absences for longer than six (6) weeks must be taken as a medical leave of absence. [OPPP Section IV.D.4.a.2.].

In the development of these current proposed amendments the Legislative Operating Committee did not consider whether maternity leave should be addressed or revised. The Legislative Operating Committee may make one of the following considerations:

1. Section IV.D.4.a of the Law shall remain as currently drafted with maternity leave granted for a period of six (6) weeks without pay.
2. Section IV.D.4.a of the Law should be revised updated to address how the Nation handles maternity leave. The Legislative Operating Committee may consider whether to expand the time allowed for maternity leave, or provide that maternity leave be paid instead of unpaid.

LOC Consideration

Comments 13 through 16 – Indian Preference and the Haudenosaunee Community:

SECTION III – SELECTION POLICY

A. ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

The Oneida Nation is an equal employment opportunity employer and follows non-discriminatory policies and procedures in personnel decisions. The Oneida Nation exists to serve the needs of the Oneida people and therefore accords Oneida Preference to enrolled members of the Oneida Nation where such preference is not otherwise prohibited. All General Managers and top administrative positions, as defined by HRD in a standard operating procedure, shall be held by enrolled members of the Oneida Nation. In all other instances, the Nation applies the following priorities of Indian Preference in staffing decisions:

- 1 Enrolled members of the Oneida Nation;
- 2 Individuals eligible for enrollment in the Oneida Nation;
- 3 Documented first generation descendants of the Oneida Nation;
- 4 Members or descendants of a federally recognized tribe;
- 5 Other (non-Indian).

B. HIRING PROCEDURE

1 Statement of Policy

- a. The Oneida Nation is an equal employment opportunity employer and follows nondiscriminatory policies in hiring.
- b. The Oneida Nation is a firm advocate of the 1964 Civil Rights Act (as amended) and the 1968 Indian Civil Rights Act (as amended) and will make every effort to ensure compliance with each Act; however:
- c. The Oneida Nation follows the principles of Indian Preference in the implementation of hiring practices (see the Oneida Preference and Indian Preference Statement of Policy).

Tina Jorgensen (oral): And I'd like somewhere I don't know if it's an Indian preference law, probably. But we have a large community of members that are not Oneida or not considered Oneida enrolled because they live in Canada. And they could be interested in applying for our positions, specifically in Cultural Heritage, and I'd like for somehow Haudenosaunee communities or community members to be considered as part of our Indian preference. Currently, we only can post Oneida enrolled only or not. And I would like Oneida enrolled only at least to include those communities, or have the ability to post for those to include those communities. Those are my questions and comments.

Tina Jorgensen (written): Please include the following in the comments for the proposed law amendments of the Personnel Policies and Procedures.

Section III – Selection Policy

- Currently, you can post for Oneida enrolled only or open to all. I would like to add the following categories:
 - o Six Nations tribal members or Haudenosaunee or Confederacy something to that effect
 - o All enrolled tribal members from a federally recognized tribe.

Tina Jorgensen (written): Additionally, I think our Oneida family members in Canada that are not considered “federally recognized” should be considered eligible for enrollment and listed somewhere or defined in the policies.

Mark Powless (written): Line Specific Comments

253 The Oneida Nation exists to serve the needs of the Oneida people and
 254 therefore accords Oneida Preference to enrolled members of the Oneida Nation
 255 Members where such preference is not otherwise prohibited.

- Extend Oneida Preference to all members of the Haudenosaunee. We have a shared history, culture, and family lines. Our ancestors took great measures to preserve the unity of the Haudenosaunee. Our hiring practices should reflect who we are as a people.

Response

The commenters express a desire to have the Legislative Operating Committee reconsider the Nation’s Indian Preference in staffing decisions to be more inclusive of all members of the Haudenosaunee.

The Law provides that the Nation applies the following priorities of Indian Preference in staffing decisions:

1. Enrolled members of the Oneida Nation;
2. Individuals eligible for enrollment in the Oneida Nation;
3. Documented first generation descendants of the Oneida Nation;
4. Members or descendants of a federally recognized tribe;
5. Other (non-Indian). *[OPPP Section III.A]*.

Enrolled members of the Oneida Nation receive the highest level of preference, while members or descendants of other federally recognized tribes receive preference just above other non-Indians. Members of Haudenosaunee nations – such as the Mohawk, Onondaga, Cayuga, Seneca and Tuscarora – would currently be considered in the “members or descendants of a federally recognized tribe” category of preference. The commenters first look for consideration from the Legislative Operating Committee that general Indian Preference in staffing be revised so that all members of Haudenosaunee be provided the same preference as enrolled members of the Oneida Nation.

The commenters also look specifically at how job postings are made within the Nation and suggest that the process be revised to better include all members of the Haudenosaunee. Originally the Law provided that unless otherwise prohibited by external grant source or federal law, the first posting for a position vacancy shall be limited to enrolled Oneida members and shall be posted for a minimum of seven (7) calendar days, while the second posting for a position vacancy shall be posted for a minimum of ten (10) calendar days and shall be open to the general public, unless the position must be filled by an enrolled Oneida Nation member. To improve the Nation’s hiring capacity and service delivery in the tight labor markets that resulted from the COVID-19 pandemic the Oneida Business Committee adopted emergency amendments to the Law through resolution BC-11-24-21-A which eliminated the requirement that a position vacancy be posted twice with the

first posting open to enrolled members of the Nation only and the second posting open to the general public and required instead that applicants who are enrolled members of the Oneida Nation be screened and interviewed prior to any other applicants.

The proposed amendments to the Law eliminate much of the process and procedures currently contained in the law regarding the hiring and selection process, and instead provides that the HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the hiring and selection of employees of the Nation. [Section III(B)(2)(c)]. Utilizing the Administrative Rulemaking law for the promulgation of rules regarding the hiring and selection process instead of including this information in the law itself provides greater flexibility to the Human Resources Department to develop rules that best meet the needs of the Nation in its current circumstances. These rules could address how postings are made to better include all members of Haudenosaunee.

The Legislative Operating Committee may make one of the following considerations in regard to these comments:

1. The priorities of Indian Preference in staffing decisions as provided in Section III.A of the Law shall remain as currently drafted.
2. The priorities of Indian Preference in staffing decisions as provided in Section III.A of the Law should be revised to be more inclusive of all members of the Haudenosaunee. The Legislative Operating Committee may consider whether all members of the Haudenosaunee should receive the same level of preference as members of the Oneida Nation, or how preference is utilized in the postings of vacant job positions.

LOC Consideration

Comment 17 – Removal of the Wage Deduction for Probationary Employees:

SECTION III – SELECTION POLICY

D. ORIGINAL PROBATION

The first three (3) months after an employee's starting date after being hired, transferred, or reassigned shall be considered a period of probation. At the end of six (6) weeks, the employee's performance shall be reviewed with them by the supervisor by completing an employee evaluation. At the end of the three (3) month probation period, a second performance evaluation shall be conducted. This evaluation shall recommend the end of probation and regular status for the employee, an extension of probation, or termination for cause.

1. **Status as a Probationary Employee**
 - a. Probationary employees shall accrue vacation and personal days during the probation period and shall receive holiday pay.
 - b. Probationary employees may be terminated for cause at any time during the probation period. Cause shall consist of a violation of policies or

the documented inability of the employee to perform the duties and responsibilities of the position.

c. Termination of an employee for cause during their original probationary period shall not be subject to appeal.

Michelle Tipple (oral): And then the second comment is I support removing the wage deduction from probationary employees because of the challenge in recruiting right now for our workforce. Thank you.

Response

The commenter expresses support for the removal of the wage deduction for probationary employees. Previously, the Law provided that probationary employees will be paid at five percent (5%) below the posted pay rate for the position and that new employees hired under a negotiated salary will receive a salary one step below the agreed upon salary during the probationary period. To improve the Nation's hiring capacity and service delivery in the tight labor markets that resulted from the COVID-19 pandemic the Oneida Business Committee adopted emergency amendments to the Law through resolution BC-11-24-21-A which removed the provision that provided probationary employees be paid at five percent (5%) below the posted pay rate for the position. The proposed amendments to the Law remove this provision on a permanent basis.

There is no action or consideration needed by the Legislative Operating Committee based on this comment.

LOC Consideration

Comments 18 through 21 – Non-Payment of Personal and Vacation time for a Probationary Employee:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

h. Upon termination from Oneida Nation employment, employees will be paid for any unused personal and/or vacation days.

1) Employees who have used the Oneida Nation-sponsored loan program will be required to honor the terms of the loan agreement.

2) Employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck.

Wendy Alvarez (written): Line 661 If an employee quits in the first 90 days do they received PTO payout? If so, can they add "Employees who resign or are terminated during"

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section IV.A.5., Vacation/Personal Days

The current OPPP provides that all employees are paid out for unused personal and vacation time upon separation from employment. (OPPP Section IV.A.5.h.) The proposed amendments disallow payout of personal or vacation time to employees “who are terminated during their original probation period.” (OPPP Amendments, Draft 1, lines 463-464) The amendments do not distinguish between probationary employees who are “terminated” and those who are separated for other reasons, such as a quit. It is unclear whether the word “terminated” is used to mean any separation of a probationary employee from their employment or if it means, very specifically, termination. This should be clarified, perhaps through use of the word “separated” in place of “terminated.”

Lisa Duff on behalf of Gaming Senior Management (written): 4) Clarify the statement to include separations (e.g., quit, job abandonment, etc.).

661 2) Employees who are terminated during their original probation period shall not 662 be paid for any unused accrued vacation or personal days in their final paycheck

Shannon Stone (written): Accrued Personal and Vacation time: Lines 661 and 662 state, Employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck.

I don’t understand the need to not pay a terminated employee the compensation they earned. This seems contrary to our values and promotes an undesired behavior of not saving time off for emergencies. This could create an economic problem in the future if an employee is injured or sick but is always keeping their accrual balance at or near zero, and therefore has no safety net to get through the emergency.

Response

One commenter questions whether an employee who resigns during their original probation period receives pay for any unused accrued vacation or personal time.

Previously, the Law provided that employees who are terminated during the probation period will receive credit for accrued vacation/personal days in their final paycheck. To improve the Nation’s hiring capacity and service delivery in the tight labor markets that resulted from the COVID-19 pandemic the Oneida Business Committee adopted emergency amendments to the Law through resolution BC-11-24-21-A which eliminated Section III.D.3.b which stated that employees who are terminated during the probationary period will receive credit for accrued vacation/personal days in their final paycheck. Then additional emergency amendments to the Law were made through resolution BC-05-11-22-A to clarify an inconsistency that was erroneously made with Section IV.A.5.h with the prior emergency amendments. Section IV.A.5.h of the Oneida Personnel Policies and Procedures stated that upon termination from Oneida Nation employment, employees will be paid for any unused personal and/or vacation days. This additional emergency amendment

clarified that employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck. [Section IV.A.5.h.2].

The proposed emergency amendments to the Law now provide in section IV.A.5.h.2 of the Law that employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck. The intent behind this provisions was that an employee should only be eligible to receive credit for any vacation or personal time accrued once they make it beyond their probationary status and become a regular employee of the Nation. To better reflect the original intent of this provision of the Law the following revision is recommended:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

h. Upon resignation, separation, or termination from Oneida Nation employment, employees will be paid for any unused personal and/or vacation days.

1) Employees who have used the Oneida Nation-sponsored loan program will be required to honor the terms of the loan agreement.

2) Employees who are separated or terminated, or resign during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck.

The other commenter expresses concern that it is poor practice to not pay a terminated employee the compensation they earned as this seems contrary to our values and promotes an undesired behavior of not saving time off for emergencies. It is important to note that section IV.A.5.h.2 of the Law provides that employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck. So if an employee makes it beyond their probationary period then section IV.A.5.h of the Law provides that the employee is indeed paid out for their unused personal and vacation time.

LOC Consideration

Comment 22 – Additional Duties Compensation:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

o. Additional Duties Compensation

Wendy Alvarez (written): Line 708 Additional Duties, there is nothing written. Should the Work Standard be referend?

Response

The commenter points out that section IV.A.5.o of the Law is titled “Additional Duties Compensation” but does not contain any additional information as to what this may refer to. It is recommended that the Legislative Operating Committee review and clarify this provision of the Law to see if this line should be deleted, expanded, or if a work standard needs to be referenced.

LOC Consideration
Comment 23 – Meeting Attendance Organized under Leaves:
SECTION IV - COMPENSATION AND BENEFITS
D. LEAVES
1. Meeting Attendance

a. Approval for attending any meetings inside normal working hours must be approved in advance by the employee's immediate supervisor. (BC Action, 5-16-89)

b. Employees who receive stipends or honoraria in excess of \$50.00 for attending meetings during working hours will forfeit the amount in excess of \$50.00 from their regular paycheck. Stipends for travel or per diem will not be deducted if accompanied by receipts for such expenses.

c. Stipends or honoraria for intra-tribal meetings during normal working hours will results in the employee's paycheck being reduced by the full amount of the stipend.

Wendy Alvarez (written): Line 715 to 724 Meeting attendance – is this the correct place under leaves?

Response

The commenter questions whether the Meeting Attendance provisions found in section IV.D.1 of the Law is organized in the right place within the Law.

Section IV.D.1 of the Law discusses the procedures to be followed if an employee requests leave from work to attend a meeting with an outside organization during their normal working hours. Approval for attending any meetings during normal working hours must be approved in advance by the employee's immediate supervisor. [OPPP section IV.D.1.a]. The Law then governs how stipends or honoraria for attending these outside meetings is handled. Employees who receive stipends or honoraria in excess of fifty dollars (\$50) for attending meetings during working hours will forfeit the amount in excess of fifty dollars (\$50) from their regular paycheck, but stipends for travel or per diem will not be deducted if accompanied by receipts for such expenses. [OPPP section IV.D.1.b]. Stipends or honoraria for intra-tribal meetings during normal working hours will

results in the employee's paycheck being reduced by the full amount of the stipend. [OPPP section IV.D.1.c].

Because section IV.D.1 of the Law discusses the procedures to be followed if an employee requests leave from work to attend a meeting with an outside organization during their normal working hours, it is appropriate placed under the “Leaves” section of the Law.

LOC Consideration

Comment 24 – Honoraria for Meeting Attendance Leave:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

1. Meeting Attendance

- a. Approval for attending any meetings inside normal working hours must be approved in advance by the employee's immediate supervisor. (BC Action, 5-16-89)**
- b. Employees who receive stipends or honoraria in excess of \$50.00 for attending meetings during working hours will forfeit the amount in excess of \$50.00 from their regular paycheck. Stipends for travel or per diem will not be deducted if accompanied by receipts for such expenses.**
- c. Stipends or honoraria for intra-tribal meetings during normal working hours will results in the employee's paycheck being reduced by the full amount of the stipend.**

Tina Jorgensen (written): Section IV – Compensation and Benefits

- **QUESTION** regarding meeting attendance: If an employee is going to be paid honorarium for presenting at a meeting, can they use personal or vacation time to receive the honorarium?

Response

The commenter questions whether an employee can utilize vacation or personal time to take time off of work to attend a meeting with an outside organization and accept the payment of honorarium for presenting at that meeting.

The Law governs how stipends or honoraria for attending these outside meetings is handled. Employees who receive stipends or honoraria in excess of fifty dollars (\$50) for attending meetings during working hours will forfeit the amount in excess of fifty dollars (\$50) from their regular paycheck, but stipends for travel or per diem will not be deducted if accompanied by receipts for such expenses. [OPPP section IV.D.1.b]. Stipends or honoraria for intra-tribal meetings during normal working hours will results in the employee's paycheck being reduced by the full amount of the stipend. [OPPP section IV.D.1.c].

The Law is not clear on whether utilizing vacation or personal time to take the day off of work, eliminates the requirement that an employee forfeit any amount in excess of fifty dollars (\$50) from their regular paycheck for attending a meeting with an outside organization during working hours.

The Legislative Operating Committee should consider clarifying section IV.D.1 of the Law and the provisions governing the receipt of stipends or honorarium for attending a meeting with an outside organization during working hours.

LOC Consideration

Comments 25 through 26 – Maximum Wage instead of Highest Step:

SECTION V – EMPLOYEE RELATIONS

B. EVALUATIONS

4. Satisfactory evaluations may result in the employee receiving an increase in pay within their grade level provided that the employee has not attained the highest step within the grade.

Wendy Alvarez (written): Line 864 “has not attained the highest step? We do not have steps in the grades an longer. Change step to wage?

Lisa Duff on behalf of Gaming Senior Management (written): Below are public comments submitted on behalf of Gaming Senior Management regarding the proposed Oneida Personnel Policies and Procedures Amendments. The comments are separated in two sections:

- Hiring and Selection
- Complaints, Disciplinary Actions and Grievance Processes

Please contact Louise Cornelius, Gaming General Manager, regarding any questions you may have. She can be reached at extension 3201 or at lcornel3@oneidanation.org Thank you

Hiring and Selection

1) Remove the following: We do not have steps within grades.

166 e. Temporary employees will be paid within the Grade in which the job is classified
and

167 ~~salary will be negotiated within the first three (3) steps of respective grade.~~

168 1) Any negotiated salary beyond step three will require written justification and

169 approval from the respective General Manager. (H.R. Interpretation, 12-8-16)

Response

The commenters provides that section V.B.4 of the Law uses the terminology “highest step,” but that terminology is no longer used within the Nation.

Section V.B.4 of the Law provides information on evaluations and states that satisfactory evaluations may result in the employee receiving an increase in pay within their grade level provided that the employee has not attained the highest step within the grade.

The following revision is recommended to clarify the terminology used in section V.B.4 of the Law:

SECTION V – EMPLOYEE RELATIONS

B. EVALUATIONS

4. Satisfactory evaluations may result in the employee receiving an increase in pay within their grade level provided that the employee has not attained the ~~highest step~~ maximum wage within the grade.

LOC Consideration

Comments 27 through 29 – Career Development:

SECTION V – EMPLOYEE RELATIONS

C. CAREER DEVELOPMENT

1. Oneida Nation employees are encouraged to develop their skills and abilities by pursuing education at a local educational institution. (BC Action, 9-9-92)
 - a. Oneida Nation employees must provide a general Career Development Plan to the supervisor listing the goals and objectives of the training and education to be undertaken.
2. Oneida Nation employees may be eligible for assistance for one (1) course per semester. The employee must attempt to arrange to take the class outside his/her normal working hours.
 - a. Where a class conflicts with the employee’s work schedule, the needs of the Tribal unit take precedence; however, the supervisor shall attempt to accommodate the employee’s request.
 - b. In no case shall the accommodation exceed actual class hours plus reasonable travel time.
 - c. Employees must obtain the approval of their immediate supervisor to take a course on work time.
3. The supervisor’s approval and estimated cost must be submitted to the HRD Office, the Area Manager and the General Manager. (HR Interpretation, 12-8-16)
4. The cost of the books, tuition and fees for the course shall be paid by the Nation through funds budgeted in programs or through the Higher Education program.
 - a. Reimbursement for books, tuition and fees is contingent upon the employee receiving at least a C (2.0 on a 4.0 point scale).

- b. Employees who receive less than the required grade point will be required to reimburse the program for whatever costs were incurred.**

Wendy Alvarez (written): Line 898 to 903 Are we reimbursing for classes? I didn't think we were doing this any longer

Mark Powless (written):

880 C. CAREER DEVELOPMENT

881 1. Oneida Nation employees are encouraged to develop their skills and abilities by
882 pursuing education at a local educational institution. (BC Action, 9-9-92)
883 a. Oneida Nation employees must provide a general Career Development Plan to the
884 supervisor listing the goals and objectives of the training and education to be
885 undertaken.

- This process is not followed within the Oneida Nation. Either strike these lines from the Personnel Policies and Procedures or enforce with all staff. Additionally, these aspects of training and education should be an emphasis of the Nation but do not have the funding to support. A concerted effort should be placed on improving our policies, procedures, and funding of employee training and education.

Mark Powless (written):

886 2. Oneida Nation employees may be eligible for assistance for one (1) course per semester.
887 The employee must attempt to arrange to take the class outside his/her normal working
888 hours.
889 a. Where a class conflicts with the employee's work schedule, the needs of the Tribal
890 unit take precedence; however, the supervisor shall attempt to accommodate the
891 employee's request.
892 b. In no case shall the accommodation exceed actual class hours plus reasonable travel
893 time.
894 c. Employees must obtain the approval of their immediate supervisor to take a course
895 on work time.
896 3. The supervisor's approval and estimated cost must be submitted to the HRD Office, the
897 Area Manager and the General Manager. (HR Interpretation, 12-8-16)
898 4. The cost of the books, tuition and fees for the course shall be paid by the Nation through
899 funds budgeted in programs or through the Higher Education program.
900 a. Reimbursement for books, tuition and fees is contingent upon the employee
901 receiving at least a C (2.0 on a 4.0 point scale).
902 b. Employees who receive less than the required grade point will be required to
903 reimburse the program for whatever costs were incurred.

- This section is not funded or utilized within the Oneida Nation. Either strike these lines from the Personnel Policies and Procedures or fund and utilize. If utilizing I refer back to my previous statement of taking the time to improve our policies, procedures, and funding of employee training and education. Regarding this specific section I recommend revising to encompass not only a course, but also a certificate, training or similar program.

Response

The commenters questions whether the Nation still engages in career development practices and reimbursing for educational classes taken for career development.

Section V.C. of the Law discusses career development. The Law provides that employees of the Nation are encouraged to develop their skills and abilities by pursuing education at a local educational institution. [OPPP section V.C.1]. Oneida Nation employees may be eligible for assistance for one (1) course per semester. [OPPP section V.C.2]. The cost of the books, tuition and fees for the course shall be paid by the Nation through funds budgeted in programs or through the Higher Education program. [OPPP section V.C.4]. The Law further provides that reimbursement for books, tuition, and fees is contingent upon the employee receiving at least a “C” grade, and that employees who receive less than the required grade point will be required to reimburse the program for whatever costs were incurred. [OPPP section V.C.4(a)-(b)].

It is recommended that the Legislative Operating Committee review section V.C. of the Law regarding career development with the Human Resources Department to determine if this practice is still being utilized within the Nation, or if these provisions need to be removed from the Law.

LOC Consideration

Comments 30 through 31 – Recordkeeping Requirements:

SECTION VIII – RECORDKEEPING

A. PERSONNEL OFFICE

1. **Basic records to be retained include:**
 - a. **Reference Data**
 - b. **Job Descriptions**
 - c. **Resumes and Applications**
 - d. **Interview notes/selection information**
 - e. **Resignations**
 - f. **Employee tax exemption claims**
 - g. **Disciplinary action information**
 - h. **Performance evaluations**
 - i. **Insurance coverage/changes**
 - j. **Transfers**
2. **The Personnel Office shall keep and maintain a complete record of each employee throughout his/her term of employment.**
 - a. **Oneida Nation employees shall have access to their employment file.**
 - b. **Employment files kept by the Personnel Office shall be considered confidential information. Release of any information to a third party must have the consent of the employee in writing.**

Wendy Alvarez (written): Line 1725 What reference data do we retain?

Wendy Alvarez (written): Line 1728 What interview notes/selection information do we retain? If it is on this list, do we have to retain the records for a specified time period?

Response

The commenter questions what reference data and interview notes/selection information the Nation retains as referenced in section VIII.A.1.a and section VIII.A.1.d of the Law.

The Legislative Operating Committee did not review or revise section VIII during the development of these amendments, so it is unknown what specifically “reference data” is being referenced in section VIII.A.1.a of the Law, or what “interview notes/selection information” is being referenced in section VIII.A.1.a of the Law other than the ordinary use of the language.

The Legislative Operating Committee may collaborate with the Human Resources Department to review section VIII.A.1 and determine what records are currently maintained by the Human Resources Department to adequately capture what the Law should require for recordkeeping.

The commenter also questions how long the Human Resources Department has to retain the records for. The Nation’s Open Records and Open Meetings law typically requires that all records be retained at least seven (7) years before destruction. [1 O.C. 107.9-4]. The Open Records and Open Meetings law then provides that the regulations regarding the storage and protection of personnel records shall be governed by the Nation’s personnel policies and procedures. [1 O.C. 107.4-3]. Section VIII.A.2 of the Law provides that the Human Resources Department is required to keep and maintain a complete record of each employee throughout his/her term of employment.

LOC Consideration

Comments 32 through 33 – Indigenous Peoples’ Day:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

4. Holidays (Work Standard, 11-7-14)

a. Tribal holidays consist of the following:

- 1) One-half Day Christmas Eve**
- 2) Christmas Day**
- 3) New Year's Day**
- 4) Memorial Day**
- 5) Veteran's Day**
- 6) Independence Day**

- 7) **Labor Day**
- 8) **Indigenous Peoples' Day**
- 9) **Thanksgiving Day**
- 10) **Indian Day (day after Thanksgiving)**
- 11) **One-half day Good Friday**
- 12) **Code Talker's Day (Oneida Day, Friday prior to Memorial Day)**

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section IV, Compensation and Benefits - Section IV.A.4., Holidays

The proposed amendments establish a new holiday – Indigenous Peoples' Day – for Oneida employees. (OPPP Amendments, Draft 1, line 406) In the United States, Indigenous Peoples' Day is celebrated on the second Monday of October.

Lisa Rauschenbach (written): Feedback from Comprehensive Housing Staff: Positive Changes: Indigenous People Day being added as a paid holiday.

Response

The commenters either provide a summary of the proposed amendment to section IV.A.4.a of the Law, which is the addition of Indigenous Peoples' Day as a recognized holiday of the Nation, or express their support of this proposed amendment.

There is no action needed by the Legislative Operating Committee based on these comments.

LOC Consideration

Comment 34 – Martin Luther King Jr. Day as a Holiday:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

4. Holidays (Work Standard, 11-7-14)

a. Tribal holidays consist of the following:

- 1) **One-half Day Christmas Eve**
- 2) **Christmas Day**
- 3) **New Year's Day**
- 4) **Memorial Day**
- 5) **Veteran's Day**
- 6) **Independence Day**
- 7) **Labor Day**
- 8) **Indigenous Peoples' Day**
- 9) **Thanksgiving Day**

- 10) **Indian Day (day after Thanksgiving)**
- 11) **One-half day Good Friday**
- 12) **Code Talker's Day (Oneida Day, Friday prior to Memorial Day)**

Mark Powless (written): 596 a. Tribal holidays consist of the following:

- Add Martin Luther King Jr. Day. MLK Day is a Federal holiday. Many area businesses and schools close or take time to recognize his accomplishments for people of color.

Response

The commenter requests that Martin Luther King Jr. Day – observed on the third Monday of each January – be considered as an official holiday of the Nation.

Section IV.A.4.a of the Law provides a list of all the recognized official holidays of the Nation. The Nation currently recognizes one-half day for Christmas Eve, Christmas Day, New Year's Day, Memorial Day, Veteran's Day, Independence Day, Labor Day, Thanksgiving Day, Indian Day, one-half day for Good Friday, and Code Talker's Day. The proposed amendments to the Law also include the addition of Indigenous Peoples' Day.

The Legislative Operating Committee may consider whether Martin Luther King Jr. Day be included as an official recognized holiday of the Nation. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.A.4.a of the Law should remain as currently drafted, and Martin Luther King Jr. Day should not be included as an official holiday recognized by the Nation.
2. Section IV.A.4.a of the Law should be revised to include Martin Luther King Jr. Day as an official holiday of the Nation. If the Legislative Operating Committee makes this determination then the following revision is recommended:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

4. Holidays (Work Standard, 11-7-14)

a. Tribal holidays consist of the following:

- 1) One-half Day Christmas Eve
- 2) Christmas Day
- 3) New Year's Day
- 4) Memorial Day
- 5) Veteran's Day
- 6) Independence Day
- 7) Labor Day
- 8) Indigenous Peoples' Day
- 9) Thanksgiving Day
- 10) Indian Day (day after Thanksgiving)
- 11) One-half day Good Friday
- 12) Code Talker's Day (Oneida Day, Friday prior to Memorial Day)

13) Martin Luther King Jr. Day

LOC Consideration

Comment 35 – Floating Holidays:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

4. Holidays (Work Standard, 11-7-14)

a. Tribal holidays consist of the following:

- 1) One-half Day Christmas Eve
- 2) Christmas Day
- 3) New Year's Day
- 4) Memorial Day
- 5) Veteran's Day
- 6) Independence Day
- 7) Labor Day
- 8) Indigenous Peoples' Day
- 9) Thanksgiving Day
- 10) Indian Day (day after Thanksgiving)
- 11) One-half day Good Friday
- 12) Code Talker's Day (Oneida Day, Friday prior to Memorial Day)

Jessica Vandekamp (written): 1. Floating Holidays. To propose the Oneida Nation provides up to two (2) floating holidays to each employee that will substitute up to two (2) current public paid holidays. This can promote diversity and respect for employees who have different cultures, religious beliefs, or traditions. The day the employee decides to take off is at their discretion and approved by the immediate supervisor.

Benefits for Employee:

1. Allowing employees to celebrate a holiday, religious event or cultural event that has meaning to them respects individual's differences. (Ex: Oneida ceremonies, birthdays, Martin Luther King Jr. Day, Hmong New Year, etc.)
2. Happy employees are productive employees when you allow them to take time off that matters to them.

Benefits for the Nation:

1. May lower payroll for premium pay when employees choose floating holidays rather than work public holidays.
2. Scheduling may improve in departments and be more flexible in Enterprises & Gaming.

Policy Considerations:

1. Are not eligible for premium pay.

2. Employee may choose floating holiday(s) at the beginning of each calendar year.
3. Must be scheduled and approved in advance by the employee's immediate supervisor.
4. Will not carry over to the next calendar year.
5. Cannot be cashed out or paid upon termination of employment.
6. Floating holidays only count towards religious holidays, cultural holidays, employee birthday, state/federal holiday, wedding anniversary, or special occasion mutually agreed upon by the employee & supervisor.

Response

The commenter requests that the Legislative Operating Committee consider allowing up to two (2) floating holidays to each employee that will substitute up to two (2) current paid holidays for employees of the Nation.

Currently, section IV.A.4.a. of the Law provides a list of all the recognized official holidays of the Nation. The Nation currently recognizes one-half day for Christmas Eve, Christmas Day, New Year's Day, Memorial Day, Veteran's Day, Independence Day, Labor Day, Thanksgiving Day, Indian Day, one-half day for Good Friday, and Code Talker's Day. The proposed amendments to the Law also include the addition of Indigenous Peoples' Day.

The Legislative Operating Committee may consider whether the Law should allow an employee to substitute up to two (2) official recognized holidays of the Nation for floating holidays that can be taken on a date mutually agreed upon between the employee and their immediate supervisor. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.A.4.a of the Law should remain as currently drafted.
2. Section IV.A.4.a of the Law should be revised allow an employee to substitute up to two (2) official recognized holidays of the Nation for floating holidays that can be taken on a date mutually agreed upon between the employee and their immediate supervisor. If the Legislative Operating Committee makes this determination then it is recommended that the Legislative Operating Committee collaborate with the Human Resources Department to determine how floating holidays should be addressed and implemented for the Nation. For example, the use of floating holidays may have different implementation implications for different parts of the organization. On the enterprise side of the organization, areas such as Gaming and Retail are typically open and operational on holidays recognized by the Nation, so allowing an employee to regularly work on a holiday and instead substitute the holiday time for a different day may just require administrative tracking. On the program side of the organization, many of the areas or departments are closed and non-operational on holidays recognized by the Nation, so allowing an employee to work on a holiday will need different considerations.

LOC Consideration

Comment 36 – Eligibility for Holiday Pay:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

4. Holidays (Work Standard, 11-7-14)

b. To be eligible for a paid holiday, employees must work the preceding and following scheduled work days (except for employees who are on a prescheduled work leave or an approved extended sick leave.) Employees who are granted a sick day directly prior to a holiday must certify that they were capable of working the holiday in order to qualify for a paid holiday.

Mark Powless (written):

610 b. To be eligible for a paid holiday, employees must work the preceding and following
611 scheduled work days (except for employees who are on a prescheduled work leave
612 or an approved extended sick leave.) Employees who are granted a sick day directly
613 prior to a holiday must certify that they were capable of working the holiday in order
614 to qualify for a paid holiday.

- From an administrative perspective this can be cumbersome. Grant the holiday regardless of whether or not they work the preceding and following scheduled workdays.

Response

The commenter provides that section IV.A.4.b of the Law's requirement that to be eligible for a paid holiday, employees must work the preceding and following scheduled work days is cumbersome from an administrative perspective, and should be simplified and removed.

Section IV.A.4.b of the Law provides that to be eligible for a paid holiday, employees must work the preceding and following scheduled work days, except for employees who are on a prescheduled work leave or an approved extended sick leave. The Law then goes on to state that employees who are granted a sick day directly prior to a holiday must certify that they were capable of working the holiday in order to qualify for a paid holiday.

The Legislative Operating Committee may consider whether the requirement to work the preceding and following scheduled work days in order to be eligible for holiday pay should remain as a requirement in the Law. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.A.4.b of the Law should remain as currently drafted, and an employee should be required to work the preceding and following scheduled work days in order to be eligible for holiday pay.
2. Section IV.A.4.b of the Law should be revised to eliminate any administrative burden, and the requirement that an employee work the preceding and following scheduled work days in order to be eligible for holiday pay be removed. If the Legislative Operating Committee makes this determination then the following revision is recommended:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

4. Holidays (Work Standard, 11-7-14)

~~b. To be eligible for a paid holiday, employees must work the preceding and following scheduled work days (except for employees who are on a prescheduled work leave or an approved extended sick leave.) Employees who are granted a sick day directly prior to a holiday must certify that they were capable of working the holiday in order to qualify for a paid holiday.~~

LOC Consideration

Comment 37 – Maximum Paid Holiday Hours:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

4. Holidays (Work Standard, 11-7-14)

c. All regular employees will be given holiday pay for the maximum pay of eight (8) hours per day.

Mark Powless (written):

615 c. All regular employees will be given holiday pay for the maximum pay of eight (8) 616 hours per day.

- Grant holiday pay based on the regularly scheduled hours for that position. If an employee works 10-hour shifts, provide holiday pay of 10 hours, when applicable.

Response

The commenter requests that the Legislative Operating Committee consider revising section IV.A.4.c of the Law, and grant holiday pay based on the regularly scheduled hours for that position.

Section IV.A.4.c of the Law provides that all regular employees will be given holiday pay for the maximum pay of eight (8) hours per day. The commenter points out that there are some employees within the Nation that regularly work shifts of more than eight (8) hours.

The Legislative Operating Committee may consider whether the eight (8) hour maximum for holiday pay should remain in the Law. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.A.4.c of the Law should remain as currently drafted, and an employee employees should only be given holiday pay for the maximum pay of eight (8) hours per day

2. Section IV.A.4.c of the Law should be revised so that an employee is eligible to receive holiday pay for all regularly scheduled hours worked during a holiday. If the Legislative Operating Committee makes this determination then the following revision is recommended:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

4. Holidays (Work Standard, 11-7-14)

- c. All regular employees ~~will~~shall be given holiday pay for the hours worked during a holiday~~maximum pay of eight (8) hours per day~~.

LOC Consideration

Comment 38 – Reduction of the Amount of Accrued Personal and Vacation Time:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

- c. Except as provided for in section g, the accrual of personal days shall be as follows: (BC Resolution – 4-11-13-F)

- 1) 0-3 years of service - 6 days per year;
- 2) 4-7 years of service - 8 days per year;
- 3) 8-14 years of service - 10 days per year;
- 4) 15+ years of service - 12 days per year;

- d. Except as provided for in section g, the accrual of vacation days shall be as follows:

- 1) 0-3 years of service - 12 days per year
- 2) 4-7 years of service - 15 days per year;
- 3) 8-15 years of service - 20 days per year;
- 4) 15+ years of service - 25 days per year.

Mark Powless (written):

636 c. Except as provided for in section g, the accrual of personal days shall be as follows:

637 (BC Resolution – 4-11-13-F)

638 1) 0-3 years of service - 6 days per year;

639 2) 4-7 years of service - 8 days per year;

640 3) 8-14 years of service - 10 days per year;

641 4) 15+ years of service - 12 days per year;

642 d. Except as provided for in section g, the accrual of vacation days shall be as follows:

643 1) 0-3 years of service - 12 days per year

644 2) 4-7 years of service - 15 days per year;

645 3) 8-15 years of service - 20 days per year;

646 4) 15+ years of service - 25 days per year.

- Start to scale back the accrual of personal and vacation days by eliminating the accruals for 15+ years of service for both personal and vacation. Prior to Trade Back For Cash in 2022 91 employees were maintaining a balance of 250 or more personal/vacation hours. Of those, 73% had 15 or more years of service. Additionally, employees are gaining an additional holiday (Indigenous People's Day) with the approval of these amendments.

Response

The commenter requests that the Legislative Operating Committee consider how the accrual of personal and vacation time is handled by the Nation and eliminate the additional accrual category for employees with more than fifteen (15) years of service.

The Law provides that every Oneida Nation employee, except temporary employees, shall be allowed personal and vacation days with pay to the extent that personal days and vacation are accumulated. *[OPPP Section IV.A.5.a]*. The amount of personal and vacations days shall be determined by continuous service for the Nation. *[OPPP Section IV.A.5.b]*. The Law provides the following for the accrual of personal and vacation time:

- Accrual of Personal Days:
 - 0-3 years of service - 6 days per year;
 - 4-7 years of service - 8 days per year;
 - 8-14 years of service - 10 days per year;
 - 15+ years of service - 12 days per year;
- Accrual of Vacation Days:
 - 0-3 years of service - 12 days per year;
 - 4-7 years of service - 15 days per year;
 - 8-15 years of service - 20 days per year;
 - 15+ years of service - 25 days per year. *[OPPP Section IV.A.5.c-d]*.

The Legislative Operating Committee may consider whether the accrual rates for personal and vacation time provided for in section IV.A.5.c-d of the Law should be revised Law. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.A.5.c-d of the Law should remain as currently drafted, and there should be no change to the accrual rates for personal and vacation time.
2. Section IV.A.5.c-d of the Law should be revised to address the accrual rates for personal and vacation time. The Legislative Operating Committee may consider how the accrual rates should be revised, and if they should be reduced or if certain accrual rate levels should be eliminated. If the Legislative Operating Committee makes the determination to eliminate the accrual rates for personal and vacation time for those employees who have more than fifteen years of service, as suggested by the commenter, then the following revision is recommended:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

- c. Except as provided for in section g, the accrual of personal days shall be as follows: (BC Resolution – 4-11-13-F)

- 1) 0-3 years of service - 6 days per year;
 - 2) 4-7 years of service - 8 days per year;
 - 3) 8~~+~~⁺14 years of service - 10 days per year;
 - 4) ~~15+ years of service - 12 days per year;~~
- d. Except as provided for in section g, the accrual of vacation days shall be as follows:
- 1) 0-3 years of service - 12 days per year
 - 2) 4-7 years of service - 15 days per year;
 - 3) 8~~+~~⁺15-years of service - 20 days per year;
 - 4) ~~15+ years of service - 25 days per year.~~

LOC Consideration

Comment 39 – Combination of Personal and Vacation Time:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

- c. Except as provided for in section g, the accrual of personal days shall be as follows: (BC Resolution – 4-11-13-F)
- 1) 0-3 years of service - 6 days per year;
 - 2) 4-7 years of service - 8 days per year;
 - 3) 8-14 years of service - 10 days per year;
 - 4) 15+ years of service - 12 days per year;
- d. Except as provided for in section g, the accrual of vacation days shall be as follows:
- 1) 0-3 years of service - 12 days per year
 - 2) 4-7 years of service - 15 days per year;
 - 3) 8-15 years of service - 20 days per year;
 - 4) 15+ years of service - 25 days per year.

Jessica Vandekamp (written): 6. Paid Time Off

- Why do we have to separate personal/vacation?
- Most employees use interchangeably.
- Combine p/v time to one large amount of PTO, load at the beginning of the year rather than accumulate.

Response

The commenter questions why the Law differentiates between “personal” and “vacation” time since they are typically used interchangeably by an employee, and suggests that the Law be revised to combine personal time and vacation time into one allocation of personal time off. The

commenter also then suggests that the Law be revised so that yearly accruals are provided to an employee in one lump sum at the beginning of the year instead of accumulated throughout the year through weekly accrual rates.

The Law provides that every Oneida Nation employee, except temporary employees, shall be allowed personal and vacation days with pay to the extent that personal days and vacation are accumulated. *[OPPP Section IV.A.5.a]*. The amount of personal and vacations days shall be determined by continuous service for the Nation. *[OPPP Section IV.A.5.b]*. The Law provides the following for the accrual of personal and vacation time:

- Accrual of Personal Days:
 - 0-3 years of service - 6 days per year;
 - 4-7 years of service - 8 days per year;
 - 8-14 years of service - 10 days per year;
 - 15+ years of service - 12 days per year;
- Accrual of Vacation Days:
 - 0-3 years of service - 12 days per year;
 - 4-7 years of service - 15 days per year;
 - 8-15 years of service - 20 days per year;
 - 15+ years of service - 25 days per year. *[OPPP Section IV.A.5.c-d]*.

Personal Days can be used for any reason so long as the request is approved by the employee's supervisor at least twenty-four (24) hours in advance, unless the absence is due to illness or unforeseen circumstances. *[OPPP Section IV.A.5.i]*. In the case of illness or unforeseen circumstance, the supervisor shall be notified no later than fifteen (15) minutes before the scheduled starting time. *[OPPP Section IV.A.5.i.1]*. An employee shall notify his or her supervisor of an intent to use personal days in the following ways: for three (3) to five (5) days - one (1) week advance notification, and for six (6) days or more days - two (2) weeks advance notification. *[OPPP Section IV.A.5.j]*. An employee shall notify his or her supervisor one (1) day in advance if he or she will take off one (1) or two (2) days of vacation. *[OPPP Section IV.A.5.k]*. Three (3) to five (5) days of vacation require a one (1) week advance notification, while six (6) or more days of vacation require at least two (2) weeks advance notification. *[OPPP Section IV.A.5.k.1-2]*. Programs and enterprises may institute stricter standards of notification. *[OPPP Section IV.A.5.i.2, and IV.A.5.k]*.

It is unknown why personal and vacation time are differentiated in the Law. The provisions for advance notification of the use of personal and vacation time are very similar for each category, except that personal time may be notified less than twenty-four (24) hours in advance in certain circumstances.

The Legislative Operating Committee may consider how the Nation handles the separation of personal and vacation time accruals. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.A.5.c-d of the Law should remain as currently drafted, and there should be no change to the separation of personal and vacation time accrual rates.

2. Section IV.A.5.c-d of the Law should be revised to combine the accrual rates for personal and vacation time. If the Legislative Operating Committee makes this determination, then the following revision is recommended:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. ~~Vacation/Personal Days~~ Personal Time Off

- c. Except as provided for in section g, the accrual of personal time off (PTO) ~~days~~ shall be as follows: (BC Resolution – 4-11-13-F)

- 1) 0-3 years of service – 18 6 days per year;
- 2) 4-7 years of service – 23 8 days per year;
- 3) 8-14 years of service – 30 10 days per year;
- 4) 15+ years of service – 37 12 days per year;

- ~~d. Except as provided for in section g, the accrual of vacation days shall be as follows:~~

- ~~1) 0-3 years of service – 12 days per year~~
- ~~2) 4-7 years of service – 15 days per year;~~
- ~~3) 8-15 years of service – 20 days per year;~~
- ~~4) 15+ years of service – 25 days per year.~~

All other references to personal or vacation time throughout the Law would also have to be updated and revised.

Additionally, the Legislative Operating Committee may consider whether the amount of personal and vacation time provided to an employee should be accrued throughout the year, as is the current practice, or provided to the employee in one lump sum at the beginning of the year. If the Legislative Operating Committee would like to explore this issue, then it is recommended that the Legislative Operating Committee collaborate with the Finance Administration to determine the potential fiscal impacts of providing personal and vacation time to an employee as a lump sum at the beginning of the year.

LOC Consideration

Comment 40 – Discontinuance of Oneida Nation Sponsored Loan Program:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

- h. Upon termination from Oneida Nation employment, employees will be paid for any unused personal and/or vacation days.

- 1) Employees who have used the Oneida Nation-sponsored loan program will be required to honor the terms of the loan agreement.

Mark Powless (written):

659 1) Employees who have used the Oneida Nation-sponsored loan program will be
660 required to honor the terms of the loan agreement.

- This program no longer exists. Strike these lines from the Personnel Policies and Procedures.

Response

The commenter provides that the Oneida Nation sponsored loan program no longer exists, and therefore the language referencing this loan program found in section IV.A.5.h.1 should be removed from the Law.

Section IV.A.5.h. of the Law provides that upon termination from Oneida Nation employment, employees will be paid for any unused personal and/or vacation days. The Law then states that employees who have used the Oneida Nation-sponsored loan program will be required to honor the terms of the loan agreement.

The following revision is recommended based on the comment that the Oneida Nation sponsored loan program is no longer utilized:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

h. Upon termination from Oneida Nation employment, employees will be paid for any unused personal and/or vacation days.

~~1) Employees who have used the Oneida Nation-sponsored loan program will be required to honor the terms of the loan agreement.~~

LOC Consideration

Comment 41 – Trade Back for Cash:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

n. Trade-back for Cash - Each fiscal year, the Oneida Business Committee shall analyze fiscal conditions to determine whether employees may trade back personal and/or vacation hours for cash that fiscal year.

1) If the Oneida Business Committee approves trade-back for cash, they shall also determine whether (i) and/or (ii) applies: (See Revision)

i. All employees will have the opportunity to trade-back hours one time that year.

1. By August 15, each employee who has accumulated twenty-four (24) hours or more of vacation and/or personal days may opt to trade in his/her hours for cash.
2. Employees will receive their trade back on or before September 30 of that year.
- ii. Only those employees who are unable to utilize their personal and/or vacation time due to working conditions, such as a shortage in staffing, as determined by the Human Resources Executive Director or designee, will have the opportunity to trade back hours on a quarterly basis.
 1. Employees will receive their trade back within sixty (60) days after opting to trade back hours.
- 2) When trade-back for cash is approved by the Oneida Business Committee, the following standards shall apply:
 - i. Employees must decide which status (vacation or personal or both) from which their trade back will be drawn.
 - ii. Employees may not trade for cash more than eighty (80) hours in one year. (GTC Resolution, 5-23-11-B)

Mark Powless (written):

696 ii. Only those employees who are unable to utilize their personal and/or
 697 vacation time due to working conditions, such as a shortage in staffing, as
 698 determined by the Human Resources Executive Director or
 699 designee, will have the opportunity to trade back hours on a quarterly basis.
 700 1. Employees will receive their trade back within sixty (60) days after
 701 opting to trade back hours.

- This opportunity no longer exists. Strike these lines from the Personnel Policies and Procedures.

Response

The commenter provides that the opportunity for Trade Back for Cash as provided in section IV.A.5.n. of the Law no longer exists, so this provision of the Law should be eliminated.

Section IV.A.5.n. of the Law provides that each fiscal year, the Oneida Business Committee is responsible for analyzing fiscal conditions to determine whether employees may trade back personal and/or vacation hours for cash that fiscal year. If the Oneida Business Committee approves trade-back for cash, they shall also determine whether all employees will have the opportunity to trade back hours one time that year, or if only those employees who are unable to utilize their personal and/or vacation time due to working conditions, such as a shortage in staffing, as determined by the Human Resources Executive Director or designee, will have the opportunity to trade back hours on a quarterly basis. If all employees are allowed to trade back personal or vacation time for cash, then by August 15, each employee who has accumulated twenty-four (24) hours or more of vacation and/or personal days may opt to trade in his/her hours for cash. Employees will receive their trade back on or before September 30 of that year. If only certain

employees are allowed to trade back their personal or vacation time for cash then employees will receive their trade back within sixty (60) days after opting to trade back hours. Overall, when trade-back for cash is approved by the Oneida Business Committee, employees must decide which status (vacation or personal or both) from which their trade back will be drawn, and employees are limited to trading back no more than eighty (80) hours in one year.

Trade Back for Cash was most recently used in 2022. The Oneida Business Committee adopted resolution BC-07-13-22-G, *Authorization of 80 Hours of Trade Back for Cash for Fiscal Year 2022*. Through this resolution the Oneida Business Committee declared that there shall be authorized a one-time Trade Back for Cash for Fiscal Year 2022 which shall be capped at eighty (80) hours of personal and/or vacation time for eligible employees in accordance with Section IV.A.5.n. of the Oneida Personnel Policies and Procedures.

The Legislative Operating Committee may consider whether Trade Back for Cash program as provided for in section IV.A.5.n of the Law should remain in the Law or be eliminated. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.A.5.n. of the Law should remain as currently drafted, and the Trade Back for Cash program should remain in the Law. This provides the Oneida Business Committee the flexibility to determine if the fiscal conditions of the Nation provide the opportunity for this program to be utilized.
2. Section IV.A.5.n. of the Law should be revised to eliminate the Trade Back for Cash program. If the Legislative Operating Committee makes the determination then the following revision is recommended:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

~~n. — Trade-back for Cash — Each fiscal year, the Oneida Business Committee shall analyze fiscal conditions to determine whether employees may trade back personal and/or vacation hours for cash that fiscal year.~~

~~1) — If the Oneida Business Committee approves trade-back for cash, they shall also determine whether (i) and/or (ii) applies: (See Revision)~~

~~i. — All employees will have the opportunity to trade-back hours one time that year.~~

~~1. — By August 15, each employee who has accumulated twenty four (24) hours or more of vacation and/or personal days may opt to trade in his/her hours for cash.~~

~~2. — Employees will receive their trade back on or before September 30 of that year.~~

~~ii. — Only those employees who are unable to utilize their personal and/or vacation time due to working conditions, such as a shortage in staffing, as determined by the Human Resources Executive Director or designee, will have the opportunity to trade back hours on a quarterly basis.~~

~~1. — Employees will receive their trade back within sixty (60) days after opting to trade back hours.~~

- ~~2) When trade back for cash is approved by the Oneida Business Committee, the following standards shall apply:~~
- ~~i. Employees must decide which status (vacation or personal or both) from which their trade back will be drawn.~~
 - ~~ii. Employees may not trade for cash more than eighty (80) hours in one year. (GTC Resolution, 5-23-11-B)~~

LOC Consideration

Comment 42 – Promotions as a Result of Evaluations:

SECTION V – EMPLOYEE RELATIONS

B. EVALUATIONS

- 1. Evaluation reports will be used in determining all promotions, transfers and salary adjustments.**

Mark Powless (written):

850 B. EVALUATIONS

851 1. Evaluation reports will be used in determining all promotions, transfers and salary

852 adjustments.

This section is obsolete. The Oneida Nation does not offer promotions and evaluations are not provided when determining transfers. With that being said, areas would like the opportunity to view recent evaluations when considering transfers into their department.

Response

The commenter provides that section V.B.1 of the Law is obsolete since the Nation does not provide promotions, and evaluations are not provided when determining transfers.

Section V.B.1 of the Law provides that evaluation reports will be used in determining all promotions, transfers, and salary adjustments.

It is recommended that the Legislative Operating Committee review with the Human Resources Department what an evaluation could be used for, and clarify this section accordingly. Specifically, it should be determined whether evaluations are provided when transfer considerations are made. If it determined that evaluations are not used for determining promotions or transfers, then the following revisions is recommended:

SECTION V – EMPLOYEE RELATIONS

B. EVALUATIONS

1. Evaluation reports will be used in determining ~~all promotions, transfers and~~ salary adjustments.

LOC Consideration

Comment 43 – Title of Human Resources Executive Director:

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Throughout OPPP amendments The title “HRD Manager” is updated to “Human Resources Executive Director” throughout the OPPP. This change presents no legal issues.

Response

The commenter’s highlight that throughout the Law the title of “HRD Manager” has been updated to “Human Resources Executive Director” and this revision reflects no legal issue.

After the draft of proposed amendments to this Law was sent to public meeting it was brought to the Legislative Operating Committee’s attention that the proper title is Executive Human Resources Director. It is recommended that “Human Resources Executive Director” is revised to “Executive Human Resources Director” throughout the Law.

LOC Consideration

Comment 44 – Oneida Preference and Indian Preference Statement of Policy:

SECTION III – SELECTION POLICY

A. ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

The Oneida Nation is an equal employment opportunity employer and follows non-discriminatory policies and procedures in personnel decisions. The Oneida Nation exists to serve the needs of the Oneida people and therefore accords Oneida Preference to enrolled members of the Oneida Nation where such preference is not otherwise prohibited. All General Managers and top administrative positions, as defined by HRD in a standard operating procedure, shall be held by enrolled members of the Oneida Nation. In all other instances, the Nation applies the following priorities of Indian Preference in staffing decisions:

- 1 Enrolled members of the Oneida Nation;
- 2 Individuals eligible for enrollment in the Oneida Nation;
- 3 Documented first generation descendants of the Oneida Nation;
- 4 Members or descendants of a federally recognized tribe;
- 5 Other (non-Indian).

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section III, Selection Policy
Section III.A., Oneida Preference and Indian Preference Statement of Policy

The proposed amendments update the language of the Oneida Preference and Indian Preference Statement of Policy. In this section, updated language does not substantially change the underlying policy and does not create any legal issues.

Response

The commenters highlight that there has been slight modification to the verbiage used in the Oneida preference and Indian preference statement of policy found in section III.A of the Law. This language does not alter the intent of the Oneida preference and Indian preference statement of policy.

There is no action needed by the Legislative Operating Committee based on these comments.

LOC Consideration

Comments 45 through 46 – Use of Administrative Rulemaking:

SECTION III – SELECTION POLICY

B. HIRING PROCEDURE

2. Hiring Guidelines

c. Hiring and Selection Rules.

- 1) The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the hiring and selection of employees of the Nation.

C. INTERNAL POSITION POSTING - The Oneida Nation encourages movement within and among units in order to make the best possible use of human resources to meet the Oneida Nation's goals and objectives. Supervisors and employees are encouraged to work together to create an environment in which employees constantly strive to improve their skills and abilities and managers constantly seek to provide challenging and rewarding work experiences.

1. Internal Position Posting and Reassignment Rules.

- a. The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for internal position posting and reassignment of employees of the Nation.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section III.B., Hiring Procedure

The proposed amendments eliminate almost all OPPP language regarding recruitment and hiring topics, such as identifying vacancies, developing job descriptions, applications, advertising vacancies, screening for positions, interviews, and selection of a candidate. In place of such language, the proposed amendments delegate rulemaking authority to the Human Resources Department as follows:

c. Hiring and Selection Rules.

- 1) The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the hiring and selection of employees of the Nation. (OPPP Amendments (clean copy), Draft 1, lines 295-298)

Section III.C. Internal Position Posting (formerly Transfers and Promotions Policy)

Similarly, the proposed amendments eliminate almost all OPPP language regarding transfers and promotions, internal postings, applicant pool, and reassignments and, again, delegate rulemaking authority to HRD, specifically:

1. Internal Position Posting and Reassignment Rules

- a. The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for internal position posting and reassignment of employees of the Nation. (OPPP Amendments, Draft 1, lines 306-309)

Lisa Duff on behalf of Gaming Senior Management (written): 3) Gaming is requesting the LOC consider a process that gives management (to include gaming management) representation and joint rulemaking authority over all rules for which HRD is delegated rulemaking authority in the draft OPPP. Failure to include management in this drafting process and the importance of a seat at the table in the drafting process should be noted because once documents are made public, certain things can be difficult to walk back from. This supports the need for joint authority to ensure management's voice is guaranteed to be incorporated into HRD rules rather than merely receiving the opportunity to provide public comment – as is the case in this instance. Please note that the last time employment matters were considered the LOC recognized the importance of including management and, at Gaming's request, included 2 gaming HRD representatives on the drafting team to provide a perspective from the profit centers who rely on these processes to operate businesses that funds the lion's share of the Nation's operations.

- 388 2) The HRD Office shall ~~notify screened out applicants within five (5) working~~
 389 ~~days~~
 389 ~~after the initial screening and reserve these applications~~ be delegated rulemaking
 390 ~~authority in the general recruiting pool.~~

Response

Some of the commenters summarize the proposed revisions to the Law regarding the hiring and selection process, and the internal transfer process. The proposed amendments to the Law eliminate much of the process and procedures currently contained in the law regarding the hiring and selection process, and instead provides that the HRD Office shall be delegated rulemaking

authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the hiring and selection of employees of the Nation. [Section III.B.2.c]. The proposed amendments to the Law also eliminate much of the process and procedures currently contained in the law regarding the transfers and promotions, internal postings, applicant pool, and reassignments and instead provides that the HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the internal position posting and reassignment of employees of the Nation. [Section III.C.1].

The other commenters ask the Legislative Operating Committee to consider a joint delegation of rulemaking authority to management when rulemaking authority is delegated to the Human Resources Department, in an effort to recognize the importance of including management in the development of policies.

The Legislative Operating Committee may consider what the most appropriate delegation of rulemaking authority is under the Law. The Legislative Operating Committee may make one of the following determinations:

1. Sections III.B.2.c. and III.C.1 of the Law should remain as currently drafted and provide delegations of rulemaking authority to the Human Resources Department.
2. Sections III.B.2.c. and III.C.1 of the Law should be redrafted to include a joint delegation of rulemaking authority to include management. If the Legislative Operating Committee makes this determination then the following revision to the Law is recommended:

SECTION III – SELECTION POLICY

B. HIRING PROCEDURE

2. Hiring Guidelines

c. Hiring and Selection Rules.

- 1) The ~~HRD Office~~ Human Resources Executive Director, General Manager, Gaming General Manager, and Retail General Manager shall be delegated joint rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the hiring and selection of employees of the Nation.

C. INTERNAL POSITION POSTING - The Oneida Nation encourages movement within and among units in order to make the best possible use of human resources to meet the Oneida Nation's goals and objectives. Supervisors and employees are encouraged to work together to create an environment in which employees constantly strive to improve their skills and abilities and managers constantly seek to provide challenging and rewarding work experiences.

1. Internal Position Posting and Reassignment Rules.

- a. The ~~HRD Office~~ Human Resources Executive Director, General Manager, Gaming General Manager, and Retail General Manager shall be delegated joint rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for internal position posting and reassignment of employees of the Nation.

LOC Consideration

Comment 47 – Complaint Procedure in Law:

SECTION V – EMPLOYEE RELATIONS

1. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

a. General

b. Types of Complaints

c. Complaint Procedures

1) Employee Disagreements

- a) An employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department.
- b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the supervisor of the employee with the complaint.
- c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.
 - i. The supervisor's ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department.
 - ii. The supervisor shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 1. Meetings between the supervisor and employees may occur in person, through video conferencing, or over the telephone.
 2. The supervisor shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the supervisor shall move forward with the investigation based on the information they have.
 - iii. If the supervisor cannot complete the investigation within the ten (10) working day timeframe, the supervisor may request a one (1) time five (5) working day extension from the EEO Department.
 - iv. When the supervisor's investigation is complete, the supervisor shall contact the EEO Officer to mutually determine an appropriate resolution.
 1. If the supervisor cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the supervisor shall provide written justification for non-agreement on the resolution to both the Area Manager and the Human Resources Executive Director.
 - v. The supervisor shall send the final resolution to their Area Manager to ensure accountability.
 - vi. The supervisor shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.

- d) If the supervisor fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the Area Manager.
 - i. The notice shall notify the Area Manager that the complaint was not addressed within the allotted ten (10) working days.
 - ii. The notice shall inform the Area Manager that the supervisor violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.
 - iii. The notice shall address the appropriate accountability of the supervisor.
 - 1. If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.
 - iv. The notice shall direct the Area Manager to complete the complaint investigation within ten (10) working days of receiving the notice from EEO.
- e) If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.
 - i. Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.
 - ii. The Area Manager shall have ten (10) working days to complete their investigation.
 - iii. The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.
 - iv. The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - 1. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.
 - 2. The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.
 - v. When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.
 - 1. If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.

- vi. The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.
 - vii. The Area Manager's resolution shall be final.
- f) If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.
- i. The notice shall notify the General Manager level position that the complaint was not addressed within the additional ten (10) working days.
 - ii. The notice shall inform the General Manager level position that the Area Manager violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.
 - iii. The notice shall address the appropriate accountability of the Area Manager.
 - iv. The notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.
1. Investigation Procedure for all General Manager Level Positions, not the Oneida Business Committee
- a. The General Manager level position shall complete the investigation and reach a resolution within ten (10) working days of receiving the notice from EEO.
 - b. The General Manager level position's ten (10) working day timeframe begins the day after the General Manager level position receives the complaint from the EEO Department.
 - c. The General Manager level position shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - i. Meetings between the General Manager level position and the employees may occur in person, through video conferencing, or by telephone.
 - ii. The General Manager level position shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the General Manager level position shall move forward with the investigation based on the information they have.
 - d. When the General Manager level position's investigation is complete, the General Manager level position shall contact the EEO Officer to mutually determine an appropriate resolution.

- i. If the General Manager level position cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the General Manager level position shall provide written justification for non-agreement on the resolution to the Human Resources Executive Director.
 - e. The final resolution shall be sent to the EEO Department for filing and reporting purposes.
 - f. The General Manager level position's resolution of the complaint shall be final.
 - 2. Investigation Procedure for the Oneida Business Committee
 - a. When the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.
- 2) EEO Violations
 - a) An employee may file a EEO Violation complaint with the EEO Department.
 - b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
 - c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
 - d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
 - e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an EEO Violation complaint.
 - g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
 - h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
 - i) The EEO Officer's resolution shall be final.
- 3) Illegal Activities
 - a) An employee may file an Illegal Activities complaint with the EEO Department.
 - b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
 - c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.

- d) **The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:**
 - i. **Are aware that the EEO Officer will be investigating their employee;**
 - ii. **Know the EEO Officer shall be responsible for implementing the final resolution; and**
 - iii. **Know the final resolution shall be sent to their supervisor to ensure accountability.**
- e) **The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.**
- f) **The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.**
- g) **The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.**
- h) **The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.**
- i) **The EEO Officer's resolution shall be final.**
- j) **If the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.**
- d. **The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.**

Melanie Burkhart (oral): Yes, thank you. I just have a, a comment on the complaint area. I disagree with having the complaint process included in the law, because then that ties our hands in terms of needing to be able to update a process because it's part of a law. So, I don't think that should be included in the law. Thank you.

Response

The commenter provides that she disagrees with including the complaint procedure in the Law because it results in a lack of flexibility in updating the complaint procedures to meet the needs of the Nation, since any changes to the Law would have to follow the legislative process.

The Legislative Operating Committee has to weigh what procedures and processes should be included in the Law and what procedures and processes should be provided for in other manners such as administrative rules or standard operating procedures.

The Legislative Operating Committee may consider whether the complaint procedures should remain included in the Law, or be delegated to be provided in a different manner. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section V.A.1.c. of the Law should remain as currently drafted, and the complaint procedures should be included in the Law itself.
2. Section V.A.1.c of the Law should be revised to remove the complaint procedure from the Law itself and instead delegate authority for the complaint procedure to be provided for

through an administrative rule. If the Legislative Operating Committee makes this determination, then the following revision is recommended:

SECTION V – EMPLOYEE RELATIONS

A. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

i. The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding complaint procedures.

Note: All other complaint procedure language would be removed from the Law.

LOC Consideration

Comment 48 – Approval of a Leave of Absence:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

3. Leave of Absence (Work Standard, 6-10-14)

a. A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the Nation.

1) Leaves of absence will not exceed three (3) months.

i. All leaves of absence shall be approved by the Supervisor.

ii. Requests shall be documented and submitted to the supervisor with as much advance notice as possible.

iii. Disposition of requests will be made on the basis of staffing requirements.

2) Upon returning, the employee will be reinstated in the former position with full status and benefits. Holiday, vacation, and sick leave will not be accrued during the leave of absence.

3) No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.

i. Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process.

Lisa Rauschenbach (written): Leave of Absence should also include the Area Manager. There should be more than just a Supervisor approval to ensure areas are covered.

Response

The commenter provides that approval of a leave of absence should include the approval of the Area Manager and not just a supervisor.

The proposed amendments to section IV.D.3. provides that all leaves of absence shall be approved by the supervisor. Currently, the Law requires that a leave of absence be approved by the Supervisor, Area Manager, HRD Manager and General Manager. The level of approval needed for a leave of absence was reduced to alleviate the administrative burden of obtaining approval from four (4) individuals and simplify the process.

The Legislative Operating Committee may consider whether a leave of absence should require approval beyond just the supervisor. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.D.3. of the Law should remain as currently drafted, and all leaves of absence shall be approved by the Supervisor.
2. Section IV.D.3. of the Law should be revised to require that the Area Manager, in addition to the supervisor, approve a leave of absence. If the Legislative Operating Committee makes this determination, then the following revision is recommended:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

3. Leave of Absence (Work Standard, 6-10-14)

a. A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the Nation.

- 1) Leaves of absence will not exceed three (3) months.
 - i. All leaves of absence shall be approved by the Supervisor and Area Manager.
 - ii. Requests shall be documented and submitted to the supervisor with as much advance notice as possible.
 - iii. Disposition of requests will be made on the basis of staffing requirements.
- 2) Upon returning, the employee will be reinstated in the former position with full status and benefits. Holiday, vacation, and sick leave will not be accrued during the leave of absence.
- 3) No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.
 - i. Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process.

LOC Consideration

Comment 49 – Intent to Return to Work:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

3. Leave of Absence (Work Standard, 6-10-14)

a. A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the Nation.

1) Leaves of absence will not exceed three (3) months.

i. All leaves of absence shall be approved by the Supervisor.

ii. Requests shall be documented and submitted to the supervisor with as much advance notice as possible.

iii. Disposition of requests will be made on the basis of staffing requirements.

2) Upon returning, the employee will be reinstated in the former position with full status and benefits. Holiday, vacation, and sick leave will not be accrued during the leave of absence.

3) No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.

i. Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process.

Shannon Stone (written): Leave of Absence: Line 751 requires 15 working days prior written notice of intent to return to work by the employee. There is an interpretation that says one day notice is required for LOAs shorter than 15 working days. Overall, the 15-day requirement seems out of date, particularly when the employee and supervisor should maintain communications through the period of leave. One day notice should be sufficient and earlier notice would be courteous.

The other thought is what constitutes notice of intent to return? If an employee provides a return-to-work letter from a doctor with a date to return is that intent to return?

Response

The commenter provides that the requirement that no later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position may be outdated and too long, and instead one (1) day notice should be sufficient. The commenter additionally asks for clarification on what constitutes a notice of intent to return.

Section IV.D.3.a.3. of the Law provides that no later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his or her intent to return to the position. The notice must be presented to the supervisor, and failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process.

A fifteen (15) day notice period for an employee's intent to return to their position after a leave of absence may be included to ensure that there is adequate time for a department and supervisor to plan and prepare for an employee's return. The Legislative Operating Committee may consider whether the fifteen (15) day notice requirement should be shortened. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.D.3.a.3 of the Law should remain as currently drafted, and the requirement that no later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his or her intent to return to the position should remain in the Law.
2. Section IV.D.3.a.3 of the Law should be revised to shorten the amount of working days prior to the expiration of the leave period the employee must give notice in writing of his or her intent to return to the position. If the Legislative Operating Committee makes this determination, then the following revision is recommended:
 - 3) No later than ~~fifteen (15)~~ X working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.
 - i. Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process.

The Legislative Operating Committee should also consider whether the Law should address the amount of notice that is required for an employee to provide written notice of their intent to return to work after a leave of absence if the leave of absence is less than fifteen (15) days in length. If the Legislative Operating Committee determines the Law should address leave of absences less than fifteen (15) days in length, then the following revision is recommended:

- 3) For a leave of absence longer fifteen (15) days or longer, no later than ~~fifteen (15)~~ X working days prior to the expiration of the leave period the employee shall ~~must~~ give notice in writing of his/her intent to return to the position. For a leave of absence less than fifteen (15) days, no later than X working days prior to the expiration of the leave period the employee shall give notice in writing of their intent to return to the position. Notice shall ~~must~~ be presented to the supervisor.

- i. Failure to provide written notice ~~shall~~ ~~will~~ be interpreted to mean that the employee does not intend to return following the leave. The position ~~shall~~ ~~will~~ be posted and filled through the selection process.

The Legislative Operating Committee may also consider whether the Law needs additional clarification as to what constitutes written notice.

LOC Consideration

Comments 50 through 89 – Authority of the Supervisor and the EEO Department:

Lisa Rauschenbach (written): The Complaint process is taking the majority of the authority away from the Supervisor and giving it to the EEO Officers.

- EEO department currently only has two employees. They are difficult to get ahold of currently.
- The EEO Officers don't know the day to day operations in departments nor the personalities of employees. This is what the Supervisor is for. The majority of a Supervisor's job is to manage employees.
- The EEO Officer will also have the ability to discipline employees with the approval process going to the HRD Executive Director.
- The EEO Officer will have 10 days to investigate a complaint, allowing interviews of all necessary staff. This is a potential disruption thru a department.
- In the EEO Officer investigation they notify the Supervisor and at the end they meet with the Human Resources Executive Director to determine the final resolution and the EEO Officer's resolution is final.

Ultimately, this is taking the authority away from the Supervisors, crippling them within their departments and giving all authority to HRD department. It opens the door for individuals to make accusations against co-workers with no documentation, proof/evidence. It provides the ability to disrupt departments for investigations and too much room for abuse of power.

If there is an issue with toxic work environments then the managers/directors should be held accountable to make the work conditions better and safe for all their staff. The disciplinary process should remain the same.

The Blue book is written for employees and supervisors and not EEO. EEO should remain a neutral entity at all times. The Personnel Policies book should be written for supervisors.

Instead of taking away managers and supervisors authority, why not build them up? These changes affect the authority that supervisors/managers have and give it directly to HRD and the EEO officers.

EEO/HRD should never have the authority to discipline outside of their department.

These amendments sound like EEO is frustrated with poor management and has decided to take away the managers ability to manage. These amendments sound like they would create more chaos within an area than help it.

Supervisors know their frontline staff intimately and are better equipped to handle complaints and disciplines. How will an EEO know an employee and their work habits, ethics etc when investigating a complaint?

The EEO should never be responsible party for issuing a discipline.

Kelly Skenandore-Holtz (oral): Good Afternoon, Kelly Skenandore-Holtz. I have some comments and questions about the section where EEO will be initiating disciplinary action in lieu of the supervisors in an EEO issue or illegal activity, I believe is the verbiage. My question is, what research has been done regarding the implications of this decision? Umm, in the operations of the organization. What other alternatives have been explored versus EEO issuing the disciplines?

And then a comment that, there is, it feels as though there is a lot of support for leadership development in this organization and this process eliminates umm, the need for leadership development. It eliminates the ability for supervisors to take the action. It also eliminates supervisors' authority. And is there a set process of how if EEO is issuing disciplinaries, what it will be the process as to how they determine what level of disciplinary action will take place and then what will be the appeal process, if anything, for supervisors that don't agree with the level of discipline that has been issued.

Tina Jorgensen (oral): I was going to submit written comments in addition, but I think I'd like to also reiterate what Kelly had said about the complaint process. I disagree with changing the complaint process and putting it in the hands of fully of the EEO Department. It appears in reading through those flow charts and through the proposed amendments that there is, this is being put in, and this is my opinion, that it's being put in place because there's a distrust in the supervisors actually doing their duties and responsibilities with the complaint process and holding employees accountable. And we have in the past, several times, put things in place because of distrust. And I think instead there should be more efforts to educate supervisors, maybe require more leadership development. And educate on the process and the responsibilities. And then also for area managers to hold those in, those supervisors or managers accountable instead of putting this in the hands of a different department.

Louise Cornelius (oral): : I just wanted to add my comments to Kelly Skenandore-Holtz on the umm, on the EEO process on the disciplinary action, I don't agree with them issuing the disciplinary action. I think again, I concur with her, and it eliminates the supervisor's authority. They're not familiar with what exactly is going on when those type of things are required, but I do, umm I do know that they do consult with them before issuing any type of disciplinary action with our employees. So, I think that works fine as it is, not to give them that authority. Thank you.

Matthew W. Denny (written): In regards to the OPP Amendments...I am against the proposed amendment that allows the EEO office to investigate and issue disciplinary action. For whatever reason!

As it was explained by Matt J Denny, EEO Director, that the purpose of this amendment is because supervisors do not do or know how to do disciplinary action when it comes to EEO violations and/or Illegal activities.

This is a problem with the training of the supervisor and/or Area Manager. The problem is not solved by taking this duty away from the supervisor, and giving it to another entity who does not discipline. The problem gets fixed by training the supervisor, and holding them accountable when they do not perform their duties correctly, just like any other employee. This seems to be the real issue to the problem.

The EEO office has been designated as an impartial entity in regards to disciplinary actions. They currently have authority to void disciplinary actions that have clear procedural errors. This office looks out for employees of the Nation, and the Nation, not just the Nation. Giving them authority to discipline employee takes away their impartial status in the disciplinary procedure, and makes them a tool of the Nation only. The proposal also talks about who hears appeals of EEO initiated disciplines, which is different then any other procedure. This causes confusion and is unnecessary.

By having a properly trained Supervisors and Area Managers, this issue, large or small, will be fixed. Giving another entity who is not the employee's supervisor, disciplinary authority, is NOT the answer, and opens doors that should not be opened. Ignorance and laziness of Supervisors and Area Managers must be addressed by HRD and the OBC with training. Proposed solution: Make this issue an requirement for Supervisors/Area Managers before they can discipline, just like Interview Training is required before Hiring. Make EEO do the training. Good Day.

Jackie Smith (written): 3. Reconsider the power and authority of the EEO department in managing complaints

- a. It is not recommended that HRD EEO has the ability to determine the outcome of an employee in a complaint investigation without input and possibly appeal rights of the supervisor.
- b. HRD as an overall program hasn't been held accountable to deliver on current HRD laws, it is uncertain how this lack of oversight and accountability will be managed in the future.

Lisa Duff on behalf of Gaming Senior Management (written): Complaints, Disciplinary Actions and Grievance Processes
Personnel Policies and Procedures Amendments

Section V- Employee Relations

Line 704-707: In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives and handle grievances.

Blue book is written for employees and supervisors, not EEO. EEO should not have authority to take disciplinary action on an employee. EEO is HRD who should remain a neutral entity at all times.

Lisa Duff on behalf of Gaming Senior Management (written): EEO Violations: Agree that EEO violations should be investigated by EEO but they should not have the authority to discipline. HRD needs to remain neutral and not be involved in disciplining an employee they do not supervise. EEO should continue to submit their recommendation to the immediate supervisor of the employee after they have completed their investigation. HR's job is to support the nations employees, supervisors, managers etc., not to dictate how they operate or take over their job responsibilities. EEO must ensure that the supervisor is taking proper corrective measures and advise the decision makers on processes and points of law as well as informing them how historical cases have been treated, to ensure consistency. EEO should not be disciplining an employee they do not supervise.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1069-1070: The supervisor or EEO Officer shall fill out a disciplinary action from within five (5) working days or either:

Remove “or EEO Officer” from this process. This should not be within their authority to discipline employees they do not supervise. The current disciplinary procedure first states “Supervisor becomes aware of unsatisfactory work performance or violation. Supervisor investigates through a meeting with the employee(s) and determines whether disciplinary action is warranted” This is one of the most important steps in the procedure. It clearer written the current way than what is written in the new process lines 1071 -1074.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1071-1074: the resolution of a complaint from which it has been determined that disciplinary action is warranted, or the determination that disciplinary action is warranted based on the unsatisfactory work performance of an employee.

Line 1075: The supervisor or EEO Officer shall fill out the disciplinary action form...

Remove “or EEO Officer” as this should not be within their authority as they are not the immediate supervisor of the employee.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1082-1084: The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.

Remove “or EEO Officer” as this should not be within EEO authority, as they need to remain a neutral entity.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1085-1086: The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.

Remove “or EEO Officer” as they should not be disciplining employees they do not supervise.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1087: During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee...

Remove “or EEO Officer” should not have authority to discipline employees they do not supervise as HR needs to remain a neutral entity.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1095-1096: “or EEO Officer” is mentioned twice and should be removed from the procedure as it is not within the EEO Officers authority issue disciplinary action against an employee they do not supervise.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1099: the supervisor or EEO Officer shall provide copies of the signed disciplinary action...

Remove “or EEO Officer” as it should not be within EEO’s authority to issue disciplinary action to employees they do not supervise. EEO needs to remain a neutral entity.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1132-1133: The Human Resources Executive Director, or designee, may void a disciplinary action taken by an EEO Officer for clear procedural errors.

Remove these lines as EEO Officers should not have authority to issue disciplinary actions against employees they do not supervise.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1134-1135: Notification of a voided disciplinary action shall be sent to the supervisor or EEO Officer and the employee which identifies the procedural error.

Remove “or EEO Officer” as they should not have authority to issue disciplinary action to employees they do not immediately supervise. Only the immediate supervisor has authority to take action against an employee.

Lisa Duff on behalf of Gaming Senior Management (written): Complaint Procedures Line 784-788: If the supervisor cannot come to mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the supervisor shall provide written justification for non-agreement on the resolution to both the Area Manager and the Human Resources Executive Director.

Why? What is the purpose of this? The process is long enough without adding another step. It is the discretion of the supervisor as to what they are going to do, not EEO.

Lisa Duff on behalf of Gaming Senior Management (written): Line 789-790: The supervisor shall send the final resolution to their Area Manager to ensure accountability.

What does this mean, to ensure accountability??? What is area manager supposed to do about it? Again, it is the discretion of the supervisor.

Lisa Duff on behalf of Gaming Senior Management (written): Line 802: The notice shall address the appropriate accountability of the supervisor.

What does this mean? Line 799-801 already states the notice shall inform the area manager that the supervisor violated the complaint process by being negligent and failed to properly investigate a complaint, so what does line 802 mean? This line doesn't seem necessary.

Lisa Duff on behalf of Gaming Senior Management (written): Line 803-808: If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

So, it's up to EEO to determine if an Area Manager fails to take appropriate action to address the supervisor? So, if EEO don't like or agree with what the Area Manager did, this goes to the General Manager? This is too much authority for EEO. First off, in gaming there are many levels of management and the General Manager may not be the appropriate person in the chain of command. Only an immediate supervisor can take corrective action with an employee and in most cases the Gaming General Manager is not the immediate supervisor of an area manager. Secondly, why are there so many levels now in the complaint process? This is way too much. The Gaming General Manager doesn't need to be involved in, nor do they have the time for front line complaints that EEO is not satisfied with how they were handled all the way up the chain of command. Does the Business Committee really want to be involved in employee complaints that EEO is not satisfied with how they were handled? The current blue book has four (4) sentences on how to handle a complaint. This new complaint process is now five (5) pages. This is way too much. Why is it so long?

Lisa Duff on behalf of Gaming Senior Management (written): Line 833-837: If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.

Why? What is the purpose of this, it's just another step that is unnecessary? It's up to the Area Manager what they are going to do, it's not up to EEO. And what if this step doesn't happen, what does this change?

Lisa Duff on behalf of Gaming Senior Management (written): Line 842-846: If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

This is now the third (3rd) step in the complaint process. Why is it necessary to have so many levels involved? The General Manager may not be the supervisor of the Area Manager in gaming as there are many levels in the chain of command so why is going to the General Manager? The GM cannot take action on an Area Manager they do not supervise. The process is too long. Should the Oneida Business Committee really be involved in day-to-day complaints that employees file, that EEO is not satisfied with how they were handled? The current complaint process is short and sweet, easy to follow, this recommended process is too lengthy and has too many levels of management involved.

Lisa Duff on behalf of Gaming Senior Management (written): Line 854-855: The notice shall address the appropriate accountability of the Area Manager.

It's not clear as to what this means as prior to this step, the EEO sends a notice to the General Manager informing them the Area Manager violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint. Seems another unnecessary step.

Lisa Duff on behalf of Gaming Senior Management (written): Line 905-906: Know the EEO Officer shall be responsible for implementing the final resolution;

EEO Officer should not be responsible for implementing the final resolution, they should send their recommendation to the immediate supervisor of the employee to implement.

Lisa Duff on behalf of Gaming Senior Management (written): Line 928-929: Know the EEO Officer shall be responsible for implementing the final resolution; and;

EEO should not be responsible for implementing the final resolution (discipline) they should be sending their recommendation to the immediate supervisor of the employee. EEO should not have discipline authority of employees they do not supervise.

Lisa Duff on behalf of Gaming Senior Management (written): Discipline Line 952-953: Disciplinary actions shall be initiated by an EEO Officer as the resolution of an EEO Violation complaint or an illegal activities complaint investigation.

Remove this sentence. Disciplinary procedures should only be initiated by the immediate supervisor. EEO keeps record of disciplinary actions on file, they should not be issuing them and tracking their own disciplines. EEO needs to remain neutral. I agree EEO can investigate these complaints but send their recommendation to the immediate supervisor to address. Giving EEO Officers the ability to discipline employees they do not supervise is too much authority, as that is the job of the immediate supervisor, not EEO.

Lisa Duff on behalf of Gaming Senior Management (written): Disciplinary Procedure Line 1067-1068: The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

Remove “or EEO Officer” as they should not have authority to discipline employee’s they do not supervise.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1111-1113: If the EEO Office is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension.

Remove these lines as EEO should not be disciplining employees they do not supervisor. It is not within their authority.

If allowed, what is the process if they don’t agree to the length of suspension? It should be the same as managements process.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1123-1125: If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action.

Remove these lines as the EEO Officers should not have the authority to issue disciplinary action to employees they do not supervise. EEO Officers at HR need to remain neutral, not go against employees.

If allowed, what is the process if they don’t mutually agree to the termination? It should be the same process as managements.

Mark Powless (written):

1167 2) A supervisor Disciplinary actions shall be initiated by an EEO Officer as the
1168 resolution of an EEO Violation complaint or an Illegal Activities complaint
1169 investigation.

• Moving disciplinary actions out of the hands of supervisors and into the hands of EEO Officer will create a difficult dynamic in departments. Some of the reasons include:

- o If a supervisor witnesses or receives a report of an employee contributing to a hostile workplace or bullying, will the supervisor be able to take immediate action in the workplace? Must the issue be reported to the EEO office and work its way through the process before being addressed? If so, the result is the inability to address workplace issues in a timely manner.
- o This change will send a message that either supervisors are deemed incompetent or not trusted to address workplace issues. The result is decreased morale.
- o The EEO officers do not understand the dynamics of departments and the backgrounds of workplace relationships. They do not have the depth of understanding that supervisors have to address issues.
- o Some supervisors address matters more effectively through coaching and mentoring or through mediation. This revised process ignores and stifles those strengths in supervisors.

o There is the potential that different employees under the same supervisor will be treated differently for the same violation if their matter is addressed by different EEO Officers, leading to inconsistent corrective actions.

Tina Jorgensen (written): Section V – Employee Relations

- Complaints – Employee disagreements should NOT be submitted to EEO department as this removes the responsibility of the Supervisor. I can agree that the complaint is CC'd to EEO but not filed with EEO. This appears to be recommended to implement due to a lack of trust and that Supervisors are not doing their job. I don't believe a process like this should be implemented for that reason. We should train Supervisors and work with Area Managers to hold those Supervisors accountable instead of taking away their ability to do their job and give it to someone else.

Tina Jorgensen (written): Again, I do not agree with the EEO department having the ability to discipline. This takes away from the role of the Supervisor.

Vanessa Miller (written): Further, I share concern that during the process of EEO investigations of EEO policy violations, efforts in coaching and mentoring being made by the supervisor may be lost when a separate department is potentially issuing disciplinary action. While I recognize that discretion will still certainly be key while EEO performs their investigation, supervisor efforts and up close understanding of situations, cultural climate, personalities, environmental climate, etc. is necessary if the goal is changed behavior and changed work performance.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Establishing the Nation's Workplace Culture

A workplace culture is the shared values, belief systems, attitudes and the set of assumptions that people in a workplace share. Dr. Pragya Agarwal, How To Create A Positive Workplace Culture, Forbes (August 29, 2018). A positive workplace culture values, supports and nurtures all the organization's employees. Id. The importance of carefully crafting a positive workplace culture is increasingly a topic among human resources professionals who note, "[a]ll leaders have a responsibility to be intentional and systematic about designing the culture they want, rather than settling for the culture that is created by chance." Starner, Tom, 6 Policies to Help HR be More Strategic About Culture, Human Resources Executive (September 9, 2021). Additionally, experts have noted, "[t]he new remote and hybrid work environments have not only made culture more important than ever, but they've forced leaders to rethink their strategy for building culture." Id.

The Oneida Personnel Policies and Procedures is the primary document responsible for setting the Nation's workplace culture – it defines the Nation's employment goals and sets human resources standards for the Nation. A serious concern related to the proposed amendments to the OPPP is the overall tone of the document and how that tone may have a negative impact on the workplace culture. The underlying tone of this document communicates that the Nation's supervisors cannot be trusted, that supervisors' experiences are not valued and that the OPPP and HRD are needed to protect "employees." This is most glaring in the Complaints, Disciplinary Actions, and Grievances section. For example, the introductory paragraph reads:

Disciplinary procedures provide a systematic process for handling problem employees and correcting unacceptable behavior. Grievance procedures provide a systematic process for

protecting employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives and handles grievances.

There are a couple important things to note about this section. First, when compared to the current OPPP, the reference to also serving to protect the Nation has been removed. Second, the line about protecting employees from inconsistent and unfair treatment really stands out. When put together, it takes the section out of balance. By reading in between the lines, the organization would be sending the message that corrective actions are for “problem employees” and that, if left to their own devices, supervisors would treat their employees inconsistently and unfairly. A much simpler drafting of the policy, without reference to “problem employees” or to the need to protect employees from supervisors would foster a much more positive workplace culture. For example: Disciplinary procedures provide a systematic process for correcting unacceptable employment behavior/performance. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense.

This tone is carried throughout proposed Section V.D., to the extent that all these actions funnel through the Equal Employment Officer and route disciplines for any EEO and/or illegal activities violations exclusively through the EEO Department. The breadth of illegal activities is wide and often implicated when terminating an employee for reasons other than progressive discipline. There is a question as to the capacity of the EEO Department to perform these investigations for the Nation’s entire employment body even if only considering time and resources. But it is also an issue of subject matter expertise. While the EEO has the subject matter expertise in human resources policies, the supervisors have critical subject matter expertise that cannot be removed from the process without sacrificing the integrity of the investigation. For example, supervisors are the subject matter experts related to the interactions between the employees involved, the employment standards and expectations for the positions involved, and most importantly, the day-to-day operations of their department, including any operating systems for access to documents. Removing supervisors from investigations does not serve the employees’ or the Nation’s best interests.

The proposed OPPP amendments fall short of building a positive workplace culture that values, supports and nurtures all the organization’s employees when the policy does not value, support and nurture the Nation’s management team. I strongly encourage the drafting team to consider workplace culture when setting the tone of the amended-OPPP. I encourage the Nation to consider whether its HRD should be a processor of human resources documents and policies (similar to most HRDs) or whether the Nation’s HRD will have decision making authorities on behalf of the Nation (which is very uncommon). It would be helpful to spend some time identifying an overall policy and goal of the Nation in terms of employment and to keep that at the forefront in each section of the document rather than trying to identify the policy and goals section by section – which create internal conflict within the document and creates confusion as to the Nation’s employment intentions.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Another concern is the proposed Amendments would require the EEO Officers to investigate the functions, records,

systems, and policies of a department that the EEO likely has no experience in. Such investigations are currently delegated to supervisors who understand and work directly in their departments. Supervisors may request assistance from professional investigators in Oneida Internal Security. An EEO Officer's unfamiliarity with the subject matter and processes can increase the time, effort, and resources needed for an investigation. It will also likely affect the ability of law enforcement to conduct an effective investigation, if needed. It is not clear why this responsibility has been removed from the supervisors.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.2., Discipline

The current OPPP provide a process for direct supervisors to discipline their employees for infractions enumerated within the Law. See OPPP V.D.2. Under current law, if anyone other than an immediate supervisor uncovers information or performs an investigation that reveals a basis for possible discipline, the matter is referred to the direct supervisor to perform the discipline. (See e.g. Investigative Leave, 2 O.C. 208.7-3; and OPPP §V.D.5)a)1.c., Sexual Harassment Policy). Throughout the investigation and disciplinary process in place at this time, supervisors are given discretion to determine how an investigation is conducted, whether a discipline is justified, and the severity of the discipline. Oneida Courts have affirmed supervisor discretion, holding, for example, that a supervisor has discretion to not terminate an employee who accumulates three disciplinary notices, even though such termination is provided for in the OPPP. (*Moore v. Skenandore*, 15-AC-011, p. 4 (November 10, 2015)) (See also *Oneida Bingo & Casino, Table Games Dept. v. Hoffman*, 09-AC-007, p. 9 (Aug. 19, 2009)) (“It is the discretion of the supervisor to determine if a discipline is warranted and if so the severity of the discipline. . . . Having found that Ms. Hoffman did not adhere to the attendance and punctuality rules, it is the supervisor that should be permitted and has the authority in deciding what if any consequences should be applied to their employee’s work performance.”)

Current law also places certain constraints on the supervisor’s discretion, specifically: (1) any deviation from progressive discipline must be justified (OPPP V.D.2.b.)¹⁶; (2) five-day timeline to issue discipline after supervisor concludes the investigation (OPPP V.D.5.b.); (3) in the event of a suspension or termination, supervisor must consult with an EEO Officer to mutually determine the discipline (OPPP V.D.5.f.1)).¹⁷ In addition to the constraints imposed by the OPPP, supervisors’ disciplinary decisions are regularly reviewed by area managers and the Courts. It is not clear why the proposed amendments reach even further in constraining supervisor and area manager discretion.

Unlike the current OPPP, the proposed amendments would establish a disciplinary process that may be initiated by either the direct supervisor or the EEO Officer

2. Discipline

a. Initiation of Disciplinary Action.

- 1) Disciplinary actions shall be initiated by an immediate supervisor for the purpose of correcting unsatisfactory work performance or as the resolution of an Employee Disagreement complaint investigation.
- 2) Disciplinary actions shall be initiated by an EEO Officer as the resolution of an EEO Violation complaint or an Illegal Activities complaint investigation. (OPPP amendments, Draft 1, lines 947-953).

The proposed amendments permit discipline by either an employee's direct supervisor or an EEO Officer, depending on the basis for the discipline. In situations where a supervisor "fails to investigate and resolve [an Employee Disagreement] complaint," the EEO will direct the Area Manager or, ultimately, the General Manager to "resolve the complaint." (OPPP amendments, Draft 1, lines 794-6 and 856-8). Where supervisor discretion and supervisor-initiated disciplines have had long standing in the OPPP and are supported by the Courts, it is not clear what philosophy has led to such a change in the proposed amendments.

¹⁶ Justification of deviation from progressive discipline is typically included in the written summary that accompanies the Disciplinary Action Form. The justification may then be reviewed by the area manager, in the event the employee appeals.

¹⁷ OPPP V.D.5.f.1) requires the supervisor to mutually determine suspensions and terminations with the HRD Manager. In practice, this function has been delegated to the EEO Officers.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

iii. If the supervisor cannot complete the investigation within the ten (10) working day timeframe, the supervisor may request a one (1) time five (5) working day extension from the EEO Department.

iv. When the supervisor's investigation is complete, the supervisor shall contact the EEO Officer to mutually determine an appropriate resolution.

1. If the supervisor cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the supervisor shall provide written justification for non-agreement on the resolution to both the Area Manager and the Human Resources Executive Director.

v. The supervisor shall send the final resolution to their Area Manager to ensure accountability.

vi. The supervisor shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.

Sections V.D.1.c.1)c)iii. - vi. of the proposed amendments create additional burdens for supervisors when resolving Employee Disagreement Complaints. The current OPPP gives the supervisor discretion to "attempt to resolve the disagreement" and, if the resolution is not satisfactory to the complaining employee, allows the employee to appeal one time to the area manager. (current OPPP V.D.1.b. and c. (See excerpt at p. 4, above)). Under the amended process, a supervisor – and an area manager and the General Manager – is no longer trusted to resolve complaints that are based on an employee's frustration or misunderstanding with another employee. (OPPP amendments, Draft 1, lines 726-7) The supervisor, area manager, and General Manager would be required to consult with the EEO to resolve an employee's frustration or to properly address an employee's misunderstanding.¹² It is unclear what has prompted this wholesale removal of discretion from supervisors, area managers, and General Managers. The foundation for and philosophy behind this change is not explained in the proposed amendments.

¹² And, it is important to note at this point, if the supervisor, area manager, or General Manager does not follow this process, they may be disciplined.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

- e) If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.
 - i. Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.
 - ii. The Area Manager shall have ten (10) working days to complete their investigation.
 - iii. The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.
 - iv. The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - 1. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.
 - 2. The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.
 - v. When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.
 - 1. If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.
 - vi. The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department 840 for filing and reporting purposes.
 - vii. The Area Manager's resolution shall be final.
- f) If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.
 - i. The notice shall notify the General Manager level position that the complaint was not addressed within the additional ten (10) working days.
 - ii. The notice shall inform the General Manager level position that the Area Manager violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.
 - iii. The notice shall address the appropriate accountability of the Area Manager.
 - iv. The notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.
 - 1. Investigation Procedure for all General Manager Level Positions, not the Oneida Business Committee

- a. The General Manager level position shall complete the investigation and reach a resolution within ten (10) working days of receiving the notice from EEO.
- b. The General Manager level position's ten (10) working day timeframe begins the day after the General Manager level position receives the complaint from the EEO Department.
- c. The General Manager level position shall meet with the employee 868 filing the complaint as well as all other parties mentioned in the complaint.
 - i. Meetings between the General Manager level position and the employees may occur in person, through video conferencing, or by telephone.
 - ii. The General Manager level position shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the General Manager level position shall move forward with the investigation based on the information they have.
- d. When the General Manager level position's investigation is complete, the General Manager level position shall contact the EEO Officer to mutually determine an appropriate resolution.
 - i. If the General Manager level position cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the General Manager level position shall provide written justification for non-agreement on the resolution to the Human Resources Executive Director.
- e. The final resolution shall be sent to the EEO Department for filing and reporting purposes.
- f. The General Manager level position's resolution of the complaint shall be final.

2. Investigation Procedure for the Oneida Business Committee

- a. When the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.

The proposed amendments significantly and, perhaps, unnecessarily complicate the employee complaint process. An Employee Disagreement based on a problem, misunderstanding, or frustration may be elevated to the General Manager, which could be as many as five levels of supervision above the complaining employee. It is difficult to estimate how many additional complaints might require area managers' and General Managers' attention under the amended process. Of course, it is not just the additional complaints that will become burdensome. The Complaint investigation and resolution process itself will bury supervisors, area managers, and General Managers. With present labor market conditions and a shortage of workers in most Oneida departments, supervisors and area managers are regularly covering work duties and filling

vacancies. If supervisors are regularly faced with the choice between, on the one hand, being disciplined for an untimely response to a complaint or, on the other hand, an unattended cashier till, patients who cannot get in for required medical visits, lack of supervision in a Head Start classroom, or being unavailable for required testimony in Indian Child Welfare hearings, supervisors will simply choose to leave the Oneida organization and go elsewhere. Supervisors, including area managers and General Managers, are employees, too. They deserve trust and respect in the form of discretion to investigate and resolve employee complaints that are based on “frustration and misunderstandings.”

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Proposed Amendments Create Uncertainty and Conflict

The proposed amendments insert the HRD Director and EEO into the disciplinary process in a new way. The amendments delegate quasi-judicial²⁹ authority to the EEO, vesting broad discretion to the EEO. This delegation of authority is potentially problematic for several reasons.

First, the amendments contain vague and undefined language, thereby opening up EEO enforcement to subjective criteria. For example, the proposed EEO violation section indicates an “EEO violation occurs when an employee alleges they are being bullied, working in a hostile-working environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed.” Sec. V.D.I.2. As written, a mere allegation constitutes a violation. It is unknown if this presumption is intentional in the drafting. Aside from “sexual harassment,” the concepts (terms) of “being bullied,” “hostile-working environment,” “being discriminated against,” “being harassed,” “being intimidated,” and “being retaliated against” are undefined in the proposed amendments and process is lacking. Although there is no federal employment law against “bullying,”³⁰ some of the behaviors that may fall under such a label may generally fall under discrimination. Without highlighting the complexities of application of federal and state employment laws to tribal employers, those established laws have defined meanings and processes for topics such as discrimination, hostile-work environment, and retaliation. And, yet, no such definitions or processes have made their way into the proposed amendments.

Second, the proposed changes and delegation of quasi-judicial authority may implicate liability and premium concerns that are best explored with the Nation’s Risk Management Department. The Nation has vigorously defended its employees to both state and federal regulatory agencies when external discrimination complaints have been leveled against them and when external litigation occurs. In such instances, the legal defenses³¹ are generally known. With the proposed amendments, the EEO is tasked with making a legal determination that may have a legal effect on the Nation, both with the Nation’s court system and potentially with external regulatory agencies. It becomes more complex to defend against an employment or external discrimination complaint, for example, when a finding of wrongdoing (“violation”) has already occurred or has been predetermined. This issue also raises questions concerning policy coverage and individual liability when there is a “violation” and external litigation occurs. A standard immunity defense in external courts requires, generally, that a tribal employee (supervisor, for example) be acting within their official capacity and scope of authority. A quasi-judicial final determination of a violation by the EEO in these instances may negate the “scope authority” argument and, additionally, policy

coverage. See for example, *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476 (1985); *Landreman v. Martin*, 191 Wis. 2d 787, 530 N.W.2d 62 (Ct. App. 1995); *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269 (1991).

Third, the proposed amendments create at least four types of conflict: (1) conflict between the EEO's responsibilities; (2) conflict between the EEO and supervisors; (3) conflict between employees and supervisors; and, (4) conflict between the EEO's role and the Judiciary's role.³² Currently, the EEOs position themselves as "neutrals" in the discipline process, primarily providing process guidance to supervisors while also providing similar process information to employees subject to discipline.³³ Under the proposed structure, the EEO would continue to offer supervisors guidance on the disciplinary process, but the EEO is also inserted into the process as an authority that metes out discipline. Under the proposed structure, the EEO would make a final determination (and seemingly discipline) on those newly categorized EEO violations against the same supervisors³⁴ the EEO office may be responsible to provide support to. The EEO may require a specific disciplinary outcome from supervisors continuing through the General Manager level.³⁵ The EEO will absolutely determine negligence occurred if the disciplinary timeline is not adhered to.³⁶ The EEO will be inserted the investigation of illegal activities.³⁷ And the EEO will void a disciplinary action for a "clear" procedural error. V.D.1. and 2. The EEO would no longer be a neutral. Even with this new quasi-judicial authority the EEO remains in a position where they are offering guidance to supervisors in the disciplinary process. This is a conflict of role that also has the real ability to create conflict between the EEO and the supervisors they are advising.³⁸

It is unclear what has necessitated some of the proposed amendments, including the new EEO violation section. Certainly, the proposed complaint section containing the new EEO violations of the law invites "complaints" from employees to file against other employees. It is not far reaching to presume that an employee subject to discipline may feel as if the discipline is an act of being "bullied" and may, in turn, file an EEO complaint. This scenario creates a conflict within the EEO role because it creates conflict between the EEO and the supervisor, as well as the EEO and the employee. Additionally, although the EEO has been a neutral witness concerning HRD-related processes and interpretations, insertion of the EEO into the quasi-judicial role may cause confusion at all levels, including the Judiciary, where it may be necessary to determine whether EEO is a witness or a party in employment litigation.

Last, in addition to lacking definition, the delegation of quasi-judicial authority to the EEO lacks process and potentially delegates unfettered authority. Not only are undefined but specified allegations deemed "violations" when they are alleged, but the law lacks a process that is specific enough to allow an accused employee to ask questions, present evidence or otherwise refute or address any allegations. Although the EEO is acting in a quasi-judicial capacity, the administrative process that tends to exist for quasi-judicial decisions is lacking.³⁹

It is not necessary, in fact it is a duplication of services, to push employee advocacy and/or quasi-judicial responsibilities onto the Equal Employment Officer. EEOs must know the Nation's human resources policies and must be able to inform employees regarding access to those policies. However, the EEO should not be providing employees interpretations of policies (unless it is a formal interpretation issued in writing by HRD as a whole) and should not be advising employees as to potential legal courses of action following a discipline aside from providing a referral to the

GTC Legal Resource Office. That is because the Nation is already employing an entire office to do just this – the GTC Legal Resource Center is responsible for providing legal representation to Oneida Nation employees involved in the disciplinary process at no cost. It is the GTC Legal Resource Center that should provide interpretations of policy for employee’s use in their defense and guidance through the employment process.

²⁹ To describe an activity (as opposed to “ministerial”) is “quasi-judicial” is to say that the activity involves the exercise of discretion and judgment in the application of a rule to specific facts. The concept of quasi-judicial immunity is a common law concept that may also be codified in law. Although the contours of quasi-judicial immunity remain unsettled, quasi-judicial immunity extends beyond to traditional “judges” to those employees/ officials and members of adjudicatory bodies whose duties are functionally equivalent to those of a judge or prosecutor. The caselaw on quasi-judicial and quasi-judicial function (and immunity) is lengthy, but an example appears in *Wilson v. Ill. Dep’t of Financial and Professional Regulation*, 376 F. Supp.3d 849 (March 25, 2019); *Snyder v. Nolan*, 380 F.3d 279 (August 13, 2004). Even agencies, those with functions such as the FTC, have been determined to be quasi-judicial agencies. *Morrison v. Olson*, 487 U.S. 654, 687 (June 29, 1988).

³⁰ <https://www.stopbullying.gov/resources/laws/federal.gov>

³¹ By its own terms, Title VII does not apply to Indian tribes. 42. U.S.C. § 2000e(b); *Morton v. Mancari*, 417 U.S. 535 (June 17, 1974); www.eeoc.gov/laws/guidance/policy-statement-indian-preference-under-title-vii Indian Preference under Title VII | U.S. Equal Employment Opportunity Commission (eeoc.gov); www.eeoc.gov/laws/guidance/section-2-threshold-issues2 Threshold Issues | U.S. Equal Employment Opportunity Commission (eeoc.gov).

³² The EEO position predates the Judiciary, which was implemented into the Nation’s Constitution in 2017. The proposed amendments seem to be a step backwards by delegating quasi-judicial authority to the EEO—after the Nation has so carefully transferred quasi-judicial authority to the Judiciary where possible. For example BC Resolution 09-27-17-E. The General Tribal Council adopted the Judiciary at its January 7, 2013 meeting by resolution GTC-01-07-13-B. Broadly, the Judiciary was established to administer the law and ensure justice through the Oneida Nation’s own court system. Formalizing the court system reinforced Oneida Nation’s status as sovereign nation evidenced by the exercise of its inherent authority to make, execute, apply, and enforce its own laws, and to apply its own customs and traditions in matters affecting the Oneida people. In the spring of 2015, through the BIA’s Secretarial Election process, Oneida Nation’s membership voted to amend the Oneida Nation Constitution by adopting Article V, Judiciary. Although the GTC already approved the Judiciary, Article V constitutionally established the judiciary as a separate power, existing to exercise the judicial authority of the Oneida Nation. Although there was a challenge to the Secretarial Election, the election was upheld and Oneida’s constitution was amended. *Genskow v. Midwest Regional Dir.*, 62 IBIA 155 (02/11/2016). The General Tribal Council confirmed the results of the secretarial election, by adopting resolution GTC-03-19-17-A. This resolution confirmed the Oneida Judiciary in the Oneida Nation Constitution and made a broad authorization of judicial authority.

³³ Employees (regardless of Tribal status) subject to discipline also have access to the GTC Legal Resource Center for representation on employment matters. See Oneida General Tribal Council, 2nd Reconvened Special Meeting from Aug. 10, 2016, Meeting Minutes- Draft, p. 39 (November 14, 2016).

³⁴ As well as other employees.

³⁵ This creates questions of structure if the EEO is not in the chain of command or organizational chart. Additionally, while the EEO is required to know the employment process, the EEO may not be in the best position to understand the nuances of the facts and responsibilities of the position.

³⁶ Regardless or reason.

³⁷ It is unclear how the EEO is more suited to perform these investigations over a supervisor with immediate knowledge of the facts and operations of a department. While an “illegal activities” section of the law may be helpful for those supervisors performing complex employment investigations with criminal implications (for example: embezzlement, theft from an employer, misuse of federal funds, fraud, and computer crimes) by providing additional process guidance and potentially extended timeframes, it is not clear that the EEO is in the best position to do this. As drafted, it is also not clear if “illegal activities” are only those few violations listed. Still, the EEO would then replace the Supervisor and the EEO “neutral” role would be negated. This has potential to cause confusion, particularly at the Judicial level.

³⁸ And will potentially chill an already difficult disciplinary process.

³⁹ Although the Judiciary contains such process, such a process should be available when administrative quasi-judicial determinations are made.

Response

The commenters express concern with the delegation of authority to the EEO Department to investigate complaints in certain circumstances and issue disciplines as a result of those complaints. The commenters feel that this change to the Law is encroaching on the authority of supervisors, and that instead of delegating what traditionally has been the authority of supervisors to the EEO Department, more efforts should be made to train supervisors to handle these responsibilities themselves.

The proposed amendments to section V.D.1.b of the Law separate complaints into three (3) categories: Employee Disagreements, EEO violations, and Illegal Activities. Supervisors are responsible for handling the investigations for Employee Disagreement complaints, while the EEO Department is responsible for handling the investigations or EEO Violations and Illegal Activities complaints. Disciplinary action shall be initiated by an immediate supervisor for the purpose of correcting unsatisfactory work performance or as the resolution of an Employee Disagreement complaint investigation. [OPPP Section V..2.a.1]. While disciplinary actions shall be initiated by an EEO Officer as the resolution of an EEO Violation complaint or an Illegal Activities complaint investigation. [OPPP Section V..2.a.2]. The intent of the proposed amendments to the complaint and disciplinary procedures found in the Law was to move the higher level complaints to an area that can specialize in those complaint investigations, and to ensure that the body completing the investigation and gathering all the information is the body that ultimately determines the conclusion of the investigation and issues and corresponding discipline.

The Legislative Operating Committee may reconsider the complaint and discipline provisions found in section V.D of the Law in light of the concerns expressed by the commenters, and determine moving forward how best to address who should have the authority to investigate complaints and issue disciplines.

LOC Consideration

Comments 90 through 95 – Role of the Personal Commission:

SECTION III – SELECTION POLICY

B. HIRING PROCEDURE

2. Hiring Guidelines

a. All Supervisors of the Oneida Nation shall undergo both training upon hiring and periodic retraining in EEO and laws, rules, and regulations of the Nation.

b. Personnel Commission Role

1) The Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of employees of the Nation and to shield those employees from inconsistent and unfair treatment by:

- a) Protecting against issues of nepotism;
- b) Enforcing Oneida and Indian preference.

2) The Personnel Commission is directed to:

i. Participate in the hiring selection process, including job description pre-screens and interviews, to ensure compliance with the Nation's laws and policies regarding the following subject matters:

- 1. Oneida and Indian preference;
- 2. Nepotism;
- 3. Conflicts of interest;
- 4. Veteran status; and
- 5. Physical capacity requirements.

ii. Comply with the Oneida Personnel Commission Bylaws

Wendy Alvarez (written): Good afternoon, I would like to submit some comments based on the Proposed Amendments to the Oneida Policies and Procedures. Line 301 What is the OPC role? Are we going to meet with them to review how this will look?

Shannon Stone (written): Personnel Commission: The Personnel Commission Role is to a) Protecting against issues of nepotism; and b) Enforcing Oneida and Indian preference. Lines 301 through 306. However, lines 307 through 362 are inconsistent by directing the OPC to ensure compliance with the Nation's laws and policies in the area of Conflicts of Interest, Veteran Status, and Physical Capacity requirement. One would think the Personnel Commission would act only within the boundaries of their role.

Finally, it seems strange that the Personnel Policies and Procedures would have authority to direct the Personnel Commission to follow their bylaws. This should be a matter of law, not policy. Additionally, the Commission's bylaws should be consistent with the established role to protect

against issues of nepotism and enforcement of Indian Preference. Activities outside this area would be beyond the scope authorized by the GTC.

Jessica Vandekamp (written): 2. Personnel Commission. Remove any responsibilities of being a hearing body for employment appeals and to participate in the hiring process. I believe this commission has outlived its purpose for the Nation's hiring and it impedes upon a smooth and timely hiring process.

Tina Jorgensen (written): I agree with the Personnel Commission ensuring compliance with specific processes. I would like that to be the only responsibility of the Personnel Commission during hiring. For instance, in the past, the Personal Commission scored the applicants during the interview. I do not believe this should be a future responsibility of the Personnel Commission as they are not the experts on the questions and answers. They do not know the dynamics of the department and what type of employee the Supervisor is looking for.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section III.B.2.b., Personnel Commission Role

The current OPPP defines the Personnel Commission Role as follows:

b. Personnel Commission Role

- 1) The Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of employees of the Nation.

The proposed amendments narrow down the Personnel Commission Role:

b. Personnel Commission Role

- 1) The Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of employees of the Nation and to shield those employees from inconsistent and unfair treatment by:
 - a) Protecting against issues of nepotism;
 - b) Enforcing Oneida and Indian preference.¹ (OPPP Amendments, Draft 1, lines 280-284)

In addition, the current OPPP direct the involvement of Personnel Commissioners in particular screening and interview processes, specifically as one member of the Screening Committee “to conduct the screening of applicants” (OPPP III.B.2.f.2)) and as two members of the Interview Committee (OPPP III.B.2.g.1)). The proposed amendments generally direct the Oneida Personnel Commission to “participate in the hiring selection process, including job description pre-screens and interviews” and “ensure compliance with the Nation’s laws and policies regarding . . . 1. Oneida and Indian preference; 2. Nepotism; 3. Conflicts of Interest; 4. Veteran status; and 5. Physical capacity requirements.” The Commission is further directed to comply with its own bylaws. (OPPP Amendments, Draft 1, lines 285-294).

While the current OPPP specifies how Personnel Commissioners are involved in screening and interview processes, the proposed amendments do not identify any specific duties through which the Commission will “participate” and “ensure compliance.” The Commission’s current bylaws have similar language² to the OPPP amendments and, therefore, do not identify specific duties for

Commissioners in the screening and interview processes. (Oneida Personnel Commission By-Laws, Article I. Authority, Section 1-3 and 1-5(e)) The Personnel Commission could amend its bylaws to describe its participation in the Nation's hiring processes.³ (See Oneida Personnel Commission By-Laws, Article VII. Amendments). If the amended OPPP does not direct the Personnel Commissioners' duties in the screening and interview processes, who has the authority to direct them? The authority of and involvement by the Oneida Personnel Commission has always been defined by Oneida Law and not through departmental rulemaking. The proposed amendments do not state why this change is needed.

¹ Language added through the proposed OPPP amendments is identical to language in the Commission's Bylaws describing its authority. See Oneida Personnel Commission By-Laws, Section 1-3(a).

² The Personnel Commission bylaws include an additional area of authority under Section 1-3: "(3) Hearing and deciding appeals of disciplinary action filed by employees of the Nation." Section 1-5(e) includes a corresponding responsibility to "[c]onduct grievance hearings in accordance with the Oneida Personnel Policies and procedures and Oneida Business Committee Resolution BC-03-13-19-C." Through a series of Business Committee resolutions and GTC directives that are not relevant to this legal review, the Personnel Commission was dissolved and then reinstated in 2018.

³ At this time, the Personnel Commission has 1 member; all other seats are vacant.

Lisa Summers and Brooke Doxtator (written): 2. The Government Administrative Office is not in support of the changes outlined in lines 1487 to 1595 of the redline version that replaces the Human Resources Department with Government Administrative Office as this time.

a. There are several things we would like addressed before proceeding with these changes:

ii. That the Oneida Business Committee (OBC) makes a determination on next steps regarding implementing a functioning Oneida Personnel Commission.

1. The Commission has not been functioning since 2018. The GAO has brought several posting requests and information before the OBC for additional guidance and direction.

2. The OPC has encountered issues finding qualified applicants to apply for the Commission, and has had issues with the members completing their trainings.

3. The OPC was placed in "Temporary Closure Status" from April 8, 2020, to June 14, 2021, due to the COVID pandemic; however, since reactivating the OPC, they have been unable to meet due a lack of members, nor have member completed proper training as identified in item #2 above.

Response

The commenters questions what the role of the Oneida Personnel Commission is under the proposed amendments to the Law.

Section III.B.2.b of the Law discusses the role of the Oneida Personnel Commission. The Law provides that the Oneida Personnel Commission was established to represent the Oneida Community-at-large in the selection of employees of the Nation and to shield those employees from inconsistent and unfair treatment by protecting against issues of nepotism and enforcing

Oneida and Indian preference. The Law then directs the Oneida Personnel Commission to participate in the hiring selection process, including job description pre-screens and interviews, to ensure compliance with the Nation's laws and policies regarding the following subject matters:

- Oneida and Indian preference;
- Nepotism;
- Conflicts of interest;
- Veteran status; and
- Physical capacity requirements.

Section III.B.2.b of the Law then also directs that the Oneidas Personnel Commission comply with the Oneida Personnel Commission Bylaws. Section V.D.3.c.2. then allows an employee to appeal the Area Manager's grievance decision to the Oneida Personnel Commission and provides the process and procedures for how the Oneida Personnel Commission handles that grievance.

It is recommended that the Legislative Operating Committee consider further clarifying the role of the Oneida Personnel Commission in the Law, so that the specific duties and responsibilities of the Oneida Personnel Commission is clearly provided. The Legislative Operating Committee may also want to consider whether the role the Oneida Personnel Commission played in the past is still necessary today.

LOC Consideration

Comments 96 through 98 – Relationship between the Oneida Personnel Commission and the Judiciary:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

3. Grievance

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines:

2) Appeal to the Oneida Personnel Commission (BC Resolution, 3-18-19)

a) An employee may appeal the Area Manager's decision to the Oneida Personnel Commission by filing a grievance with the Government Administrative Office on behalf of the Oneida Personnel Commission within ten (10) working days from the employee's receipt of the Area Manager's decision.

b) The Government Administrative Office shall notify the Human Resources Executive Director of the appeal of the Area Manager's decision within one (1) business day of receipt of the appeal.

c) The Government Administrative Office shall collect all information the Area Manager used in making the decision to uphold or modify the disciplinary action.

d) The Government Administrative Office shall provide the information obtained to the Oneida Personnel Commission members selected to serve as the hearing body for the appeal.

e) The Oneida Personnel Commissioners shall review all the information submitted by the employee petitioner and the Government Administrative Office to determine if one (1) or both conditions exist;

i. The decision of the Area Manager is clearly against the weight of the evidence; or

ii. Procedural irregularities were exhibited during the appeal process that were harmful to one of the parties to the grievance.

f) If Oneida Personnel Commission members selected to serve as the hearing body for the appeal find one (1) or both conditions exist, the Government Administrative Office shall convene the Oneida Personnel Commission to hear the grievance.

g) If the Oneida Personnel Commission members find that neither condition exists, the Oneida Personnel Commission shall deny the appeal for a hearing and affirm the decision of the Area Manager.

h) Convening a Hearing

i. The Government Administrative Office shall schedule a time and location for the grievance hearing and shall confirm the participation of the Oneida Personnel Commission members selected to serve as the hearing body for the complaint.

ii. The Government Administrative Office shall send notice of the hearing to the petitioner, respondent, and Oneida Personnel Commission members at least five (5) working days prior to the hearing date.

iii. The Government Administrative Office shall provide copies of all information on the subject case upon which the disciplinary action was upheld or modified by the Area Manager to the members of the Oneida Personnel Commission at least two (2) working days prior to the appeal date.

iv. The Government Administrative Office shall allow the petitioner and respondent access to this information in the Government Administrative Office at least two (2) days prior to the appeal date.

i) Hearing Procedure

i. The order of presentation for the hearing shall be:

1. Petitioner's opening statement;
2. Respondent's opening statement;
3. The Petitioner's case;
4. The Respondent's case;
5. Petitioner's closing statement; and

6. Respondent's closing statement.
- ii. The petitioner shall have the right to be represented by an advocate, at their own expense. The respondent and/or Area Manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or Area Manager shall have access to the professional legal representation.
 1. Should the petitioner and their representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be upheld, and the grievance dismissed.
 2. Should the respondent and their representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be overturned.
- iii. If new evidence which was previously unavailable is introduced at any point during the hearing process, the Oneida Personnel Commission hearing shall be suspended, and the case shall be remanded to the Area Manager for reconsideration.
 1. The Area Manager shall reconsider the decision in light of the new evidence and issue a decision within three (3) working days.
 2. This procedure may be invoked only once.
- iv. Thereafter, the appeal process shall continue to a conclusion based on the information originally presented and the newly introduced evidence.
 1. If the Area Manager overturns their decision, the case shall not come back for a hearing.
 2. If the Area Manager affirms their decision, then the case shall come back to the Oneida Personnel Commission to complete the hearing.
- v. The Oneida Personnel Commission's decision shall be based solely on the information presented to them before the appeal hearing, the record of the prior proceedings, and any new evidence if introduced appropriately.
- vi. The Oneida Personnel Commission may:
 1. Uphold the disciplinary action; or
 2. Overturn the disciplinary action and:
 - a. Reinstatement the employee (petitioner) with back pay for any lost time in accordance with the Back Pay law; or
 - b. Reinstatement the employee (petitioner) without back pay.
- vii. The Oneida Personnel Commission shall provide notification of the final decision within five (5) working days

following the hearing. Notification of the final decision shall include;

1. The final decision;
2. The reason(s) for the final decision; and
3. The action to be taken as a result of the final decision.

j) The Government Administrative Office shall keep records of the hearing, and provide copies of administrative advocacy rules, procedural rules, and time line rules to interested parties.

k) If the Oneida Personnel Commission is unable to fulfil its responsibility to hear an appeal of an Area Manager's decision, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision.

Tina Jorgensen (oral): Also, I have a question. If the Personnel Commission is not, is in place and the employee still appeals to the Judiciary, or can the employee still appeal to the Judiciary if they're not satisfied with the decision through the Personnel Commission process?

Tina Jorgensen (written): QUESTION: Can an employee move onto the Judiciary if they are not satisfied with the Personnel Commission decision?

Tina Jorgensen (written): QUESTION: If the employee appealing a discipline is not satisfied with the decision of the Personnel Commission, can they appeal to the Judiciary?

Response

The commenter first questions what occurs if the Oneida Personnel Commission is not in place, and then questions if an employee can appeal the decision of the Oneida Personnel Commission to the Judiciary if they are not satisfied with the decision of the Oneida Personnel Commission.

Section V.D.3.c.2.k of the Law provides that if the Oneida Personnel Commission is unable to fulfill its responsibility to hear an appeal of an Area Manager's decision, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision. So if the Oneida Personnel Commission is inactive, then an employee will appeal the decision of the Area Manager directly to the Judiciary.

In regard to whether an employee can appeal the decision of the Oneida Personnel Commission to the Judiciary if they are not satisfied with the decision of the Oneida Personnel Commission, the Law itself is silent as to this matter. The Rules of Appellate Procedure provides that any party to a civil action, who is aggrieved by a final judgment or order of the Trial Court or original hearing body, may appeal to the Court of Appeals. [8 O.C. 805.5-1]. An original hearing body is defined as the administrative agency decision-making panel which heard a contested case under the Administrative Procedures Act (or similar law) and from which appeal is permitted by law. [8

O.C. 805.3-1(s)]. The Legislative Operating Committee may determine whether this should be clarified within the Law.

LOC Consideration

Comments 99 through 102 – Involvement of Affected Entities:

Lisa Summers and Brooke Doxtator (written): The purpose of this correspondence is to provide the Government Administrative Office (GAO) comments and concerns regarding the Oneida Personnel Policies and Procedures Amendments.

Comments and/or Identified Concerns

1. In the legislative analysis under “affected entities” the Government Administrative Office is missing, and it is noted that the GAO was not asked to participate in the work meetings held to develop the amendments and analysis. Overall, this concern leads to a series of questions the GAO has regarding the intent of the amendments, and consideration for additional resources which may be needed to implement change. Additionally, it is identified through the analysis, there appears to be missing data which would provide guidance on the type of resources needed to fulfill the responsibilities which accompany the proposed change. This concern is detailed further in item #2.

Lisa Rauschenbach (written): Why were managers not included in drafting the amendments outside of HRD?

Mark Powless (written): The purpose of this memorandum is to provide written comments regarding the proposed Oneida Personnel Policies and Procedures Amendments. These comments are reflective of the views of myself and do not represent the views of my direct reports. Direct Reports were asked to provide verbal or written comments as they felt necessary.

General Comments

- Pertaining to policies and procedures that directly impact departments and staff of the Oneida Nation, it is good business practice to either allow those areas to participate in the development of said policies and procedures or to gather feedback on the front end. This will help to set an agreed upon foundation to move forward from. It will avoid significant time and energy being placed into an effort only to learn that the resultant feedback potentially sends the effort back to ‘square one’.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): On December 7, 2022, the Legislative Operating Committee released to the public for the first time a draft of comprehensive amendments to the Oneida Personnel Policies and Procedures. Neither the Oneida Law Office nor any department/division management personnel besides the Human Resources Department were

notified about or involved in any work meetings, discussions, drafting, or other development of the OPPP amendments.

Response

The commenters express that not all managers, directors, or supervisors of the Nation were directly involved in the development of the proposed amendments prior to the public meeting.

The Legislative Procedures Act provides a standard process for the development and adoption of legislation of the Nation which includes taking into account comments and input collected from members and agencies of the Nation. [1 O.C. 109.1-1, 109.1-2]. The Legislative Procedures Act provides that the Legislative Operating Committee is the body responsible for the development of laws of the Nation in accordance with this law, other such duties as provided by law and the development and maintenance of the Oneida Register. [1 O.C. 109.4-2]. The Legislative Procedures Act requires that the Legislative Operating Committee hold a public meeting for the purpose of soliciting oral comment and questions, and then hold open a public comment period for the submission of written comments and questions. [1 O.C. 109.8]. Under the Legislative Procedures Act, the public meeting and public comment period is the opportunity for departments or community members to provide their input on proposed legislation to the Legislative Operating Committee.

Although not required by Law, the Legislative Operating Committee does typically collaborate with affected entities on the development of legislation prior to a public meeting, and uses its discretion to determine which affected entities to invite to its work meetings on the development of the legislation. The Legislative Operating Committee typically attempts to be as inclusive as possible in its early collaborations. In the case of these proposed amendments, the Legislative Operating Committee was working under an accelerated timeline in an attempt to present these amendments to the General Tribal Council for consideration prior to May 11, 2023, when the emergency amendments expire. Additionally, due to the nature of this Law, every employee of the Nation is an affected entity, so there is a large breadth of individuals who may have input. Therefore, the Legislative Operating Committee collaborated with a much smaller work group than typical and instead relied on the public meeting and the public comment period to solicit input from all other agencies. The Legislative Operating Committee is pleased by the participation in the legislative process exhibited through the comments received for this legislation during the public meeting and the public comment period. The desire to participate further in the legislative process by many individuals has encouraged the Legislative Operating Committee to be more mindful of being as inclusive as possible in its collaboration efforts in the future.

LOC Consideration

Comment 103 through 106– Administrative Support for the Oneida Personnel Commission:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

3. Grievance

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines:

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a) An employee may appeal the Area Manager's decision to the Oneida Personnel Commission by filing a grievance with the Government Administrative Office on behalf of the Oneida Personnel Commission within ten (10) working days from the employee's receipt of the Area Manager's decision.

b) The Government Administrative Office shall notify the Human Resources Executive Director of the appeal of the Area Manager's decision within one (1) business day of receipt of the appeal.

c) The Government Administrative Office shall collect all information the Area Manager used in making the decision to uphold or modify the disciplinary action.

d) The Government Administrative Office shall provide the information obtained to the Oneida Personnel Commission members selected to serve as the hearing body for the appeal.

e) The Oneida Personnel Commissioners shall review all the information submitted by the employee petitioner and the Government Administrative Office to determine if one (1) or both conditions exist;

i. The decision of the Area Manager is clearly against the weight of the evidence; or

ii. Procedural irregularities were exhibited during the appeal process that were harmful to one of the parties to the grievance.

f) If Oneida Personnel Commission members selected to serve as the hearing body for the appeal find one (1) or both conditions exist, the Government Administrative Office shall convene the Oneida Personnel Commission to hear the grievance.

g) If the Oneida Personnel Commission members find that neither condition exists, the Oneida Personnel Commission shall deny the appeal for a hearing and affirm the decision of the Area Manager.

h) Convening a Hearing

i. The Government Administrative Office shall schedule a time and location for the grievance hearing and shall confirm the participation of the Oneida Personnel Commission members selected to serve as the hearing body for the complaint.

ii. The Government Administrative Office shall send notice of the hearing to the petitioner, respondent, and Oneida Personnel Commission members at least five (5) working days prior to the hearing date.

iii. The Government Administrative Office shall provide copies of all information on the subject case upon which the disciplinary action was upheld or modified by the Area Manager to the members of the Oneida Personnel Commission at least two (2) working days prior to the appeal date.

iv. The Government Administrative Office shall allow the petitioner and respondent access to this information in the Government Administrative Office at least two (2) days prior to the appeal date.

i) Hearing Procedure

i. The order of presentation for the hearing shall be:

1. Petitioner's opening statement;
2. Respondent's opening statement;
3. The Petitioner's case;
4. The Respondent's case;
5. Petitioner's closing statement; and
6. Respondent's closing statement.

ii. The petitioner shall have the right to be represented by an advocate, at their own expense. The respondent and/or Area Manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or Area Manager shall have access to the professional legal representation.

1. Should the petitioner and their representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be upheld, and the grievance dismissed.

2. Should the respondent and their representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be overturned.

iii. If new evidence which was previously unavailable is introduced at any point during the hearing process, the Oneida Personnel Commission hearing shall be suspended, and the case shall be remanded to the Area Manager for reconsideration.

1. The Area Manager shall reconsider the decision in light of the new evidence and issue a decision within three (3) working days.

2. This procedure may be invoked only once.

iv. Thereafter, the appeal process shall continue to a conclusion based on the information originally presented and the newly introduced evidence.

1. If the Area Manager overturns their decision, the case shall not come back for a hearing.

2. If the Area Manager affirms their decision, then the case shall come back to the Oneida Personnel Commission to complete the hearing.
- v. The Oneida Personnel Commission's decision shall be based solely on the information presented to them before the appeal hearing, the record of the prior proceedings, and any new evidence if introduced appropriately.
- vi. The Oneida Personnel Commission may:
 1. Uphold the disciplinary action; or
 2. Overturn the disciplinary action and:
 - a. Reinstatement the employee (petitioner) with back pay for any lost time in accordance with the Back Pay law; or
 - b. Reinstatement the employee (petitioner) without back pay.
- vii. The Oneida Personnel Commission shall provide notification of the final decision within five (5) working days following the hearing. Notification of the final decision shall include;
 1. The final decision;
 2. The reason(s) for the final decision; and
 3. The action to be taken as a result of the final decision.
- j) The Government Administrative Office shall keep records of the hearing, and provide copies of administrative advocacy rules, procedural rules, and time line rules to interested parties.
- k) If the Oneida Personnel Commission is unable to fulfil its responsibility to hear an appeal of an Area Manager's decision, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision.

Lisa Summers and Brooke Doxtator (written): 2. The Government Administrative Office is not in support of the changes outlined in lines 1487 to 1595 of the redline version that replaces the Human Resources Department with Government Administrative Office as this time.

- a. There are several things we would like addressed before proceeding with these changes:
 - i. HRD to provide an analysis of the work, resources, training, and time required to offer this support to the Oneida Personnel Commission.

We respectfully request the Government Administrative Office be removed from the amendments until an analysis on the following is completed:

1. Workload or anticipated workload based on HRD records of activities which would have included in the OPC, and
2. An analysis of the resources needed to fulfill the requirements, and
3. There is a determination made regarding how the OPC will function moving forward.

Lisa Liggins (written): I am in full support of the written comments submitted by the OBC Area Manager and the BCC Supervisor to the LOC regarding the Oneida Personnel Policies and Procedures Amendments. I would like this email of support to be accepted by my written comments regarding this piece of legislation. Thank you.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1201-1293: This entire section references the Government Administrative Office taking over the role of the HRD office who currently has all information and all the documentation regarding disciplinary action issued to employees. This section states employees who want to appeal an Area Managers decision to the Personnel Commission must file a grievance with the Government Administrative Office on behalf of the Personnel Commission. It states the Government Administrative Office shall collect all information the Area Manager used in making the decision to uphold or modify the disciplinary action.

Currently all the confidential information regarding disciplinary action remains at HRD until a hearing body requests it. It's a concern that now another entity (Government Administrative Office) will be privy to this confidential information regarding employees of the Nation. How many people are in this office, who will all see this confidential information? What is in place to ensure this confidential information does not get out in the community before a final decision is made by a hearing body?

Why don't the EEO Officers continue the role they currently doing, the administrative part, and not be involved in disciplining employees they do not supervise. Why do they want authority to discipline employees they don't even know or work with? This process being presented gets more people involved with seeing confidential information that does not need to be disclosed.

HRD/EEO Officers need to remain neutral and provide assistance/support to all employees, whether they are front line, supervisors, managers, directors or general managers. EEO/HRD should not take over a supervisor's job responsibilities. EEO must ensure that the supervisor is taking proper corrective measures and advise the decision makers on processes and points of law as well as informing them how historical cases have been treated, to ensure consistency. EEO should not discipline an employee they do not supervise. This is not within their authority, nor should we allow it to be. If EEO is concerned about holding people accountable for their actions or inaction, they need to bring that matter to the persons supervisor and allow that supervisor to decide what to do.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.3.c.2), Appeal to the Oneida Personnel Commission²⁸

Overall, the proposed amendments would not significantly change the law regarding Oneida Personnel Commission (OPC) hearings. The current draft would have the Government Administrative Office receive and distribute information and organize OPC hearings, rather than the Human Resources Department. (See OPPP Amendments, Draft 1, lines 1199-1300). This proposed change will require training for GAO personnel.

²⁸ As noted previously in this memo, the Oneida Personnel Commission is not a functioning body and, with only one member, it is not certain when they will be able to hear grievance appeals.

Response

The commenters express concern over the proposed revision to section V.D.3.c.2 of the Law which removes the Human Resources Department as the body responsible for providing administrative assistance to the Oneida Personnel Commission, particularly in regard to assistance with its hearing procedures, and instead delegates that authority to the Government Administrative Office.

The decision to replace the Human Resources Department with the Government Administrative Office as the body responsible for providing the Oneida Personnel Commission administrative assistance, specifically in regard to administrative assistance with its hearing procedures, was based on the fact that the Government Administrative Office has staff dedicated to boards, committees, and commissions of the Nation and already provides administrative assistance to boards, committees, and commissions of the Nation.

Whether it be the Human Resources Department or the Government Administrative Office that provides administrative assistance to the Oneida Personnel Commission, all employees are expected to maintain the highest confidentiality standards and are bound by the Code of Ethics to protect the privileged information to which they have access in the course of official duties and be prudent in the use of information acquired in the course of their duties. [1 O.C. 103.4-8].

The Legislative Operating Committee may reconsider who is the most appropriate entity to provide administrative assistance to the Oneida Personnel Commission. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.3.c.2 of the Law should remain as currently drafted, which replaces the Human Resources Department with the Government Administrative Office as the body responsible for providing administrative assistance to the Oneida Personnel Commission, particularly in regard to assistance with its hearing procedures.
2. Section V.D.3.c.2 of the Law should be revised to revert back to the language currently included in the Law, which provides that the Human Resources Department is the body responsible for providing administrative assistance to the Oneida Personnel Commission, particularly in regard to assistance with its hearing procedures.

LOC Consideration

Comment 107 – Original Probation:

SECTION III – SELECTION POLICY

D. ORIGINAL PROBATION

The first three (3) months after an employee's starting date after being hired, transferred, or reassigned shall be considered a period of probation. At the end of six (6) weeks, the employee's performance shall be reviewed with them by the supervisor by completing an employee evaluation. At the end of the three (3) month probation period, a second performance evaluation shall be conducted. This evaluation shall recommend the end of probation and regular status for the employee, an extension of probation, or termination for cause.

1. Status as a Probationary Employee

a. Probationary employees shall accrue vacation and personal days during the probation period and shall receive holiday pay.

b. Probationary employees may be terminated for cause at any time during the probation period. Cause shall consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position.

c. Termination of an employee for cause during their original probationary period shall not be subject to appeal.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section III.D., Original Probation

The proposed language clarifies that an employee will be on probation for 3 months “after being hired, transferred, or reassigned” into a position.⁴(OPPP Amendments, Draft 1, lines 311-313) The amendments also permanently remove probationary pay from Oneida law.⁵

In addition, the proposed amendments permanently remove appeal rights of probationary employees who are terminated “for cause,” which “consist[s] of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position.”⁶ (OPPP Amendments, Draft 1, lines 325-326)

⁴ The Business Committee enacted this amendment on an emergency basis in November 2021 (BC Resolution #11-24-21-A) and has subsequently reenacted and extended the amendment. (See BC Resolution 05-11-22-A and 11-07-22-A).

⁵ Probationary pay is 5% below the posted rate of pay for the position. The Business Committee adopted an emergency amendment to the same effect in November 2021 (BC Resolution #11-24-21-A) and has subsequently reenacted and extended the amendment. (See BC Resolution 05-11-22-A and 11-07-22-A).

⁶ The Business Committee enacted this amendment on an emergency basis in May 2022 (BC Resolution #05-11-22-A) and extended the same amendment in November 2022 (See BC Resolution 11-07-22-A).

Response

The commenters summarize the proposed revisions to the Law regarding original probation found in section III.D of the Law. Other than the summary, the commenters do not provide any comment for consideration by the Legislative Operating Committee. There is no action needed by the Legislative Operating Committee based on these comments.

LOC Consideration

Comments 108 through 109 – Complaints, Disciplinary Actions, and Grievances Introductory Language:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process correcting unacceptable and problematic behaviors in employees. Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V., Employee Relations
Section V.D., Complaints, Disciplinary Actions, and Grievances - Introduction

The current OPPP include an introductory paragraph to the Complaints, Disciplinary Actions, and Grievances section. (OPPP V.D.) This introductory language is frequently cited by the Oneida Judiciary when framing employee grievance decisions. (See e.g. Thundercloud v. HRD et al., 20-EMP-002, p.4 (July 2, 2020); Kriescher v. Suquet, 12-AC-010, p. 6 (Oct. 23, 2012); Oneida Bingo & Casino v. Martin, 11-AC-002, p. 3-4, 9 (June 1, 2011); Oneida Bingo & Casino v. Jones, 14 O.N.R. 36, 41 (Sept. 23, 2008)). Therefore, the introductory language establishes the Nation’s employment philosophy regarding Complaints, Disciplinary Actions, and Grievances.

Currently, OPPP V.D. describes the purposes of the disciplinary process as “provid[ing] a systematic process for handling problem employees,” “correct[ing] unacceptable behavior,” and “protect[ing] the Nation.” (OPPP V.D.) The proposed amendments condense the express purposes for disciplinary action to “provide a systematic process correcting (sic) unacceptable and problematic behaviors in employees.” (OPPP Amendments, Draft 1, lines 702-3)

The purpose of grievance procedures in the current OPPP is to “provide a systematic process for hearing and evaluating job related disputes” and “protect employees from inconsistent and unfair treatment.” (OPPP V.D.) The proposed amendments shift the focus of grievance procedures to employee protection:

Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. (OPPP Amendments, Draft 1, lines 703-4)

As the introductory language is an important signal of the Nation’s employment values and is relied upon by Oneida Courts, the language should accurately reflect the Nation’s regard for the value of all employees within the organization, front-line through General Managers, in all divisions and non-divisional.

Shannon Stone (written): COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES
Line 908 should be changed to problematic behaviors “from” employees.

Response

The commenters express concern that the proposed revisions to the introductory provisions found in section V.D. of the Law disrupt the balance these provisions previously provided.

The Legislative Operating Committee may consider whether the proposed revisions to the introductory language found in section V.D. of the Law should be revised to address the commenter’s concerns. The Legislative Operating Committee may make one of the following decisions:

1. The introductory language found in section V.D. of the Law should remain as currently drafted.
2. The introductory language found in section V.D. of the Law should be revised so that there is better balance in the protection of the Nation as a whole and the protection of the employees. If the Legislative Operating Committee makes this determination then the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process correcting unacceptable and problematic behaviors from in employees, and protecting the Nation. Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. as well as providing a systematic process for hearing and evaluating job related disputes. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

LOC Consideration

Comment 110 – Right to File a Complaint:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process correcting unacceptable and problematic behaviors in employees. Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

- 1. Complaints**

a. General

- 1) The Nation recognizes that all employees have the right to file a complaint against another employee, and that all complaint investigations shall be handled with the utmost fairness, respect, and equality.**
- 2) The Nation recognizes there are various levels of severity of complaints, and dependent on the severity of the complaint, not all complaints shall follow the same process.**
- 3) An employee found to have given false information or made a false claim shall face disciplinary action in accordance with the appropriate policies and procedures.**
- 4) Access to complaint information shall be limited to those who have a legitimate need to know.**
- 5) Retaliation of any form against an employee for filing a complaint shall be strictly prohibited.**

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.1., Complaints

The current OPPP provides a process for employees to file a complaint against another employee in Section V.D.1.

1. Complaints (current OPPP)

- a. Should an employee have a disagreement with another employee, he/she may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor.
- b. The supervisor will investigate the complaint and attempt to resolve the disagreement.
- c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she may ask the Area Manager to attempt a resolution.
- d. There is no further appeal of this process.

Currently, an employee files a complaint with the supervisor of the employee who is the subject of the complaint. (OPPP V.D.1.a.) The OPPP gives the supervisor discretion in how to investigate and the timeline for a resolution and response. (OPPP V.D.1.b.) The complaining employee may appeal the supervisor's response to the supervisor's supervisor (the area manager), but no further appeal is allowed. (OPPP V.D.1.c. and V.D.1.d.) (See e.g. Mays v. Boucher, 15-AC-005, p.5 (July 29, 2015); and Oneida Compliance Division v. Metoxen, 5 O.N.R. 3-103, 107 (Oct. 25, 1999)). The current complaint process is designed to be flexible, allowing supervisors to address issues before they erupt in litigation. The proposed amendments drastically expand the complaint process, potentially involving Oneida personnel up to the General Manager in complaints that begin at any level of the organization.

Section V.D.1.a., General

Amendments to the OPPP include a new introduction to the Complaint section:

1. Complaints

a. General

- 1) The Nation recognizes that all employees have the right to file a complaint against another employee, and that all complaint investigations shall be handled with the utmost fairness, respect, and equality.
- 2) The Nation recognizes there are various levels of severity of complaints, and dependent on the severity of the complaint, not all complaints shall follow the same process.
- 3) An employee found to have given false information or made a false claim shall face disciplinary action in accordance with the appropriate policies and procedures.
- 4) Access to complaint information shall be limited to those who have a legitimate need to know.
- 5) Retaliation of any form against an employee for filing a complaint shall be strictly prohibited. (OPPP Amendments, Draft 1, lines 709-23)

As written, the introduction language raises some issues. Declaring that “employees have the right to file a complaint against another employee” is unnecessary because the Complaint process would not be written into the law if employees did not have a right to it. In addition, other basic employment processes – receipt of wages, use of accrued vacation or personal time, non-discriminatory supervision – are not delineated as “rights” in the OPPP. The proposed language of OPPP V.D.1.a.1) begs the question: Why should the complaint process be elevated as a “right” above other essential employment processes?

Response

The commenters express concern over the phrase “employees have the right to file a complaint against another employee” found in section V.D.1.a.1 of the Law. The commenters feel this language is unnecessary and are weary it would cause confusion as other basic employment processes are not delineated as rights in the Law.

The Legislative Operating Committee may determine if the language “employees have the right to file a complaint against another employee” found in section V.D.1.a.1 of the Law is problematic and should be removed from the Law. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.1.a.1 of the Law should remain as currently drafted.
2. Section V.D.1.a.1 of the Law should be revised to remove the language that “employees have the right to file a complaint against another employee.” If the Legislative Operating Committee makes this determination then the following revision is recommended:

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

a. General

- 1) ~~The Nation recognizes that all employees have the right to file a complaint against another employee, and that a~~ All complaint investigations shall be handled with the utmost fairness, respect, and equality.
- 2) The Nation recognizes there are various levels of severity of complaints, and dependent on the severity of the complaint, not all complaints shall follow the same process.

- 3) An employee found to have given false information or made a false claim shall face disciplinary action in accordance with the appropriate policies and procedures.
- 4) Access to complaint information shall be limited to those who have a legitimate need to know.
- 5) Retaliation of any form against an employee for filing a complaint shall be strictly prohibited.

LOC Consideration

Comment 111 – Topic:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process correcting unacceptable and problematic behaviors in employees. Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

1. Complaints

a. General

- 1) The Nation recognizes that all employees have the right to file a complaint against another employee, and that all complaint investigations shall be handled with the utmost fairness, respect, and equality.
- 2) The Nation recognizes there are various levels of severity of complaints, and dependent on the severity of the complaint, not all complaints shall follow the same process.
- 3) An employee found to have given false information or made a false claim shall face disciplinary action in accordance with the appropriate policies and procedures.
- 4) Access to complaint information shall be limited to those who have a legitimate need to know.
- 5) Retaliation of any form against an employee for filing a complaint shall be strictly prohibited.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

The draft amendment also proposes new language regarding release of complaints, as “complaint information” would be released to “those who have a legitimate need to know.” The scope of what may be released – the “complaint information” in proposed OPPP V.D.1.a.4) – is undefined. Does

that refer to only the complaint itself? Or does it mean notes, documents, recordings, and other information collected during the supervisor's investigation? Also left undefined is who will determine whether a requester has a "legitimate need to know." And are there any factors that will be balanced against the "legitimate need" or is the requester's "legitimate need" sufficient to access the "complaint information?" These questions lead to uncertainty for supervisors, area managers, employees, and those responsible for releasing information.

As written, the amendments potentially allow the employee who is the subject of a complaint to receive a copy of it, since the employee who is the subject of a complaint and subsequent investigation certainly has a "legitimate need to know." This directly contradicts established Oneida law and caselaw. Both the current OPPP and the proposed amendments address the confidentiality of personnel records in Section IX. Current Oneida Law and the proposed amendments require an employee's written consent prior to release of employee records "to any person or agent of any organization."⁷ (OPPP Section IX.A.) Oneida caselaw emphasizes that a complaint will not be released to the employee who is the subject of it. In *Somers v. OBC Officers*, the Oneida Appeals Court determined that an employee's due process rights were not violated when the Business Committee, in their role as Somers' supervisors, refused to provide her with a copy of a complaint they were investigating. (18-AC-007, p. 4 (August 23, 2017)). The Appellate Court listed several reasons why a complaint should not be released to the employee who is the complaint's subject, specifically:

- (1) Releasing a complaint to the subject employee "can create more issues between the employee, supervisor, and other employees within the organization." *Id.* at 3-4.⁸
- (2) The "supervisor is simply trying to determine if the allegations of the complaints have merit and if so, to address them administratively." *Id.* at 4.
- (3) "An effective investigator will only disclose details of the complaint that are necessary for the inquiry" for the purpose of "elicit[ing] extemporaneous responses that are not just responses to the person making the complaint or the accusations in the complaint." *Id.*

The proposed amendments may contradict established Oneida Law by allowing disclosure of a complaint to the subject employee without written consent. Adopting the amendments as written would potentially overturn Oneida caselaw, which is based on long-standing HRD practice and advice. The reasons for this proposed change are not apparent from the current draft.

⁷ OPPP Section IX – Privacy and Confidentiality of Employee Records refers specifically to collection and release of employee records by the Human Resources Department. Under the proposed amendments, after a supervisor concludes their investigation and resolution of a complaint, the supervisor "shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes," thereby creating an employee record that is subject to OPPP Section IX.

⁸ The Court relied upon testimony from Geraldine Danforth, HRD Area Manager for 16 years, for a description of reasons why a complaint should not be released to the subject employee. Ms. Danforth "testified on two different occasions that an investigator should never give the complaint to the employee." 18-AC-007, p. 3.

Response

The commenters express concern that section V.D.1.a.4. does not provide enough clarification as to who has access to complaint information or exactly what complaint information means, which creates uncertainty for supervisors, area managers, employees, and those responsible for releasing information. The commenters also express concern that established case law does not allow the employee who is the subject of a complaint to receive a copy of the complaint, and question whether it was intended that this provision of the Law contradict established Oneida Law by allowing disclosure of a complaint to the subject employee without written consent.

It is recommended that the Legislative Operating Committee review this provision of Law and revise this provision to include additional information to clarify the questions brought up by the commenters such as: who makes the determination someone has a legitimate need to access the complaint information, what exactly does complaint information mean, and should an employee who is the subject of the complaint have access to the complaint.

LOC Consideration

Comments 112 through 113 – Types of Complaints:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

b. Types of Complaints

1) Employee Disagreements

a) An employee disagreement occurs when an employee alleges they are having problems, misunderstandings, or frustrations with another employee.

2) EEO Violations

a) An EEO violation occurs when an employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed.

i. Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

2. submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals;

or

3. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

3) **Illegal Activities**

a) An illegal activities violation occurs when an employee alleges:

i. They witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;

ii. They witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;

iii. They witnessed or have knowledge of the use or possession of an illegal controlled substance; or

iv. They witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions.

4) **Additional Complaints**

a) Complaints of alleged workplace violence shall be reported and processed in accordance with the Nation's Workplace Violence law.

b) Complaints of use of prohibited drugs and/or alcohol during working hours shall be reported and processed in accordance with the Nation's Drug and Alcohol Free Workplace law.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.1.b., Types of Complaints

The amendments break Complaints into three categories: (1) Employee Disagreements; (2) EEO Violations; and (3) Illegal Activities.⁹ Each type of Complaint follows a separate process.

⁹ By establishing Complaint categories and giving those categories precise definitions, it is likely the proposed language will eliminate complaints that could be filed under the more general language of the current OPPP. For example, if an employee wishes to complain about another employee's incompetency, incapacity to perform job duties, or failure to perform adequately, those complaints do not seem to fit under any proposed Complaint category. Will employees choose not to file complaints if they cannot figure out the right category? Or will such Complaints be rejected by the EEO? The proposed amendments are silent on this question.

Vanessa Miller (written): Please accept this communication as my public comment regarding the amendments to the Oneida Personnel Policies and procedures being made to address the selection process, as well as the complaint, discipline, and grievance procedures.

I. Complaints

With these changes, the complaint process will be split into three (3) different pathways: 1. Employee disagreement complaints; 2. EEO Violation Complaints; and 3. Illegal Activity Complaints. The supervisor investigates pathway one, while EEO investigates pathways 2 and 3.

While these three pathways do seem to distinguish and make separation between complaints so that they may be handled accordingly per the proposed processes, it appears that there is still room for gray area and overlapping. For instance, an employee disagreement that involves EEO policy violation would seem to be overlapping in nature. How would these complaints be vetted through to determine which pathway they are to go down, and to ensure that a standardized process is used in determining such? In addition, it is not clear what the various EEO violations are or mean as they are not defined.

Response

The commenters express concern that the delineation of complaints into three distinct categories may eliminate complaints that could have been filed under the more general language of the Law that is currently in effect.

Section V.D.1.b. of the Law provides that there are three (3) categories of complaints that can be made against an employee – Employee Disagreements, EEO Violations, and Illegal Activities. An employee disagreement occurs when an employee alleges they are having problems, misunderstandings, or frustrations with another employee. *[OPPP Section V.D.1.b.1]*. An EEO violation occurs when an employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed. *[OPPP Section V.D.1.b.2]*. An illegal activities violation occurs when an employee alleges: they witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation; they witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace; they witnessed or have knowledge of the use or possession of an illegal controlled substance; or they witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions. *[OPPP Section V.D.1.b.3]*.

In an effort to avoid a situation where an employee desires to file a complaint against another employee, but the topic of the employee does not clearly fit into one of the provided categories, the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

b. Types of Complaints

1) ~~Employee Disagreements~~ General Complaints

a) ~~An employee disagreement occurs when an employee alleges they are having problems, misunderstandings, or frustrations~~

~~with another employee.~~ A general complain is any complaint that is not a EEO Violation or an Illegal Activity.

The Legislative Operating Committee may determine whether the general complaints sections should include examples of types of general complaints.

LOC Consideration

Comment 114 – Clarification on Different Complaint Processes:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

b. Types of Complaints

1) Employee Disagreements

a) An employee disagreement occurs when an employee alleges they are having problems, misunderstandings, or frustrations with another employee.

2) EEO Violations

a) An EEO violation occurs when an employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed.

i. Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

2. submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or

3. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

3) Illegal Activities

a) An illegal activities violation occurs when an employee alleges:

- i. They witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;
 - ii. They witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;
 - iii. They witnessed or have knowledge of the use or possession of an illegal controlled substance; or
 - iv. They witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions.
- 4) **Additional Complaints**
- a) Complaints of alleged workplace violence shall be reported and processed in accordance with the Nation's Workplace Violence law.
 - b) Complaints of use of prohibited drugs and/or alcohol during working hours shall be reported and processed in accordance with the Nation's Drug and Alcohol Free Workplace law.

Michelle Tipple (oral): Good afternoon. Michelle Tipple with Oneida Comprehensive Health Division. Just a comment and this may be in the works, but just to mention that three (3) different types of complaints and the different types of appeal processes, it would be helpful, I think to supervisors to see that in a maybe like a process map flow process or something that kind of illustrates those processes. Because you know, hopefully we're not in those processes often that we know them by heart, but that would help if someone has to go through that process.

Response

The commenter requests that that a visual aid be created that illustrates the different complaint types and their corresponding procedures.

It is recommended that the Legislative Operating Committee request that the Human Resources Department develop visual aids for the various processes contained in the Law upon adoption of any amendments to the Law.

LOC Consideration

Comment 115 – Oral or Written Complaint:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

a) An employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Employee Disagreements are “when an employee alleges they are having problems, misunderstandings, or frustrations with another employee.” (OPPP Amendments, Draft 1, lines 725-7) The complaint process for an Employee Disagreement is described as follows:

1) Employee Disagreements

a) An employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department.

b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the supervisor of the employee with the complaint.

It is not clear whether the proposed amendments require an employee to file a written complaint or if an oral complaint to the EEO is sufficient. This should be clarified.

Response

The commenters request the Legislative Operating Committee clarify whether it is required that a written complaint be filed or if an oral complaint is sufficient.

Section V.D.1.c.1. of the Law provides that an employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department. Under the current Law, both oral and written complaints are allowed. It was not the intent to change current practice on this issue.

To clarify the manner in which a complaint is filed, then following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

a) An employee who alleges they have a disagreement with another employee may file an oral or written complaint with the EEO Department.

LOC Consideration

Comment 116 – Supervisor who Receives a Complaint:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the supervisor of the employee with the complaint.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): The proposed amendments require the EEO to “provide the supervisor of the employee with the complaint.” It is not clear which supervisor will be provided the complaint: the supervisor of the employee who made the complaint or the supervisor of the employee whose behavior led to the Employee Disagreement. If the amendments require the EEO to provide the complaint to the supervisor of the complaining employee, that could be problematic if the complainant’s supervisor is the subject of the complaint. The proposed amendments should have clearer language in Section V.D.1.c.1) b. regarding which supervisor will receive the complaint.

Response

The commenters request that the Legislative Operating Committee clarify which supervisor – the supervisor of the employee who is the subject of the complaint or the supervisor of the employee filing the complaint – is the supervisor the EEO Department provides a submitted complaint to.

Section V.D.1.c.1.b of the Law provides that within two (2) working days of the receipt of the complaint, the EEO Department shall provide the supervisor of the employee with the complaint. To clarify which supervisor the EEO Department provides the complaint to, the following revision is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the complaint to the supervisor of the employee who is the subject of the complaint. ~~with the complaint.~~

LOC Consideration

Comment 117 – Definition of Working Day:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

Throughout the amended OPP section regarding Complaints, timelines are counted in “working days” but no definition of “working day” is provided in the amendments¹⁰. A possible definition for “working day” is: Any day that is not a weekend or a recognized Oneida holiday.

¹⁰ The phrase “working day” is used throughout the current OPPP and not defined. The amendments are an opportunity to define an important term that is central to complaint and disciplinary process.

Response

The commenters request that the term “working day” be defined in the Law, as this is a term that is currently used throughout the Law but is undefined.

Overall, the Law is not organized like other laws of the Nation and thereby lacks a definition section that provides a space for terms utilized throughout the document to be clearly defined. The Legislative Operating Committee may want to consider bringing the formatting and drafting of this Law into compliance with the drafting standards used for all others of the Nation.

In regard to the definition for working day, it is recommended that the Legislative Operating Committee include a definition for working day in the Law. Typically, in Laws of the Nation the term “business day” is utilized, with a definition that means Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding holidays recognized by the Nation. It is the intent that the term “working day” be defined differently than business day, and instead be related to the program or enterprise in which the pertinent procedures of the Law applies. For example, for enterprises in which Saturday and/or Sunday are scheduled working days, all procedures referring to working days will include Saturday and/or Sunday as a working day. Working day could be defined as any day in which the business unit is regularly operational. The Legislative Operating Committee should determine whether they would like to proceed with utilizing the term “working day” and include a relevant definition, or revise the Law to utilize the term “business day.”

Whatever term the Legislative Operating Committee determines is most appropriate in the Law should then be defined in the Law.

LOC Consideration

Comment 118 – Receipt of Complaint:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

i. The supervisor’s ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): i. The supervisor’s ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department.

Oneida Courts have further defined what it means for a supervisor or area manager to “receive” documents during the grievance appeal process and it would be helpful to include the same clarification in the proposed amendments. In *Lecker v. Powless*, an employee alleged the area manager decision was untimely. (22-AC-004, p. 2 (June 7, 2022)). After multiple recusals, Lecker’s appeal of her termination was upheld by Area Manager Powless. *Id.* The Court of Appeals determined the Area Manager decision was timely and declined the grievance appeal. *Id.* The Court emphasized it is the Area Manager’s actual receipt of an appeal that starts the timeline. *Id.* The amendments should include language to better align with the Lecker decision, such as:

The Area Manager receives an appeal when they personally receive the grievance, after all possible recusals have been resolved.

Response

The commenters express that the Court of Appeals further defined what it means for a supervisor or area manager to “receive” documents during the grievance appeal process and it would be helpful to include the same clarification in the proposed amendments to the Law. The commenters provide that the Court of Appeals emphasized it is the Area Manager’s actual receipt of an appeal that starts the timeline, so the Legislative Operating Committee should consider codifying the Court’s interpretation into Law.

Section V.D.1.c.1.c.i of the Law provides that the supervisor's ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department. The Legislative Operating Committee may determine whether the Law needs further clarification as to what receipt of an appeal means. The Legislative Operating Committee may make one of the following decisions:

1. Section V.D.1.c.1.c.i of the Law should remain as currently drafted, and provide that the supervisor's ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department.
2. Section V.D.1.c.1.c.i of the Law should be revised to clarify that the supervisor receives an appeal when they personally receive the complaint, after all possible recusals have been resolved. If the Legislative Operating Committee makes this determination the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

i. The supervisor's ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department. The supervisor receives an appeal when they personally receive the grievance, after all possible recusals have been resolved.

If the Legislative Operating Committee makes this determination, then similar revisions to the Law should be made in other relevant sections of the Law when receipt of a complaint or grievance is discussed.

LOC Consideration

Comment 119 – Burden of Meeting Investigations

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

ii. The supervisor shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): ii. The supervisor shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

Altogether, the proposed Complaint section places an incredible burden on supervisors, area managers, and, in some cases, even General Managers. A part of that burden is found in Section V.D.1.c.1)c.ii. and other similarly-worded sections. (See e.g.V.D.1.c.1)e.iv. regarding area manager investigation and V.D.1.c.1) f.iv.1.c. regarding General Manager investigation of complaints). Under the proposed amendments, supervisors (and area managers and General Managers) will be required to meet with the employee who filed the complaint and “all other parties mentioned in the complaint.”¹¹ The amendments do not grant the supervisor, area manager, or General Manager any discretion in determining which individuals have information relevant to the Employee Disagreement. A complaining employee could name numerous individuals in the complaint, which would necessitate a supervisor meeting with each and every one of them. In addition, use of the term “parties” rather than “employees” means the supervisor would be required to meet with individuals outside the organization. The proposed amendments do not provide any discretion for supervisors, area managers, or General Managers to conduct an investigation tailored to the complaint.

¹¹ It is interesting that the amendments would not require the supervisor to meet with the employee who is the subject of the complaint if such employee is not, in fact, named in the complaint. This may be an oversight, but it seems essential to creating an effective resolution to an Employee Disagreement.

Response

The commenters provide that the Law’s requirement to meet with the employee who filed the complaint and all other parties mentioned in the complaint may be burdensome, and does not grant the supervisor, area manager, or General Manager any discretion in determining which individuals have information relevant to the Employee Disagreement. The commenter also questions why the proposed amendments would not require the supervisor to meet with the employee who is the subject of the complaint if such employee is not, in fact, named in the complaint.

Section V.D.1.c.1.c.ii. of the Law provides that during an investigation of a complaint the supervisor is required to meet with the employee filing the complaint as well as all other parties mentioned in the complaint. The supervisor is required to meet with all individuals named in the complaint in order to obtain the most information to base their investigation on. The commenter’s interpretation that the proposed amendments to the Law do not require the supervisor to meet with the employee that is the subject of the complaint is unclear, since in order to file a complaint against an individual you would inherently need to name that employee in the complaint.

The Legislative Operating Committee may determine whether the requirement for a supervisor to meet with the employee filing the complaint as well as all other parties mentioned in the complaint

during a complaint investigation is too burdensome, and if supervisors should be granted discretion in determining who to meet with. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.1.c.1.c.ii. of the Law should remain as currently drafted, and provide that during an investigation of a complaint the supervisor is required to meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
2. Section V.D.1.c.1.c.ii. of the Law should be revised to provide the supervisor with more flexibility in determining which individuals to meet with during a complaint investigation. If the Legislative Operating Committee makes this determination then the following revision to the Law is recommended:

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

ii. The supervisor shall meet with the employee filing the complaint and the employee who is the subject of the complaint. The supervisor may also meet with as well as all any other parties mentioned in the complaint as determined to be relevant to the complaint investigation.

LOC Consideration

Comment 120 – Defining what it means to be Unavailable to Meet:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

ii. The supervisor shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

1. Meetings between the supervisor and employees may occur in person, through video conferencing, or over the telephone.

2. The supervisor shall document all attempts made to meet with an employee. If the

complaining employee or the employee being complained about is unavailable, the supervisor shall move forward with the investigation based on the information they have.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): 1. Meetings between the supervisor and employees may occur in person, through video conferencing, or over the telephone. 2. The supervisor shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the supervisor shall move forward with the investigation based on the information they have.

The proposed amendment language does not define when or how an employee is “unavailable” to meet. The Oneida Judiciary provided guidance on when an employee may be considered unavailable to meet. The Oneida Court of Appeals, in *Skenandore v. Smith et al.*, found that a supervisor must provide an employee at least 24-hours’ notice prior to a requested meeting for the employee’s no-show to count as a refusal to meet. (21-AC-008, p. 4 (April 11, 2022)) (“[P]roviding less than 24-hour notice to attend a meeting on a voicemail, especially when the meeting has not been confirmed, is not judicious good sense.”). In addition, a supervisor may be required to follow-up with an employee who does not respond to a meeting request, rather than allowing the meeting time to pass and proceeding with discipline. *Id.* at 5. The proposed amendments do not explain why the principles –and the rule of law – of *Skenandore* have been left out of the OPPP amendments.

Also, while the supervisor is permitted to move forward with an investigation if the complaining employee or subject employee are unavailable, the amendments do not have similar instructions when any “other party” is unavailable. It is unclear whether the supervisor’s attempts to meet with “all other parties” must be documented and whether unavailability affects the investigation in any way. This topic should be addressed to provide clear guidance to supervisors, area managers, and General Managers.

Response

The commenter requests that the Legislative Operating Committee consider providing further clarification in the Law as to what “unavailable to meet” means, and consider codifying the guidance and interpretations the Courts has provided through case law.

Section V.D.1.c.1.c.ii. of the Law provides that the supervisor shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint, and that the supervisor shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the supervisor shall move forward with the investigation based on the information they have.

It is recommended that the Legislative Operating Committee review this provision of the Law to provide greater clarification as what it means for an employee to be unavailable to meet. The Legislative Operating Committee should discuss and determine how much notice is required for a meeting, are follow-ups with an employee who does not respond to a meeting request required, is

the supervisor required to document its efforts to meet with any parties other than the employee making the complaint and the employee that is the subject of the complaint.

LOC Consideration

Comment 121 – Filing and Reporting of Complaint Resolutions:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

vi. The supervisor shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Under the proposed amendments, Section V.D.1.c.1)c)vi. requires the supervisor to send the final resolution to the EEO Department “for filing and reporting purposes.” It is not clear what reporting is required or permitted for resolutions to Employee Disagreement Complaints. As outlined above, OPPP Section IX protects personnel records from disclosure absent written permission from the subject employee. The amendments should more clearly define – and perhaps limit – reporting of Complaint resolutions.

Response

The commenters request that the Legislative Operating Committee more clearly define the reporting of complaint resolutions.

Section V.D.1.c.1.c.iv. of the Law provides that the supervisor shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.

It is recommended that the Legislative Operating Committee review this section and determine what reporting would be necessary for the resolutions of complaints, and who has access to the complaint resolutions, and then revise the Law accordingly.

LOC Consideration

Comment 122 – Accountability of the Ten (10) Day Complaint Investigation Timeframe:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

d) If the supervisor fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the Area Manager.

i. The notice shall notify the Area Manager that the complaint was not addressed within the allotted ten (10) working days.

ii. The notice shall inform the Area Manager that the supervisor violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.

iii. The notice shall address the appropriate accountability of the supervisor.

1. If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

iv. The notice shall direct the Area Manager to complete the complaint investigation within ten (10) working days of receiving the notice from EEO.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

d) If the supervisor fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the Area Manager.

i. The notice shall notify the Area Manager that the complaint was not addressed within the allotted ten (10) working days.

ii. The notice shall inform the Area Manager that the supervisor violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.

iii. The notice shall address the appropriate accountability of the supervisor.

1. If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO Department shall send notice

to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

- iv. The notice shall direct the Area Manager to complete the complaint investigation within ten (10) working days of receiving the notice from EEO.

The proposed amendments add a significant “accountability” process to the Complaint section. If a supervisor “fails” to investigate and resolve a complaint within 10 days¹³, the EEO Department is compelled to send notice to the area manager. It is not clear what constitutes a supervisor’s failure to investigate and resolve a complaint. Historically, these questions have been examined and resolved by an Oneida hearing body, which provides an opportunity for both sides to be heard and supplies written decisions that guide future actions of supervisors throughout the organization. Such important due process and notice functions will be missed if these determinations are made by the EEO Department.

¹³ Although a supervisor may request an additional five days to resolve a complaint under proposed Section V.D.1.c.1)c)iii., the “accountability” process does not recognize any extensions. A supervisor failure to investigate and resolve in 10 working days, rather than 15, compels the EEO to send notice to the area manager.

In addition, the EEO determination occurs without giving the supervisor an opportunity to explain why the deadline was missed. While the proposed amendments provide ample process for employees to complain and appeal, supervisors (and area managers and General Managers who respond to complaints) are not afforded the same right to be heard. Instead, the EEO unilaterally determines both that the supervisor, area manager, or General Manager was “negligent in the performance of assigned duties” and assigns “appropriate accountability.” It is unclear from the proposed language what might be used to hold the supervisor accountable. Is it discipline? An entry in the personnel file of the offending supervisor? As the EEO’s notice will describe the supervisor’s actions as “negligence in the performance of assigned duties,” which is an action subject to discipline under both the current OPPP and the proposed amendments, it would appear that accountability will be in the form of discipline. And the area manager would be required to issue the discipline without hearing the supervisor’s perspective. A unilateral finding that an employee (here, a supervisor) was negligent in the performance of their duties without granting any opportunity for the employee (supervisor) to explain their actions is counter to the remainder of the proposed OPPP amendments.

In addition, the proposed amendments remove the area manager’s or General Manager’s discretion to address the supervisor’s actions, since the next step is to notify the General Manager of the area manager’s failure to address the situation (or at least to address it to the EEO’s satisfaction). It is not clear what philosophy supports the removal of discretion from most levels of management.

Response

The commenter expresses concern regarding the process provided in section V.D.1.c.1.d. of the Law which addresses what occurs when the supervisor fails to complete the investigation and

resolve the complaint within the ten (10) working days. The commenter feels that this provision does not provide the supervisor a right to be heard, or address why the deadline was missed.

It is recommended that the Legislative Operating Committee review the concerns addressed by this comment, and determine what, if any, clarifications can be added to section V.D.1.c.1.d. of the Law

LOC Consideration

Comments 123 through 125 – Definition of Sexual Harassment:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

b. Types of Complaints

2) EEO Violations

a) An EEO violation occurs when an employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed.

i. Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

2. submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or

3. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.1.c.2), EEO Violations

The second category of Complaints is EEO Violations, which “occurs when an employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being

harassed, being intimidated, being retaliated against, or being sexually harassed.” (OPPP amendments, Draft 1, lines 728-42). The proposed amendments define “Sexual Harassment” using language from current OPPP Section V.D.2.c)5), specifically:

- i. Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 - 1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;
 - 2. submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or
 - 3. such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment.

Over time, the definition of sexual harassment has expanded beyond what is in the current OPPP and proposed for the amendments. Comprehensive amendments to the OPPP provide an opportunity to update the scope of prohibited sexually harassing behavior under Oneida law. The United States Equal Employment Opportunity Commission¹⁴ includes in its definition all harassment “because of a person’s sex” and “offensive remarks about a person’s sex.” (U.S. Equal Employment Opportunity Commission, Sexual Harassment, last visited 12/22/2022, www.eeoc.gov/sexual-harassment). Most importantly, harassment “does not have to be of a sexual nature” to be prohibited as sexual harassment. *Id.* Also, sexual harassment can be perpetrated by a man or a woman and the harasser and victim may be of the same sex or opposite sex. *Id.* The amendments should include an updated scope of sexually harassing behaviors.

¹⁴ As a federally-recognized Indian tribe, the Oneida Nation is exempt from Title VII of the Civil Rights Act of 1964 and not subject to EEOC jurisdiction. EEOC definitions may guide the Nation in forming a sexual harassment policy.

Jessica Vandekamp (written): 5. Hostile Work Environment • Add: define hostile work environment as a form of sexual harassment. I’ve heard often that employees use the term incorrectly when describing an unfriendly work environment.

Tina Jorgensen (written): It is very easy for an employee to claim they are working in a hostile work environment. It was mentioned in a few of my employee disagreements and investigations and was due to the employee being held accountable for their actions. I agree with EEO being involved but I disagree that the EEO department being responsible.

Response

The commenter suggests that the Legislative Operating Committee consider updating the definition for sexual harassment.

Section V.D.1.b.2.a.i of the Law provides that sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or
3. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

It is recommended that the Legislative Operating Committee work with the EEO Department to revise and update the definition for sexual harassment to clarify the scope of sexually harassing behaviors.

LOC Consideration

Comments 126 through 130 – : Oversight and Accountability for EEO Violations Complaint Investigations:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

2) EEO Violations

- a) An employee may file a EEO Violation complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an EEO Violation complaint.

- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.**
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.**
- i) The EEO Officer's resolution shall be final.**

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): The proposed Complaint process for EEO violations is as follows:

2) EEO Violations

- a) An employee may file a EEO Violation complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an EEO Violation complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.¹⁵
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
- i) The EEO Officer's resolution shall be final. (OPPP amendments, Draft 1, lines 896-917)

The most notable aspect of the EEO Violations Complaint process is the lack of oversight, especially when this section is compared to the Employee Disagreements Complaint process. While supervisors, area managers, and General Managers throughout the organization will be found "negligent in the performance of their assigned duties" and be subject to "appropriate accountability" if they "fail to complete [an] investigation and resolve the complaint," the EEO Officers have no oversight and no threatened discipline. The proposed amendments are very focused on EEO oversight of supervisor, area manager, and General Manager investigations, decision-making, and follow-through. But there is a complete lack of oversight for the EEO Officers themselves when they are investigating and resolving EEO Violation Complaints.

¹⁵ The proposed Amendments do not state what happens if the EEO and HR Executive Director cannot mutually agree. A possible solution is for the Executive Director decision to control in those instances.

Lisa Duff on behalf of Gaming Senior Management (written): Line 900-901: The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department received the complaint from the employee.

After this step, nothing in the EEO Officers process for investigating and resolution of the complaint addresses what happens if the EEO fails to adhere to the timeline during the process. There are steps up the chain of command, up to the Business Committee if supervisors, managers, and the General Manager fail to adhere to the timeline. If EEO wants supervisor authority to discipline, they too need to be held accountable if they miss the timeline. The process needs to be fair and consistent to all who are taking action. In the supervisor, area manager and general manager sections under complaints it states that if they fail to complete the investigation and resolve the complaint within ten (10) working days, the EEO Department shall send notice up the chain of command, informing them they violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint. This same process has to be followed when EEO is negligent.

Lisa Duff on behalf of Gaming Senior Management (written): Line 913-914: The EEO Office shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.

Where's the step after this that says, if the EEO cannot come to a mutual determination with the Human Resources Executive Director as to an appropriate resolution for the complaint then the EEO shall provide written justification for non-agreement on the resolution to the General Manager or Business Committee. In all the complaint processes for the supervisor, Area Manager and the General Manager, it states they must provide written justification for non-agreement with EEO. If EEO is allowed disciplinary authority, in the event of a disagreement with the Executive Director's decision, the Executive Directors decision shall be final in regard to internal review prior to actual litigation before the Judiciary.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1136-1140: For any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department shall send a letter to the Area Manager. The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee.

If EEO Officers are going to be allowed the authority to discipline employees that they don't work with or supervise, what happens when the EEO Officer fails to follow the Nations disciplinary procedures? Where is the accountability process for them? They too should have a letter sent to their Area Manager informing them the EEO Officer violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee. The process has to be fair and consistent for all.

Shannon Stone (written): There does not seem to be the same level of accountability for EEO as there is for a supervisor in the Complaint and Grievance processes.

Response

The commenters provide that the complaint procedures for EEO Violations found in section V.D.1.c.2 of the Law lacks the level of accountability for the EEO officers that is provided for the supervisors in the complaint procedures for Employee Disagreements.

Some examples of the commenters concerns include section V.D.1.c.2.g of the Law which provides that the EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution, but does not provide what occurs if the EEO Officer and the Human Resources Executive Director cannot come to a mutual determination. Additionally, section V.D.1.c.2 of the Law does not address what occurs if the EEO Officer fails to complete the investigation within the timelines provided in the Law.

It is recommended that the Legislative Operating Committee review the complaint procedures for EEO Violations found in section V.D.1.c.2. of the Law to address the accountability of the EEO Officers. Specifically, the Legislative Operating Committee should discuss and determine what occurs if the EEO Officer and the Human Resources Executive Director cannot come to a mutual determination, as provided for in V.D.1.c.2.g of the Law, as well as accountability measures for an EEO Officer who does not follow the complaint procedures.

LOC Consideration

Comment 131 – Clarification on Final Resolution for EEO Violation Investigation:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

2) EEO Violations

- a) An employee may file a EEO Violation complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:

- i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an EEO Violation complaint.
 - g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
 - h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
 - i) The EEO Officer's resolution shall be final.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): The proposed amendments require the EEO Officer to notify the supervisor of the employee who is the subject of the complaint to state, among other things, “the final resolution shall be sent to their supervisor to ensure accountability.” (OPPP amendments, Draft 1, lines 907-908). It is unclear which supervisor will receive the “final resolution.” The language may refer to the supervisor of the employee being complained about or it may refer to the supervisor's supervisor (in other words, two levels of supervision above the employee being complained about). The language should more clearly specify who will receive the final resolution.

In addition, the language declaring the EEO's resolution of a Complaint as “final” should be more clear. If the meaning of “final” is that the EEO's resolution cannot be appealed to any hearing body, such limitation should be explicit.

Response

The commenters request that the Legislative Operating Committee clarify which supervisor the final resolution shall be sent to as provided for in section V.D.1.c.2.d.iii. of the Law. The commenters also request that the Legislative Operating Committee clarify what section V.D.1.c.2.i of the Law means when it states that the EEO Officer's resolution shall be final.

Section V.D.1.c.2.d.iii of the Law provides that the EEO Officer shall notify the immediate supervisor of the employee being complained about so they: Are aware that the EEO Officer will be investigating their employee; Know the EEO Officer shall be responsible for implementing the final resolution; and Know the final resolution shall be sent to their supervisor to ensure accountability. Because the communication is from the EEO Officer to the supervisor of the employee who is the subject of the complaint, the provision that “the final resolution shall be sent

to *their* supervisor to ensure accountability” is referencing the supervisor of the supervisor, more commonly known as the Area Manager. It is not currently addressed in the proposed amendments, but the Legislative Operating Committee may want to ensure that the final resolution is also provided to the supervisor of the employee being complained about so that they are aware of the final resolution.

Additionally, section V.D.1.c.2.i of the Law provides that the EEO Officer’s resolution shall be final. The intent of this provision is that the EEO Officer’s resolution of the complaint be non-appealable.

It is recommended that the Legislative Operating Committee make the following revisions to the Law to clarify the above mentioned issues:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

2) EEO Violations

a) An employee may file a EEO Violation complaint with the EEO Department.

b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.

c) The EEO Officer’s ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.

d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:

i. Are aware that the EEO Officer will be investigating their employee;

ii. Know the EEO Officer shall be responsible for implementing the final resolution; and

iii. Know the final resolution shall be sent to the supervisor and area manager of the employee who is the subject of the complaint ~~their supervisor~~ to ensure accountability.

i) The EEO Officer’s resolution shall be final and non-appealable.

LOC Consideration

Comment 132 – Definition for Illegal Activities:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

b. Types of Complaints

3) Illegal Activities

a) An illegal activities violation occurs when an employee alleges:

- i. They witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;**
- ii. They witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;**
- iii. They witnessed or have knowledge of the use or possession of an illegal controlled substance; or**
- iv. They witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions.**

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.1.c.3), Illegal Activities

The proposed amendments add a new Complaint process centered on employee allegations of illegal activities. Illegal activities are defined within the amendments at Section V.D.1.b.3):

3) Illegal Activities

a) An illegal activities violation occurs when an employee alleges:

- i. They witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;**
- ii. They witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;**
- iii. They witnessed or have knowledge of the use or possession of an illegal controlled substance; or**
- iv. They witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions. (OPPP amendments, Draft 1, lines 743-754)**

The OPPP are Oneida law and must be confined to matters over which the Oneida Nation can exercise its jurisdiction. For the purpose of employment regulation, this is generally considered to include activities that occur within the workplace, activities that are part of an employee's work duties, or activities that substantially affect an employee's ability to perform their work duties. The proposed amendments do not confine the definition of "Illegal Activities" to activities that are under the Nation's jurisdiction, which can pose a problem for enforcement of the Law. Only amended Section V.D.1.c.3)a)ii refers to an employee "witness[ing] or hav[ing] knowledge of a

possession of a dangerous or unauthorized material . . . in the workplace.” (OPPP amendments, Draft 1, lines 747-8) (emphasis added). Similar language should be added to Sections i, iii, and iv.

Response

The commenters request the Legislative Operating Committee consider revising section V.D.1.3.b.a. of the Law to activities that occur within the workplace, activities that are part of an employee’s work duties, or activities that substantially affect an employee’s ability to perform their work duties.

Section V.D.1.3.b.a. of the Law provides that an illegal activities violation occurs when an employee alleges:

- They witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;
- They witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;
- They witnessed or have knowledge of the use or possession of an illegal controlled substance; or
- They witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions.

It is recommended that the Legislative Operating Committee make the following revision to section V.D.1.3.b.a. of the Law to provide a greater connection between the illegal activity and the workplace:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

b. Types of Complaints

3) Illegal Activities

a) An illegal activities violation occurs when an employee alleges they witnessed or have knowledge of an illegal act that:

i. occurred within the workplace;

ii. occurred as a result of an employee’s work duties; or

iii. ssubstantially affects an employee’s ability to perform their work duties.

(b) An illegal activity may include, but is not limited to, the following:

i. ~~They witnessed or have knowledge of~~ arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;

ii. ~~They witnessed or have knowledge of a~~ possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;

iii. ~~They witnessed or have knowledge of the~~ use or possession of an illegal controlled substance; or

- iv. ~~They witnessed or have knowledge of a~~ theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions.

LOC Consideration

Comments 133 through 135 – Illegal Activities Complaint Process Concerns:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.

- i) **The EEO Officer's resolution shall be final.**
- j) **If the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.**
 - i. **The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.**

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): The proposed amendments also describe a process for Illegal Activities Complaints.

3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
 - i) The EEO Officer's resolution shall be final.
- j) If the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.
 - i. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint. (OPPP amendments, Draft 1, lines 918-946)

The Illegal Activities complaint process mirrors the EEO Violations complaint process for the most part, so the comments are similar. (See EEO Violations, above). In summary, when compared to the Employee Disagreement Complaint process, there is a lack of oversight for EEO Officer investigation and resolution of Illegal Activities. Also, it is unclear which supervisor will receive

“the final resolution” identified in Section V.D.1.c.3)d)iii. Finally, it is not clear what is meant by, “The EEO Officer’s resolution shall be final.”

Lisa Duff on behalf of Gaming Senior Management (written): Illegal Activities Lines 923-924: The EEO Officer’s ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.

Same as mentioned above in EEO violations, nothing in the EEO process addresses if the EEO Officer fails to complete the investigation and resolve the complaint within ten (10) working days. Nothing states who will send this notice, and who is it sent to, to inform them the EEO violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint. If this process exists for supervisors, area managers and the General Manager in needs to be in the EEO’s process also. All need to be held accountable in the same manner.

Lisa Duff on behalf of Gaming Senior Management (written): Line 936-937: The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.

Nothing is stated in this process who the EEO sends their justification to if the EEO Officer and Human Resources Executive Director do not come to a mutually determination of an appropriate resolution as listed in the supervisor, area manager and General Managers process. Both should have to follow the same process to be consistent.

Response

The commenters provide that the complaint procedures for Illegal Activities found in section V.D.1.c.3. of the Law lacks the level of accountability for the EEO officers that is provided for the supervisors in the complaint procedures for Employee Disagreements.

Some examples of the commenters concerns include section V.D.1.c.3.g of the Law which provides that the EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution, but does not provide what occurs if the EEO Officer and the Human Resources Executive Director cannot come to a mutual determination. Additionally, section V.D.1.c.3. of the Law does not address what occurs if the EEO Officer fails to complete the investigation within the timelines provided in the Law.

It is recommended that the Legislative Operating Committee review the complaint procedures for Illegal Activities found in section V.D.1.c.3. of the Law to address the accountability of the EEO Officers. Specifically, the Legislative Operating Committee should discuss and determine what occurs if the EEO Officer and the Human Resources Executive Director cannot come to a mutual determination, as provided for in V.D.1.c.2.g of the Law, as well as accountability measures for an EEO Officer who does not follow the complaint procedures.

Additionally, the commenters request that the Legislative Operating Committee clarify which supervisor the final resolution shall be sent to as provided for in section V.D.1.c.3.d.iii. of the Law.

The commenters also request that the Legislative Operating Committee clarify what section V.D.1.c.3.i of the Law means when it states that the EEO Officer's resolution shall be final.

Section V.D.1.c.3.d.iii of the Law provides that the EEO Officer shall notify the immediate supervisor of the employee being complained about so they: Are aware that the EEO Officer will be investigating their employee; Know the EEO Officer shall be responsible for implementing the final resolution; and Know the final resolution shall be sent to their supervisor to ensure accountability. Because the communication is from the EEO Officer to the supervisor of the employee who is the subject of the complaint, the provision that "the final resolution shall be sent to *their* supervisor to ensure accountability" is referencing the supervisor of the supervisor, more commonly known as the Area Manager. It is not currently addressed in the proposed amendments, but the Legislative Operating Committee may want to ensure that the final resolution is also provided to the supervisor of the employee being complained about so that they are aware of the final resolution.

Additionally, section V.D.1.c.3.i of the Law provides that the EEO Officer's resolution shall be final. The intent of this provision is that the EEO Officer's resolution of the complaint be non-appealable.

It is recommended that the Legislative Operating Committee make the following revisions to the Law to clarify the above mentioned issues:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to the supervisor and area manager of the employee who is the subject of the complaint ~~their supervisor~~ to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
- i) The EEO Officer's resolution shall be final and non-appealable.
- j) If the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.
 - i. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.

LOC Consideration

Comment 136 – Involvement of the Oneida Law Office in Illegal Activities Complaints:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.

- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
- i) The EEO Officer's resolution shall be final.
- j) If the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.
 - i. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Proposed Section V.D.1.c.3.g. would require the EEO Office to meet with the HR Executive Director to “mutually determine an appropriate resolution.” When there is the possibility of illegal activity within an Oneida workplace or a crime against the Nation, such discussion should involve an attorney(s) from the Oneida Law Office. The Nation’s attorneys both represent the interest of the Nation and directly advise the Oneida Business Committee about legal implications of potential illegal activity within the organization.

In addition, while the Illegal Activities complaint process requires an EEO Officer to forward information to a local law enforcement agency if the Officer reaches a “conclusion that an illegal activity did occur,” this requirement falls far short of what is actually needed in these circumstances. If grant funds are implicated in any way, grant requirements must be considered and a report(s) made to relevant granting agency(ies). In addition, illegal activity typically impacts compacts, contracts, memoranda of understanding or agreement, and other intergovernmental agreements. The Oneida Law Office is involved in cases of illegal activity to ensure that the requirements of all applicable agreements are fulfilled. In almost every case, the matter is reported to the Business Committee with the appropriate confidentiality and context. Simply saying that the EEO will refer the matter to a local law enforcement agency does not address all the implications of an Illegal Activities investigation. This language should be expanded to ensure that the Oneida Law Office is involved and all reports are made.

Response

The commenters request that the Legislative Operating Committee include the Oneida Law Office in section V.D.1.c.3. of the Law, since that the Oneida Law Office should be involved in all reports of Illegal Activities.

It is recommended that the Legislative Operating Committee collaborate with the Oneida Law Office to determine how best to incorporate the Oneida Law Office into the Illegal Activities complaint procedures provided for in section V.D.1.c.3. of the Law, and revise the Law accordingly.

LOC Consideration

Comment 137 – Local Law Enforcement Agencies:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.

h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.

i) The EEO Officer's resolution shall be final.

j) If the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.

i. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): The Illegal Activities Complaint process raises an additional concern. Section V.D.1.c.3.j)i. seems to direct "local law enforcement agenc[ies]" to "utilize their investigation and accountability processes for the complaint." Every local law enforcement agency, including the Oneida Police Department, uses its discretion to determine an approach to every complaint they receive. It is not necessary to direct law enforcement agencies as proposed in the OPPP amendments.

Response

The commenters provide that it is unnecessary for the section V.D.1.c.3.j.i. of the Law to provide direction to local law enforcement agencies.

Section V.D.1.c.3.j. of the Law provides that if the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency. The Law then provides that the local law enforcement agency shall utilize their investigation and accountability processes for the complaint.

The following revision to the Law is recommended based on this comment:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

3) Illegal Activities

j) If the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.

~~i. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.~~

LOC Consideration

Comments 138 through 141 – Deviation from Progressive Order of Discipline:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

b. Determination of Disciplinary Action.

1) All disciplinary actions shall commensurate with the seriousness of the unsatisfactory performance or violation.

2) Disciplinary actions shall be considered in progressive order.

a) The progressive order for discipline is as follows, unless otherwise noted:

i. Written warning (W);

ii. Suspension (S);

iii. Termination (T).

b) Deviation from Progressive Order

i. Any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.

ii. Any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and approved by the Human Resources Executive Director, or designee.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

b. Determination of Disciplinary Action.

1) All disciplinary actions shall commensurate¹⁸ with the seriousness of the unsatisfactory performance or violation.

2) Disciplinary actions shall be considered in progressive order.

a) The progressive order for discipline is as follows, unless otherwise noted:

i. Written warning (W);

ii. Suspension (S);

iii. Termination (T).

b) Deviation from Progressive Order

i. Any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.

ii. Any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and approved by the Human Resources Executive Director, or designee.

The proposed amendments would require a supervisor to obtain EEO approval of any deviation from progressive discipline, within the timeline for issuing discipline. The amendments do not provide an opportunity to appeal the EEO decision regarding deviation

¹⁸ It's possible Section V.D.2.b.1) is intended to read, "All disciplinary actions shall be commensurate with the seriousness of the unsatisfactory performance or violation."

Lisa Duff on behalf of Gaming Senior Management (written): Line 963-965: Any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.

EEO should not have to approve a supervisor's deviation from the recommended progression. They never had in the current process so why change it? I agree the process should remain that any deviation from the recommended progression shall be justified in writing, but it should not have to have EEO approval, as again, it is the discretion of the supervisor on what level of discipline they are going to issue.

Lisa Duff on behalf of Gaming Senior Management (written): Line 982: unless a deviation is sought and approved.

Don't agree that a supervisor's decision to deviate from the recommended progression needs EEO approval. It never has in the past, why add it now? Again, too much authority to EEO. Supervisors are currently required to justify the deviation in writing so why change the process?

Mark Powless (written):

991 When the supervisor's investigation is complete, the supervisor shall
 992 contact the EEO Officer to mutually determine an appropriate resolution.
 993 c.1. If the supervisor cannot come to a mutual determination with the EEO
 994 Officer as to an appropriate resolution for the complaint, then the
 995 supervisor shall provide written justification for non-agreement on the
 996 resolution to both the Area Manager to attempt a resolution and the
 997 Human Resources Executive Director.

1179 i. Any deviation from the recommended progressive order made by the
 1180 supervisor shall be justified in writing and approved by the EEO
 1181 Department.

- In both sections the time for the EEO office to respond is not defined. A supervisor has a defined timeframe to respond. If the EEO office is not timely it will delay completion of the investigation/resolution.

Response

The commenters provide that overall the discipline timelines do not provide adequate time for the supervisor to obtain approval by the EEO Department for any deviation from the progressive order

as required by section V.D.2.b.2.b. of the Law. Additionally, the commenters state the section V.D.2.b.2.b. of the Law does not allow a supervisor to appeal the decision of the EEO Department. The commenters also provide general non-support of this provision of the Law.

Section V.D.2.b.2. of the Law provides that disciplinary actions shall be considered in progressive order, which is as follows, unless otherwise noted: Written warning (W); Suspension (S); Termination (T). Section V.D.2.b.2.b.i. of the Law then provides that any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.

The Legislative Operating Committee may consider whether the disciplinary procedures found in section V.D.2. of the Law allow enough time for the requirements of section V.D.2.b.2.b.i. to be accomplished. The Legislative Operating Committee may also consider whether a supervisor should be able to appeal the decision of the EEO Department regarding the deviation from the normal progressive order of discipline. The Legislative Operating Committee may make one of the following determinations.

1. Section V.D.2.b.2.b.i. of the Law should remain as currently redrafted and require that any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.
2. Section V.D.2.b.2.b.i. of the Law should be redrafted and the Legislative Operating Committee should consider whether the approval of the EEO Department is necessary for a deviation from the progressive order. If the Legislative Operating Committee decides to keep the requirement for the approval of the EEO Department, then the Legislative Operating Committee should consider the timeline for the EEO Department to approve the deviation, and whether a supervisor be allowed to appeal the decision of the EEO Department.

LOC Consideration

Comment 142 – Accumulated Disciplinary Actions Warranting Termination:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

b. Determination of Disciplinary Action.

3) Accumulated Disciplinary Actions Warranting Termination

a) The following accumulations of disciplinary actions shall warrant the termination of an employee:

- i. Three (3) upheld warning notices within any twelve (12) month period;**

- ii. Two (2) upheld suspensions within any twelve (12) month period; or
- iii. Any combination of three (3) upheld warning notices and/or upheld suspensions within any twelve (12) month period.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

3) Accumulated Disciplinary Actions Warranting Termination

- a) The following accumulations of disciplinary actions shall warrant the termination of an employee:
 - i. Three (3) upheld warning notices within any twelve (12) month period;
 - ii. Two (2) upheld suspensions within any twelve (12) month period; or
 - iii. Any combination of three (3) upheld warning notices and/or upheld suspensions within any twelve (12) month period.

Proposed language regarding accumulated disciplines is substantially similar to language in the current OPPP and presents no legal issues.

Response

The commenters provide a summary of section V.D.2.b.3. of the Law and provide that it is substantially similar to current language in the Law and presents no legal issue. There is no action needed by the Legislative Operating Committee based on this comment.

LOC Consideration

Comment 143 – Definition of Prohibited Drug:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

c. Disciplinary Action for Unsatisfactory Work Performance.

1) A supervisor may initiate disciplinary action for unsatisfactory work performance of an employee.

2) The actions listed below are examples of unsatisfactory work performance and do not constitute a comprehensive or exhaustive list. The actions in parentheses are the progressive order standards to be used in administering disciplinary actions, unless a deviation is sought and approved.

d) Personal Actions and Appearance

xiii. The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or prohibited drugs on or about Oneida Nation premises while on duty. (S/T)

1. Prohibited drug means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): The amendments include lists of actions that may constitute unsatisfactory¹⁹ work performance, which are substantially similar to the lists of actions in the current law. (See OPPP amendments, Draft 1, lines 983-1066). A significant change in the proposed amendments is found in Section V.D.2.c.2)d)xiii., which proposes to define “prohibited drug” as follows:

xiii. The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or prohibited drugs on or about Oneida Nation premises while on duty. (S/T)

1. Prohibited drug means marijuana,²⁰ cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

As the laws regarding the legality of marijuana continue to change, it may be advisable to not include a list of specific drugs as “prohibited.” To stay current with any potential changes to drug laws, proposed Section V.D.2.c.2)d)xiii.1. could state:

1. Prohibited drug means any substances included in Schedules I through V, as established by 21 United States Code §812. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

¹⁹ In the current OPPP, the list of actions is referred to as “unacceptable” work performance. See OPPP V.D.2.c.

²⁰ Many states have decriminalized marijuana for medical or recreational use, or both. In Wisconsin, where state law maintains criminal penalties, several municipalities have decriminalized marijuana possession, including Appleton and Green Bay, though such municipalities may permit civil monetary penalties. As a federal grant recipient, the Oneida Nation is required to comply with the Drug Free Workplace Act of 1988, which requires “publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person’s workplace and specifying the actions that will be taken against employees for violations of such prohibition.” 41 USC §701(a)(1)(A). Marijuana is currently included on the federal list of controlled substances.

Response

The commenter requests that the Legislative Operating Committee consider revising the definition for prohibited drug contained in the Law.

Section V.D.2.c.2.d.xiii.1. of the Law provides that prohibited drug means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

In an effort to stay current with any potential changes to drug laws, the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

c. Disciplinary Action for Unsatisfactory Work Performance.

1) A supervisor may initiate disciplinary action for unsatisfactory work performance of an employee.

2) The actions listed below are examples of unsatisfactory work performance and do not constitute a comprehensive or exhaustive list. The actions in parentheses are the progressive order standards to be used in administering disciplinary actions, unless a deviation is sought and approved.

d) Personal Actions and Appearance

xiii. The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or prohibited drugs on or about Oneida Nation premises while on duty. (S/T)

1. Prohibited drug means ~~marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other~~ substances included in Schedules I through V, as defined by ~~Section 812 of Title 21 of the United States Code~~ 21 United States Code §812. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

LOC Consideration

Comment 144 – Clarify Promptly Meeting with an Employee:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. **Disciplinary Procedure.** The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

1) The supervisor or EEO Officer shall fill out a disciplinary action form within five (5) working days of either:

- a) the resolution of a complaint from which it has been determined that disciplinary action is warranted, or
 - b) the determination that disciplinary action is warranted based on the unsatisfactory work performance of an employee.
- 2) The supervisor or EEO Officer shall fill out the disciplinary action form in its entirety and ensure the information contained on the form is complete and accurate. The disciplinary action form shall include at a minimum the following information:
 - a) Statement of the behavior for which the disciplinary action is being taken;
 - b) The time and date of its occurrence; and
 - c) The specific policy section under which action is being taken.
- 3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.
 - a) The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.
 - b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:
 - i. Understands the reason for the disciplinary action;
 - ii. Understands the expected work performance in light of the disciplinary action; and
 - iii. Understands the consequences of continued unacceptable behavior.
- 4) The employee being disciplined shall sign the disciplinary action form.
 - a) Should an employee being disciplined refuse to discuss the action with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.
- 5) Within one (1) working day of the conclusion of the meeting with the employee, the supervisor or EEO Officer shall provide copies of the signed disciplinary action form, or disciplinary action form noting the date of refusal, to the:
 - a) Employee being disciplined;
 - b) Human Resources Executive Director;
 - c) Supervisor;
 - d) Area Manager; and
 - e) Appropriate General Manager level position.
- 6) Should a disciplinary action result in the suspension of an employee, the following guidelines shall apply:
 - a) Consultation on Suspensions

- i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine the length of the suspension.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension.
 - b) Suspensions shall be limited to a maximum period of three (3) weeks.
 - i. Suspensions that are overturned in the grievance process shall result in the employee receiving back pay for the time they were suspended.
- 7) Should a disciplinary action result in the termination of an employee, the following guidelines shall apply:
 - a) Consultation on Termination
 - i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine that the termination is the appropriate disciplinary action.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action.
 - b) Terminations that are overturned in the grievance process shall result in the employee receiving back pay for the time they were terminated.
- 8) The Human Resources Department may void a disciplinary action for clear procedural errors.
 - a) The EEO Officer may void a disciplinary action taken by a supervisor for clear procedural errors.
 - b) The Human Resources Executive Director, or designee, may void a disciplinary action taken by an EEO Officer for clear procedural errors.
 - c) Notification of a voided disciplinary action shall be sent to the supervisor or EEO Officer and the employee which identifies the procedural error.
- 9) For any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department shall send a letter to the Area Manager.
 - a) The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee.
 - b) The letter shall address the appropriate accountability of the supervisor.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.2.d., Disciplinary Procedure

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

- 1) The supervisor or EEO Officer shall fill out a disciplinary action form within five (5) working days of either:
 - a) the resolution of a complaint from which it has been determined that disciplinary action is warranted, or
 - b) the determination that disciplinary action is warranted based on the unsatisfactory work performance of an employee.
- 2) The supervisor or EEO Officer shall fill out the disciplinary action form in its entirety and ensure the information contained on the form is complete and accurate. The disciplinary action form shall include at a minimum the following information:
 - a) Statement of the behavior for which the disciplinary action is being taken;
 - b) The time and date of its occurrence; and
 - c) The specific policy section under which action is being taken.
- 3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action. (OPPP Amendments, Draft 1, lines 1067-84)

It is not clear what qualifies as “promptly” meeting with a disciplined employee. Under the proposed amendments, the EEO Department can refer a supervisor who “fails to follow the Nation’s disciplinary procedures” for discipline. See OPPP Amendments, Draft 1, lines 1136-41. If an employee (here, a supervisor) is subject to discipline for certain actions or inaction, the employer should inform the employee of exactly what behaviors are required to avoid discipline. The proposed amendments do not adequately inform supervisors how to avoid discipline by promptly meeting with an employee.

Additionally, supervisors have an interest in not having a discipline overturned for procedural errors. (See *Oneida Bingo and Casino v. Oneida Human Resources Dept.*, 02-AC-007, 8 O.N.R. 3-138, 139 (Aug. 12, 2002) (“[T]he supervisor is not presenting this grievance to the Personnel Commission in her personal capacity. She is bringing this action as a representative of the Oneida Bingo and Casino, which is Mr. Haven’s employer. And the Oneida Bingo and Casino does have an interest in upholding Mr. Haven’s suspension from employment. . . . [T]he Bingo and Casino as an entity has an interest in maintaining itself and its processes.”) For supervisors to avoid having their disciplines overturned, they need to be told the details of the disciplinary process. Requiring a “prompt” meeting is not detailed enough. For these reasons, proposed OPPP V.D.2.d.3) should include a specific timeline for supervisors and EEO Officers to meet with an employee who is being disciplined.

Response

The commenters provide that the requirement of section V.D.2.d.3 of the Law for a supervisor or EEO Officer to promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action does not provide enough clarification as to what promptly means.

Section V.D.2.d.3 of the Law provides that the supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action. A definitive timeline for this action is not provided.

It is recommended that section V.D.2.d.3. of the Law be redrafted to provide a definitive timeline for when the supervisor or EEO Officer has to hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action. The Legislative Operating Committee should determine an appropriate timeframe and revise the Law accordingly as illustrated below:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action within __ (add timeframe) __.

a) The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.

b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:

- i. Understands the reason for the disciplinary action;
- ii. Understands the expected work performance in light of the disciplinary action; and
- iii. Understands the consequences of continued unacceptable behavior.

LOC Consideration

Comment 145 – Clarification on What Constitutes Corrective Action:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

- 3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.
 - a) The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.
 - b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:
 - i. Understands the reason for the disciplinary action;
 - ii. Understands the expected work performance in light of the disciplinary action; and
 - iii. Understands the consequences of continued unacceptable behavior.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Furthermore, it is not clear what is included as a “corrective action” that must be identified during the disciplinary meeting. Is the discipline – written warning, suspension, termination – the corrective action? Or would something else – a restriction on employee’s authority, a corrective plan, a mitigation agreement – qualify as a corrective action? In order to provide notice to the supervisor and to help the supervisor implement discipline that will be upheld, the types of “corrective action” need to be identified in the Amendments.

Response

The commenters provide that section V.D.2.d.3. of the Law should be revised to provide greater clarification as to what constitutes corrective action.

Section V.D.2.d.3 of the Law provides that the supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.

It is recommended that the Legislative Operating Committee review section V.D.2.d.3. of the Law and determine what constitutes corrective action in these circumstances, and then revise the Law accordingly.

LOC Consideration

Comment 146 – Refusal to Meet:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

- d. **Disciplinary Procedure.** The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

- 3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.
 - a) The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.
 - b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:
 - i. Understands the reason for the disciplinary action;
 - ii. Understands the expected work performance in light of the disciplinary action; and
 - iii. Understands the consequences of continued unacceptable behavior.
- 4) The employee being disciplined shall sign the disciplinary action form.
 - a) Should an employee being disciplined refuse to discuss the action with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

- a) The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.
- b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:
 - i. Understands the reason for the disciplinary action;
 - ii. Understands the expected work performance in light of the disciplinary action; and
 - iii. Understands the consequences of continued unacceptable behavior.
- 4) The employee being disciplined shall sign the disciplinary action form.
 - a) Should an employee being disciplined refuse to discuss²¹ the action with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.
- 5) Within one (1) working day of the conclusion of the meeting with the employee, the supervisor or EEO Officer shall provide copies of the signed disciplinary action form, or disciplinary action form noting the date of refusal, to the:
 - a) Employee being disciplined;
 - b) Human Resources Executive Director;
 - c) Supervisor;
 - d) Area Manager; and
 - e) Appropriate General Manager level position.
- 6) Should a disciplinary action result in the suspension of an employee, the following guidelines shall apply:
 - a) Consultation on Suspensions

- i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine the length of the suspension.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension.
 - b) Suspensions shall be limited to a maximum period of three (3) weeks.
 - i. Suspensions that are overturned in the grievance process shall result in the employee receiving back pay for the time they were suspended.
- 7) Should a disciplinary action result in the termination of an employee, the following guidelines shall apply:
 - a) Consultation on Termination
 - i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine that the termination is the appropriate disciplinary action.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action. (OPPP Amendments, Draft 1, lines 1085-1125).

The proposed OPPP Amendments regarding mutual determination of suspension length and of termination are substantially similar to the current OPPP and do not present any new legal issues.

²¹ It is not clear if there is a difference between an employee's refusal to meet and a "refusal to discuss." Oneida hearing bodies and Courts have created significant precedent regarding an employee's refusal to meet for an investigation or discipline. See e.g. Thundercloud et al. v. Skenandore, 21-AC-008 (April 11, 2022). The Amendments should make clear whether such precedent holds its value by using the phrase "refuse to meet."

Response

The commenters provide that it is not clear if there is a difference between an employee's refusal to meet and a "refusal to discuss" as provided for in section V.d.2.d.4. of the Law, and that Oneida hearing bodies and Courts have created significant precedent regarding an employee's refusal to meet for an investigation or discipline.

Section V.d.2.d.4. of the Law provides that the employee being disciplined shall sign the disciplinary action form, and that should an employee being disciplined refuse to discuss the action with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.

The following revision to the Law is recommended based on this comment:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

- d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

- 4) The employee being disciplined shall sign the disciplinary action form.
 - a) Should an employee being disciplined refuse to ~~discuss the action~~ meet with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.

LOC Consideration

Comments 147 through 148 – Conformance with the Back Pay Law:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. **Disciplinary Procedure.** The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

6) Should a disciplinary action result in the suspension of an employee, the following guidelines shall apply:

a) **Consultation on Suspensions**

i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine the length of the suspension.

ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension.

b) Suspensions shall be limited to a maximum period of three (3) weeks.

i. Suspensions that are overturned in the grievance process shall result in the employee receiving back pay for the time they were suspended.

7) Should a disciplinary action result in the termination of an employee, the following guidelines shall apply:

a) **Consultation on Termination**

i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine that the termination is the appropriate disciplinary action.

ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action.

b) Terminations that are overturned in the grievance process shall result in the employee receiving back pay for the time they were terminated.

3. **Grievance (Grievance Flowchart)**

c. **Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance.** The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

1) **Appeal to the Area Manager**

c) The Area Manager shall take one of the following actions:

- i. Uphold the disciplinary action;
- ii. Modify the disciplinary action; or
- iii. Overturn the disciplinary action.

1. If a suspension or termination is overturned, the employee (petitioner) shall be reinstated to the position the employee was suspended or terminated from with full back pay.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

b) Terminations that are overturned in the grievance process shall result in the employee receiving back pay for the time they were terminated. (OPPP Amendments, Draft 1, lines 1126-7).

Both the suspension and termination sections of the proposed amendments require back pay in the event a discipline is overturned. (OPPP Amendments, Draft 1, lines 1115-6 and lines 1126-7). The recently-amended Back Pay Law clearly defines eligibility for and calculation of Back Pay. See 2 O.C. 206, Back Pay. Proposed language in the amendments that requires back pay “for the time they were suspended” or “for the time they were terminated” is not very specific. However, the Back Pay Law is quite specific about these calculations. The proposed amendments should require back pay “in conformance with Oneida Law,” as this is simpler and less confusing.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

c) The Area Manager shall take one of the following actions:

- i. Uphold the disciplinary action;
- ii. Modify the disciplinary action; or
- iii. Overturn the disciplinary action.

1. If a suspension or termination is overturned, the employee (petitioner) shall be reinstated to the position the employee was suspended or terminated from with full back pay. (OPPP Amendments, Draft 1, lines 1184-90).

The recently-amended Back Pay Law addresses all requirements for reinstatement and back pay. Therefore, it is sufficient in these amendments to state, “If a suspension or termination is overturned, reinstatement and back pay will be in conformance with Oneida Law.”

Response

The commenters express that language discussing reinstatement and back pay provided in sections V.D.2.d.6.b.i., V.D.2.d.7.b., V.D.3.c.1.c.iii.1. should be simplified and provide that all reinstatement and back pay will be in conformance with the Nation's Back Pay law.

Section V.D.2.d.6.b.i. of the Law provides that suspensions that are overturned in the grievance process shall result in the employee receiving back pay for the time they were suspended. Section V.D.2.d.7.b. of the Law provides that terminations that are overturned in the grievance process shall result in the employee receiving back pay for the time they were terminated. Section V.D.3.c.1.c.iii.1. of the Law provides that if a suspension or termination is overturned, the employee (petitioner) shall be reinstated to the position the employee was suspended or terminated from with full back pay.

In an effort to ensure compliance with the Nation's Back Pay law the following revisions to the Law are recommended based on these comments:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

6) Should a disciplinary action result in the suspension of an employee, the following guidelines shall apply:

a) Consultation on Suspensions

i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine the length of the suspension.

ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension.

b) Suspensions shall be limited to a maximum period of three (3) weeks.

i. If a suspensions ~~that are~~ is overturned in the grievance process any back pay shall comply with the Nation's laws governing back pay ~~result in the employee receiving back pay for the time they were suspended.~~

7) Should a disciplinary action result in the termination of an employee, the following guidelines shall apply:

a) Consultation on Termination

i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine that the termination is the appropriate disciplinary action.

- ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action.
 - b) If a terminations ~~that are~~ is overturned in the grievance process any reinstatement or back pay shall comply with the Nation's laws governing back pay ~~result in the employee receiving back pay for the time they were terminated.~~
- 3. Grievance (Grievance Flowchart)
 - c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)
 - 1) Appeal to the Area Manager
 - c) The Area Manager shall take one of the following actions:
 - i. Uphold the disciplinary action;
 - ii. Modify the disciplinary action; or
 - iii. Overturn the disciplinary action.
 - 1. If a suspension or termination is overturned, any reinstatement or back pay shall comply with the Nation's laws governing back pay ~~the employee (petitioner) shall be reinstated to the position the employee was suspended or terminated from with full back pay.~~
 - 2) Appeal to the Oneida Personnel Commission
 - i) Hearing Procedure
 - vi. The Oneida Personnel Commission may:
 - 1. Uphold the disciplinary action; or
 - 2. Overturn the disciplinary action and:
 - a. Reinstatement the employee (petitioner) with back pay ~~for any lost time~~ in accordance with the Nation's laws governing back pay ~~Back Pay law~~; or
 - b. Reinstatement the employee (petitioner) without back pay.

It is also important to note that although the Legislative Operating Committee is currently developing amendments to the Nation's Back Pay law, no amendments have yet been adopted.

LOC Consideration

Comments 149 through 151 – Voiding a Disciplinary Action:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. **Disciplinary Procedure.** The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

8) The Human Resources Department may void a disciplinary action for clear procedural errors.

a) The EEO Officer may void a disciplinary action taken by a supervisor for clear procedural errors.

b) The Human Resources Executive Director, or designee, may void a disciplinary action taken by an EEO Officer for clear procedural errors.

c) Notification of a voided disciplinary action shall be sent to the supervisor or EEO Officer and the employee which identifies the procedural error.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

8) The Human Resources Department may void a disciplinary action for clear procedural errors.

a) The EEO Officer may void a disciplinary action taken by a supervisor for clear procedural errors.

b) The Human Resources Executive Director, or designee, may void a disciplinary action taken by an EEO Officer for clear procedural errors.

c) Notification of a voided disciplinary action shall be sent to the supervisor or EEO Officer and the employee which identifies the procedural error. (OPPP Amendments, Draft 1, lines 1128-35).

The proposed amendments explicitly permit the EEO Officers to void a disciplinary action imposed by a supervisor if there are “clear procedural errors.” However, without a description of what constitutes clear procedural error, the amendments do not give supervisors sufficient notice of when their disciplines may be overturned. As described above, supervisors have an interest in issuing disciplines that will not be overturned. Therefore, the proposed amendments need a clearer definition of “clear procedural error.” In addition, the determination of whether a procedural error occurred has always been made by either the Personnel Commission or the Oneida Judiciary Trial Court. This allows for presentation of evidence by both sides and it provides written opinions that other supervisors can use to guide their disciplines in the future. Allowing EEO Officers to simply void disciplines eliminates these important due process and notice functions.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): In addition, the Oneida Judiciary Trial Court and Appellate have subject matter and personal jurisdiction over the Nation’s employment matters. It is both clumsy and redundant to add an additional layer of what essentially amounts to judicial review by inserting EEO ability to void disciplines issued by supervisor and potentially upheld by area managers for “clear procedural errors.” Moreover, a “clear procedural error” is not the standard the Judiciary is required to use when evaluating whether a discipline should be overturned for a procedural irregularity. The Judiciary must consider whether,

“[p]rocedural irregularities were exhibited during the appeal process that were harmful to one of the parties to the grievance.” OPPP, Section V, 3.C(2)(e)ii. It is the Trial Court who should evaluate if there was a deviation of process and, if there was, whether the deviation was significant enough to merit overturning the discipline.⁴⁰ A procedural error alone is not enough for the Judiciary to overturn, but is enough for the EEO to void a discipline. To avoid confusion, the proposed amendments should maintain the Oneida Judiciary’s jurisdiction over employment matters and avoid a costly duplication of services. The Oneida Judiciary should be the only party outside of the chain of command that is able to overturn a disciplinary action, whether that be for lack of support of the discipline or a failure of process.

⁴⁰ A statistical review of Oneida Judiciary Trial Court decisions from 2018-2022 shows that 83% of the published employee grievance decisions are based, in whole or in part, on issues of procedural error. The proposed amendments are not filling a gap in the employee grievance process, as the Oneida Trial Court addresses questions of procedural error in almost every one of its grievance decisions. The reasons to keep procedural error issues with the Trial Court are discussed elsewhere in this memo.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1128-1131: The Human Resources Department may void a disciplinary action for clear procedural errors.

Shouldn’t voiding a disciplinary action issued by a supervisor be left up to the Area Manager or the Judiciary in the grievance process? At the Judiciary only procedural errors that harmed one of the parties are overturned. This states that EEO can void for any clear procedural error.

Response

The commenters express concern regarding the proposed amendments to section V.D.2.d.8. of the Law which allows the Human Resources Department to void a disciplinary action for clear procedural errors due to the fact that the determination that a clear procedural error is undefined in the proposed amendments to the Law, and previously an original hearing body of the Nation – such as the Oneida Personnel Commission or Judiciary – has been the entity making the decisions as to what constitutes a clear procedural error.

Section V.D.2.d.8. of the Law provides that the Human Resources Department may void a disciplinary action for clear procedural errors. An EEO Officer is delegated authority to void a disciplinary action taken by a supervisor for clear procedural errors, while the Human Resources Executive Director, or designee, is delegated authority to void a disciplinary action taken by an EEO Officer for clear procedural errors. Notification of a voided disciplinary action is required to be sent to the supervisor or EEO Officer and the employee which identifies the procedural error.

The Legislative Operating Committee may reconsider whether the Human Resources Department may void a disciplinary action for clear procedural errors. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.2.d.8. of the Law should remain as currently drafted, and provide that the Human Resources Department may void a disciplinary action for clear procedural errors. If the Legislative Operating Committee makes this determination then the Legislative

Operating Committee should consider adding in greater clarification as to what constitutes a clear procedural error.

2. Section V.D.2.d.8. of the Law should be eliminated, and the Human Resources Department should not be able to void a disciplinary action for clear procedural errors.

LOC Consideration

Comment 152 – Notice and Accountability:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

9) For any supervisor who fails to follow the Nation’s disciplinary procedures, the EEO Department shall send a letter to the Area Manager.

a) The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee.

b) The letter shall address the appropriate accountability of the supervisor.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

9) For any supervisor who fails to follow the Nation’s disciplinary procedures, the EEO Department shall send a letter to the Area Manager.

a) The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee.

b) The letter shall address the appropriate accountability of the supervisor. (OPPP Amendments, Draft 1, lines 1136-41).

In Section V.D.2.d.9), the draft amendments appear to replace current accountability measures – namely, allowing an area manager or an Oneida Court to overturn a faulty discipline – with accountability in the form of more discipline as recommended by the EEO Department. The proposed amendments do not identify what “appropriate accountability” will be addressed in the letter to the area manager and, further, do not identify consequences if the area manager does not follow up as recommended. It is not clear what philosophy prompts the imposition of more discipline as an answer to improper discipline. This form of accountability should be reconsidered.

Response

The commenters express concern that section V.D.2.d.9. of the Law addresses a supervisor's failure to follow the Nation's disciplinary procedures with additional discipline and ask the Legislative Operating Committee to reconsider the imposition of discipline as an answer to improper discipline.

Section V.D.2.d.9 of the Law provides that for any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department shall send a letter to the Area Manager. The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee and address the appropriate accountability of the supervisor.

The Legislative Operating Committee may reconsider a supervisor's failure to follow the Nation's disciplinary procedures should result in the discipline of that supervisor. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.2.d.9 of the Law should remain as currently drafted and require that for any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department shall send a letter to the Area Manager notifying that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee and address the appropriate accountability of the supervisor.
2. Section V.D.2.d.9 of the Law should be eliminated from the Law and the Legislative Operating Committee should consider other means of addressing a supervisor who fails to follow the Nation's disciplinary procedures.

LOC Consideration

Comment 153 – Clarifying Notice:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

a. General

- 1) An employee who receives a disciplinary action which they believe is improper may grieve the action.
- 2) The grievance process shall be conducted with utmost consideration for due process within the time limits set forth herein but will allow and account for recognized holidays of the Nation and unforeseen circumstances, such as illnesses, deaths in the immediate family of principals.

b. Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO

Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline.

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

1) Appeal to the Area Manager

a) The employee (petitioner) shall file an appeal in writing with the Area Manager and the Human Resources Executive Director, or designee, within ten (10) working days from the day the employee receives the disciplinary action.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.3., Grievance
The proposed amendments divide employee grievance appeals according to the basis for the grieved discipline. Disciplines that arise from EEO Violations and Illegal Activities Complaints would be appealed directly to the Oneida Judiciary – Trial Court. (OPPP Amendments, Draft 1, lines 1150-53). Disciplines based on Employee Disagreement Complaints and Unsatisfactory Work Performance would be appealed to the area manager and then to the Oneida Personnel Commission.²²

3. Grievance (Grievance Flowchart)

a. General

1) An employee who receives a disciplinary action which they believe is improper may grieve the action.

2) The grievance process shall be conducted with utmost consideration for due process within the time limits set forth herein but will allow and account for recognized holidays of the Nation and unforeseen circumstances, such as illnesses, deaths in the immediate family of principals.

b. Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline.

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines²³: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

1) Appeal to the Area Manager

a) The employee (petitioner) shall file an appeal in writing with the Area Manager and the Human Resources Executive Director, or designee, within ten (10) working days from the day the employee receives the disciplinary action. (OPPP Amendments, Draft 1, lines 1142-62).

Both employees and management have an interest in clarifying when notice is received, especially when the date of receipt determines the timeline for appeal. Opening the OPPP to comprehensive amendment provides an opportunity to emphasize that an employee cannot avoid service of a disciplinary action (or other notice) by refusing to retrieve or sign for their mail. (See e.g. Oneida Bingo & Casino v. Metoxen, 97-EP-0018, 4 O.N.R. 3-1, 2 (January 8, 1998) (“A party cannot avoid the time lines set forth in the Blue Book by intentionally refusing to sign for the certified letter that serves as notice.”) For example, Section V.D.3.c.1)a) could state that an employee who does not retrieve or sign for their mail will be deemed in receipt of the discipline on the date that delivery was first attempted.²⁴

²² The Oneida Personnel Commission is not taking grievance appeals at this time. The Oneida Nation website shows only 1 active Commissioner. Until the Personnel Commission is prepared to exercise hearing authority, all grievance appeals under current OPPP V.D.6 are brought to the Oneida Trial Court. See BC Resolution #03-13-19-C.

²³ Although “guidelines” is in the current OPPP, the LOC may want to replace it with “requirements” for a stronger statement.

²⁴ Similar language regarding a timeline that begins upon actual receipt is found at proposed OPPP V.D.3.b)2), regarding filing a grievance appeal with the Oneida Personnel Commission. (OPPP Amendments, Draft 1, lines 1488-92). Both sections would benefit from clarification regarding when notice is deemed received.

Response

The commenters ask the Legislative Operating Committee to provide greater clarification as to when notice is received during the grievance procedures. The commenters express that amending the Law will allow the Legislative Operating Committee to address problematic behavior that occurs, such as an employee avoiding service of a disciplinary action (or other notice) by refusing to retrieve or sign for their mail. The commenters request the Legislative Operating Committee consider including language in section V.D.3.c.1.a that provides that an employee who does not retrieve or sign for their mail will be deemed in receipt of the discipline on the date that delivery was first attempted.

It is recommended that the Legislative Operating Committee consider revising the Law to include greater clarification as to what constitutes receipt of the disciplinary action. The following revisions to the Law are recommended based on these comments:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

b. Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee’s receipt of the discipline.

1) An employee who does not retrieve or sign for their mail will be deemed in receipt of the discipline on the date that delivery was first attempted.

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that

resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

- 1) Appeal to the Area Manager
 - a) The employee (petitioner) shall file an appeal in writing with the Area Manager and the Human Resources Executive Director, or designee, within ten (10) working days from the day the employee receives the disciplinary action.

i) An employee who does not retrieve or sign for their mail will be deemed in receipt of the discipline on the date that delivery was first attempted.

LOC Consideration

Comments 154 through 155 – Area Manager Response to a Grievance Appeal:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

c. **Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance.** The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

- 1) Appeal to the Area Manager
 - b) The Area Manager, for all disciplinary action investigations, shall have ten (10) working days from the receipt of the employee's appeal to complete the investigation.
 - i. The supervisor shall meet with the following individuals during the disciplinary action investigation:
 1. Employee filing the appeal of the discipline;
 2. Supervisor who issued the discipline; and
 3. Any other witnesses mentioned in the appeal that were not mentioned in the disciplinary action.
 - ii. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.
 - iii. The Area Manager shall document all attempts made to meet with an employee. If an employee is unavailable to meet within the grievance timelines, the

Area Manager shall move forward with the investigation based on the information they have.

iv. One (1) extension of no more than five (5) working days may be requested of and granted by the Human Resources Executive Director, or designee, at their discretion.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

- i. The employee may seek the assistance of an advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.²⁵
- b) The Area Manager, for all disciplinary action investigations, shall have ten (10) working days from the receipt of the employee's appeal to complete the investigation.
 - i. The supervisor²⁶ shall meet with the following individuals during the disciplinary action investigation:
 - 1. Employee filing the appeal of the discipline;
 - 2. Supervisor who issued the discipline; and
 - 3. Any other witnesses mentioned in the appeal that were not mentioned in the disciplinary action.
 - ii. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.
 - iii. The Area Manager shall document all attempts made to meet with an employee. If an employee is unavailable to meet within the grievance timelines, the Area Manager shall move forward with the investigation based on the information they have.
 - iv. One (1) extension of no more than five (5) working days may be requested of and granted by the Human Resources Executive Director, or designee, at their discretion. (OPPP Amendments, Draft 1, lines 1163-83).

Under the proposed amendments, the area manager who responds to a grievance appeal must follow a process similar to that placed on the supervisor in proposed OPPP V.D.1.c., regarding supervisor investigation and resolution of Employee Disagreements. The legal issues presented by proposed OPPP V.D.3.c.1)b) are similar to those identified Pages 9-15 this memo.

²⁵ This section is duplicative when compared to proposed OPPP V.D.3.c.2)i)ii. As described in a subsequent section of the memo, I proposed deleting V.D.3.c.2)i)ii (which should be renumbered in any case, since it uses "i" as both the lowercase letter i and as small Roman Numeral i).

²⁶ This should probably be "area manager" rather than supervisor.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1169-1170: The supervisor shall meet with the following individuals during the disciplinary investigation.

Since this section is about appealing to the Area Manager, as above this sentence is states, "The Area Manager for all disciplinary action investigations, shall have ten (10) working days form the receipt of the employee's appeal to complete the investigation. Then in line 1169-1170 it states the

supervisor shall meet with the employee, the supervisor and any witnesses. I believe Line 1169 should state, The area manager shall meet with the following individuals...

Response

The commenters ask the Legislative Operating Committee to consider the concerns shared regarding section V.D.1.c of the Law again in reference to section V.D.3.c.1. of the Law. It is recommended that the Legislative Operating Committee review these concerns in reference to section V.D.3.c.1.b. of the Law.

The commenters also provide that the use of the term “supervisor” in section V.D.3.c.1.b.i of the Law should be revised to Area Manager. The following revision to the Law is recommended based on this comment:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelinesrequirements: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

1) Appeal to the Area Manager

b) The Area Manager, for all disciplinary action investigations, shall have ten (10) working days from the receipt of the employee’s appeal to complete the investigation.

i. The Area Manager supervisor shall meet with the following individuals during the disciplinary action investigation:

1. Employee filing the appeal of the discipline;
2. Supervisor who issued the discipline; and
3. Any other witnesses mentioned in the appeal that were not mentioned in the disciplinary action.

ii. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.

iii. The Area Manager shall document all attempts made to meet with an employee. If an employee is unavailable to meet within the grievance timelines, the Area Manager shall move forward with the investigation based on the information they have.

iv. One (1) extension of no more than five (5) working days may be requested of and granted by the Human Resources Executive Director, or designee, at their discretion.

LOC Consideration

Comment 156 – Accountability of Area Manager in Grievance Process:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

c. **Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance.** The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

1) Appeal to the Area Manager

d) The Area Manager shall file their decision with the employee and the Human Resources Executive Director, or designee. The decision of the Area Manager shall include:

- i. a reason for the decision;
- ii. an explanation of the decision; and
- iii. the action to be taken as a result of it.

e) An Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

d) The Area Manager shall file²⁷ their decision with the employee and the Human Resources Executive Director, or designee. The decision of the Area Manager shall include:

- i. a reason for the decision;
- ii. an explanation of the decision; and
- iii. the action to be taken as a result of it.

e) An Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline. (OPPP Amendments, Draft 1, lines 1191-98).

The proposed amendments again suggest disciplinary action for area managers who do not follow the grievance process. This raises several concerns, which are addressed on Page 12 of this memo. In addition, area managers are entrusted with greater levels of responsibility in the organization. A threat of discipline for not following the grievance process seems counter to the level of trust otherwise granted to employees at this level of management. It is not clear what philosophy underlies this proposed change.

²⁷ Filing documents implies that such documents are deposited with a court or other hearing body. Where the area manager is providing copies of their decision to certain individuals, they should be required to “send” or “provide” their decision to the employee and HRD Executive Director.

Response

The commenters express concern with the proposed amendments again suggesting disciplinary action for Area Managers who do not follow the grievance process.

Section V.D.3.c.1.e. of the Law provides that an Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline.

The Legislative Operating Committee may reconsider whether an Area Manager's failure to follow the Nation's grievance procedures should result in the discipline of that Area Manager. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.3.c.1.e. of the Law should remain as currently drafted and provide that an Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline
2. Section V.D.3.c.1.e. of the Law should be eliminated from the Law and the Legislative Operating Committee should consider other means of addressing an Area Manager who fails to follow the Nation's grievance procedures.

Additionally, the commenter expresses that the use of the term "filing" in section V.D.3.c.1.d. erroneously conveys that such documents are deposited with a court or other hearing body, and another word should be used instead. In reference to this comment, the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)
 - c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)
 - 1) Appeal to the Area Manager
 - d) The Area Manager shall ~~file~~**provide** their decision with the employee and the Human Resources Executive Director, or designee. The decision of the Area Manager shall include:
 - i. a reason for the decision;
 - ii. an explanation of the decision; and
 - iii. the action to be taken as a result of it.
 - e) An Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline.

LOC Consideration

Comment 157 – Right to an Advocate during the Grievance Process:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

2) Appeal to the Oneida Personnel

i) Hearing Procedure

ii. The petitioner shall have the right to be represented by an advocate, at their own expense. The respondent and/or Area Manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or Area Manager shall have access to the professional legal representation.

1. Should the petitioner and their representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be upheld, and the grievance dismissed.

2. Should the respondent and their representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be overturned.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): At proposed Section V.D.3.c.2.i)ii., the amendments retain current OPPP language regarding an employee's right to an advocate. However, this section has caused confusion throughout the grievance process. Since this right would be described in proposed OPPP V.D.3.c.1)a)i., the language at V.D.3.c.2.i)ii can be deleted.

Response

The commenter provides that section V.D.3.c.2.i.ii. of the Law is duplicative of section V.D.3.c.1.a.i. of the Law.

Section V.D.3.c.2.i.ii. of the Law provides that the petitioner shall have the right to be represented by an advocate, at their own expense. The respondent and/or Area Manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or Area

Manager shall have access to the professional legal representation. Earlier in the Law, section V.D.3.c.1.a.i. of the Law provides that the employee may seek the assistance of an advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.

Due to the fact that section V.D.3.c.2.i.ii. of the Law is duplicative of section V.D.3.c.1.a.i. of the Law, the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

2) Appeal to the Oneida Personnel

i) Hearing Procedure

ii. ~~The petitioner shall have the right to be represented by an advocate, at their own expense. The respondent and/or Area Manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or Area Manager shall have access to the professional legal representation.~~

LOC Consideration

Comment 158 – Oneida Personnel Commission Unable to Perform Duties:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

2) Appeal to the Oneida Personnel

k) If the Oneida Personnel Commission is unable to fulfil its responsibility to hear an appeal of an Area Manager's decision, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial

Court within ten (10) days from the employee's receipt of the Area Manager's decision.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): The amendments would add language regarding where grievance appeals shall be filed if the Oneida Personnel Commission is not active, specifically:

k) If the Oneida Personnel Commission is unable to fulfill its responsibility to hear an appeal of an Area Manager's decision, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision. (OPPP Amendments, Draft 1, lines 1296-1300).

The language of proposed OPPP V.D.3.c.2)k) should reflect the language of BC Resolution #03-13-19-C regarding the Personnel Commission's capacity and readiness to hearing grievance appeals. Use of the phrase "unable to fulfill its responsibility to hear an appeal" permits filing grievance appeals at the Oneida Judiciary-Trial Court outside of the circumstances identified in BC Resolution #03-13-19-C.

Response

The commenters request that section V.D.3.c.2.k. of the Law be amended to reflect the language of resolution BC-03-13-19-C regarding the Oneida Personnel Commission's capacity to hear grievance appeals.

Section V.D.3.c.2.k. of the Law provides that if the Oneida Personnel Commission is unable to fulfill its responsibility to hear an appeal of an Area Manager's decision, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision.

Resolution BC-03-13-19-C, *Amending Resolution BC-09-26-18-F Rescission of the Dissolution of the Oneida Personnel Commission and Related Emergency Amendments in Accordance with General Tribal Council's August 27, 2018 Directive*, provides:

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

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

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

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

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

The Legislative Operating Committee may consider whether section V.D.3.c.2.k. of the Law should reflect the language used in resolution BC-03-13-19-C. The Legislative Operating Committee may make one of the following considerations:

1. Section V.D.3.c.2.k. of the Law should remain as currently drafted and provide that if the Oneida Personnel Commission is unable to fulfill its responsibility to hear an appeal of an Area Manager's decision, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision.
2. Section V.D.3.c.2.k. of the Law should be revised to reflect the language that is provided for in resolution BC-03-13-19-C. If the Legislative Operating Committee makes this determination then the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

2) Appeal to the Oneida Personnel

k) If the Oneida Personnel Commission cannot exercise hearing authority due to a lacks of the minimum number of appointed Oneida Personnel Commission members who have obtained all required trainings, ~~is unable to fulfil its responsibility to hear an appeal of an Area Manager's decision~~, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision.

LOC Consideration

Comment 159 – Sections VI through Section IX:

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section VI, Safety and Health
Section VII, Program/Enterprise Rules & Regulations
Section VIII, Recordkeeping
Section IX, Privacy and Confidentiality of Employee Records

The proposed amendments to the OPPP do not make any changes to Sections VI through IX. There are no outstanding legal issues presented by these sections that require amendment.

Response

The commenters provide that the proposed amendments to the Law do not make any changes to sections VI through IX. There is no action needed for consideration by the Legislative Operating Committee based on this comment.

LOC Consideration

Comments 160 through 161 – Unsatisfactory Work Performance:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process correcting unacceptable and problematic behaviors in employees. Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances

2. Discipline

a. Initiation of Disciplinary Action.

1) Disciplinary actions shall be initiated by an immediate supervisor for the purpose of correcting unsatisfactory work performance or as the resolution of an Employee Disagreement complaint investigation.

Tina Jorgensen (oral): With the complaint process, what if a supervisor becomes aware of an issue - and it's not really considered a complaint, does it still have to go through EEO?

Tina Jorgensen (written): QUESTION: What if a Supervisor becomes aware of an issue and it is not really a complaint but could result in discipline? Does EEO need to be informed? What is the role of EEO in these cases? I don't agree EEO should take on the responsibility of the Supervisor. I do agree EEO should be involved as FYI and offer assistance with the investigation.

Response

The commenter questions if a supervisor has to go through the EEO Department if they become aware of an issue, that has not been made through a formal complaint.

Section V.D.2.a.1. of the Law provides that disciplinary actions shall be initiated by an immediate supervisor for the purpose of correcting unsatisfactory work performance or as the resolution of an Employee Disagreement complaint investigation. Section V.D.2.c.2. of the Law provides a list of examples of behaviors that may constitute unsatisfactory work performance, including issues with work performance, attendance and punctuality, use of property, and personal actions and appearances. Therefore, a supervisor has the authority to address unsatisfactory work performance even in the absence of a formal complaint made about the unsatisfactory work performance.

If the supervisor becomes aware of a situation that would fall under the provisions of the Law regarding an EEO Violation or an Illegal Activities complaint if a complaint was filed, then the responsibility to investigate the complaint would lie with the EEO Department.

There is no action needed by the Legislative Operating Committee based on this comment.

LOC Consideration

Comment 162 – Adoption by the General Tribal Council:

Racquel Hill (oral): Racquel Hill. My question is in regards to the reason why this needs to go to the General Tribal Council for the approval. I know that it's understood that it's always been done this way, but does it need to be? Now, this is basically day-to-day business and it's in regards to the organization. So, that is the question, and I'm wondering if criteria will be set and the things that GTC needs to approve going forward. Thank you.

Response

The commenter questions why the proposed amendments to the Law need to be adopted by the General Tribal Council.

Amendments to the Law have historically been adopted by the General Tribal Council. The Nation's Ten Day Notice Policy requires that any action to over rule previous passed motions or resolutions made by the General Tribal Council shall require a two-thirds (2/3) majority vote of the Oneida General Tribal Council. [1 O.C. 110.3-1(a)(3)].

There is no action needed by the Legislative Operating Committee based on this comment.

LOC Consideration

Comment 163 – Oneida Nation School Board’s Authority to Process Grievances:

Sharon Mousseau (written): Good afternoon, Having reviewed the Oneida Personnel Policies and procedures amendments, I wanted to comment regarding the Oneida Nation School System and how our MOA and SOP for Grievance Process may interact with the newly updated process.

While the MOA is old, being signed in March of 1988, although it can not be amended except by the Oneida General Tribal Council or at the express direction of the Oneida General Tribal Council and shall be effect upon ratification by the Oneida General Tribal Council. This is the first attachment.

The second attachment is an updated signed ONSS MOA Grievance Process, which was approved by the School Board on Jan. 4, 2021.

On page 13 of the OPPP, section Grievance, should there be a note of the School Board’s authority or process with grievances? Or would this process be included with the language included on the top of page 14 when there is a reference to the boards, committees and commissions? So when the process is replaced by the Government Administrative Office, would the school then have the process replaced by the Oneida Nation School Board?

We have worked with the BIE on processes and procedures for the School Board to follow and I just don’t want their authority to be taken away until we do change the MOA. Which is long overdue to be updated.

Thanks for your time and efforts with the public comment period for the OPPP.

Response

The commenter questions whether section V.D.3. of the Law should reference the fact that the Oneida Nation School Board has a MOA and various standard operating procedures which replace section V.D. of the Law.

It is recommended that the Legislative Operating Committee conduct a thorough review of the attached materials and determine if the Law needs to address the fact that the Oneida Nation School Board does not currently utilize section V.D. of the Law.

LOC Consideration

Comment 164 – Simplification of Language

Lisa Rauschenbach (written): I do agree with their cut back of wordiness in the policy too.

Response

The commenter provides support for cutting back on the wordiness of the Law. There is no action by the Legislative Operating Committee needed based on this comment.

LOC Consideration

Comment 165 – Involvement of the Oneida Business Committee in the Complaint Process:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

f) If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

i. The notice shall notify the General Manager level position that the complaint was not addressed within the additional ten (10) working days.

ii. The notice shall inform the General Manager level position that the Area Manager violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.

iii. The notice shall address the appropriate accountability of the Area Manager.

iv. The notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.

1. Investigation Procedure for all General Manager Level Positions, not the Oneida Business Committee

a. The General Manager level position shall complete the investigation and reach a resolution within ten (10)

working days of receiving the notice from EEO.

b. The General Manager level position's ten (10) working day timeframe begins the day after the General Manager level position receives the complaint from the EEO Department.

c. The General Manager level position shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

i. Meetings between the General Manager level position and the employees may occur in person, through video conferencing, or by telephone.

ii. The General Manager level position shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the General Manager level position shall move forward with the investigation based on the information they have.

d. When the General Manager level position's investigation is complete, the General Manager level position shall contact the EEO Officer to mutually determine an appropriate resolution.

i. If the General Manager level position cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the General Manager level position shall provide written justification for non-agreement on the resolution to the Human Resources Executive Director.

e. The final resolution shall be sent to the EEO Department for filing and reporting purposes.

f. The General Manager level position's resolution of the complaint shall be final.

2. Investigation Procedure for the Oneida Business Committee

a. When the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.

Lisa Rauschenbach (written): Per the 1932 resolution the Oneida Business Committee shall not be involved in day to day business, you are proposing the OBC in the complaint process, this is ridiculous.

Response

The commenter provides that the Oneida Business Committee should not be involved in the complaint process, as that constitutes involvement in day-to-day business.

Section V.D.1.c.1.f. of the Law provides that the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee. Section V.D.1.c.1.f.iv. of the Law provides that the notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution. Section V.D.1.c.1.f.iv.2.a. of the Law then provides that when the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.

The Oneida Business is only included in the complaint procedures found in section V.D.1.c.1 of the Law if the Oneida Business Committee when acting in the capacity of serving as the General Manager level position in that chain of command. This is a role that the Oneida Business Committee already provides as the supervisor of various direct reports.

It is common practice that the Oneida Business Committee oversee and supervise various direct reports. Resolution BC-02-08-23-C, *Setting Supervision and Management of Direct Reports to the Oneida Business Committee and Professional Support Staff*, is the most recent resolution to identify the various direct reports of the Nation and identify that the Oneida Business Committee supervises the various direct reports due to the position, the duties, or the services provided by the direct reports.

There is no action by the Legislative Operating Committee required based on this comment.

LOC Consideration

Comment 166 – Use of the Term Area Manager:

Jackie Smith (written): My feedback/comments regarding the proposed amendments to OPPP are Below:

1. Eliminate the use of the term “area manager” in the proposed changes as it created confusion between what position/employee is the actual area manager and what position/employee is the area manager in the disciplinary process

a. There was confusion by the court when this term was used in a disciplinary hearing. My title and role are area manager; however, the disciplinary process area manager was the general manager.

i. I was requested by the court to attend an appeal hearing as the area manager, but mistakenly was named the area manager in the disciplinary process terminology.

ii. This mistake cost the tribe money as there were duplicate managers required to attend an appeal hearing by the Oneida court.

Response

The commenter requests the Legislative Operating Committee consider eliminating the use of the term “Area Manager” within in the Law, as it creates confusion with employee positions that have the title “Area Manager.”

The term “Area Manager” is used within the Law to mean the supervisor of a supervisor, or an individual who is two (2) levels of supervision in the chain of command above the employee. An actual definition for the term “Area Manager” is not included in the Law itself.

The Legislative Operating Committee may consider whether the use of the term “Area Manager” creates confusion with employee positions that have the term “Area Manager” in their title, and therefore should be replaced with another term. If the Legislative Operating Committee decides to continue the use of the term Area Manager, it is recommended that the Legislative Operating Committee include a definition for the term.

LOC Consideration

Comment 167 – Organization of HRD:

Jackie Smith (written): 2. Ensure there is an appropriate and balanced allocation of power to the Oneida Human Resource Department (HRD)

- a. HRD in an internal service provider whose purpose is usually to support programs or business entities in the delivery of services
- b. HRD executives typically report to a General Manager or CEO
- c. Currently, HRD is treated as a standalone entity in the Oneida with a direct report the government. This reduces the overall effectiveness and connection to the function of being an internal service provider.
 - i. This creates issues as HRD is not directly connected to the needs of the organization

Response

The commenter requests the Legislative Operating Committee consider the overall organization of the Human Resources Department. The commenter expresses concern that the organization of the Human Resources Department as a non-divisional entity, with the Human Resources Executive Director as a direct report to the Oneida Business Committee creates separation of the Human Resources Department from the rest of the organization.

The Legislative Operating Committee may determine if the overall organization of the Human Resources Department needs to be addressed.

LOC Consideration

Comment 168 – Appeal Rights of Temporary Employees:

SECTION II - RECRUITING

C. EMERGENCY/TEMPORARY POSITIONS

3. Recruitment/Selection

- g. **Temporary employees that are terminated due to documented cause will have the right to the appeal process as outlined in the Personnel Policies and Procedures.**

Lisa Duff on behalf of Gaming Senior Management (written): 2) To be consistent in practice with probation employees, it is recommended: To remove appeals rights for Temporary employees.

- 172 Temporary employees can be ~~that are~~ terminated due to documented cause ~~will have~~ the
- 173 right to the appeal process as outlined in the Personnel Policies and Procedures.

Response

The commenter requests that the Legislative Operating Committee consider removing the right of a temporary employee to appeal a termination.

Section II.C.3.g. of the Law provides that temporary employees that are terminated due to documented cause will have the right to the appeal process as outlined in the Personnel Policies and Procedures. The commenter requests that temporary employees be handled in the same manner as employees on their original probation. Section III.D.1. of the Law provides that probationary employees may be terminated for cause at any time during the probation period, and that termination of an employee for cause during their original probationary period shall not be subject to appeal.

The Legislative Operating Committee may determine whether a temporary employee should be allowed to appeal a termination. The Legislative Operating Committee may make one of the following determinations:

1. Section II.C.3.g. of the Law should remain as currently drafted and provide that temporary employees that are terminated due to documented cause will have the right to the appeal process as outlined in the Personnel Policies and Procedures.
2. Section II.C.3.g. of the Law should be revised to remove the right of a temporary employee to appeal a termination. If the Legislative Operating Committee makes this determination then the following revision is recommended:

SECTION II - RECRUITING

C. EMERGENCY/TEMPORARY POSITIONS

3. Recruitment/Selection

- g. Temporary employees that are terminated due to documented cause ~~will~~ **shall not** have the right to the appeal ~~the termination. process as outlined in the Personnel Policies and Procedures.~~

LOC Consideration

Comment 169 – General Manager Level Position Resolving a Complaint:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

- f) If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

i. The notice shall notify the General Manager level position that the complaint was not addressed within the additional ten (10) working days.

ii. The notice shall inform the General Manager level position that the Area Manager violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.

iii. The notice shall address the appropriate accountability of the Area Manager.

iv. The notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.

1. Investigation Procedure for all General Manager Level Positions, not the Oneida Business Committee

a. The General Manager level position shall complete the investigation and reach a resolution within ten (10) working days of receiving the notice from EEO.

b. The General Manager level position's ten (10) working day timeframe begins the day after the General Manager level position receives the complaint from the EEO Department.

c. The General Manager level position shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

i. Meetings between the General Manager level position and the employees may occur in person, through video conferencing, or by telephone.

ii. The General Manager level position shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the General Manager level position shall move forward with the investigation based on the information they have.

d. When the General Manager level position's investigation is complete, the General Manager level position shall contact the EEO Officer to mutually determine an appropriate resolution.

i. If the General Manager level position cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the General Manager level position shall provide written justification for non-agreement on the resolution to the Human Resources Executive Director.

e. The final resolution shall be sent to the EEO Department for filing and reporting purposes.

f. The General Manager level position's resolution of the complaint shall be final.

2. Investigation Procedure for the Oneida Business Committee

a. When the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.

Lisa Duff on behalf of Gaming Senior Management (written): Line 859-895: Should just remove the 3rd level for the GM to investigate an employee complaint that EEO was not satisfied with how the supervisor or the Area Manager handled. This is too much. Should stick with current blue book complaint process of two levels of handling a complaint. A timeline is good to add but it shouldn't keep going up the chain of command and jumping to the General Manager to address the complaint. Why is this necessary?

If the purpose is to hold a supervisor or Area Manager or General Manager accountable for failing to address a complaint, or not addressing it properly according to EEO, then just state they may be held accountable for job negligence. All these steps are unnecessary.

Response

The commenter provides that a General Manager level position should not be responsible to complete the complaint investigation and reach a resolution if the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days.

Section V.D.1.c.1.f. of the Law provides that if the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee. Section V.D.1.c.1.f.iv. of the Law provides that the notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.

The Legislative Operating Committee may reconsider whether a General Manager level position should not be responsible to complete the complaint investigation and reach a resolution if the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.1.c.1.f. of the Law should remain as currently drafted, and provide that if the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command.
2. Section V.D.1.c.1.f. of the Law should be revised to remove the provision which requires the EEO Department shall send notice to the General Manager level position in that chain of command if the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days.

LOC Consideration

Comments 170 through 171 – Meetings Held through Video Conferencing or By Telephone:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

1) The supervisor or EEO Officer shall fill out a disciplinary action form within five (5) working days of either:

- a) the resolution of a complaint from which it has been determined that disciplinary action is warranted, or**
- b) the determination that disciplinary action is warranted based on the unsatisfactory work performance of an employee.**

- 2) The supervisor or EEO Officer shall fill out the disciplinary action form in its entirety and ensure the information contained on the form is complete and accurate. The disciplinary action form shall include at a minimum the following information:
 - a) Statement of the behavior for which the disciplinary action is being taken;
 - b) The time and date of its occurrence; and
 - c) The specific policy section under which action is being taken.
- 3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.
 - a) The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.
 - b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:
 - i. Understands the reason for the disciplinary action;
 - ii. Understands the expected work performance in light of the disciplinary action; and
 - iii. Understands the consequences of continued unacceptable behavior.
- 4) The employee being disciplined shall sign the disciplinary action form.
 - a) Should an employee being disciplined refuse to discuss the action with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1085-1086: The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.

Remove “through video conferencing, or over the telephone” This meeting cannot occur over video conferencing or over the phone. How can you go over a discipline form with an employee if they can’t see the form and they can’t physically sign the form as required as stated in line 1093. The meeting would need to occur in person during a termination notice so the supervisor can collect employee badge, keys or any other tribal property the employee has at the time of signatures.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1093: the employee being disciplined shall sign the disciplinary action form.

It's required employee sign the discipline form, or they can refuse to sign the form and that's documented on the discipline form. This important step cannot occur if the so-called meeting takes place as mentioned in line 1086, "through video conferencing or over the phone." The meeting to issue a discipline to an employee needs to occur in person so the employee can physically sign the form or refuse to sign it.

Response

The commenter provides that a meeting between a supervisor or EEO Officer and an employee regarding a discussion of the disciplinary action form should not be allowed to occur through video conferencing or by telephone as currently allowed in section V.D.2.d.3.a of the Law. The commenter expresses concern that an employee can not sign the disciplinary action form if the meeting does not occur in person.

Section V.D.2.d.3.a of the Law provides that once a disciplinary action form has been filled out, the supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form and identify a corrective action. The Law provides that the meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone. Section V.D.2.d.4. of the Law requires that the employee being disciplined shall sign the disciplinary action form.

The Legislative Operating Committee may determine whether a meeting with the employee to discuss the disciplinary action form may occur in person, through video conferencing, or over the telephone. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.2.d.3.a of the Law should remain as currently drafted, and provide that once a disciplinary action form has been filled out, the supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form that occurs in person, through video conferencing, or over the telephone.
2. Section V.D.2.d.3.a of the Law should be revised so that the meeting between the supervisor or EEO Officer and the employee to discuss the disciplinary action form is required to occur in person. If the Legislative Operating Committee makes this determination the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

- 1) The supervisor or EEO Officer shall fill out a disciplinary action form within five (5) working days of either:
 - a) the resolution of a complaint from which it has been determined that disciplinary action is warranted, or
 - b) the determination that disciplinary action is warranted based on the unsatisfactory work performance of an employee.
- 2) The supervisor or EEO Officer shall fill out the disciplinary action form in its entirety and ensure the information contained on the form is

complete and accurate. The disciplinary action form shall include at a minimum the following information:

- a) Statement of the behavior for which the disciplinary action is being taken;
 - b) The time and date of its occurrence; and
 - c) The specific policy section under which action is being taken.
- 3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.
- a) The meeting between the supervisor or EEO Officer and the employee ~~shall~~ may occur in person, ~~through video conferencing, or over the telephone.~~
 - b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:
 - i. Understands the reason for the disciplinary action;
 - ii. Understands the expected work performance in light of the disciplinary action; and
 - iii. Understands the consequences of continued unacceptable behavior.
- 4) The employee being disciplined shall sign the disciplinary action form.
- a) Should an employee being disciplined refuse to discuss the action with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.

LOC Consideration

Comment 172 – Grievance Process for EEO Violations and Illegal Activities Complaints:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

3. Grievance (Grievance Flowchart)

a. General

- 1) An employee who receives a disciplinary action which they believe is improper may grieve the action.
- 2) The grievance process shall be conducted with utmost consideration for due process within the time limits set forth herein but will allow and account for recognized holidays of the Nation and

unforeseen circumstances, such as illnesses, deaths in the immediate family of principals.

- b. Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline.**

Lisa Duff on behalf of Gaming Senior Management (written): Grievance Line 1150-1153: Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employees' receipt of the discipline.

First off, these lines should be removed as EEO Officers should not have authority to discipline employees they do not immediately supervise. This is not within EEO's authority nor is it in their job description. HR is not the entity that should be disciplining employees as they are to remain neutral. Secondly, why is there no Area Manager to hear this appeal first? If you're going to allow the EEO Officer to take disciplinary action, why does this just jump to the judiciary? Why is the Judiciary acting as the area manager?

Response

The commenter questions why an employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline.

Section V.D.3.b. of the Law provides that an employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline. The determination that appeals of a discipline that resulted from a EEO Violation or Illegal Activities complaint be made directly to the Oneida Nation Judiciary, instead of to an Area Manager, was made based on the increased severity of the offenses.

The Legislative Operating Committee may reconsider whether section V.D.3.b. of the Law should provide that an employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline, or if a process similar to that provided in section V.D.3.c.1. of the Law for the grievance process to an Area Manager for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance.

LOC Consideration

Comments 173 through 174 – Need for Comprehensive Amendments:

Mark Powless (written): Major changes have been proposed. If the organization is opening the document for major changes take a comprehensive approach and revise the entire document.

- o This is a great opportunity to change the approach to corrective action. Adopting an approach of investing in employee training, mentoring, and coaching will yield better results than focusing on how complaints are handled and any subsequent disciplinary actions. Generally, preventive efforts produce better long-term results than reactionary efforts. Our workforce is our community and our community is our workforce. Increasing training and education efforts will create a net benefit for our community.
- o Many sections of the document remained untouched even though they are not followed or have become obsolete. These sections should be removed or revised.

Mark Powless (written): Major changes have been proposed. Perhaps a better stepped approach (before committing to major changes) is an initial internal procedure change to gather appropriate data for sound decision making. Require all employee complaints to be submitted to the Human Resources Department (HRD). HRD will route the complaints to the appropriate Supervisor. The Supervisor will investigate and follow through with appropriate actions. These results will be submitted in a summary report to HRD. After a period of one year the data can be assessed for areas of improvement and subsequent policy/procedure changes.

Response

The commenter provides that opening the Law for amendments is a good opportunity to conduct a comprehensive review and develop comprehensive amendments to the entire law, instead of only addressing certain provisions of the Law.

It is recommended that the Legislative Operating Committee reconsider its strategy in narrowing the focus of the proposed amendments to only a could sections of the Law, and instead consider taking the time to conduct an in depth review of the Law so that comprehensive amendments can be developed.

LOC Consideration

Comment 175 – General Comments Regarding the Employee Disagreements Complaints:

SECTION V – EMPLOYEE RELATIONS

1. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

a. General

b. Types of Complaints

c. Complaint Procedures

1) Employee Disagreements

- a) An employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department.
- b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the supervisor of the employee with the complaint.
- c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.
 - i. The supervisor's ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department.
 - ii. The supervisor shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - 1. Meetings between the supervisor and employees may occur in person, through video conferencing, or over the telephone.
 - 2. The supervisor shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the supervisor shall move forward with the investigation based on the information they have.
 - iii. If the supervisor cannot complete the investigation within the ten (10) working day timeframe, the supervisor may request a one (1) time five (5) working day extension from the EEO Department.
 - iv. When the supervisor's investigation is complete, the supervisor shall contact the EEO Officer to mutually determine an appropriate resolution.
 - 1. If the supervisor cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the supervisor shall provide written justification for non-agreement on the resolution to both the Area Manager and the Human Resources Executive Director.
 - v. The supervisor shall send the final resolution to their Area Manager to ensure accountability.
 - vi. The supervisor shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.
- d) If the supervisor fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the Area Manager.
 - i. The notice shall notify the Area Manager that the complaint was not addressed within the allotted ten (10) working days.
 - ii. The notice shall inform the Area Manager that the supervisor violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.
 - iii. The notice shall address the appropriate accountability of the supervisor.

1. If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.
- iv. The notice shall direct the Area Manager to complete the complaint investigation within ten (10) working days of receiving the notice from EEO.
- e) If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.
 - i. Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.
 - ii. The Area Manager shall have ten (10) working days to complete their investigation.
 - iii. The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.
 - iv. The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 1. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.
 2. The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.
 - v. When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.
 1. If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.
 - vi. The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.
 - vii. The Area Manager's resolution shall be final.
- f) If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

- i. The notice shall notify the General Manager level position that the complaint was not addressed within the additional ten (10) working days.
 - ii. The notice shall inform the General Manager level position that the Area Manager violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.
 - iii. The notice shall address the appropriate accountability of the Area Manager.
 - iv. The notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.
1. Investigation Procedure for all General Manager Level Positions, not the Oneida Business Committee
 - a. The General Manager level position shall complete the investigation and reach a resolution within ten (10) working days of receiving the notice from EEO.
 - b. The General Manager level position's ten (10) working day timeframe begins the day after the General Manager level position receives the complaint from the EEO Department.
 - c. The General Manager level position shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - i. Meetings between the General Manager level position and the employees may occur in person, through video conferencing, or by telephone.
 - ii. The General Manager level position shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the General Manager level position shall move forward with the investigation based on the information they have.
 - d. When the General Manager level position's investigation is complete, the General Manager level position shall contact the EEO Officer to mutually determine an appropriate resolution.
 - i. If the General Manager level position cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the General Manager level position shall provide written justification for non-agreement on the resolution to the Human Resources Executive Director.
 - e. The final resolution shall be sent to the EEO Department for filing and reporting purposes.
 - f. The General Manager level position's resolution of the complaint shall be final.

2. Investigation Procedure for the Oneida Business Committee

- a. **When the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.**

Mark Powless (written):

1) Employee Disagreements

970 a) An employee who alleges they have a disagreement with another employee

971 may file a complaint with the employee's EEO Department.

972 a.b) Within two (2) working days of the receipt of the complaint, the EEO

973 Department shall provide the supervisor of the employee with the complaint.

974 b.c) The supervisor will shall have ten (10) working days to investigate the

975 complaint and attempt to resolve the disagreement complaint.

• This section does not allow for an assessment of merit of complaints. Will a complaint dating back 1 year be investigated? Will frivolous complaints be investigated? Additionally, how will complaints between employees in different Divisions or different Departments be handled. Will the investigating employee address both employees?

Response

The commenter provides a myriad of questions regarding the application of section V.D.1.c.1. of the Law regarding the complaint process for Employee Disagreement complaints.

Section V.D.1.c.1. of the Law provides the process to be used for the investigation of Employee Disagreement complaints by a supervisor. Section V.D.1.c.1.c. of the Law provides that the supervisor shall have ten (10) working days to investigate and resolve the complaint. When the supervisor's investigation is complete, the supervisor shall contact the EEO Officer to mutually determine an appropriate resolution for the complaint. During the investigation it may be determined by a supervisor that a complaint lacks merit or is frivolous, and the resolution of the complaint may reflect such determination. The commenter questions if there is a statute of limitations as to when an employee may file a complaint, and currently, the Law is silent in regard to this matter.

The commenter also questions how complaints between different employees will be handled under the Law. Section V.D.1.c.1.b. of the Law provides that the EEO Department shall provide the supervisor of the employee with the complaint. It is the intention of the Law that it is the supervisor of the employee that is the subject of the complaint that is responsible for conducting the investigation. It is recommended that the Legislative Operating Committee makes the following revision to the Law to clarify Section V.D.1.c.1.b. of the Law:

SECTION V – EMPLOYEE RELATIONS

2. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

a. General

b. Types of Complaints

- c. Complaint Procedures
 - 1) Employee Disagreements
 - a) An employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department.
 - b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the complaint to the supervisor of the employee who is the subject of ~~with~~ the complaint.

LOC Consideration

Comment 176 – Appeal of the Supervisors Resolution for Employee Disagreement Complaints:

SECTION V – EMPLOYEE RELATIONS

3. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

a. General

b. Types of Complaints

c. Complaint Procedures

1) Employee Disagreements

- e) If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.
 - i. Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.
 - ii. The Area Manager shall have ten (10) working days to complete their investigation.
 - iii. The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.
 - iv. The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - 1. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.
 - 2. The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.
 - v. When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.

1. **If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.**
- vi. **The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.**
- vii. **The Area Manager's resolution shall be final.**

Mark Powless (written):

1022 e) If the employee is not satisfied with the supervisor's final resolution, they may
 1023 refile their complaint with the EEO Department for resolution by the Area
 1024 Manager.

• Allowing appeals of employee disagreements may be difficult in practice. One reason is because frivolous complaints are currently allowed in the proposed amendment. To investigate a frivolous complaint twice will be a huge use of time and energy, and reduction in efficiency for management. Additionally, it is not uncommon for a supervisor to investigate an employee disagreement and not be able to provide full details of the outcome to the complainant. It is a violation of confidentiality for a supervisor to share the disciplinary action of one employee with any other employee. Therefore, a complainant may simply be told, "The matter was investigated and the employee was addressed appropriately." If it is appealed and the Area Manager provides the same response, the complainant may not accept the response leaving everyone feeling as though the process was an unnecessary use of time and energy. Recommendations include 1) allow for a process to remove frivolous complaints and 2) include the EEO Officer in the process for appeals. The EEO Officer can review the corrective measures taken to address an employee(s) and determine if an appeal has merit.

Response

The commenter expresses concern with allowing the resolution of a complaint investigation for Employee Disagreements by a supervisor to be appealed to the Area Manager.

Section V.D.1.c.1e. of the Law allows an employee who is not satisfied with the supervisor's final resolution, to refile their complaint with the EEO Department for resolution by the Area Manager. The law then provides that the Area Manager shall have ten (10) working days to complete their investigation. The commenter questions whether this is an efficient use of time.

The Legislative Operating Committee may reconsider whether an employee who is not satisfied with the supervisor's final resolution should be able to refile their complaint with the EEO Department for resolution by the Area Manager. The Legislative Operating Committee may make one of the following determinations.

1. Section V.D.1.c.1e. of the Law should remain as currently drafted and allows an employee who is not satisfied with the supervisor's final resolution, to refile their complaint with the EEO Department for resolution by the Area Manager. If the Legislative Operating

Committee makes this determination, the Legislative Operating Committee may consider whether additional clarifying provisions are needed to create a more efficient system.

2. Section V.D.1.c.1e. of the Law should be revised so that a supervisor's resolution of an Employee Disagreement complaint is final and non-appealable. If the Legislative Operating Committee makes this determination the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

4. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

- a. General
- b. Types of Complaints
- c. Complaint Procedures

1) Employee Disagreements

- c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

vii. The resolution of the supervisor shall be final and non-appealable.

- ~~f) If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.~~

- ~~i. Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.~~

- ~~ii. The Area Manager shall have ten (10) working days to complete their investigation.~~

- ~~iii. The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.~~

- ~~iv. The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.~~

- ~~1. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.~~

- ~~2. The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.~~

- ~~v. When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.~~

- ~~1. If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.~~

- ~~vi. The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.~~

- ~~vii. The Area Manager's resolution shall be final.~~

LOC Consideration

Comment 177 – Recusal of EEO Officers:

Mark Powless (written): There is no verbiage around matters where EEO Officers should not be involved and required to recuse themselves. For example, an EEO Officer should not be investigating or disciplining in a matter involving one of their family members.

Response

The commenter provides that section V.D. of the Law does not address a when an EEO Officer should not be involved in the investigation or discipline of an employee and thereby should recuse themselves.

The Legislative Operating Committee may determine whether the Law should address when an EEO Officer should recuse themselves from handling the investigation and discipline of an employee and revise the Law accordingly.

LOC Consideration

Comment 178 – Supervisor’s Appeal of an EEO Officer’s Decision:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

2) EEO Violations

i) The EEO Officer’s resolution shall be final.

3) Illegal Activities

i) The EEO Officer’s resolution shall be final.

Mark Powless (written): Will a Supervisor be able to appeal an EEO decision? EEO Officers may be involved in favoritism, overlooking key information, missing deadlines, etc. Supervisors should have the ability to appeal an EEO decision prior to issuing a disciplinary decision to an employee.

Response

The commenter questions whether a supervisor would be able to appeal a decision of the EEO Department. The commenter is not clear as to what decision of the EEO Department he is referencing.

In regard to the resolution of a EEO Violation or Illegal Activities complaint, sections V.D.1.c.2.i. and V.D.1.c.3.i of the Law provides that the EEO Officer's resolution shall be final. The intent of this provision is that the EEO Officer's resolution of the complaint be non-appealable. Additionally, the Law does not provide a process to allow a supervisor to appeal a discipline provided by an EEO Officer to an employee. Only an employee who receives a disciplinary action which they believe is improper may grieve the action. [OPPP Section V.D.3.a.1.].

There is no action required by the Legislative Operating Committee needed to address this comment.

LOC Consideration

Comment 179 – Succession Plans for Internal Postings:

SECTION III – SELECTION POLICY

C. INTERNAL POSITION POSTING - The Oneida Nation encourages movement within and among units in order to make the best possible use of human resources to meet the Oneida Nation's goals and objectives. Supervisors and employees are encouraged to work together to create an environment in which employees constantly strive to improve their skills and abilities and managers constantly seek to provide challenging and rewarding work experiences.

1. Internal Position Posting and Reassignment Rules.

a. The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for internal position posting and reassignment of employees of the Nation.

Tina Jorgensen (written): Regarding internal posting: If a department has a succession plan with employees that have been working on obtaining the qualifications of a position, the Supervisor should NOT have to post externally. If the position has been offered to all in the department and no Oneida enrolled are interested, the Supervisor should be able to hire the other employees based on the succession plan.

Response

The commenter provides that if a department has a succession plan with employees that have been working on obtaining the qualifications of a position, the Supervisor should NOT have to post

externally, and that if the position has been offered to all in the department and no Oneida enrolled are interested, the Supervisor should be able to hire the other employees based on the succession plan.

The proposed amendments to the Law eliminate much of the process and procedures currently contained in the law regarding the transfers and promotions, internal postings, applicant pool, and reassignments and instead provides that the HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the internal position posting and reassignment of employees of the Nation. *[Section III.C.1]*. Utilizing the Administrative Rulemaking law for the promulgation of rules regarding internal position posting and reassignments instead of including this information in the law itself provides greater flexibility to the Human Resources Department to develop rules that best meet the needs of the Nation in its current circumstances. Under the proposed amendments to the Law, the comments concerns would be best addressed in the administrative rulemaking process.

There is no action needed from the Legislative Operating Committee based on this comment.

LOC Consideration

Comment 180 – Timeline for Employee Disagreement Complaint:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

Tina Jorgensen (written): When investigating a complaint for an employee disagreement, I have noticed that it can take much longer than 10 working days to complete the investigation. I think 30 days for the investigation is reasonable. Some examples of needing longer:

- o Employees who are involved in the investigation may not be available.
- o Sometimes the employee disagreements between two can require the Supervisor to meet with all employees.
- o When the disagreement revolves under lack of understanding a process, a policy may be identified as necessary, vetted, created and routed for signature.

Response

The commenters questions whether the ten (10) working day timeframe for a supervisor to investigate and resolve an Employee Disagreement complaint is a sufficient amount of time, and

requests that the Legislative Operating Committee consider expanding this timeframe to thirty (30) days.

Section V.D.1.c.1.c. of the Law provides that the supervisor shall have ten (10) working days to investigate and resolve the complaint.

The Legislative Operating Committee may reconsider whether the ten (10) working day timeframe for a supervisor to investigate and resolve an Employee Disagreement complaint is a sufficient amount of time. The Legislative Operating Committee may make one of the following determinations.

1. Section V.D.1.c.1.c. of the Law should remain as currently drafted, and provide that the supervisor shall have ten (10) working days to investigate and resolve the complaint.
2. Section V.D.1.c.1.c. of the Law should be revised to expand the amount of time provided to a supervisor to investigate and resolve a complaint. If the Legislative Operating Committee makes this determination then the following revision is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints
 - c. Complaint Procedures
 - 1) Employee Disagreements
 - c) The supervisor shall have thirty (30) ~~ten (10)~~ working days to investigate and resolve the complaint.

LOC Consideration

Comment 181 – Appeal of a Complaint Resolution:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints
 - c. Complaint Procedures
 - 1) Employee Disagreements
 - e) If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.
 - i. Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.
 - ii. The Area Manager shall have ten (10) working days to complete their investigation.

- iii. The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.
 - iv. The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - 1. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.
 - 2. The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.
 - v. When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.
 - 1. If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.
 - vi. The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.
 - vii. The Area Manager's resolution shall be final.
- 2) EEO Violations
 - i) The EEO Officer's resolution shall be final.
 - 3) Illegal Activities
 - i) The EEO Officer's resolution shall be final.

Tina Jorgensen (written): QUESTION: Can an employee move to the Judiciary when not satisfied with the outcome of their complaint?

Response

The commenter questions whether an employee can appeal to the Judiciary if not satisfied with the outcome of their complaint.

For Employee Disagreement complaints, section V.D.1.c.1.e. of the Law provides that if the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager. Section V.D.1.c.1.e.vii. of the Law

provides that the Area Manager's resolution of the complaint will be final. For EEO Violation complaints and Illegal Activities Complaints, sections V.D.1.c.2.i. and V.D.1.c.3.i. of the Law provides that the EEO Officers resolution of the complaint shall be final. Therefore, the Law does not allow an employee to appeal the resolution of their complaint to the Judiciary if they are not satisfied with the result of the complaint.

There is no action by the Legislative Operating Committee required based on this comment.

LOC Consideration

Comment 182 – Cumulation of Progressive Discipline:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

b. Determination of Disciplinary Action.

1) All disciplinary actions shall commensurate with the seriousness of the unsatisfactory performance or violation.

2) Disciplinary actions shall be considered in progressive order.

a) The progressive order for discipline is as follows, unless otherwise noted:

i. Written warning (W);

ii. Suspension (S);

iii. Termination (T).

b) Deviation from Progressive Order

i. Any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.

ii. Any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and approved by the Human Resources Executive Director, or designee.

Vanessa Miller (written): J. Discipline

The legal analysis states that “Previously, the Law provided that the supervisor must consider each disciplinary action in progressive order and justify a deviance from that recommended progression. The proposed amendments now provide greater clarification on this issue, and provide that disciplinary action shall be considered in progressive order (written warning □ suspension □ termination), and that any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department, while any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing

and approved by the Human Resources Executive 284 Director, or designee. [Section V(D)(2)(b)(2)]”

My concern with this proposition is there appears to be room for misinterpretation regarding “progression discipline.” As written, this analysis states that “the Law provided that the supervisor must consider each disciplinary action in progressive order...” In the decision of Appellant Case No. 17-AC-008, Dated November 20, 2017 (Falck V. Thumer), the following was ordered:

Thurner also argues that progressive discipline is applicable only for “repeated violations of the same type” and Flack erred in progressively disciplining her for unrelated violations. This would mean that because Thurner was disciplined for three different type of unacceptable work performance....she would be able to have three separate progressive disciplinary tracks ongoing for each type of violation. This is a clearly erroneous position and not what V.D.2.a.3) directs supervisors to do. The progressive disciplinary process can be cumulative if disciplinary actions occur within a certain time frame.

My comment would be to clarify in this amendment the definition of progressive discipline in its application so that it is clear that it may be cumulative in nature regarding different types of behavior or policy violations.

Response

The commenter expresses concern that section V.D.2.b.2. of the Law still allows for misinterpretation regarding the progression of discipline. The commenter references caselaw from a decision of the Appellate Court that provides that progressive disciplinary process can be cumulative if disciplinary actions occur within a certain time frame. The commenter requests that the Legislative Operating Committee consider clarifying this provision of the Law so that it is clear that progressive disciplines may be cumulative in nature regarding different types of policy violations.

It is recommended that the Legislative Operating Committee revise the Law to address to concerns of the commenter. The following revision to the Law is recommended based on this comment:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

b. Determination of Disciplinary Action.

- 1) All disciplinary actions shall commensurate with the seriousness of the unsatisfactory performance or violation.
- 2) Disciplinary actions shall be considered in progressive order.
 - a) The progressive order for discipline is as follows, unless otherwise noted:
 - i. Written warning (W);
 - ii. Suspension (S);
 - iii. Termination (T).
 - b) Progressive disciplinary action may be cumulative in nature amongst varying violations.

- c) Deviation from Progressive Order
- i. Any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.
 - ii. Any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and approved by the Human Resources Executive Director, or designee.

LOC Consideration



ONEIDA NATION PERSONNEL POLICIES AND PROCEDURES MANUAL

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SECTION I – INTRODUCTION

Welcome to the Oneida Nation. We are pleased to have you join us as a partner on a team of individuals dedicated to providing quality service that enhances the quality of life of the Oneida community. The role you play in your position is important to the overall effort required by your department to meet the goals and objectives of the Oneida Nation. We encourage you to take advantage of the opportunities presented to you, as an employee, to grow and develop both personally and professionally.

The purpose of this "Employee Manual" is to provide you with a ready source of information about employee related Oneida Nation policies and procedures. Although we have tried to make this manual as comprehensive as possible; it does not, and cannot, include policies which address every situation that may arise. The Oneida Nation reserves the right to modify, alter, change or cancel existing policies and procedures or adopt new procedures and policies at any time.

The policies and procedures set forth in this manual apply to all employees. As an employee of the Oneida Nation, you are required to know and abide by these policies and procedures. Oneida Nation departments may have specific and additional procedures enhancing the general policies stated in this manual. Each employee is expected to learn his/her department's procedures and comply with them. In the event of any conflict between policies in this manual and departmental procedure, the policies in this manual supersede. Each employee is also expected to conform to the professional standards of his/her occupation. Questions regarding this manual, or any employee related policies, should be directed to your supervisor, department head, or to the Human Resources Department at (920) 496-7900.

The Oneida Nation is proud to have you on our staff and we look forward to a fulfilling and successful team relationship.

SECTION II - RECRUITING

A. RECRUITING

1. Recruiting Strategy

- a. The Oneida Nation shall implement a Recruiting Strategy to increase the potential for hiring the best-qualified and most capable employees possible.
 - 1) The Recruiting Strategy shall target, as the first priority, applicants in accordance with the Oneida and Indian Preference Policy.
 - 2) The Recruiting Strategy shall have a nationwide focus and will use:
 - a) The Kalihwisaks (national distribution);
 - b) The Oneida Higher Education Office's network of post-secondary school students;
 - c) Local and regional media and public employment agencies.

2. Applicant Pool

- a. The Oneida Nation shall establish and maintain an Applicant Pool consisting of individuals who have expressed an interest in working for the Oneida Nation.
 - 1) The Applicant Pool will consist of files containing:
 - a) An Oneida Nation Application Form;
 - b) A summary of career goals and job preferences.
 - 2) The Applicant Pool will be regularly reviewed to:
 - a) Update individual files;
 - b) Remove files where indicated.
 - 3) The Applicant Pool will be cross-referenced by job preferences.
 - a) Notices of job vacancies and an Application Form will be sent to all Applicant Pool members as appropriate.
 - 4) All Applicant Pool members shall have the right to review and update their file upon request.
 - 5) Applicant Pool members shall be apprised of the Nation's Indian Preference Policy.

B. LABOR POOLS

1. Supervisors that wish to establish a job classification as a Labor Pool Position will work with the HRD to establish the job classification.
2. Each Labor Pool Position shall be advertised as on-going recruitment pool. The HRD shall maintain an updated list of qualified candidates for each Labor Pool Position.
3. The HRD will accept all job applications and verify that each applicant is qualified according to the established job description. All qualified applicants will then be placed in a pool according to the Nation's Oneida and Indian Preference Policy and the date the application was received. All applicants will be notified of acceptance into or rejection from the pool.
 - a. **PRESCREENING OF LABOR POOL POSITIONS** [\(HR Interpretation 11-13-12\)](#) Applicants who were previously employed by the Oneida Nation and were terminated for reasons of misconduct or performance issues will be screened out for a period of twelve (12) months following the date of discharge.
4. The HRD will keep an updated list of qualified applicants for each job position.
5. When a vacancy occurs in a Labor Pool Position, the supervisor will notify the HRD of the position to be filled. The HRD Office shall then refer the top three (3) applicants to the

124 immediate supervisor. The top three applicants shall be based first on the Oneida and
125 Indian Preference Policy and, second, the date an application was received. The
126 immediate supervisor will notify the HRD of their selection and the HRD will then offer
127 the position to the applicant. After the position is filled, all ranked candidates will move
128 up on the list. [\(HR Interpretation 7-11-13\)](#)

- 129 6. If the applicant refuses the position, the HRD Office will then offer it to the next applicant
130 until the position is filled.
- 131 7. If the applicant refuses the job, the applicant may withdraw from the Labor Pool or, if he
132 or she declines to withdraw from the Labor Pool, the date of refusal will be considered
133 the date the application was received and the applicant will be placed in the Labor Pool
134 list according to B.3.
- 135 8. Indian (Oneida) Preference will be adhered to in all hiring decisions.

136 137 C. EMERGENCY/TEMPORARY POSITIONS

- 138 1. The HRD will periodically recruit individuals who are interested in filling temporary
139 positions which consist of the following classifications:
 - 140 a. Emergency/Temp
 - 141 b. Limited Term
 - 142 c. Seasonal
 - 143 d. Substitute/Relief
 - 144 e. Youth Worker
 - 145 f. Student/Intern
- 146 2. Creation of Positions
 - 147 a. Creation of positions in the above Temporary Employee Classifications will require
148 that these positions be budgeted for the current fiscal year, or proof through
149 documentation that the budget is adequate to incorporate these positions.
 - 150 b. The positions must be developed in conjunction with the HRD; assuring that all
151 Policies and Procedures are adhered to. Creation of temporary classification requires
152 the approval of the Director, Area Manager, and ~~HRD Manager~~ [Human Resources](#)
153 [Executive Director](#), or elected official of the Oneida Nation.
 - 154 c. All newly created temporary positions must be processed through the Wage and
155 Salary system before a position can be filled with a temporary employee.
- 156 3. Recruitment/Selection
 - 157 a. Recruitment/selection of applicants for all temporary positions requires a completed
158 Temporary Personnel Requisition form with an updated job description attached.
 - 159 b. The HRD will provide a list of qualified candidates according to the job descriptions
160 to the immediate supervisor. The immediate supervisor will select from the approved
161 list adhering to Indian Preference.
 - 162 c. The HRD will contact the selected candidate and offer the position, following the
163 proper procedures to put the incumbent on payroll.
 - 164 d. The selected candidate will sign a statement accepting conditions of temporary
165 employment, and length of employment where applicable.
 - 166 e. Temporary employees will be paid within the Grade in which the job is classified and
167 salary will be negotiated within the first three (3) steps of respective grade.
 - 168 1) Any negotiated salary beyond step three will require written justification and
169 approval from the respective General Manager. [\(H.R. Interpretation, 12-8-16\)](#)
 - 170 f. Temporary employees are welcome to apply for any regular position within the
171 Nation that becomes available during the term of their employment.
 - 172 g. Temporary employees that are terminated due to documented cause will have the
173 right to the appeal process as outlined in the Personnel Policies and Procedures.

- 174 h. All temporary employees are subject to lay-off based upon department job needs
175 and budgets. [\(HR Interpretation – 11-25-13\)](#)
176 i. Supervisors are required to do proficient planning within their respective span of
177 control; as such they must also enforce separation dates and will be monitored by
178 HRD for compliance.
179 j. Supervisors must select the most appropriate category of classification for the job.
180 1) Moving from one classification to another is prohibited.
- 181 4. Benefits
- 182 a. The following employee classifications will be eligible for benefits as defined in the
183 section of the Personnel Policies and Procedures as medical, dental, vacation and
184 personal accrual, holiday pay, premium pay.
185 1) Limited Term
186 2) Seasonal
- 187 b. The following employee classifications will be eligible for benefits as defined in this
188 section of the Personnel Policies and Procedures as Mandatory Benefits and Holiday
189 pay.
190 1) Emergency/Temporary
191 2) Substitute/Relief
192 3) Seasonal Worker (only during their first season)
- 193 c. The following employee classifications will be eligible for benefits as defined in this
194 section of the Personnel Policies and Procedures as Mandatory Benefits.
195 1) Youth Worker
196 2) Student/Intern
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SECTION III – SELECTION POLICY

A. ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

Federal policy since 1834 accords hiring preference to Indians. The purpose of this preference is threefold: 1) to give Indians a greater participation in self-government; 2) to further the Government's trust obligation; and 3) to increase the positive effect of having Indians administer matters that affect Indian tribal life. [\(GTC Resolution – 5-23-11-A\)](#)

More recently, legislation such as the Civil Rights Act (1964) and the Education Amendments of 1972 (passed after the Equal Employment Opportunity Act) continued to specifically provide for preferential hiring of Indians by Indian Nations.

As an employer, the Nation seeks to employ individuals who possess the skills, abilities and background to meet the employment needs of the Nation.

As a sovereign Indian Nation and a unique cultural group, the Oneida Nation has determined that a highly desirable employment characteristic is knowledge of Oneida culture ~~that can be attained only by membership (or eligibility for membership) in the Oneida Nation.~~ Further, the Nation recognizes the unique, shared culture of Native American Indians and has determined that a desirable employment characteristic is status as a member ~~of an American Indian Nation~~ or descendant of a federally recognized tribe. At a minimum, the Nation has determined that some knowledge of Indian culture is a desirable employment characteristic.

Accordingly, the Oneida Nation establishes the following policy in regard to Indian Preference for selecting employees to provide services that meet the needs of the Oneida people. ~~This Indian Preference policy shall be specific to staffing decisions made under the Personnel Policies and Procedures and shall not be construed to have an application outside of these policies and procedures.~~

The Oneida Nation is an equal employment opportunity employer and follows non-discriminatory policies and procedures in personnel decisions. [\(HR Interpretation 5-19-14\)](#) ~~However, the~~ The Oneida Nation exists to serve the needs of the Oneida people and therefore accords Oneida Preference to enrolled members of the Oneida Nation ~~Members~~ where such preference is not otherwise prohibited. All General Managers and top administrative positions, as defined by HRD in a standard operating procedure, shall be held by enrolled ~~Tribal~~ members of the Oneida Nation. In all other instances, the Nation applies the following priorities of Indian Preference in staffing decisions:

- 1 Enrolled members of the Oneida ~~Tribal member~~ Nation;
- 2 ~~Oneida Indians~~ Individuals eligible for enrollment in the Oneida Nation;
- 3 Documented first generation descendants of the Oneida ~~descendant~~ Nation;
- 4 ~~Other Native American Indian~~;
- 4 Members or descendants of a federally recognized tribe;
- 5 Other (non-Indian). [\(HR Interpretation – 6-24-11\)](#)

This policy ~~will~~shall apply in decisions where the basic requirements for employment are met.

B. HIRING PROCEDURE

1 Statement of Policy

- a. The Oneida Nation is an equal employment opportunity employer and follows nondiscriminatory policies in hiring.
- b. The Oneida Nation is a firm advocate of the 1964 Civil Rights Act (as amended) and the 1968 Indian Civil Rights Act (as amended) and will make every effort to ensure compliance with each Act; however:
- c. The Oneida Nation follows the principles of Indian Preference in the implementation of hiring practices (see the Oneida Preference and Indian Preference Statement of Policy).

~~2. The members~~Hiring Guidelines

~~d. All Supervisors~~ of the ~~Personnel Commission and all~~ Oneida Nation ~~employees who supervise other Oneida Nation employees~~ shall undergo both training upon hiring and periodic retraining in EEO and ~~Tribal~~ laws, rules, and regulations. ~~—~~

~~1) Training will be knowledge and skills based~~

~~2) All Personnel Commission members and Tribal supervisors will undergo periodic re-training in EEO and Tribal laws, rules and regulations~~

~~e.a. No person shall be recommended for a position if a conflict of interest or nepotism is created. Nepotism is created by the following relationships: (HR~~

~~Interpretation 08-13-12)~~ Nation.

~~a) Father~~ ~~i) Father in-law~~

~~b) Mother~~ ~~j) Mother in-law~~

~~c) Husband~~ ~~k) Brother in-law~~

~~d) Wife~~ ~~l) Sister in-law~~

~~e) Brother~~ ~~m) Son-in-law~~

~~f) Sister~~ ~~n) Daughter in-law~~

~~g) Son~~ ~~o) Grandparent~~

~~h) Daughter~~ ~~p) Grandchild~~

~~3. Hiring Procedures~~

~~a. HRD Office Responsibilities~~

~~1) Unless specifically noted, the HRD Office will have responsibility for implementing the policies and procedures guiding the selection of Tribal employees.~~

b. Personnel Commission Role

- 1) The Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of ~~tribal employees~~ employees of the Nation and to shield those employees from inconsistent and unfair treatment by:

a) Protecting against issues of nepotism;

b) Enforcing Oneida and Indian preference.

~~2)~~ The Personnel Commission is directed to:

- 308 i. ~~Seek out~~Participate in the best-matched applicants for each available
309 position;
- 310 ii. ~~Consider only job-related factors (such as education, experience, past job~~
311 ~~performance, skills and abilities, and compatibility with the position and~~
312 ~~potential co-workers) when selecting candidates.~~
- 313 c. ~~Identification of Vacancies and Development of Job Descriptions~~^(Work Standard, 11-16-11)
- 314 1) ~~Supervisors may inform the HRD Office of pending vacancies as soon as they are~~
315 ~~identified.~~
- 316 2) ~~For existing positions, the HRD Manager (or designate), the supervisor and the~~
317 ~~Area Manager (at his/her option) will review the~~hiring selection process,
318 including job description pre-screens and interviews, to ensure compliance with:
- 319 a) ~~The~~the Nation's job structure;
- 320 b) ~~The needs~~laws and requirements of the job.
- 321 3) ~~For new positions, the HRD Manager, the appropriate Area Manager, and the~~
322 ~~supervisor shall develop the job description.~~^(HR Interpretation, 12-8-16)
- 323 a) ~~The new job description shall conform to the Oneida Nation job structure.~~
- 324 b) ~~The new job description will be reviewed by the General Manager.~~
- 325 4) ~~All job descriptions shall contain the following information:~~
- 326 a) ~~Job title, division/department, location, supervisor's title;~~
- 327 b) ~~Posting date, application deadline, preferred starting date, date of job,~~
328 ~~description review;~~
- 329 c) ~~Pay level (grade, step, hourly rate);~~
- 330 d) ~~A brief job summary;~~
- 331 e) ~~Duties and responsibilities;~~
- 332 f) ~~Qualifications;~~
- 333 g) ~~Inquiry address;~~
- 334 h) ~~Statement of compliance with EEO and Indian Preference policies.~~
- 335 d. ~~Applications~~
- 336 1) ~~All inquiries for job vacancies will be responded to with an Oneida Nation~~
337 ~~Application Form which will consist of:~~
- 338 a) ~~Job vacancy title;~~
- 339 b) ~~Applicant biographical data;~~
- 340 c) ~~A request for a resume (where applicable).~~
- 341 2) i. ~~The Application Form shall be accompanied by a Statement of Policy~~
342 ~~regarding Oneida Preference and Indian Preference.~~the following
343 subject matters:
- 344 3) ~~Hand-delivered applications will be accepted at the HRD Office until 4:30 p.m. on~~
345 ~~the deadline date; mailed applications must be postmarked on or before the~~
346 ~~deadline date.~~
- 347 4) ~~All applications will be acknowledged.~~
- 348 e. ~~Advertising~~
- 349 1) ~~Position vacancies will be advertised as widely as possible including:~~
- 350 a) ~~The Kalihwisaks;~~

- b) ~~Statewide, through print and electronic media and public employment agencies;~~
- c) ~~Through targeted recruiting efforts including:~~
- i. ~~Major metropolitan areas (i.e. Milwaukee, Chicago, Minneapolis, etc.)~~
 - ii. 1. The Bureau of Oneida and Indian Affairs preference;
 - iii. ~~The Oneida Higher Education Office.~~
 - 2. Other postings targeted toward special recruiting categories (such as professions) shall be carried out at the discretion of the HRD Office.
 - Nepotism:
 - 3. Conflicts of interest;
 - 4. Veteran status; and
 - 5. Physical capacity requirements.
- d) ~~Comply with the advice and consent of the affected department.~~
- 2) ~~Unless otherwise prohibited by external grant source or federal law, the first posting for a position vacancy shall be limited to enrolled Oneida members and shall be posted for a minimum of seven (7) calendar days.~~
- 3) ~~The second posting for a position vacancy shall be posted for a minimum of ten (10) calendar days and shall be open to the general public, unless the position must be filled by an enrolled Oneida Nation member. (HR Interpretation 8-9-11)~~
- 4) ~~All vacancies requiring re-posting shall be referred back to B-2.c (Identification of Vacancies and Development of Job description) to begin the re-posting process.~~
- f. ~~Screening of Applicants (HR Interpretation 11-16-12) (HR Interpretation 10-22-12).~~
- 1) ii. A Screening Committee consisting of the HRD Manager (or designate), the position supervisor, the Area Manager (at his/her option), and a member of the Personnel Commission shall be convened to conduct the screening of applicants. The Screening process will begin as soon as practical following the closing of the position. This Committee will:
 - Bylaws.
- a) ~~Verify that all applications are complete, are accurate~~ Hiring ~~and were submitted on time.~~
- i. ~~Applications that are incomplete, inaccurate, or were not submitted on or before the posted deadline date may be screened out.~~
 - b) ~~Analyze the job description to establish screening criteria. These criteria will include qualifications listed on the job description determined by the supervisor and Area Manager to be essential to the job. (T.O.E. WS-5-6-13)~~
 - c) ~~Screen verified applications~~
- d) c. Recommend a list of applicants to be interviewed. Selection Rules.
- 2) ~~The HRD Office shall notify screened out applicants within five (5) working days after the initial screening and reserve these applications~~ be delegated rulemaking authority in the general recruiting pool.
 - 3) ~~The HRD Office will arrange for interviews~~ accordance ~~with the listed candidates.~~
- g. ~~Candidate Interviews~~

- 393 1) ~~An Interview Committee will be convened and will consist of the members of the~~
394 ~~Screening Committee except that the HRD Manager will be replaced with a~~
395 ~~second member of the Personnel Commission. The Interview Committee will:~~
396 a) ~~Construct an interview format consisting of:~~
397 ~~i. A set of questions related to the screening criteria qualifications;~~
398 ~~ii. An interview rating scale designed to objectively evaluate each~~
399 ~~candidate's qualifications.~~
400 b) ~~Interview candidates and evaluate each individually.~~
401 2) ~~The HRD Manager (or designee) will total the evaluation rating scale to rank~~
402 ~~order of the candidates.~~
403 h. ~~Selection~~ ~~(HR Interpretation - Disqualification of Applicant 10-24-13)~~
404 1) ~~The supervisor shall select one of the top two (2) candidates as ranked through~~
405 ~~the rating scale.~~ ~~(HR Interpretation - 10-17-12)~~
406 a) ~~The supervisor may conduct an additional personal interview with the top~~
407 ~~two (2) candidates.~~
408 b) ~~The~~ Administrative Rulemaking law to develop rules regarding procedures
409 for the hiring and ~~selection decision shall be governed by the Oneida~~
410 ~~Preference and Indian Preference Policy.~~ ~~(HR Interpretation - 6-6-11)~~
411 c) ~~The HRD Office will notify the selected candidate and offer the candidate the~~
412 ~~job within five (5) working days of the selection decision by the supervisor.~~
413 ~~i. Should the supervisor's first choice refuse the offer, the HRD Office will~~
414 ~~offer the job to the second ranked candidate.~~
415 2) ~~Should both of the top two ranked candidates refuse the job offer, the~~
416 ~~supervisor may:~~
417 a) ~~Repeat the process outlined in B.2.h.1. above; or~~
418 b) ~~Re post the position.~~
419 3) ~~The HRD Office will notify those candidates interviewed but not selected of the~~
420 ~~decision to hire the best qualified candidate.~~
421 4) 1) All newly hired ~~of~~ employees will be listed in ~~of~~ the HR newsletter Nation.

- 422
423 C. ~~TRANSFERS AND PROMOTIONS POLICY~~ INTERNAL POSITION POSTING - The Oneida Nation
424 encourages ~~transfers and promotions~~ movement within and among units in order to make
425 the best possible use of human resources to meet the Oneida ~~Nation~~ Nation's goals and
426 objectives. Supervisors and employees are encouraged to work together to create an
427 environment in which employees constantly strive to improve their skills and abilities and
428 ~~mangers~~ managers constantly seek to provide challenging and rewarding work
429 experiences.

430 1. Procedure

431 a. 1. Internal Position Posting and Bidding Reassignment Rules.

- 432 1) ~~Open positions as determined by a supervisor and his/her Area Manager will be~~
433 ~~posted internally~~ The HRD Office shall be delegated rulemaking authority in
434 accordance with the Administrative Rulemaking law to develop rules regarding

- ~~procedures~~ for five (5) working days. This internal ~~position~~ posting ~~will be~~
~~concurrent with the external (public) posting and reassignment of positions.~~
- ~~a) Positions will be posted in prominent locations in each Oneida Nation building~~
- ~~2)a. Oneida Nation employees may bid for transfers by notifying their immediate supervisor and submitting an Application Form to the HRD Office of the Nation.~~
- ~~a) The HRD Manager will inform all affected Area Managers of each transfer bid.~~
- ~~3) At the end of the five (5) day internal posting period, the HRD Manager will schedule a conference with the open position's supervisor and the Area Manager.~~
- ~~a) The conference committee will consist of the supervisor, the Area Manager and the HRD Manager (or designate) acting as this Committee will:~~
- ~~i. Establish selection criteria; and~~
- ~~ii. Review each bid.~~
- ~~b) The Committee may select the best qualified applicant but is not required to choose an applicant to fill the open position from those employees who have submitted an application for a transfer or promotion.~~
- ~~c) If the Committee does not fill the position from the transfer/promotion process, the process will continue through the full advertising, screening and interview steps.~~
- ~~i. Any decision will be governed by the Indian Preference Policy.~~
- ~~4) Employees who are transferred or promoted will not lose any benefits; however:~~
- ~~a) An employee may be required to continue serving in his/her present position until a replacement can be found;~~
- ~~b) An employee who is transferred to a position lower on the Oneida Nation Job Structure will be paid at the grade level corresponding to the new position;~~
- ~~c) An employee must have completed one year of service to the Nation before being eligible for a promotion or transfer (requests for transfers for documented medical conditions will be handled on a case by case basis and only when in the best interests of both the employee and the Nation);~~
- ~~d) The newly transferred or promoted employee shall be required to complete a three (3) month probation period (all conditions of the Nation's Probation Policy shall apply).~~
- ~~b. Applicant Pool Process~~
- ~~1) New and vacant positions will be advertised through the Tribal Applicant Pool.~~
- ~~2) The job description will be sent to persons whose applications are maintained in the Applicant Pool.~~
- ~~a) The Tribal Applicant Pool will consist of open (unspecified) applications from Tribal members who wish to be considered for employment by the Nation.~~
- ~~b) Advertising through the Tribal Applicant Pool will follow the format and time conditions set forth in the Hiring Policy.~~

2. ~~Reassignments~~

a. ~~Title Reassignments~~

1) ~~Title Reassignments may be made by supervisors to:~~

a) ~~More accurately describe or define an existing job; or~~

b) ~~Make minor adjustments in jobs within a unit or operating division.~~

2) ~~Title Reassignments may be made at any time with the approval of the Area Manager and HRD Manager.~~

b. ~~Job Reassignments~~

1) ~~Job Reassignments may be made by supervisors to make more efficient and effective use of human resources.~~

2) ~~Job Reassignments may be supervisor initiated or employee initiated but must be made in the best interests of the operating unit.~~

3) ~~Job Reassignments may be made at any time with the approval of the Area Manager and after a review of each affected job by the Personnel Evaluation Committee.~~

c. ~~Interim Job Reassignments~~ ~~(Work Standard 7-11-13)~~

D. **ORIGINAL** PROBATION

1. ~~The first three (3) months after an employee's starting date~~ after being hired, transferred, or reassigned shall be considered a period of probation. At the end of six (6) weeks, the employee's performance shall be reviewed with him/her/them by the supervisor by completing an employee evaluation.

a. ~~At the end of the three (3) month probation period, a second performance evaluation will~~ shall be conducted. This evaluation will ~~shall~~ recommend the end of probation and regular status for the employee, an extension of probation, or termination for cause.

2. 1. ~~Status as a Probationary Employee~~

a. ~~Probationary employees will be paid at five percent (5%) below the posted pay rate for the position.~~

1) ~~New employees hired under a negotiated salary will receive a salary one step below the agreed upon salary during the probationary period.~~

b. a. ~~Probationary employees will~~ shall accrue vacation ~~and~~ personal days during the probation period and ~~will~~ shall receive holiday pay.

c. b. ~~Probationary employees may be terminated for cause at any time during the probation period. Cause must~~ shall consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position. ~~This termination is subject to appeal. (BC Action 3-20-92)~~

3. ~~Completion~~ Termination of Probation Period

a. ~~Satisfactory completion of probation will result in the~~ an employee ~~receiving the regular salary for the position.~~

- b. ~~Employees who are terminated~~cause during ~~the probation~~their original probationary period ~~will receive credit for accrued vacation/personal days in their final paycheck.~~
- c. ~~Extensions of probation periods will~~shall not affect accrual of or use of benefits as explained under D.2.be subject to appeal

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

1. Oneida Nation Job and Salary Structure

- a. An ongoing plan will be instituted based on standard employee grades and step levels to assure that a uniform approach is taken to establish equitable salary and wage levels.
- b. Employee performance evaluations will be a resource in determining whether an employee receives an increase in pay for the upcoming year. An overall satisfactory rating must be attained in order to be granted an increase in pay.
- c. Merit increase shall be granted upon the recommendation of the supervisor, the Area Manager, the ~~HRD Manager~~Human Resources Executive Director and the General Manager.

2. Workday [\(Work Standard, 10-17-12\)](#)

- a. The regular Tribal workday is from 8:00 a.m. to 4:30 p.m. with an hour for lunch. The exception to these hours occurs only if the program/enterprise hours must vary for the purpose of providing service (such as retail hours beyond 4:30 p.m.). Shifts will be developed as needed, and the shift hours will then become the regular workday for assigned employees for that program/enterprise.
- b. Employees are expected to be at work each scheduled work day.
 - 1) Employees who do not report for work because of inclement weather or unforeseen circumstances will not be paid for that day. Employees may elect to use personal day(s) to cover this absence. [\(W.S. Closures Multiple/Individual Depts.7-28-2017\)](#)
[\(W.S. Closures Non-Critical Departments/Divisions 7-28-2017\)](#)
 - 2) In case of an unavoidable delay or absence, the supervisor must be notified no later than thirty (30) minutes after the scheduled starting time. Employees are encouraged to notify their supervisor before their scheduled starting time.
 - i. Employees failing to report to their assigned jobs or failing to call in within the thirty (30) minute time allowed will be subject to disciplinary action.
 - ii. Permission to leave early must be obtained by the employee from his/her supervisor.

3. Overtime

- a. Any and all overtime will be kept to a minimum and must be approved by the Supervisor and Area Manager.
 - 1) In the case of potential overtime that may occur at night, on holidays or on weekends, supervisors will delegate this authority to a specific employee and outline specific situations and actions that warrant overtime.
- b. All overtime must be reported to the supervisor for evaluation.
- c. Overtime will be approved only if the program or enterprise budget is capable of paying it.
- d. Overtime will be approved only for hours worked in excess of forty (40) hours per week. Personal/vacation days and holidays will not count toward the forty (40) hour requirements.
- e. Tribal employees are expected to work overtime if required. Time and one-half will be paid for this overtime.
- f. Exempt employees are not eligible for overtime.
 - 1) The HRD Office will maintain a list of exempt employees.

4. Holidays [\(Work Standard, 11-7-14\)](#)

- a. Tribal holidays consist of the following:
 - 1) One-half Day Christmas Eve
 - 2) Christmas Day
 - 3) New Year's Day
 - 4) Memorial Day
 - 5) Veteran's Day
 - 6) Independence Day
 - 7) Labor Day

- 604 8) Indigenous Peoples' Day
605 9) Thanksgiving Day
606 10) Indian Day (day after Thanksgiving)
607 11) One-half day Good Friday
608 12) Code Talker's Day (Oneida Day, Friday prior to Memorial Day)
609 (BC Resolution – 12-11-13A)
- 610 b. To be eligible for a paid holiday, employees must work the preceding and following
611 scheduled work days (except for employees who are on a prescheduled work leave
612 or an approved extended sick leave.) Employees who are granted a sick day directly
613 prior to a holiday must certify that they were capable of working the holiday in order
614 to qualify for a paid holiday.
- 615 c. All regular employees will be given holiday pay for the maximum pay of eight (8)
616 hours per day.
- 617 d. Holidays falling on a Saturday will be observed the preceding Friday; holidays falling
618 on a Sunday will be observed on the following Monday. [\(2019 Holiday Observance Calendar\)](#)
619 [\(2018 Holiday Observance Calendar\)](#)
- 620 e. The Oneida Nation acknowledges its responsibility to make a reasonable
621 accommodation to employees who wish time off to observe religious holidays.
622 Requests for such time off will be granted where possible, based on the scheduling
623 and staffing needs of affected departments. Employees wishing to take time off work
624 for religious observances should inform their supervisor as early as possible.
625 Employees may use personal time for such requests if eligible; otherwise the time off
626 will be treated as unpaid leave.
- 627 5. Vacation/Personal Days
- 628 a. Every Oneida Nation employee, except temporary employees, shall be allowed
629 personal and vacation days with pay to the extent that personal days and vacation
630 are accumulated.
- 631 b. The amount of personal and vacations days shall be determined by continuous
632 service for the Nation. A "lay-off" from Oneida Nation employment shall not be
633 considered an interruption in continuous service where the lay-off is in accordance
634 with the Nation's Layoff Policy, nor shall a preapproved leave of absence. [\(HR](#)
635 [Interpretation. 3-6-12\)](#)
- 636 c. Except as provided for in section g, the accrual of personal days shall be as follows:
637 [\(BC Resolution – 4-11-13-F\)](#)
- 638 1) 0-3 years of service - 6 days per year;
639 2) 4-7 years of service - 8 days per year;
640 3) 8-14 years of service - 10 days per year;
641 4) 15+ years of service - 12 days per year;
- 642 d. Except as provided for in section g, the accrual of vacation days shall be as follows:
- 643 1) 0-3 years of service - 12 days per year
644 2) 4-7 years of service - 15 days per year;
645 3) 8-15 years of service - 20 days per year;
646 4) 15+ years of service - 25 days per year.

- e. Part-time employees accrue personal and vacation days for time actually worked at a ratio of a full-time employee.
- f. Service is defined as working for Programs/Enterprises which are contracted by the Nation or specifically sponsored by the Nation.
- g. Vacation and personal days shall be capped at 280 ~~hrs~~ hours. An employee shall cease to accrue vacation and personal hours when he or she has reached 280 total hours. Supervisors shall notify their employees when said employees have accumulated 200 total hours of vacation and personal time. (GTC Resolution, 7-2-12A)
 - 1) An employee may trade back accumulated vacation and personal hours in accordance with Section IV.A.5.n. below. (GTC Resolution, 5-23-11-B)
- h. Upon termination from Oneida Nation employment, employees will be paid for any unused personal and/or vacation days.
 - 1) Employees who have used the Oneida Nation-sponsored loan program will be required to honor the terms of the loan agreement.
 - 2) Employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck.
- i. Personal Days can be used for any reason so long as the request is approved by the employee's supervisor at least twenty-four (24) hours in advance (unless the absence is due to illness or unforeseen circumstances).
 - 1) In the case of illness or unforeseen circumstance, the supervisor shall be notified no later than fifteen (15) minutes before the scheduled starting time.
 - 2) Programs and enterprises may institute stricter standards of notification. These standards will be submitted to and approved by the Personnel Department.
- j. An employee shall notify his/her supervisor of an intent to use personal days in the following ways:
 - 1) Three (3) to five (5) days - one (1) week advance notification
 - 2) Six (6) days or more - two (2) weeks advance notification.
- k. An employee shall notify his/her supervisor one (1) day in advance if he/she will take off one (1) or two (2) days of vacation. Programs and enterprises may institute stricter standards of notification.
 - 1) Three (3) to five (5) days of vacation require a one (1) week advance notification.
 - 2) Six (6) or more days of vacation require at least two (2) weeks advance notification.
- l. The burden shall be on the supervisor to show that a denial of a personal day or a vacation day is based upon interference with the business of the Nation.
- m. Personal or Vacation Days can be taken when an employee is on probation. (GTC Resolution 5-23-11-B, HR Interpretation 5-8-17)
- n. Trade-back for Cash - Each fiscal year, the Oneida Business Committee shall analyze fiscal conditions to determine whether employees may trade back personal and/or vacation hours for cash that fiscal year.
 - 1) If the Oneida Business Committee approves trade-back for cash, they shall also determine whether (i) and/or (ii) applies: (See Revision)

- i. All employees will have the opportunity to trade-back hours one time that year.
1. By August 15, each employee who has accumulated twenty-four (24) hours or more of vacation and/or personal days may opt to trade in his/her hours for cash.
 2. Employees will receive their trade back on or before September 30 of that year.
- ii. Only those employees who are unable to utilize their personal and/or vacation time due to working conditions, such as a shortage in staffing, as determined by the ~~HRD Manager~~Human Resources Executive Director or designee, will have the opportunity to trade back hours on a quarterly basis.
1. Employees will receive their trade back within sixty (60) days after opting to trade back hours.
 - 2) When trade-back for cash is approved by the Oneida Business Committee, the following standards shall apply:
 - i. Employees must decide which status (vacation or personal or both) from which their trade back will be drawn.
 - ii. Employees may not trade for cash more than eighty (80) hours in one year.
(GTC Resolution, 5-23-11-B)
- o. Additional Duties Compensation
- p. Travel Time Compensation (Work Standard , 3-20-13)
- B. INSURANCES (see separate publication) for information on Oneida Nation Insurance plans.
- C. RETIREMENT PLAN (See separate publication for information on Tribal Retirement Plan).
(Separating Employees WS 5-6-13)
- D. LEAVES
1. Meeting Attendance
 - a. Approval for attending any meetings inside normal working hours must be approved in advance by the employee's immediate supervisor. (BC Action, 5-16-89)
 - b. Employees who receive stipends or honoraria in excess of \$50.00 for attending meetings during working hours will forfeit the amount in excess of \$50.00 from their regular paycheck. Stipends for travel or per diem will not be deducted if accompanied by receipts for such expenses.
 - c. Stipends or honoraria for intra-tribal meetings during normal working hours will results in the employee's paycheck being reduced by the full amount of the stipend.
 2. Funeral Leave (Work Standard, 8-2-11)
 - a. All regular employees will be given a ~~three~~five (5) day leave without loss of pay for funeral services for immediate family. Immediate family includes:

Husband	Mother	Brother	Great-grandparent
Wife	Father	Sister	Great-grandchildren
Mother-in-law	Son	Grandparent	Spouse's great-grandparents

- Father-in-law Daughter Grandchild Spouse's grandparents
Daughter-in-law Sister-in-law Brother-in-law
- b. ~~Three (3)~~Five (5) day leave for other persons will be given only if the employee is responsible for making funeral arrangements, subject to prior approval of supervisor.
- c. All other funeral leave will be limited to ~~no more than one (1) day~~three (3) hours with pay subject to the notification and approval of the immediate supervisor. ~~(Mgmt Directive, 12-17-2009)~~
3. Leave of Absence ~~(Work Standard, 6-10-14)~~
- a. A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the Nation.
- 1) Leaves of absence will not exceed three (3) months.
- i. All leaves of absence ~~must~~shall be approved by the Supervisor, ~~Area Manager, HRD Manager and General Manager. (HR Interpretation, 12-9-16).~~
- ii. Requests ~~must~~shall be documented and submitted to the supervisor with as much advance notice as possible.
- iii. Disposition of requests will be made on the basis of staffing requirements.
- 2) Upon returning, the employee will be reinstated in the former position with full status and benefits. Holiday, vacation, and sick leave will not be accrued during the leave of absence.
- 3) No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.
- i. Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process. ~~(HR Interpretation, 11-21-11)~~
4. Maternity Leave
- a. Maternity leave will be granted for a period of six (6) weeks without pay.
- 1) An employee may elect to cover any portion of this time by using accumulated sick days.
- 2) Any maternity-related absences for longer than six (6) weeks must be taken as a medical leave of absence.
5. Military Leave
- a. In addition to the following provisions, the Nation's Military Service Protection Act shall govern Military Leave.
- b. A Military Leave of Absence is afforded employees entering active duty without accumulation of holiday, vacation or personal time during the period of leave. Any accumulated benefits prior to leave will be maintained for the employee.
- c. Time off for inactive duty training, examinations to determine fitness for duty and funeral honors duty shall be afforded to employees without the accumulation or loss of holiday, vacation or personal time. An employee will receive pay from the Nation for any hours work that the employee was required to miss due to reservist training.

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- 1) Any pay received for performing any of the above duties shall be deducted from the employee's pay. [\(GTC Resolution, 1-26-08A\)](#)
6. Jury Duty
- a. During a period of jury duty, an employee will receive pay from the Nation for any hours of work missed due to jury duty.
- 1) Jury duty pay will be deducted from the employee's paycheck when determining the amount of pay
- 2) No overtime will be allowed in determining employee pay while serving on jury duty.
7. Educational Leave [\(BC Action, 5-4-90\)](#)
- a. A leave of absence for education purposes will not exceed one (1) year.
8. Parent Policy Leave [\(BC Action, 3-2-94A\)](#) [\(Parental Leave Policy, 11-3-17\)](#)
- a. Employees who are parents, guardians, or those individuals specifically referred to as "immediate family" as defined in Section IV, page 6 of these Personnel Policies and Procedures which includes husband, wife, mother, father, brother, sister, son, daughter, mother-in-law, father-in-law, grandparent and grandchild may request to participate in their child(ren)'s educationally sanctioned events not to exceed four (4) hours per employee per month
- 1) These four (4) hours shall not accumulate.
- b. Approval to utilize the four (4) hours must be obtained from the supervisor.
- 1) An employee shall request his/her supervisor to utilize this leave with a minimum of twenty-four (24) hours' notice.
- 2) The Supervisor may request verification of
- i. Guardianship of the child(ren) and/or
- ii. The attendance of the employee at their child(ren)'s educationally sanctioned event.
- c. The burden shall be on the supervisor to show that a denial of the Parent Policy Leave which is based upon interference with the business of the Nation.
- d. This leave shall not be paid as overtime. The supervisor may have the option to use flex time to cover this time off to attend their child(ren)'s educationally sanctioned events.
- e. All employees, except Emergency/Temporary, Youth Workers, Student Interns, and Seasonal Workers during their first season, and Substitute Reliefs are eligible to participate in this benefit.

SECTION V – EMPLOYEE RELATIONS

A. ORIENTATION POLICY

The Oneida Nation reflects the unique culture and character of our Nation. The Oneida Nation

recognizes that this may present special problems and difficulties for a new employee. The Nation therefore provides an Orientation Program designed to ease the new employee's transition into a job and enable the new employee to become effective and productive as quickly as possible.

1. Orientation Program Outline

- a. Overview
- b. Tribal Government and Procedures
- c. Key Policies and Procedures
- d. Benefits
- e. Safety, Health and Security
- f. Departmental Orientation

2. Responsibilities

- a. The HRD Office will administer the General Orientation Program
 - 1) The HRD Office will assist Divisions in administering Departmental Orientation Programs.
- b. The HRD Office will develop and establish an Employee Mentor Program with each Division.
 - 1) Employee Mentors will be responsible for conducting the Departmental Orientation.
 - 2) Employee Mentors will assist new employees throughout their probation period as a source of references and referrals.
- c. The HRD Office will annually review the General Orientation Program and each Departmental Orientation Program to:
 - 1) Evaluate the effectiveness of each Program,
 - 2) Modify programs as necessary.
 - 3) Requirements
 - a) The HRD Office will provide a copy of the Employee Policy and Procedures Manual to new employees before (if possible) the scheduled starting date.
 - b) The General Orientation Program will be completed in appropriate stages within the first month of the new employee's starting date.
 - i. The Departmental Orientation will be completed within the first week of the starting date.
 - c) The HRD Office will administer a NEW Employee Reporting Form to provide information for the purposes of maintaining a Nation-wide skills assessment inventory and a management succession plan.

B. EVALUATIONS

- 1. Evaluation reports will be used in determining all promotions, transfers and salary adjustments.
- 2. Annual evaluation reports for each employee will be submitted to the HRD Office by August 1 of each year. [\(Work Standard, 6-23-15\)](#)
 - a. Evaluation reports will be retained in each employee's personnel file.
- 3. All Oneida Nation employees will be evaluated at least once a year.
 - a. Employee performance evaluations will be conducted by each employee's immediate supervisor. The Business Committee will conduct the performance evaluation of the General Manager. [\(HR Interpretation, 12-8-16\)](#)
 - b. The supervisor will discuss the evaluation with each employee. The evaluation will then be signed by the employee and the supervisor and forwarded to the HRD Office.

- 863 4. Satisfactory evaluations may result in the employee receiving an increase in pay within
 864 their grade level provided that the employee has not attained the highest step within the
 865 grade.
 866 a. Unsatisfactory evaluations will result in probation status for the employee. The
 867 supervisor shall provide documentation to the Area Manager and to the employee
 868 detailing the deficiency(s). A repeat evaluation will be conducted three (3) months
 869 after the unsatisfactory evaluation. This second evaluation will result in the
 870 employee:
 871 1) Being removed from probation and receiving a salary increase if the second
 872 evaluation results in an overall satisfactory rating; or
 873 2) Receiving appropriate disciplinary actions if the second evaluation also results in
 874 an unsatisfactory rating.
 875 b. Employees may appeal unsatisfactory evaluations to the ~~HRD Manager. The HRD~~
 876 ~~Manager~~ Human Resources Executive Director. The Human Resources Executive
 877 Director will consult with the supervisor and the employee to negotiate an
 878 appropriate resolution (Work Standard, 12-8-16)
 879

880 C. CAREER DEVELOPMENT

- 881 1. Oneida Nation employees are encouraged to develop their skills and abilities by
 882 pursuing education at a local educational institution. (BC Action, 9-9-92)
 883 a. Oneida Nation employees must provide a general Career Development Plan to the
 884 supervisor listing the goals and objectives of the training and education to be
 885 undertaken.
 886 2. Oneida Nation employees may be eligible for assistance for one (1) course per semester.
 887 The employee must attempt to arrange to take the class outside his/her normal working
 888 hours.
 889 a. Where a class conflicts with the employee's work schedule, the needs of the Tribal
 890 unit take precedence; however, the supervisor shall attempt to accommodate the
 891 employee's request.
 892 b. In no case shall the accommodation exceed actual class hours plus reasonable travel
 893 time.
 894 c. Employees must obtain the approval of their immediate supervisor to take a course
 895 on work time.
 896 3. The supervisor's approval and estimated cost must be submitted to the HRD Office, the
 897 Area Manager and the General Manager. (HR Interpretation, 12-8-16)
 898 4. The cost of the books, tuition and fees for the course shall be paid by the Nation through
 899 funds budgeted in programs or through the Higher Education program.
 900 a. Reimbursement for books, tuition and fees is contingent upon the employee
 901 receiving at least a C (2.0 on a 4.0 point scale).
 902 b. Employees who receive less than the required grade point will be required to
 903 reimburse the program for whatever costs were incurred.
 904

905 D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

906 Disciplinary procedures provide a systematic process ~~for handling problem employees.~~
 907 ~~Disciplinary procedures serve to correct~~ correcting unacceptable ~~behavior~~ and ~~to protect the~~
 908 ~~Nation.~~ problematic behaviors in employees. Grievance procedures provide a systematic
 909 process for ~~hearing and evaluating job related disputes.~~ Grievance procedures serve to
 910 protect ~~protecting~~ employees from inconsistent and unfair treatment.- In all cases of
 911 grievance and discipline, supervisors are enjoined to use common sense, discretion and
 912 judicious good sense to resolve complaints between employees, exercise disciplinary

prerogatives, and handle grievances.
(HR Interpretation, 2-4-13) (HR Interpretation, 1-29-14)

1. Complaints

a. ~~Should~~General

- 1) The Nation recognizes that all employees have the right to file a complaint against another employee, and that all complaint investigations shall be handled with the utmost fairness, respect, and equality.
- 2) The Nation recognizes there are various levels of severity of complaints, and dependent on the severity of the complaint, not all complaints shall follow the same process.
- 3) An employee found to have given false information or made a false claim shall face disciplinary action in accordance with the appropriate policies and procedures.
- 4) Access to complaint information shall be limited to those who have a legitimate need to know.
- 5) Retaliation of any form against an employee ~~have a~~ for filing a complaint shall be strictly prohibited.

b. Types of Complaints

1) Employee Disagreements

- a) An employee disagreement ~~with another employee, he/she may lodge~~ occurs when an ~~informal~~ employee alleges they are having problems, misunderstandings, or frustrations with another employee.

2) EEO Violations

- a) An EEO violation occurs when an employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed.
 - i. Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 2. submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or
 3. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

3) ~~formal (written)~~Illegal Activities

- a) An illegal activities violation occurs when an employee alleges:
 - i. They witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;
 - ii. They witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;
 - iii. They witnessed or have knowledge of the use or possession of an illegal controlled substance; or
 - iv. They witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions.

4) Additional Complaints

- a) Complaints of alleged workplace violence shall be reported and processed in accordance with the Nation's Workplace Violence law.
- b) Complaints of use of prohibited drugs and/or alcohol during working hours shall be reported and processed in accordance with the Nation's Drug and Alcohol Free Workplace law.
- c. Complaint Procedures
- 1) Employee Disagreements
- a) An employee who alleges they have a disagreement with another employee may file a complaint with the employee's EEO Department.
- ~~a-b)~~ Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the supervisor of the employee with the complaint.
- ~~b-c)~~ The supervisor will shall have ten (10) working days to investigate the complaint and attempt to resolve the disagreement complaint.
- i. If the employee lodging The supervisor's ten (10) working day timeframe begins the day after the supervisor receives the complaint is dissatisfied from the EEO Department.
- ii. The supervisor shall meet with the attempted resolution, he/she employee filing the complaint as well as all other parties mentioned in the complaint.
1. Meetings between the supervisor and employees may ask occur in person, through video conferencing, or over the telephone.
2. The supervisor shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the supervisor shall move forward with the investigation based on the information they have.
- iii. If the supervisor cannot complete the investigation within the ten (10) working day timeframe, the supervisor may request a one (1) time five (5) working day extension from the EEO Department.
- iv. When the supervisor's investigation is complete, the supervisor shall contact the EEO Officer to mutually determine an appropriate resolution.
- ~~1.~~ If the supervisor cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the supervisor shall provide written justification for non-agreement on the resolution to both the Area Manager to attempt a resolution and the Human Resources Executive Director.
- ~~d. There is no further appeal of this process.~~
- v. The supervisor shall send the final resolution to their Area Manager to ensure accountability.
- vi. The supervisor shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.
- d) If the supervisor fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the Area Manager.
- i. The notice shall notify the Area Manager that the complaint was not addressed within the allotted ten (10) working days.
- ii. The notice shall inform the Area Manager that the supervisor violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.
- iii. The notice shall address the appropriate accountability of the supervisor.

1. If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.
- iv. The notice shall direct the Area Manager to complete the complaint investigation within ten (10) working days of receiving the notice from EEO.
- e) If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.
 - i. Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.
 - ii. The Area Manager shall have ten (10) working days to complete their investigation.
 - iii. The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.
 - iv. The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 1. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.
 2. The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.
 - v. When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.
 1. If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.
 - vi. The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.
 - vii. The Area Manager's resolution shall be final.
- f) If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.
 - i. The notice shall notify the General Manager level position that the complaint was not addressed within the additional ten (10) working days.
 - ii. The notice shall inform the General Manager level position that the Area Manager violated the complaint process by being negligent in the

- performance of their assigned duties and failure to appropriately investigate a complaint.
- iii. The notice shall address the appropriate accountability of the Area Manager.
- iv. The notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.
1. Investigation Procedure for all General Manager Level Positions, not the Oneida Business Committee
- a. The General Manager level position shall complete the investigation and reach a resolution within ten (10) working days of receiving the notice from EEO.
- b. The General Manager level position's ten (10) working day timeframe begins the day after the General Manager level position receives the complaint from the EEO Department.
- c. The General Manager level position shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- i. Meetings between the General Manager level position and the employees may occur in person, through video conferencing, or by telephone.
- ii. The General Manager level position shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the General Manager level position shall move forward with the investigation based on the information they have.
- d. When the General Manager level position's investigation is complete, the General Manager level position shall contact the EEO Officer to mutually determine an appropriate resolution.
- i. If the General Manager level position cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the General Manager level position shall provide written justification for non-agreement on the resolution to the Human Resources Executive Director.
- e. The final resolution shall be sent to the EEO Department for filing and reporting purposes.
- f. The General Manager level position's resolution of the complaint shall be final.
2. Investigation Procedure for the Oneida Business Committee
- a. When the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.
- 2) EEO Violations
- a) An employee may file a EEO Violation complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.

- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an EEO Violation complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
- i) The EEO Officer's resolution shall be final.

3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
- i) The EEO Officer's resolution shall be final.
- j) If the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.
 - i. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.

2. Discipline

2.a. Initiation of Disciplinary Actions

- a.1) Disciplinary actions will~~shall~~ be initiated by an immediate supervisor for the purpose of correcting ~~unacceptable~~unsatisfactory work performance. ~~The supervisor will always discuss or as the action with the employee being~~

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~~disciplined to ensure that the employee:~~resolution of an Employee Disagreement
complaint investigation.

- ~~1) Understands the reason for the disciplinary action;~~
~~2) Understands the expected work performance in light of the disciplinary action;~~
~~3) Understands the consequences of continued unacceptable behavior.~~

2) A supervisor Disciplinary actions shall initiate be initiated by an EEO Officer as the
resolution of an EEO Violation complaint or an Illegal Activities complaint
investigation.

b. Determination of Disciplinary Action.

1) All disciplinary actions shall commensurate with the seriousness of the
unsatisfactory performance— or violation.

2) Disciplinary actions shall be considered in progressive order.

a) The progressive order for discipline is as follows, unless otherwise noted:

i. Written warning (W);

ii. Suspension (S);

iii. Termination (T).

b) Deviation from Progressive Order

i. Any deviation from the recommended progressive order made by the
supervisor shall be justified in writing and approved by the EEO
Department.

ii. Any deviation from the recommended progressive order made by the
EEO Officer shall be justified in writing and approved by the Human
Resources Executive Director, or designee.

3) Accumulated Disciplinary Actions Warranting Termination

a) The following accumulations of disciplinary actions shall warrant the
termination of an employee:

i. Three (3) upheld warning notices within any twelve (12) month period;

ii. Two (2) upheld suspensions within any twelve (12) month period; or

iii. Any combination of three (3) upheld warning notices and/or upheld
suspensions within any twelve (12) month period.

c. Disciplinary Action for Unsatisfactory Work Performance.

~~b. 1) A supervisor must consider each~~may initiate disciplinary action ~~in~~
~~progressive order and justify a deviance from that recommended progression for~~
~~unsatisfactory work performance of an employee.~~

~~c. 2) The actions listed below are examples of unacceptable~~unsatisfactory work
performance and do not constitute a comprehensive or exhaustive list. ~~The~~
actions in parentheses are ~~guidelines for a supervisor to use~~the progressive order
standards to be used in administering disciplinary actions. ~~(W = written warning;~~
~~S = suspension; T = termination);, unless a deviation is sought and approved.~~

~~1) a) Work Performance~~

~~a) i. Insubordination (including disobedience) or failure/refusal to carry out~~
~~assignments or instructions. (W/S/T)~~

~~b) ii. Loafing, loitering, sleeping or engaging in personal business. (W/S/T)~~

~~c) iii. Unauthorized disclosure of confidential information or records. (S/T)~~

~~d) iv. Falsifying records or giving false information to departments and/or~~
~~employees responsible for Recordkeeping. (S/T)~~

~~e) v. Failure to provide accurate and complete information where such~~
~~information is required by an authorized person. (S/T)~~

~~f) vi. Failure to comply with health, safety and sanitation requirements, rules~~
~~and regulations. (W/S/T)~~

- ~~g~~vii. Negligence in the performance of assigned duties. (W/S/T)
- ~~2~~b. Attendance and Punctuality
- ~~a~~i. Failure to report promptly and observe work schedules (such as starting time, quitting time, rest and meal breaks) without the specific approval of the supervisor. (W/S/T)
- ~~b~~ii. A pattern of unexcused or excessive absenteeism and/or tardiness. (W/S/T)
- ~~3~~c. Use of Property
- ~~a~~i. Unauthorized or improper use of Oneida Nation property or equipment (for example, Oneida Nation vehicles, telephone, mail services, etc.) (W/S/T)
- ~~b~~ii. Unauthorized possession, removal or willful destruction of Oneida Nation or another employee's property (including improper use of possession of uniforms, identification cards, badges, permits or weapons). (Willful destruction of property may subject the violator to applicable liability laws.) (T)
- ~~e~~iii. Unauthorized use, lending, borrowing or duplicating of Oneida Nation keys. (T)
- ~~e~~iv. Unauthorized entry of Oneida Nation property, including unauthorized entry outside of assigned hours of work or entry into restricted areas without prior supervisory approval. (S/T)
- ~~e~~v. Theft ~~of~~ property shall include theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling or any of these actions, or conspiracy to commit such actions with Oneida Nation employees or other persons against the Nation, its guests, employee, members, customers and/or clients while on or about ~~Tribal~~the Nation's premises. (S/T) (BC Action, 12-2-88)
- ~~4~~d. Personal Actions and Appearance
- ~~a~~i. Threatening, attempting, or doing bodily harm to another person. (T)
- ~~b~~ii. Intimidating, interfering with or using abusive language toward customers, clients, co-workers or others. (S/T)
- ~~e~~iii. Making false or malicious statements concerning other employees, supervisors or program heads. (W/S/T)
- ~~e~~iv. Use of alcohol or illegal controlled substances during work hours. (S/T) (GTC Resolution, 01-05-09A)
- ~~e~~v. Reporting for work under the influence of alcohol or illegal controlled substances. (S/T) (GTC Resolution, 01-05-09A)
- ~~f~~vi. Failure to immediately report any work-related injuries to the immediate supervisor. (W/S)
- ~~g~~vii. Direct involvement in political campaigning during scheduled work hours. Violations include:
- ~~i~~1. Use of Oneida Nation employment title in Oneida Nation campaign activities. (W/S/T)
- ~~1~~a. Political materials include: leaflets, brochures, etc. which solicit support for candidates for office.
- ~~2~~b. Resolutions or petitions which propose that a political action be initiated.
- ~~3~~c. Leaflets, newsletters, or other written materials the purpose of which is to espouse political views or opinions.

- ~~h)~~viii. The acceptance of gifts or gratuities for personal gain in the course of official duties. (Customers are allowed to tip Bingo workers, Oneida ~~Tobacco~~Retail Enterprise workers, and Museum ~~Workers~~workers.) (W/S/T)
- ~~i)~~ix. Inappropriate dress or personal hygiene which adversely affects the proper performance of duties or constitutes a health or safety hazard. (W/S)
- ~~j)~~x. Failure to exercise proper judgment. (W/S/T)
- ~~k)~~xi. Failure to be courteous in dealing with fellow employees or the general public. (W/S/T)
- ~~h)~~xii. Any of the following acts by employees: Arson, bribery, perjury, obstruction or interference with an investigation authorized by the Oneida Nation. (S/T)
(BC Action, 12-2-88)
- xiii. The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or ~~controlled substances~~prohibited drugs on or about Oneida Nation premises ~~while on duty~~. (S/T)
- ~~m)~~1. Prohibited drug means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.
(BC Action, 12-2-88)
- ~~n)~~xiv. Any violation of duly adopted ~~Oneida~~laws of the Nation ~~ordinances~~. (W/S/T) (BC Action, 12-2-88)

~~5)~~ Sexual Harassment Policy

~~It is the Oneida Nation's Policy that all employees have a right to work in an environment free of discrimination which includes freedom from harassment, more specifically sexual harassment. The Oneida Nation considers sexual harassment, in whatever form, in the workplace to be a serious violation of an individual's dignity and personal rights. In all matters, where complaint of sexual harassment is lodged against an employee, the Oneida Nation has a duty and obligation to conduct a thorough investigation using discretion, good judgment and the principles and practice of strict confidentiality. If sexual harassment has been committed, the progressive disciplinary process is as follows (W/S/T).~~

~~1.) Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.~~

~~a)~~ Sexual Harassment (W/S/T)

~~i.)~~ Procedure

- 1311 a. ~~Should an employee have a complaint, he/she should file a formal~~
1312 ~~(written) complaint with the Human Resources Department.~~
1313 b. ~~The Human Resources Department is obligated to investigate the~~
1314 ~~complaint which is to be held in the strictest confidence. This~~
1315 ~~investigation shall be done within five (5) working days from~~
1316 ~~receiving the formal written complaint.~~
1317 c. ~~After investigating the complaint and the Human Resources~~
1318 ~~Department finds cause to take disciplinary action due to sexual~~
1319 ~~harassment violation, the employee will be disciplined accordingly~~
1320 ~~by their supervisor. This disciplinary action shall be initiated within~~
1321 ~~five (5) working days from the date the supervisor receives the~~
1322 ~~report from the Human Resource Department. (BC Actions, 7-16-93)~~
1323 3. ~~Accumulated Disciplinary Actions Warranting Termination (HR Interpretation, 1-29-14) (Provided~~
1324 ~~that the Drug and Alcohol Free Workplace Policy shall govern disciplinary actions~~
1325 ~~warranting termination for drug and alcohol related violations.) (GTC Resolution, 01-05-09A)~~
1326 a. ~~The accumulation of three (3) upheld warning notices within any twelve (12) month~~
1327 ~~period. (T)~~
1328 b. ~~The accumulation of two (2) upheld suspensions within any twelve (12) month~~
1329 ~~period. (T)~~
1330 c. ~~The accumulation of three (3) of any combination of upheld warning notices and/or~~
1331 ~~upheld suspensions within any twelve (12) month period. (T)~~
1332 4. ~~Substance Abuse Disciplinary Procedure Section was deleted. (GTC Resolution, 01-05-09-A)~~
1333 ~~Click here for Drug and Alcohol Free Workplace Policy.~~
1334 5. ~~d. Disciplinary Procedure (Disciplinary Flowchart)~~
1335 ~~The Procedure. The~~ following procedure shall be adhered to by the supervisor or
1336 EEO Officer whenever disciplinary action is taken.
1337 1) ~~Supervisor becomes aware of.~~ The supervisor or EEO Officer shall fill out a
1338 disciplinary action form within five (5) working days of either:
1339 a) the resolution of a complaint from which it has been determined that
1340 disciplinary action is warranted, or
1341 a.b) the determination that disciplinary action is warranted based on the
1342 unsatisfactory work performance or violation of an employee.
1343 1) ~~Supervisor investigates through a meeting with the employees and determines~~
1344 ~~whether disciplinary action is warranted.~~
1345 2) ~~If disciplinary action is warranted, within five (5) working days the~~ The supervisor
1346 will or EEO Officer shall fill out the ~~five (5) part~~ disciplinary action form stating in its
1347 entirety and ensure the information contained on the form is complete and
1348 accurate. The disciplinary action form shall include at a minimum the following
1349 information:
1350 a) Statement of the behavior for which the disciplinary action is being taken;
1351 the;
1352 b) The time and date of its occurrence; and the
1353 b.c) The specific policy section under which action is being taken.
1354 ~~c.3) The form will be discussed~~ supervisor or EEO Officer shall promptly hold a
1355 meeting with the employee to discuss the disciplinary action form with the
1356 employee and identify a corrective action will be identified.
1357 a) The meeting between the supervisor or EEO Officer and the employee may
1358 occur in person, through video conferencing, or over the telephone.

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- b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:
- i. Understands the reason for the disciplinary action;
 - ii. Understands the expected work performance in light of the disciplinary action; and
 - iii. Understands the consequences of continued unacceptable behavior.
- ~~d.4)~~ The employee being disciplined will~~shall~~ sign the disciplinary action form.
- ~~4)a)~~ Should an employee being disciplined refuse to discuss the action with his/her~~their~~ supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form and distribute as in 5.e.
- 5) Copies will be given to the employee, the HRD Manager, the supervisor, the
Within one (1) working day of the conclusion of the meeting with the employee, the supervisor or EEO Officer shall provide copies of the signed disciplinary action form, or disciplinary action form noting the date of refusal, to the:
- a) Employee being disciplined;
 - b) Human Resources Executive Director;
 - c) Supervisor;
 - d) Area Manager; and
 - e) Appropriate General Manager within twenty four (24) hours of the conference with the employee. ~~HR Interpretation 12-8-16)~~ level position.
- f.6) Should a disciplinary action result in the suspension or termination of an employee, the following guidelines shall apply:
- a) The Consultation on Suspensions
 - ~~4)i.~~ If the supervisor is issuing the discipline, then the supervisor shall consult with the HRD Manager~~EEO Officer~~ to mutually determine the length of the suspension.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension.
 - ~~a)b)~~ Suspensions will~~shall~~ be limited to a maximum period of three (3) weeks.
 - i. Suspension/terminations~~Suspensions~~ that are overturned in the grievance process shall result in the employee receiving back pay for the time they were suspended.
- 7) Should a disciplinary action result in the termination of an employee, the following guidelines shall apply:
- a) Consultation on Termination
 - i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine that the termination is the appropriate disciplinary action.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action.
 - b) Terminations that are overturned in the ~~appeal~~grievance process shall result in the employee receiving back pay for the ~~days he/she was suspended/~~time they were terminated.
- 8) The Human Resources Department may void a disciplinary action for clear procedural errors.
- a) The EEO Officer may void a disciplinary action taken by a supervisor for clear procedural errors.

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- b) The Human Resources Executive Director, or designee, may void a disciplinary action taken by an EEO Officer for clear procedural errors.
- c) Notification of a voided disciplinary action shall be sent to the supervisor or EEO Officer and the employee which identifies the procedural error.
- 9) For any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department shall send a letter to the Area Manager.
- a) The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee.
- b) The letter shall address the appropriate accountability of the supervisor.
3. Grievance [\(Grievance Flowchart\)](#)

a. General

- 1) An employee who receives a disciplinary action which ~~he/she believes~~ they believe is ~~unfair/improper~~ may grieve the action.
- 2) The ~~Grievance~~ grievance process ~~(including appeals of disciplinary action)~~ shall be conducted with utmost consideration for due process ~~(within the time limits set forth herein)~~ but will allow and account for recognized ~~Tribal~~ Nation holidays of the Nation and unforeseen circumstances ~~such as illnesses, deaths in the immediate family of principals, etc.)~~. ~~The HRD office will make every attempt to ensure that grievance procedures are concluded within forty five (45) working days; however, extensions granted for reasonable unforeseen circumstances (as determined by the HRD Manager) may extend the process.~~ The
- b. Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline.
- ~~6.c.~~ Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process ~~will~~ shall for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: [\(HR Interpretation, 8-19-2011\)](#) [\(HR Interpretation, 1-29-2014\)](#)
- a. For all disciplinary actions, regardless of severity:
- 1) Appeal to the Area Manager
- ~~1)a)~~ a) The employee (petitioner) ~~must~~ shall file an appeal in writing with the Area Manager and the Human Resources Executive Director, or designee, within ten (10) working days from the day the employee receives the disciplinary action.
- ~~a)i.~~ i. The employee may seek the assistance of ~~a spokesperson or an~~ an advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.
- ~~b)~~ The appeal ~~must be filed with the Area Manager and the HRD Manager (or designee) within ten (10) working days from the day the employee receives the disciplinary action.~~
- 2) b) The Area Manager, for all disciplinary action investigations, ~~will~~ shall have ten (10) working days from the receipt of the employee's appeal to complete the investigation. ~~One extension of no more than five (5) working days may be requested of and granted by the HRD Manager (or designee) at his or her discretion.~~
- i. The **supervisor** shall meet with the following individuals during the disciplinary action investigation:

1. Employee filing the appeal of the discipline;
2. Supervisor who issued the discipline; and
3. Any other witnesses mentioned in the appeal that were not mentioned in the disciplinary action.
- ii. Meetings between the Area Manager ~~will do~~ and the employees may occur in person, through video conferencing, or by telephone.
- iii. The Area Manager shall document all attempts made to meet with an employee. If an employee is unavailable to meet within the grievance timelines, the Area Manager shall move forward with the investigation based on the information they have.
- iv. One (1) extension of no more than five (5) working days may be requested of and granted by the Human Resources Executive Director, or designee, at their discretion.

~~3)c)~~ The Area Manager shall take one of the following actions:

- ~~a)i.~~ Uphold the disciplinary action;~~or~~
- ~~b)ii.~~ Modify the disciplinary action; or
- ~~iii.~~ Overturn the disciplinary action.

~~1.~~ If a suspension or termination is overturned, the employee (petitioner) shall be reinstated to the position the employee was suspended or terminated from with full back pay.

~~d)~~ The Area Manager ~~will~~shall file ~~at their~~ decision with the employee and the HRD Manager ~~(Human Resources Executive Director, or designee) and will.~~ The decision of the Area Manager shall include:

- ~~i.~~ a reason for the decision;
- ~~ii.~~ an explanation of the decision; and
- ~~4)iii.~~ the action to be taken as a result of it.

~~e)~~ Filing a ComplaintAn Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline.

~~b-2)~~ Appeal to the Oneida Personnel Commission (BC Resolution, 3-18-19)

~~1)a)~~ An employee may appeal the Area Manager's decision to the Oneida Personnel Commission by filing a ~~complaint~~grievance with the Human Resources DepartmentGovernment Administrative Office on behalf of the Oneida Personnel Commission within ten (10) working days from the employee's receipt of the Area Manager's decision.

~~a)~~ The employee shall file the appeal within ten (10) working days from the employee's receipt of the Area Manager's decision

~~2)b)~~ The Human Resources DepartmentGovernment Administrative Office shall notify the Human Resources Department Manager of receiptExecutive Director of the appeal of the Area Manager's decision within one (1) business day of receipt of the appeal.

~~c.~~ Collection of Information

~~1)c)~~ The Human Resources DepartmentThe Government Administrative Office shall collect all information the Area Manager used in making the decision to uphold or modify the disciplinary action.

~~d.~~ Review of the Complaint

~~d)~~ The Human Resources DepartmentThe Government Administrative Office shall provide the information obtained to the Oneida Personnel Commission members selected to serve as the hearing body for the complaint, and the appeal.

- 1508 ~~1)e.~~ The Oneida Personnel Commissioners shall review all the information
 1509 submitted by the ~~Petitioner~~employee petitioner and the ~~Human Resources~~
 1510 ~~Department~~Government Administrative Office to determine if one ~~(1)~~ or both
 1511 conditions exist;
- 1512 ~~a)i.~~ The decision of the Area Manager is clearly against the weight of the
 1513 evidence; ~~and/or~~
- 1514 ~~b)ii.~~ Procedural irregularities were exhibited during the appeal process that
 1515 were harmful to one of the parties to the grievance.
- 1516 ~~2)f)~~ If Oneida Personnel Commission members selected to serve as the hearing
 1517 body for the ~~complaint~~appeal find one ~~(1)~~ or both conditions exist, the
 1518 ~~Human Resources Department~~Government Administrative Office shall
 1519 convene the Oneida Personnel Commission to hear the grievance.
- 1520 ~~3)g)~~ If the Oneida Personnel Commission members find that neither condition
 1521 exists, the Oneida Personnel Commission ~~will~~shall deny the appeal for a
 1522 hearing and affirm the decision of the Area Manager.
- 1523 ~~e.h)~~ Convening a Hearing
- 1524 ~~1)i.~~ The Human Resources DepartmentThe Government Administrative
 1525 Office shall schedule a time and location for the grievance hearing and
 1526 shall confirm the participation of the Oneida Personnel Commission
 1527 members selected to serve as the hearing body for the complaint.
- 1528 ~~2)ii.~~ The Human Resources DepartmentThe Government Administrative
 1529 Office shall send notice of the hearing to the petitioner, respondent, and
 1530 Oneida Personnel Commission members at least five (5) working days
 1531 prior to the hearing date.
- 1532 ~~3)iii.~~ The Human Resources DepartmentThe Government Administrative
 1533 Office shall provide copies of all information on the subject case upon
 1534 which the disciplinary action was upheld or modified by the Area
 1535 Manager to the members of the Oneida Personnel Commission at least
 1536 two (2) working days prior to the appeal date.
- 1537 ~~4)iv.~~ The Human Resources DepartmentGovernment Administrative Office
 1538 shall allow the petitioner and respondent access to this information in
 1539 the ~~Human Resources Department~~Government Administrative Office at
 1540 least two (2) days prior to the appeal date.
- 1541 ~~f.i)~~ Hearing Procedure
- 1542 ~~1)i.~~ The order of presentation for the hearing shall be:
- 1543 ~~a)1.~~ Petitioner's opening statement;
- 1544 ~~b)2.~~ Respondent's opening statement;
- 1545 ~~c)3.~~ The Petitioner's case;
- 1546 ~~d)4.~~ The Respondent's case;
- 1547 ~~e)5.~~ Petitioner's closing statement; and
- 1548 ~~f)6.~~ Respondent's closing statement.
- 1549 ~~2)ii.~~ The petitioner shall have the right to be represented by an advocate, at
 1550 ~~his or her~~their own expense. ~~The respondent and/or area manager~~Area
 1551 Manager who is party to the grievance action shall have access to an
 1552 advocate for consultation and/or representation. Should the petitioner
 1553 engage outside professional legal representation, the respondent and/or
 1554 ~~area manager~~Area Manager shall have access to the professional legal
 1555 representation.
- 1556 ~~a)1.~~ Should the petitioner and ~~his or her~~their representative both fail to
 1557 appear for any scheduled hearing without justifiable cause, the

- 1558 decision of the Area Manager shall be upheld, and the grievance
1559 dismissed.
- 1560 ~~b)2.~~ 2. Should the respondent and ~~his/her~~their representative both fail to
1561 appear for any scheduled hearing without justifiable cause, the
1562 decision of the Area Manager shall be overturned.
- 1563 ~~3)iii.~~ iii. If new evidence which was previously unavailable is introduced at any
1564 point during the hearing process, the Oneida Personnel Commission
1565 hearing shall be suspended, and the case ~~will~~shall be remanded to the
1566 Area Manager for reconsideration.
- 1567 ~~a)1.~~ 1. The Area Manager shall reconsider the decision in light of the new
1568 evidence and issue a decision within three (3) working days.
- 1569 ~~b)2.~~ 2. This procedure may be invoked only once.
- 1570 ~~c)iv.~~ iv. Thereafter, the appeal process shall continue to a conclusion based on
1571 the information originally presented and the newly introduced evidence.
- 1572 ~~i.1.~~ 1. If the Area Manager overturns ~~his-or-her~~their decision, the case
1573 ~~would~~shall not come back for a hearing.
- 1574 ~~ii.2.~~ 2. If the Area Manager affirms ~~his-or-her~~their decision, then the case
1575 ~~will~~shall come back to the Oneida Personnel Commission to complete
1576 the hearing.
- 1577 ~~4)v.~~ v. The Oneida Personnel Commission's decision shall be based solely on the
1578 information presented to them before the appeal hearing, the record of
1579 the prior proceedings, and any new evidence if introduced
1580 appropriately.
- 1581 ~~5)vi.~~ vi. The Oneida Personnel Commission may:
- 1582 ~~a)1.~~ 1. Uphold the disciplinary action; or
- 1583 ~~b)2.~~ 2. Overturn the disciplinary action and:
- 1584 ~~i.a.~~ a. Reinstatement the employee (petitioner) with ~~full~~ back pay for any lost
1585 time in accordance with the Back Pay law; or
- 1586 ~~ii.b.~~ b. Reinstatement the employee (petitioner) without back pay.
- 1587 ~~6)vii.~~ vii. The Oneida Personnel Commission shall provide notification of the final
1588 decision within five (5) working days following the hearing. Notification
1589 of the final decision shall include;
- 1590 ~~a)1.~~ 1. The final decision;
- 1591 ~~b)2.~~ 2. The reason(s) for the final decision; and
- 1592 ~~c)3.~~ 3. The action to be taken as a result of the final decision.
- 1593 ~~7)j) The Human Resources Department~~The Government Administrative Office
1594 shall keep records of the hearing, and provide copies of administrative
1595 advocacy rules, procedural rules, and time line rules to interested parties.
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- 1599 k) If the Oneida Personnel Commission is unable to fulfil its responsibility to hear
1600 an appeal of an Area Manager's decision, then the employee may appeal the
1601 Area Manager's decision to the Oneida Nation Judiciary by filing a complaint
1602 with the Trial Court within ten (10) days from the employee's receipt of the
1603 Area Manager's decision.
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SECTION VI – SAFETY AND HEALTH

A. POLICY

The personal safety and health of each employee, customer and client of the Oneida Nation is of primary importance. The prevention of injuries and illnesses is of such importance that it will take precedence over operating productivity whenever necessary.

The Oneida Nation will maintain a safety and health program conforming to the best practices available. To be successful, this program will work to develop the proper attitudes toward on-the-job injury and illness prevention on the part of supervisors and employees. This program will

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strive to develop a high level of cooperation in all safety and health matters between supervisors and employees and among employees.

The objective of this program is a safe and healthy environment that will reduce the number of job-related injuries and illnesses to an absolute minimum. The Nation's goal is zero accidents and illnesses.

B. PROCEDURES

The Oneida Nation Safety Committee will adopt and enforce through the Personnel Department procedures related to the education of the Nation's work force in matters of safety and health. These procedures will include all education and prevention activities, assessments and evaluations, and reporting.

SECTION VII – PROGRAM/ENTERPRISE RULES & REGULATIONS

- A. Enterprises and programs may establish internal rules and regulations to facilitate the administration of Oneida Nation Personnel Policies and Procedures.
1. In no case will these internal rules and/or regulations conflict with or take the place of Oneida Nation Personnel Policies and Procedures.
 2. Enterprises and programs which establish internal rules and regulations will file a copy of the rules and regulations with the Personnel Department.

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SECTION VIII – RECORDKEEPING

A. PERSONNEL OFFICE

1. Basic records to be retained include:
 - a. Reference Data
 - b. Job Descriptions
 - c. Resumes and Applications
 - d. Interview notes/selection information
 - e. Resignations
 - f. Employee tax exemption claims

- g. Disciplinary action information
- h. Performance evaluations
- i. Insurance coverage/changes
- j. Transfers
- 2. The Personnel Office shall keep and maintain a complete record of each employee throughout his/her term of employment.
 - a. Oneida Nation employees shall have access to their employment file.
 - b. Employment files kept by the Personnel Office shall be considered confidential information. Release of any information to a third party must have the consent of the employee in writing.

B. ACCOUNTING DEPARTMENT

- 1. Basic records to be retained include:
 - a. Attendance records
 - b. Employee Time Sheets
 - c. Earnings - in the form of computer printouts
 - d. Travel - in the form of complete travel authorization forms.
 - 1) Time sheets and travel reports shall be filled out by every employee for pay period, collected by the program head, and forwarded to the Department.
- 2. The Accounting Department shall retain all records for a period of seven (7) years. [\(BC Action, 10-14-09B\)](#)

SECTION IX – PRIVACY AND CONFIDENTIALITY OF EMPLOYEE RECORDS

The Human Resources Department of the Oneida Nation collects information from employees in order to make decisions regarding personnel actions including hiring, transfers and promotions, training, compensation and benefits, disciplinary actions and other job opportunities. This information is maintained by the Human Resources Department in individual files for as long as the person is an employee of the Oneida Nation.

A. STATEMENT OF POLICY

As a general rule, the Oneida Nation considers all information contained in these files to be private and confidential. No information of any type shall be released to any person or agent of

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1771 any organization without the written consent of the employee except under the conditions
1772 outlined herein.

1773 B. EMPLOYEE ACCESS

1774 In addition, the Oneida Nation recognizes that the information contained in each employee's
1775 file is personal and that the lives of its employees are subject to changes. Therefore, the Oneida
1776 Nation provides for employee access to his/her personnel file. Employees are allowed to review
1777 their file and submit a statement of amendment should their review uncover any inaccurate,
1778 obsolete or irrelevant information. Should any information come into dispute, an employee's
1779 statement of dispute will be accessed into the file.

1780 C. RELEASE OF INFORMATION TO THIRD PARTIES

1781 The Oneida Nation is obligated by law to release certain information to outside parties. Such
1782 parties include the State of Wisconsin's Unemployment Compensation Department and its
1783 Workers Compensation Division and the United States Social Security Administration. Any
1784 additional information released to a third party by the Human Resources Department related to
1785 employee records shall consist of summary information and will not include any identifying
1786 personal information. (Such information may be total numbers of males and females in the
1787 workforce, mean, median and average age of the workforce, etc.)

1788 The Oneida Nation will release personal information on employees when a request is
1789 accompanied by a written release signed by the employee. The Human Resources Department
1790 will make every effort to validate this request by contacting the employee. In no case shall the
1791 Oneida Nation release personal information from an employee's file without this consent.

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LEGISLATIVE OPERATING COMMITTEE PUBLIC MEETING

Oneida Personnel Policies and Procedures Amendments

Norbert Hill Center Business Committee Conference Room and Microsoft Teams
January 12, 2023 12:15 p.m.

Present: Jennifer Webster, Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Bonnie Pigman, Microsoft Teams: Daniel Guzman King, Terri Schiltz, Nicholas Metoxen, Whitney Wheelock, Rita Reiter, Lora Danforth. Stefanie Reinke, Wendy Alvarez, Laurel Meyerspooner, Peggy Van Gheem, Tina Jorgensen, Chad Fuss, Sidney White, Louise Cornelius, Kelly McAndrews, Lori Metoxen, Laura Laitinen-Warren, Karen Smith, Kathe Cornelius, Artley Skenandore, Michelle Hill, Melanie Burkhart, Michelle Tipple, Jessica Vandekamp, Kelly Skenandore-Holtz, Reynold Danforth, Henrietta Cornelius, Racquel Hill, Gregory Matson, Lavina Cornelius, Lisa Rauschenbach, Grace Delgado, Mark Powless, Eric Boulanger, Matthew J. Denny, Debra Santiago, Kara Melchert, Debra Danforth, Lori Hill, Kristal Hill, Carrie Lindsey, Todd Vanden Heuvel, Trina Schuyler, Gunladunt Webster, Sharon Mousseau, Monica Doxtator, Michelle Braaten, Mari Kriescher, Kristen Jorgenson-Dann, Joy Salzwedel, Michelle Demmin, Lucy Neville, Danielle White, Mary Graves

Jennifer Webster: Good Afternoon. The time is 12:15 p.m. and today's date is Thursday, January 12, 2023. Do we have any idea why there is such an echo?

I'll now call to order the public meeting for the proposed amendments to the Oneida Personnel Policies and Procedures.

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 Thursday, January 19. *[Jenny's mic mutes]*.

Tina Jorgensen: Jenny, you're muted.

Jennifer Webster: This mic? Okay. 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 person. This time limit shall be applied equally to all persons.

We will now begin today's public meeting for the proposed amendments to the Oneida Personnel Policies and Procedures.

The purpose of the Oneida Personnel Policies and Procedures is to provide for the Nation's employee related policies and procedures including recruitment, selection, compensation and benefits, employee relations, safety and health, program and enterprise rules and regulations, and record keeping. Amendments to the Oneida Personnel Policies and Procedures are being made to address the selection process, as well as the complaint, discipline, and grievance procedures.

Those who wish to speak please can come to the microphone, or if you're online you can raise your hand. Please state your name when making a comment. We have nobody in person at the Norbert Hill Center to speak. Is there anybody online that would like to provide comments? Please raise your hand. Calling on Tina Jorgensen, please state your name.

Tina Jorgensen: Tina Jorgensen. I have a couple of questions and then two comments. I want to know, well one of, one thing that is not included in the current Personnel Policies and Procedures for immediate family definition does not include aunt and uncle. And I believe that as an important part of our families. So, I feel this should be added to the Personnel Policies and Procedures.

Also, I have a question. If the Personnel Commission is not, is in place and the employee still appeals to the Judiciary, or can the employee still appeal to the Judiciary if they're not satisfied with the decision through the Personnel Commission process?

With the complaint process, what if a supervisor becomes aware of an issue - and it's not really considered a complaint, does it still have to go through EEO?

And I'd like somewhere I don't know if it's an Indian preference law, probably. But we have a large community of members that are not Oneida or not considered Oneida enrolled because they live in Canada. And they could be interested in applying for our positions, specifically in Cultural Heritage, and I'd like for somehow Haudenosaunee communities or community members to be

considered as part of our Indian preference. Currently, we only can post Oneida enrolled only or not. And I would like Oneida enrolled only at least to include those communities, or have the ability to post for those to include those communities. Those are my questions and comments.

Jennifer Webster: So Tina, it's not a question and answer today, but what those will be included in the memo. So, thank you.

Tina Jorgensen: Thank you.

Jennifer Webster: Is there anybody else online that would like to speak? Louise Cornelius, please go ahead.

Louise Cornelius: Good afternoon. My name is Louise Cornelius and I work for the gaming. At Oneida Casino as the General Manager and I just have a question, or a comment, we still we still can submit written comments until January 19th, correct?

Jennifer Webster: Correct.

Louise Cornelius: Okay, so we just wanted to make sure because I informed the staff, but I wanted to confirm that. Thank you.

Jennifer Webster: Mmhm. Written comments can be submitted until close of business day on Thursday, January 19th.

Louise Cornelius: Thank you much.

Jennifer Webster: Is there anybody else that would like to speak to this? We'll go ahead and keep this open till 12:30 should anybody want to come forward and speak. Artley Skenandore, I see your hand. Go ahead.

Artley Skenandore: Uh, just a, a statement relative to reading the executive summary. I did want to acknowledge the a, the bereavement expansion from three (3) to five (5) year, uhh three (3) days to five (5) days as a, as a very appropriate response to assist in the uh, in the development of our community overall. And looking across the country, many, many tribal nations are walking along this same path, and it certainly should be something that the rest of corporate America should look at relative to offering that opportunity of encouragement to support families. So, I just wanted to acknowledge that and make mention of uhh, that's a step in the, in a good direction for our community.

Jennifer Webster: Thank you Art. Melanie Burkhart.

Melanie Burkhart: Yes, thank you. I just have a, a comment on the complaint area. I disagree with having the complaint process included in the law, because then that ties our hands in terms of needing to be able to update a process because it's part of a law. So, I don't think that should be included in the law. Thank you.

Jennifer Webster: Thank you Melanie. Michelle Tipple.

Michelle Tipple: Good afternoon. Michelle Tipple with Oneida Comprehensive Health Division. Just a comment and this may be in the works, but just to mention that three (3) different types of complaints and the different types of appeal processes, it would be helpful, I think to supervisors to see that in a maybe like a process map flow process or something that kind of illustrates those processes. Because you know, hopefully we're not in those processes often that we know them by heart, but that would help if someone has to go through that process.

And then the second comment is I support removing the wage deduction from probationary employees because of the challenge in recruiting right now for our workforce. Thank you.

Jennifer Webster: Thank you. Is there anybody else that like to come forward and provide comment? Kelly Skenandore-Holtz, please go ahead.

Kelly Skenandore-Holtz: Good Afternoon, Kelly Skenandore-Holtz. I have some comments and questions about the section where EEO will be initiating disciplinary action in lieu of the supervisors in an EEO issue or illegal activity, I believe is the verbiage. My question is, what research has been done regarding the implications of this decision? Umm, in the operations of the organization. What other alternatives have been explored versus EEO issuing the disciplines?

And then a comment that, there is, it feels as though there is a lot of support for leadership development in this organization and this process eliminates umm, the need for leadership development. It eliminates the ability for supervisors to take the action. It also eliminates supervisors' authority. And is there a set process of how if EEO is issuing disciplinarys, what it will be the process as to how they determine what level of disciplinary action will take place and then what will be the appeal process, if anything, for supervisors that don't agree with the level of discipline that has been issued.

[Audio from another person's computer begins playing.]

Jennifer Webster: Okay, I think somebody is listening to the Facebook live, I can hear them. If you can turn your mic off unless you are speaking for the public meeting today. Thank you.

Thank you Kelly. Racquel Hill, please go ahead.

Racquel Hill: Racquel Hill. My question is in regards to the reason why this needs to go to the General Tribal Council for the approval. I know that it's understood that it's always been done this way, but does it need to be? Now, this is basically day-to-day business and it's in regards to the organization. So, that is the question, and I'm wondering if criteria will be set and the things that GTC needs to approve going forward. Thank you.

Jennifer Webster: Thank you Rocky. Tina Jorgensen, please go ahead.

Tina Jorgensen: I was going to submit written comments in addition, but I think I'd like to also reiterate what Kelly had said about the complaint process. I disagree with changing the complaint process and putting it in the hands of fully of the EEO Department. It appears in reading through those flow charts and through the proposed amendments that there is, this is being put in, and this is my opinion, that it's being put in place because there's a distrust in the supervisors actually doing their duties and responsibilities with the complaint process and holding employees accountable. And we have in the past, several times, put things in place because of distrust. And I think instead there should be more efforts to educate supervisors, maybe require more leadership development. And educate on the process and the responsibilities. And then also for area managers to hold those in, those supervisors or managers accountable instead of putting this in the hands of a different department.

Jennifer Webster: Thank you Tina. Is there anybody else that like to come forward and provide comment from public meeting today? And just a reminder, you can put your name and e-mail address in the chat to make sure that you receive a copy of the memorandum in regards to today's public meeting. Louise Cornelius, please go ahead.

Louise Cornelius: I just wanted to add my comments to Kelly Skenandore-Holtz on the umm, on the EEO process on the disciplinary action, I don't agree with them issuing the disciplinary action. I think again, I concur with her, and it eliminates the supervisor's authority. They're not familiar with what exactly is going on when those type of things are required, but I do, umm I do know that they do consult with them before issuing any type of disciplinary action with our employees. So, I think that works fine as it is, not to give them that authority. Thank you.

Jennifer Webster: Thank you Louise. We'll keep this open a few more minutes. I know a lot of people jumped on late.

Again, the floor is open. If anybody wants to make comments for today's meeting.

Okay, with there being no more speakers, the public meeting for the proposed amendments for the Oneida Personnel Policies and Procedures is now closed at 12:34 p.m. I do believe we have record attendance for a public meeting today at fifty-three (53) participants. I wanna thank you all for, for attending and reading through the Policy. Again a reminder, written comments may be submitted until close of business days on Thursday, January 19, 2023. Thank you.

-End of Meeting-

From: [Lisa A. Liggins](#)
To: [LOC](#)
Cc: [Lisa M. Summers](#); [Brooke M. Doxtator](#)
Subject: RE: Comments re: Oneida Personnel Policies and Procedures Amendments
Date: Thursday, January 19, 2023 4:07:05 PM
Attachments: [image001.png](#)

I am in full support of the written comments submitted by the OBC Area Manager and the BCC Supervisor to the LOC regarding the Oneida Personnel Policies and Procedures Amendments.

I would like this email of support to be accepted by my written comments regarding this piece of legislation.

Thank you.

[Lisa Liggins](#)
 Secretary
 Oneida Business Committee

From: Brooke M. Doxtator <bdoxtat1@oneidanation.org>
Sent: Thursday, January 19, 2023 3:55 PM
To: LOC <LOC@oneidanation.org>
Cc: Lisa M. Summers <lsummer2@oneidanation.org>; Lisa A. Liggins <lliggins@oneidanation.org>
Subject: Comments re: Oneida Personnel Policies and Procedures Amendments

Please see the attached comments regarding the Oneida Personnel Policies and Procedures Amendments.

[Yawa?kó](#)

[Brooke Doxtator](#)
 Boards, Committees, and Commissions Supervisor
 Government Administrative Office (GAO)

office 920.869.4452



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From: [Matthew W. Denny](#)
To: [LOC](#)
Subject: OPP Proposed ammendments
Date: Thursday, January 12, 2023 11:24:13 AM

In regards to the OPP Amendments...

I am against the proposed amendment that allows the EEO office to investigate and issue disciplinary action. For whatever reason!

As it was explained by Matt J Denny, EEO Director, that the purpose of this amendment is because supervisors do not do or know how to do disciplinary action when it comes to EEO violations and/or Illegal activities.

This is a problem with the training of the supervisor and/or Area Manager. The problem is not solved by taking this duty away from the supervisor, and giving it to another entity who does not discipline. The problem gets fixed by **training** the supervisor, and **holding them accountable** when they do not perform their duties correctly, just like any other employee. This seems to be the real issue to the problem.

The EEO office has been designated as an impartial entity in regards to disciplinary actions. They currently have authority to void disciplinary actions that have clear procedural errors. This office looks out for employees of the Nation, and the Nation, not just the Nation. Giving them authority to discipline employee takes away their impartial status in the disciplinary procedure, and makes them a tool of the Nation only. The proposal also talks about who hears appeals of EEO initiated disciplines, which is different then any other procedure. This causes confusion and is unnecessary.

By having a properly trained Supervisors and Area Managers, this issue, large or small, will be fixed. Giving another entity who is not the employee's supervisor, disciplinary authority, is NOT the answer, and opens doors that should not be opened. Ignorance and laziness of Supervisors and Area Managers must be addressed by HRD and the OBC with training. **Proposed solution:** Make this issue an requirement for Supervisors/Area Managers **before** they can discipline, just like Interview Training is required before Hiring. Make EEO do the training.

Good Day.

Matthew W. Denny
Roll #1426

From: [Wendy M. Alvarez](#)
To: [LOC](#)
Cc: [Todd A. Vanden Heuvel](#)
Subject: OPP feedback on proposed laws
Date: Friday, January 13, 2023 2:17:12 PM
Attachments: [image001.png](#)

Good afternoon,

I would like to submit some comments based on the Proposed Amendments to the Oneida Policies and Procedures.

Line 301 What it the OPC role? Are we going to meet with them to review how this will look?

Line 661 If an employee quits in the first 90 days do they received PTO payout? If so, can they add “**Employees who resign** or are terminated during”

Line 708 Additional Duties, there is nothing written . Should the Work Standard be referend?

Line 715 to 724 Meeting attendance – is this the correct place under leaves?

Line 864 “has not attained the highest step? We do not have steps in the grades an longer. Change step to wage?

Line 898to 903 Are we reimbursing for classes? I didn’t think we were doing this any longer

Line 1725 What reference data do we retain?

Line 1728 What interview notes/selection information do we retain? If it is on this list, do we have to retain the records for a specified time period?

Respectfully,

Wendy M Alvarez
 Employment & Recruitment Director
 920-490-3642
 Human Resources



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

PO Box 365
 Oneida WI 54155
Oneida-nsn.gov

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From: [Sharon A. Mousseau](#)
To: [LOC](#)
Cc: [Jolene D. Hensberger](#); [Sacheen Lawrence](#); [Peggy A. Van Gheem](#)
Subject: ONSS comments for OPPP
Date: Wednesday, January 18, 2023 3:59:06 PM
Attachments: [ONSS Signed MOA 01 18 23.pdf](#)
[image001.png](#)
[ONSS MOA Grievance Process SOP_FINAL.pdf](#)
Importance: High

Good afternoon,

Having reviewed the Oneida Personnel Policies and procedures amendments, I wanted to comment regarding the Oneida Nation School System and how our MOA and SOP for Grievance Process may interact with the newly updated process.

While the MOA is old, being signed in March of 1988, although it can not be amended except by the Oneida General Tribal Council or at the express direction of the Oneida General Tribal Council and shall be effect upon ratification by the Oneida General Tribal Council. This is the first attachment. The second attachment is an updated signed ONSS MOA Grievance Process, which was approved by the School Board on Jan. 4, 2021.

On page 13 of the OPPP, section Grievance, should there be a note of the School Board's authority or process with grievances? Or would this process be included with the language included on the top of page 14 when there is a reference to the boards, committees and commissions? So when the process is replaced by the Government Administrative Office, would the school then have the process replaced by the Oneida Nation School Board?

We have worked with the BIE on processes and procedures for the School Board to follow and I just don't want their authority to be taken away until we do change the MOA. Which is long overdue to be updated.

Thanks for your time and efforts with the public comment period for the OPPP.

Sheri

Sharon (Sheri) A. Mousseau, Superintendent

Oneida Nation School System

N7125 Seminary Rd.


Oneida, WI

920-869-4623(office)/920-869-1684 (fax)

smousseau@oneidanation.org

www.oneida-nsn.gov



 <p>ONEIDA ONEIDA NATION SCHOOL BOARD</p> <p>STANDARD OPERATING PROCEDURE</p>	<p>TITLE: Oneida Nation School System MOA Grievance Hearing Process and Panel</p>	<p>ORIGINATION DATE: 05/07/11 REVISION DATE: 08/16/12; 12/28/20 EFFECTIVE DATE: One week after Board approval</p>
<p>AUTHOR: Sharon Mousseau</p>	<p>APPROVED BY: <i>Superintendent</i> <i>Sharon A. Mousseau</i></p>	<p>DATE: 12/28/20</p>
<p>DEPARTMENT: School System</p>	<p>APPROVED BY: <i>Oneida Nation School Board</i></p>	<p>DATE: 08/16/12; 1/04/2021</p>
<p>DIVISION: Non-Divisional</p>	<p>APPROVED BY: <i>School Board Chair</i> <i>[Signature]</i></p>	<p>DATE:</p>
<p>EEO REFERENCE NUMBER: 5889</p>	<p>REVIEWED BY: <i>EEO Director</i> <i>[Signature]</i></p>	<p>DATE: 1/08/21</p>
<p>Page 1 of 5</p>	<p>APPROVED BY: <i>HRD Manager</i> <i>[Signature]</i></p>	<p>DATE: 01/08/21</p>

1. PURPOSE:

- 1.1 The School Board establishes procedures of the Oneida Nation School System ("ONSS") related to employee grievances of disciplinary actions taken by the School Board, including termination.

2. DEFINITIONS

- 2.1 APA – Administrative Procedures Act (Ch.1) of the Oneida Nation.
- 2.2 BC – Business Committee
- 2.3 Blue Book – the Oneida Nation Personnel Policies and Procedures, formerly known as the Oneida Tribal Management System.
- 2.4 Business days – Monday through Friday, 8:00 a.m. to 4:30 p.m., when the governmental and administrative offices of the ONSS are open to the public, excluding all Tribal holidays.
- 2.5 Cause – a violation of policies, or rules, or an individual employee contract, or unprofessional conduct, or the documented inability of the employee to perform the duties and responsibilities of the position.
- 2.6 Chairperson of the School Board – the School Board member responsible for ensuring that the School Board complies in its charge to the Oneida Nation and the ONSS.
- 2.7 Contested Case – a proceeding before the ONSS MOA Grievance Hearing Panel that provides ONSS employees an opportunity for a hearing to challenge the

- disciplinary actions taken against them by the School Board as approved by the MOA Disciplinary Panel.
- 2.8 Employees – all individuals employed by the ONSS, including contracted employees.
 - 2.9 Grievant – the ONSS employee filing a written notice of appeal of his or her disciplinary action.
 - 2.10 HRD – Human Resources Department.
 - 2.11 MOA Disciplinary Panel – created to assist the School Board and School Administration in making employee disciplinary decisions.
 - 2.12 MOA Grievance Hearing Panel – the entity to provide employees a due process appeal procedure for ONSS employee disciplinary decisions.
 - 2.13 ONSS – the Oneida Nation School System, formerly known as the Oneida Tribal School.
 - 2.14 OTJS – the Oneida Tribal Judicial System, also known as the Oneida Appeals Commission.
 - 2.15 Personnel Commission – formerly known as the Oneida Tribal Personnel Selection Committee.
 - 2.16 EEO – Equal Employment Opportunities Officer.
 - 2.17 Progressive Discipline – increasingly punitive disciplinary actions consisting of written warning, suspensions, and dismissal (also known as termination).
 - 2.18 School Board – the Oneida Nation School Board, formerly known as the Oneida Education Board or the Oneida Tribal School Board.
 - 2.19 Superintendent – the person employed by the School Board to administer the ONSS Elementary School and High School.
 - 2.20 Verbal warning – a non-disciplinary action that provides the employee with notice of improper or unacceptable work conduct, and results in written documentation in the employee's file to be considered in future employee disciplinary actions.

3. WORK STANDARDS/PROCEDURES

- 3.1 This SOP, in conjunction with the SOP titled "ONSS MOA Disciplinary Process and Panel," hereby replaced the Blue Book policy and procedures at Section V, Employee Relations, D. Complaints, Disciplinary Actions, and Grievances.
- 3.2 The terms, definitions, and procedures described in the APA for contested cases, 1.10-1, shall apply to the MOA Grievance Hearing Panel and its proceedings and are incorporated by reference herein.
 - 3.2.1 The MOA Grievance Hearing Panel shall be an original hearing body under the APA.
- 3.3 The MOA Grievance Hearing Panel shall be the "delegated body," APA 1.3-1(e), appointed to act in the place of the Board as a whole.
- 3.4 The MOA Grievance Hearing Panel shall be the "deliberative body," APA 1.3-1(f), that weighs, examines, and consults the reasons for and against a contemplated act or course of conduct or a choice of acts or means in order to form an opinion.
- 3.5 The School Board shall retain the authority to issue "declaratory rulings," APA, 1.3-1(d), a written ruling related to ONSS employee personnel matters which removes doubts or puts an end to conflicting decisions in regard to what law is in relation to a particular matter.

- 3.6 Applicability of SOP
 - 3.6.1 It covers any ONSS employee against whom disciplinary action, including termination, has been approved by the MOA Disciplinary Panel and taken by the ONSS Administration and/or the School Board.
 - 3.6.2 It does not apply where it conflicts with the terms and conditions of an employee contract, other negotiated agreement, or precedential decisions issued by the OTJS interpreting the MOA.
- 3.7 The membership of the MOA Grievance Hearing Panel shall be that required under the MOA:
 - 3.7.1 Three (3) School Board members; and
 - 3.7.2 Two (2) members of the Oneida Personnel Commission; and
 - 3.7.3 One (1) EEO
 - 3.7.3.1 The Oneida Personnel Commission members shall be selected by the Oneida Personnel Commission.
 - 3.7.3.2 The EEO shall be a non-voting member of the MOA Grievance Hearing Panel and shall assist with questions that arise regarding the employee's rights under the appeal procedure.
 - 3.7.4 The Chairperson of the MOA Grievance Hearing Panel shall be selected from and by the three members of the School Board assigned to the MOA Grievance Hearing Panel.
 - 3.7.5 Persons who served on the underlying MOA Disciplinary Panel may not serve on the MOA Grievance Hearing Panel.
 - 3.7.6 The Chairperson of the School Board shall have the authority to assign a former School Board member, or members, to the MOA Grievance Hearing Panel when circumstances arise such that there are an insufficient number of current elected School Board members who are available to timely serve on the MOA Grievance Hearing Panel.
 - 3.7.7 The School Board shall have the authority to engage the assistance of legal counsel, or other individual as determined appropriate, in serving as a Hearing Officer at any hearing and to assist the MOA Grievance Hearing Panel with processing the grievance and facilitating the timely conclusion of the grievance hearing procedure.
 - 3.7.7.1 The Hearing Officer shall not be voting member of the MOA Grievance Hearing Panel.
 - 3.7.7.2 The Hearing Officer shall have the authority to issue subpoenas on behalf of the MOA Grievance Hearing Panel.
 - 3.7.7.3 The Hearing Officer may delegate the authority to decide and take action on any pre-hearing motions submitted by either party to the contested case.

Procedure for Grievance Hearing

- 3.8 The grievant shall comply with the following:
 - 3.8.1 File and appeal in writing with the Administrative Assistant of the School Board within ten (10) working days from the day the employee receives the disciplinary action.
 - 3.8.1.1 Clearly identify and state the reason(s), or basis, for the appeal.

- 3.8.1.2 Name the Superintendent as the respondent representing the School Board in the appeal.
 - 3.8.1.2.1 In the event that the Superintendent is the grievant, the School Board shall be named as the respondent in the appeal.
 - 3.8.1.2.2 Where the School Board is respondent in the appeal, it shall be represented at the hearing by at least one School Board member from the MOA Disciplinary Panel rendering the challenged decision.
- 3.8.2 May seek the assistance of a spokesperson or advocate after the disciplinary action has been issued in order to aid in the resolution of the grievance process.
- 3.9 The Administrative Assistant shall immediately notify the Chairperson of the School Board that an appeal of a MOA Disciplinary Panel decision has been filed and shall assist with managing the appeal, including scheduling meetings of the MOA Grievance Hearing Panel.
- 3.10 The MOA Grievance Hearing Panel may convene by telephone conferencing to discuss and decide preliminary, pre-hearing motions and other matters before the body.
 - 3.10.1 A grievant, respondent, or member of the MOA Grievance Hearing Panel may request preliminary, pre-hearing actions of the Hearing Panel.
 - 3.10.2 Preliminary matters before the MOA Grievance Hearing Panel that require a meeting may be conducted by telephone conferencing at the discretion of the Chairperson or the Hearing Officer.
 - 3.10.3 A majority of the MOA Grievance Hearing Panel (i.e., three members) shall be required to take action on preliminary, pre-hearing matters before the group.
- 3.11 The MOA Grievance Hearing Panel shall have the authority to negotiate a settlement of the dispute with the grievant.
 - 3.11.1 The School Board members assigned to the MOA Grievance Hearing Panel may assign one member from their group, another School Board member not on the Hearing Panel, or assign a third party, to represent the Board in settlement discussions.
 - 3.11.2 Any negotiated settlement shall be presented to the School Board as a whole, which shall take action to adopt, modify, or deny the recommended settlement. The action of the School Board shall be final.
 - 3.11.3 Settlement discussions shall be a valid reason for extending the timelines associated with a final decision of the MOA Grievance Hearing Panel.
- 3.12 The proceedings of the MOA Grievance Hearing Panel shall be recorded. The Chair of the MOA Grievance Hearing Panel shall have the discretion to engage a court reporter to record the proceedings, as deemed necessary to preserve the testimony of the witnesses.
- 3.13 All notices and timelines (and other requirements) identified in the APA, 1.10-1., shall be complied with.
- 3.14 The MOA Grievance Hearing Panel shall affirm, modify, or reverse the decision of the MOA Disciplinary Panel.
 - 3.14.1 The MOA Grievance Hearing Panel shall determine if the MOA

Disciplinary Panel had sufficient evidence to support its conclusion, whether cause existed to discipline the grievant, or if procedural irregularities at issue created harmful error.

3.14.2 If the MOA Grievance Hearing Panel reverses the disciplinary action of the MOA Disciplinary Panel, it may:

3.14.2.1 Reinstatement the grievant with full back pay and any lost time; or

3.14.2.2 Reinstatement the grievant without back pay; or

3.14.3 The decision of the MOA Grievance Hearing Panel shall be final.

4. RIGHT TO APPEAL

- 4.1 The grievant shall have a right to appeal the decision of the MOA Grievance Hearing Panel only under the provision of the APA, 1.11-1., Appellate Review of Agency or Commission Action, which is incorporated by reference herewith.
- 4.2 The Superintendent does not have an independent right to appeal a decision of the MOA Grievance Hearing Panel.
- 4.3 The School Board as a whole shall have the authority to take action to ratify a decision of the MOA Grievance Panel, at its sole discretion and on motion of any member of the School Board, and, in the alternative, to take action to appeal a decision to the OTJS.

5. REFERENCES

- 5.1 GTC Resolution #1-29-77-A.
- 5.2 GTC Resolution #7-9-83-A, January 8, 1983.
- 5.3 Memorandum of Agreement (MOA), March 21, 1988, between the ONSS School Board and the Oneida Business Committee.
- 5.4 Oneida Nation School System Board Policies (revision 2006): #2-000, 2-101, 2-108, 2-109, 2-111, 3-105, 3-000, 3-107, 3-108, 3-113.
- 5.5 *Orie v. Golinick*, 3 O.N.R. 3-16, Dkt. #96-EP-0007 (Feb. 12, 1997) (concluding that the Oneida Appeals Commission was granted the authority to interpret the MOA, pursuant to its creation by GTC Resolution #8-19-91-A (August 19, 1991)).
- 5.6 *King v. Tribal School Meals/Food Service*, DKT. #05-AC-017, November 23, 2005 (the Oneida Appeals Commission ordered the School Board to provide full due process hearings in accordance with the Tribe's Administrative Procedures Act when processing an employee grievance).
- 5.7 ONSS Standard Operating Procedure titled "Oneida Nation School System MOA Disciplinary Process and Panel."

Oneida Tribe of Indians of Wisconsin

Post Office Box 365

Phone: 869-2214

Oneida, WI 54155

324 of 400



UGWA DEMOLUM YATEHE
Because of the help of this
Oneida Chief in cementing
a friendship between the
Six Nations and the Colony
of Pennsylvania a new na-
tion the United States was
made possible



ONEIDA TRIBAL SCHOOL MEMORANDUM OF AGREEMENT

WHEREAS, the Oneida General tribal Council, on January 8, 1983, by Resolution, directed that an agreement be reached between the Oneida Business Committee and the Oneida Tribal School Board regarding the autonomous administration of the Oneida Tribal School which would provide for full involvement of the Oneida Tribal School Board in all personnel matters related to all personnel employed in the operation of the Oneida Tribal School, and

WHEREAS, the Oneida General Tribal Council further directed that said Memorandum of Agreement be made consistent with existing policies and procedures of the Oneida Tribe as set forth in the Oneida Tribal Management System that accounting, purchasing, budgeting and budget planning of the Oneida Tribal School be consistent with approved policies and procedures of the Oneida Tribal Accounting Office, and

WHEREAS, the Oneida Tribal School Board is an elected body of the Oneida General Tribal Council, any cause against them individually or as a body should be consistent with the Oneida Removal Ordinance, and

WHEREAS, contracts with the federal or state governments on behalf of the Oneida Tribal School require endorsement and approval of the Oneida Business Committee and therefore cooperation and close communications should exist between the Oneida Tribal School Administration, Oneida Business Committee and Tribal School Board.

NOW THEREFORE BE IT RESOLVED, that the following terms and conditions meet the criteria set forth by the Oneida General Tribal Council for the MEMORANDUM OF AGREEMENT above described;

ONEIDA TRIBAL SCHOOL
MEMORANDUM OF AGREEMENT

Page 2

This MEMORANDUM OF AGREEMENT is entered into this 21 day of March, 1988, between the Oneida Business Committee, hereafter referred to as the COMMITTEE, and the Oneida Tribal School Board, hereafter referred to as the BOARD, agree to abide, respect and follow the following provisions:

1. That all hiring, evaluations, promotions, suspensions/dismissals of all personnel employed in the operation of the Oneida Tribal School is to be performed by the BOARD: that hiring, promotions, suspensions/dismissals shall be conducted pursuant to the Oneida Tribal Management System wherein three (3) member of the BOARD and one (1) Tribal School Administrator, shall sit with one (1) member of the Oneida Tribal Personnel Selection Committee and the EEO Officer, that evaluations of instructional personnel shall be performed, based upon sound educational administration recognizing the contractual and school year provisions for teaching personnel, and that the COMMITTEE shall revise the Oneida Tribal Management System appropriately to accommodate the above.
 - A. Where the Oneida Tribal Management System refers to Personnel Administrator it shall be revised by the COMMITTEE to provide for Consultation with the Tribal School Administrator and Chairman of the BOARD.
2. Grievances of employees of the Oneida Tribal School are to be processed by two (2) members of the Oneida Personnel Selection Committee, three (3) BOARD members and the EEO Officer as per grievance procedures outlined in the Oneida Tribal Management System.
3. All contracts, grants and proposals related to the operation or planning of the Oneida Tribal School shall be first reviewed and endorsed by the BOARD. Such review and endorsement shall be presented in writing to the COMMITTEE at times consistent with existing Oneida Tribal Policies and Procedures. The recommendations of the BOARD shall be followed by the COMMITTEE, unless good cause to the contrary is shown, provided that such proposed contracts, grants and proposals are consistent with Oneida Tribal School funding cycles.

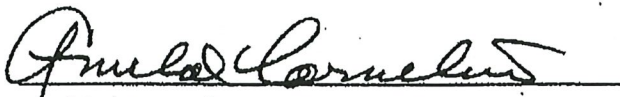
ONEIDA TRIBAL SCHOOL
MEMORANDUM OF AGREEMENT

Page 3

- A. Disputes between the COMMITTEE and the BOARD under this provision shall be negotiated by the parties.
 - B. If the matter cannot be resolved, the matter shall be reported at the next meeting of the Oneida General tribal Council or special meeting called therefore.
4. The BOARD shall submit all minutes of all meetings in writing to the COMMITTEE.
- A. Long and short range planning of the Oneida Tribal School shall be coordinated with the COMMITTEE.
 - B. The BOARD shall make two (2) annual reports in writing to the Oneida General Tribal Council to be available to the Oneida General Tribal Council consistent with the annual reports of all other tribal departments and programs to the regular annual meeting of the Oneida General Tribal Council.
5. The MEMORANDUM OF AGREEMENT shall not be amended except by the Oneida General Tribal Council or at the express direction of the Oneida General Tribal Council and shall be effective upon ratification by the Oneida General Tribal Council.

C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Oneida Business Committee, hereby, certify that the Oneida General Tribal Council in session with a quorum of 76 members present, at a meeting duly called, noticed, and held on the 21 day of March, 19 88, that the foregoing resolution was duly adopted at such meeting by a unanimous vote of those present and that said resolution has not been rescinded or amended in any way.


Anelia Cornelius, Tribal Secretary
Oneida Tribe of Indians of Wisconsin

Feedback from Comprehensive Housing Staff:

Positive Changes:

Indigenous People Day being added as a paid holiday
 Extending funeral time from 3 days to 5 days.

Other Changes:

Aunt/Uncle should be included in immediate family. It should also be clear if step-children, grand-children and parents are included in the immediate family.

- Leave of Absence should also include the Area Manager. There should be more than just a Supervisor approval to ensure areas are covered.
-
- The Complaint process is taking the majority of the authority away from the Supervisor and giving it to the EEO Officers.
 - o EEO department currently only has two employees. They are difficult to get ahold of currently.
 - o The EEO Officers don't know the day to day operations in departments nor the personalities of employees. This is what the Supervisor is for. The majority of a Supervisor's job is to manage employees.
 - o The EEO Officer will also have the ability to discipline employees with the approval process going to the HRD Executive Director.
 - o The EEO Officer will have 10 days to investigate a complaint, allowing interviews of all necessary staff. This is a potential disruption thru a department.
 - o In the EEO Officer investigation they notify the Supervisor and at the end they meet with the Human Resources Executive Director to determine the final resolution and the EEO Officer's resolution is final.
- Ultimately, this is taking the authority away from the Supervisors, crippling them within their departments and giving all authority to HRD department. It opens the door for individuals to make accusations against co-workers with no documentation, proof/evidence. It provides the ability to disrupt departments for investigations and too much room for abuse of power.
- If there is an issue with toxic work environments then the managers/directors should be held accountable to make the work conditions better and safe for all their staff. The disciplinary process should remain the same.
- I do agree with their cut back of wordiness in the policy too.
- The Blue book is written for employees and supervisors and not EEO. EEO should remain a neutral entity at all times. The Personnel Policies book should be written for supervisors.
- Instead of taking away managers and supervisors authority, why not build them up? These changes affect the authority that supervisors/managers have and give it directly to HRD and the EEO officers.
- Per the 1932 resolution the Oneida Business Committee shall not be involved in day to day business, you are proposing the OBC in the complaint process, this is ridiculous.

- Why were managers not included in drafting the amendments outside of HRD?
- EEO/HRD should never have the authority to discipline outside of their department.
- These amendments sound like EEO is frustrated with poor management and has decided to take away the managers ability to manage. These amendments sound like they would create more chaos within an area than help it.
- Supervisors know their frontline staff intimately and are better equipped to handle complaints and disciplines. How will an EEO know an employee and their work habits, ethics etc when investigating a complaint?
- The EEO should never be responsible party for issuing a discipline.

TO: Oneida Legislative Reference Office
 FROM: Jackie Smith
 DATE: 01.19.2023
 RE: Public Comments Proposed Amendments Oneida Personnel
 Policies and Procedures (OPPP) Amendments

My feedback/comments regarding the proposed amendments to OPPP are
 Below:

1. Eliminate the use of the term "area manager" in the proposed changes as it created confusion between what position/employee is the actual area manager and what position/employee is the area manager in the disciplinary process
 - a. There was confusion by the court when this term was used in a disciplinary hearing. My title and role are area manager; however, the disciplinary process area manager was the general manager.
 - i. I was requested by the court to attend an appeal hearing as the area manager, but mistakenly was named the area manager in the disciplinary process terminology.
 - ii. This mistake cost the tribe money as there were duplicate managers required to attend an appeal hearing by the Oneida court.
2. Ensure there is an appropriate and balanced allocation of power to the Oneida Human Resource Department (HRD)
 - a. HRD in an internal service provider whose purpose is usually to support programs or business entities in the delivery of services
 - b. HRD executives typically report to a General Manager or CEO
 - c. Currently, HRD is treated as a standalone entity in the Oneida with a direct report the government. This reduces the overall effectiveness and connection to the function of being an internal service provider.
 - i. This creates issues as HRD is not directly connected to the needs of the organization
3. Reconsider the power and authority of the EEO department in managing complaints
 - a. It is not recommended that HRD EEO has the ability to determine the outcome of an employee in a complaint investigation without input and possibly appeal rights of the supervisor.

- b. HRD as an overall program hasn't been held accountable to deliver on current HRD laws, it is uncertain how this lack of oversight and accountability will be managed in the future.



Memorandum

TO: Legislative Operating Committee

FROM: Lisa Summers, OBC Area Manager *LS*
Brooke Doxtator, BCC Supervisor *BD*

DATE: January 19, 2023

RE: Oneida Personnel Policies and Procedures Amendment Comments

The purpose of this correspondence is to provide the Government Administrative Office (GAO) comments and concerns regarding the Oneida Personnel Policies and Procedures Amendments.

Comments and/or Identified Concerns

1. In the legislative analysis under “affected entities” the Government Administrative Office is missing, and it is noted that the GAO was not asked to participate in the work meetings held to develop the amendments and analysis.
Overall, this concern leads to a series of questions the GAO has regarding the intent of the amendments, and consideration for additional resources which may be needed to implement change. Additionally, it is identified through the analysis, there appears to be missing data which would provide guidance on the type of resources needed to fulfill the responsibilities which accompany the proposed change. This concern is detailed further in item #2.
2. The Government Administrative Office is not in support of the changes outlined in lines 1487 to 1595 of the redline version that replaces the Human Resources Department with Government Administrative Office as this time.
 - a. There are several things we would like addressed before proceeding with these changes:
 - i. HRD to provide an analysis of the work, resources, training, and time required to offer this support to the Oneida Personnel Commission.
 - ii. That the Oneida Business Committee (OBC) makes a determination on next steps regarding implementing a functioning Oneida Personnel Commission.
 1. The Commission has not been functioning since 2018. The GAO has brought several posting requests and information before the OBC for additional guidance and direction.

2. The OPC has encountered issues finding qualified applicants to apply for the Commission, and has had issues with the members completing their trainings.
3. The OPC was placed in "Temporary Closure Status" from April 8, 2020, to June 14, 2021, due to the COVID pandemic; however, since reactivating the OPC, they have been unable to meet due a lack of members, nor have members completed proper training as identified in item #2 above.

We respectfully request the Government Administrative Office be removed from the amendments until an analysis on the following is completed:

1. Workload or anticipated workload based on HRD records of activities which would have included in the OPC, and
2. An analysis of the resources needed to fulfill the requirements, and
3. There is a determination made regarding how the OPC will function moving forward.

cc: Lisa Liggins, Secretary



PO BOX 365
Oneida WI 54155

To: Legislative Operating Committee
From: Gaming Senior Management
Date: January 18, 2023
Re: Oneida Personnel Policies and Procedures Amendments – Public Comments

Below are public comments submitted on behalf of Gaming Senior Management regarding the proposed Oneida Personnel Policies and Procedures Amendments. The comments are separated in two sections:

- Hiring and Selection
- Complaints, Disciplinary Actions and Grievance Processes

Please contact Louise Cornelius, Gaming General Manager, regarding any questions you may have. She can be reached at extension 3201 or at lcornel3@oneidanation.org

Thank you

Hiring and Selection

1) Remove the following: We do not have steps within grades.

166 e. Temporary employees will be paid within the Grade in which the
job is classified and

167 salary will be negotiated within the first three (3) steps of
respective grade.

168 1) Any negotiated salary beyond step three will require written
justification and

169 approval from the respective General Manager. (H.R.
[Interpretation, 12-8-16](#))

2) To be consistent in practice with probation employees, it is recommended: To remove appeals rights for Temporary employees.

172 Temporary employees can be that are terminated due to
documented cause will have the

173 ~~right to the appeal process as outlined in the Personnel Policies and Procedures.~~

3) Gaming is requesting the LOC consider a process that gives management (to include gaming management) representation and joint rulemaking authority over all rules for which HRD is delegated rulemaking authority in the draft OPPP. Failure to include management in this drafting process and the importance of a seat at the table in the drafting process should be noted because once documents are made public, certain things can be difficult to walk back from. This supports the need for joint authority to ensure management's voice is guaranteed to be incorporated into HRD rules rather than merely receiving the opportunity to provide public comment – as is the case in this instance. Please note that the last time employment matters were considered the LOC recognized the importance of including management and, at Gaming's request, included 2 gaming HRD representatives on the drafting team to provide a perspective from the profit centers who rely on these processes to operate businesses that funds the lion's share of the Nation's operations.

388 2) The HRD Office shall ~~notify screened out applicants within five (5) working days~~

389 ~~after the initial screening and reserve these applications be delegated rulemaking~~

390 ~~authority in the general recruiting pool.~~

4) Clarify the statement to include separations (e.g., quit, job abandonment, etc.).

661 2) ~~Employees who are terminated during their original probation period shall not~~

662 ~~be paid for any unused accrued vacation or personal days in their final paycheck~~

Complaints, Disciplinary Actions and Grievance Processes

Personnel Policies and Procedures Amendments

Section V- Employee Relations

Line 704-707: *In all cases of grievance and discipline, **supervisors** are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives and handle grievances.*

Blue book is written for employees and supervisors, not EEO. EEO should not have authority to take disciplinary action on an employee. EEO is HRD who should remain a neutral entity at all times.

Complaint Procedures

Line 784-788: *If the supervisor cannot come to mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the supervisor shall provide written justification for non-agreement on the resolution to both the Area Manager and the Human Resources Executive Director.*

Why? What is the purpose of this? The process is long enough without adding another step. It is the discretion of the supervisor as to what they are going to do, not EEO.

Line 789-790: *The supervisor shall send the final resolution to their Area Manager to ensure accountability.*

What does this mean, to ensure accountability??? What is area manager supposed to do about it? Again, it is the discretion of the supervisor.

Line 802: *The notice shall address the appropriate accountability of the supervisor.*

What does this mean? Line 799-801 already states the notice shall inform the area manager that the supervisor violated the complaint process by being negligent and failed to properly investigate a complaint, so what does line 802 mean? This line doesn't seem necessary.

Line 803-808: *If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.*

So, it's up to EEO to determine if an Area Manager fails to take appropriate action to address the supervisor? So, if EEO don't like or agree with what the Area Manager did, this goes to the General Manager? This is too much authority for EEO. First off, in

gaming there are many levels of management and the General Manager may not be the appropriate person in the chain of command. Only an immediate supervisor can take corrective action with an employee and in most cases the Gaming General Manager is not the immediate supervisor of an area manager. Secondly, why are there so many levels now in the complaint process? This is way too much. The Gaming General Manager doesn't need to be involved in, nor do they have the time for front line complaints that EEO is not satisfied with how they were handled all the way up the chain of command. Does the Business Committee really want to be involved in employee complaints that EEO is not satisfied with how they were handled? The current blue book has four (4) sentences on how to handle a complaint. This new complaint process is now five (5) pages. This is way too much. Why is it so long?

Line 833-837: *If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.*

Why? What is the purpose of this, it's just another step that is unnecessary? It's up to the Area Manager what they are going to do, it's not up to EEO. And what if this step doesn't happen, what does this change?

Line 842-846: *If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.*

This is now the third (3rd) step in the complaint process. Why is it necessary to have so many levels involved? The General Manager may not be the supervisor of the Area Manager in gaming as there are many levels in the chain of command so why is going to the General Manager? The GM cannot take action on an Area Manager they do not supervise. The process is too long. Should the Oneida Business Committee really be involved in day-to-day complaints that employees file, that EEO is not satisfied with how they were handled? The current complaint process is short and sweet, easy to follow, this recommended process is too lengthy and has too many levels of management involved.

Line 854-855: *The notice shall address the appropriate accountability of the Area Manager.*

It's not clear as to what this means as prior to this step, the EEO sends a notice to the General Manager informing them the Area Manager violated the complaint process by

being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint. Seems another unnecessary step.

Line 859-895: Should just remove the 3rd level for the GM to investigate an employee complaint that EEO was not satisfied with how the supervisor or the Area Manager handled. This is too much. Should stick with current blue book complaint process of two levels of handling a complaint. A timeline is good to add but it shouldn't keep going up the chain of command and jumping to the General Manager to address the complaint. Why is this necessary?

If the purpose is to hold a supervisor or Area Manager or General Manager accountable for failing to address a complaint, or not addressing it properly according to EEO, then just state they may be held accountable for job negligence. All these steps are unnecessary.

EEO Violations: Agree that EEO violations should be investigated by EEO but they should not have the authority to discipline. HRD needs to remain neutral and not be involved in disciplining an employee they do not supervise. EEO should continue to submit their recommendation to the immediate supervisor of the employee after they have completed their investigation. HR's job is to support the nations employees, supervisors, managers etc., not to dictate how they operate or take over their job responsibilities. EEO must ensure that the supervisor is taking proper corrective measures and advise the decision makers on processes and points of law as well as informing them how historical cases have been treated, to ensure consistency. EEO should not be disciplining an employee they do not supervise.

Line 900-901: *The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department received the complaint from the employee.*

After this step, nothing in the EEO Officers process for investigating and resolution of the complaint addresses what happens if the EEO fails to adhere to the timeline during the process. There are steps up the chain of command, up to the Business Committee if supervisors, managers, and the General Manager fail to adhere to the timeline. If EEO wants supervisor authority to discipline, they too need to be held accountable if they miss the timeline. The process needs to be fair and consistent to all who are taking action. In the supervisor, area manager and general manager sections under complaints it states that if they fail to complete the investigation and resolve the complaint within ten (10) working days, the EEO Department shall send notice up the chain of command, informing them they violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint. This same process has to be followed when EEO is negligent.

Line 905-906: *Know the EEO Officer shall be responsible for implementing the final resolution;*

EEO Officer should not be responsible for implementing the final resolution, they should send their recommendation to the immediate supervisor of the employee to implement.

Line 913-914: *The EEO Office shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.*

Where's the step after this that says, if the EEO cannot come to a mutual determination with the Human Resources Executive Director as to an appropriate resolution for the complaint then the EEO shall provide written justification for non-agreement on the resolution to the General Manager or Business Committee. In all the complaint processes for the supervisor, Area Manager and the General Manager, it states they must provide written justification for non-agreement with EEO. If EEO is allowed disciplinary authority, in the event of a disagreement with the Executive Director's decision, the Executive Directors decision shall be final in regard to internal review prior to actual litigation before the Judiciary.

Illegal Activities

Lines 923-924: *The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.*

Same as mentioned above in EEO violations, nothing in the EEO process addresses if the EEO Officer fails to complete the investigation and resolve the complaint within ten (10) working days. Nothing states who will send this notice, and who is it sent to, to inform them the EEO violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint. If this process exists for supervisors, area managers and the General Manager in needs to be in the EEO's process also. All need to be held accountable in the same manner.

Line 928-929: *Know the EEO Officer shall be responsible for implementing the final resolution; and;*

EEO should not be responsible for implementing the final resolution (discipline) they should be sending their recommendation to the immediate supervisor of the employee. EEO should not have discipline authority of employees they do not supervise.

Line 936-937: *The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.*

Nothing is stated in this process who the EEO sends their justification to if the EEO Officer and Human Resources Executive Director do not come to a mutually determination of an appropriate resolution as listed in the supervisor, area manager and General Managers process. Both should have to follow the same process to be consistent.

Discipline

Line 952-953: *Disciplinary actions shall be initiated by an EEO Officer as the resolution of an EEO Violation complaint or an illegal activities complaint investigation.*

Remove this sentence. Disciplinary procedures should only be initiated by the immediate supervisor. EEO keeps record of disciplinary actions on file, they should not be issuing them and tracking their own disciplines. EEO needs to remain neutral. I agree EEO can investigate these complaints but send their recommendation to the immediate supervisor to address. Giving EEO Officers the ability to discipline employees they do not supervise is too much authority, as that is the job of the immediate supervisor, not EEO.

Line 963-965: *Any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.*

EEO should not have to approve a supervisor's deviation from the recommended progression. They never had in the current process so why change it? I agree the process should remain that any deviation from the recommended progression shall be justified in writing, but it should not have to have EEO approval, as again, it is the discretion of the supervisor on what level of discipline they are going to issue.

Line 982: *unless a deviation is sought and approved.*

Don't agree that a supervisor's decision to deviate from the recommended progression needs EEO approval. It never has in the past, why add it now? Again, too much authority to EEO. Supervisors are currently required to justify the deviation in writing so why change the process?

Disciplinary Procedure

Line 1067-1068: *The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.*

Remove "or EEO Officer" as they should not have authority to discipline employee's they do not supervise.

Line 1069-1070: *The supervisor or EEO Officer shall fill out a disciplinary action form within five (5) working days or either:*

Remove “or EEO Officer” from this process. This should not be within their authority to discipline employees they do not supervise.

The current disciplinary procedure first states “**Supervisor becomes aware of unsatisfactory work performance or violation. Supervisor investigates through a meeting with the employee(s) and determines whether disciplinary action is warranted**” This is one of the most important steps in the procedure. It clearer written the current way than what is written in the new process lines 1071 -1074.

Line 1071-1074: *the resolution of a complaint from which it has been determined that disciplinary action is warranted, or the determination that disciplinary action is warranted based on the unsatisfactory work performance of an employee.*

Line 1075: *The supervisor or EEO Officer shall fill out the disciplinary action form...*

Remove “or EEO Officer” as this should not be within their authority as they are not the immediate supervisor of the employee.

Line 1082-1084: *The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.*

Remove “or EEO Officer” as this should not be within EEO authority, as they need to remain a neutral entity.

Line 1085-1086: *The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.*

Remove “or EEO Officer” as they should not be disciplining employees they do not supervise. Remove “through video conferencing, or over the telephone” This meeting cannot occur over video conferencing or over the phone. How can you go over a discipline form with an employee if they can’t see the form and they can’t physically sign the form as required as stated in line 1093. The meeting would need to occur in person during a termination notice so the supervisor can collect employee badge, keys or any other tribal property the employee has at the time of signatures.

Line 1087: *During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee...*

Remove “or EEO Officer” should not have authority to discipline employees they do not supervise as HR needs to remain a neutral entity.

Line 1093: *the employee being disciplined shall sign the disciplinary action form.*

It's required employee sign the discipline form, or they can refuse to sign the form and that's documented on the discipline form. This important step cannot occur if the so-called meeting takes place as mentioned in line 1086, “through video conferencing or over the phone.” The meeting to issue a discipline to an employee needs to occur in person so the employee can physically sign the form or refuse to sign it.

Line 1095-1096: “or EEO Officer” is mentioned twice and should be removed from the procedure as it is not within the EEO Officers authority issue disciplinary action against an employee they do not supervise.

Line 1099: *the supervisor or EEO Officer shall provide copies of the signed disciplinary action...*

Remove “or EEO Officer” as it should not be within EEO's authority to issue disciplinary action to employees they do not supervise. EEO needs to remain a neutral entity.

Line 1111-1113: *If the EEO Office is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension.*

Remove these lines as EEO should not be disciplining employees they do not supervisor. It is not within their authority.

If allowed, what is the process if they don't agree to the length of suspension? It should be the same as managements process.

Line 1123-1125: *If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action.*

Remove these lines as the EEO Officers should not have the authority to issue disciplinary action to employees they do not supervise. EEO Officers at HR need to remain neutral, not go against employees.

If allowed, what is the process if they don't mutually agree to the termination? It should be the same process as managements.

Line 1128-1131: *The Human Resources Department may void a disciplinary action for clear procedural errors.*

Shouldn't voiding a disciplinary action issued by a supervisor be left up to the Area Manager or the Judiciary in the grievance process? At the Judiciary only procedural errors that harmed one of the parties are overturned. This states that EEO can void for **any** clear procedural error.

Line 1132-1133: *The Human Resources Executive Director, or designee, may void a disciplinary action taken by an EEO Officer for clear procedural errors.*

Remove these lines as EEO Officers should not have authority to issue disciplinary actions against employees they do not supervise.

Line 1134-1135: *Notification of a voided disciplinary action shall be sent to the supervisor or EEO Officer and the employee which identifies the procedural error.*

Remove "or EEO Officer" as they should not have authority to issue disciplinary action to employees they do not immediately supervise. Only the immediate supervisor has authority to take action against an employee.

Line 1136-1140: *For any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department shall send a letter to the Area Manager. The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee.*

If EEO Officers are going to be allowed the authority to discipline employees that they don't work with or supervise, what happens when the EEO Officer fails to follow the Nations disciplinary procedures? Where is the accountability process for them? They too should have a letter sent to their Area Manager informing them the EEO Officer violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee. The process has to be fair and consistent for all.

Grievance

Line 1150-1153: *Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal*

Activities complaint to the Oneida Judiciary by filing a complaint with the Trial Court within ten (10) days from the employees' receipt of the discipline.

First off, these lines should be removed as EEO Officers should not have authority to discipline employees they do not immediately supervise. This is not within EEO's authority nor is it in their job description. HR is not the entity that should be disciplining employees as they are to remain neutral. Secondly, why is there no Area Manager to hear this appeal first? If you're going to allow the EEO Officer to take disciplinary action, why does this just jump to the judiciary? Why is the Judiciary acting as the area manager?

Line 1169-1170: *The supervisor shall meet with the following individuals during the disciplinary investigation.*

Since this section is about appealing to the Area Manager, as above this sentence is states, "The Area Manager for all disciplinary action investigations, shall have ten (10) working days form the receipt of the employee's appeal to complete the investigation. Then in line 1169-1170 it states the supervisor shall meet with the employee, the supervisor and any witnesses. I believe Line 1169 should state, The area manager shall meet with the following individuals...

Line 1201-1293:

This entire section references the Government Administrative Office taking over the role of the HRD office who currently has all information and all the documentation regarding disciplinary action issued to employees.

This section states employees who want to appeal an Area Managers decision to the Personnel Commission must file a grievance with the Government Administrative Office on behalf of the Personnel Commission. It states the Government Administrative Office shall collect all information the Area Manager used in making the decision to uphold or modify the disciplinary action.

Currently all the confidential information regarding disciplinary action remains at HRD until a hearing body requests it. It's a concern that now another entity (Government Administrative Office) will be privy to this confidential information regarding employees of the Nation. How many people are in this office, who will all see this confidential information? What is in place to ensure this confidential information does not get out in the community before a final decision is made by a hearing body?

Why don't the EEO Officers continue the role they currently doing, the administrative part, and not be involved in disciplining employees they do not supervise. Why do they want authority to discipline employees they don't even know or work with? This process being presented gets more people involved with seeing confidential information that does not need to be disclosed.

HRD/EEO Officers need to remain neutral and provide assistance/support to all employees, whether they are front line, supervisors, managers, directors or general managers. EEO/HRD should not take over a supervisor's job responsibilities. EEO must ensure that the supervisor is taking proper corrective measures and advise the decision makers on processes and points of law as well as informing them how historical cases have been treated, to ensure consistency. EEO should not discipline an employee they do not supervise. This is not within their authority, nor should we allow it to be. If EEO is concerned about holding people accountable for their actions or inaction, they need to bring that matter to the persons supervisor and allow that supervisor to decide what to do.

MEMO

To: Oneida Business Committee

From: Jessica Vandekamp #2616

Date: January 17, 2023

RE: Written Comments - ONEIDA PERSONNEL POLICIES AND PROCEDURES
AMENDMENTS

1. Floating Holidays

To propose the Oneida Nation provides up to two (2) floating holidays to each employee that will substitute up to two (2) current public paid holidays. This can promote diversity and respect for employees who have different cultures, religious beliefs, or traditions. The day the employee decides to take off is at their discretion and approved by the immediate supervisor.

Benefits for Employee:

1. Allowing employees to celebrate a holiday, religious event or cultural event that has meaning to them respects individual's differences. (Ex: Oneida ceremonies, birthdays, Martin Luther King Jr. Day, Hmong New Year, etc.)
2. Happy employees are productive employees when you allow them to take time off that matters to them.

Benefits for the Nation:

1. May lower payroll for premium pay when employees choose floating holidays rather than work public holidays.
2. Scheduling may improve in departments and be more flexible in Enterprises & Gaming.

Policy Considerations:

1. Are not eligible for premium pay.
2. Employee may choose floating holiday(s) at the beginning of each calendar year.
3. Must be scheduled and approved in advance by the employee's immediate supervisor.
4. Will not carry over to the next calendar year.
5. Cannot be cashed out or paid upon termination of employment.
6. Floating holidays only count towards religious holidays, cultural holidays, employee birthday, state/federal holiday, wedding anniversary, or special occasion mutually agreed upon by the employee & supervisor.

2. Personnel Commission

Remove any responsibilities of being a hearing body for employment appeals and to participate in the hiring process. I believe this commission has outlived its purpose for the Nation's hiring and it impedes upon a smooth and timely hiring process.

3. Funeral Leave

- Agree with 5 days for immediate family.
- Consider adding: an employee who works the funeral (prepares & serves food, etc.)
- Add other relationships, such as; step-, adopted, civil unions, life partner.

4. Maternity Leave

- Add: to allow up to 12 weeks for maternity leave

5. Hostile Work Environment

- Add: define hostile work environment as a form of sexual harassment. I've heard often that employees use the term incorrectly when describing an unfriendly work environment.

6. Paid Time Off

- Why do we have to separate personal/vacation?
- Most employees use interchangeably.
- Combine p/v time to one large amount of PTO, load at the beginning of the year rather than accumulate.

General Manager
909 Packerland Dr.
Green Bay, WI 54303
920-496-7000



To: Legislative Operating Committee

From: Mark W. Powless, General Manager

Date: January 19, 2022

Re: Written Comments: Oneida Personnel Policies and Procedure Amendments

The purpose of this memorandum is to provide written comments regarding the proposed Oneida Personnel Policies and Procedures Amendments. These comments are reflective of the views of myself and do not represent the views of my direct reports. Direct Reports were asked to provide verbal or written comments as they felt necessary.

General Comments

- Pertaining to policies and procedures that directly impact departments and staff of the Oneida Nation, it is good business practice to either allow those areas to participate in the development of said policies and procedures or to gather feedback on the front end. This will help to set an agreed upon foundation to move forward from. It will avoid significant time and energy being placed into an effort only to learn that the resultant feedback potentially sends the effort back to 'square one'.
- Major changes have been proposed. If the organization is opening the document for major changes take a comprehensive approach and revise the entire document.
 - This is a great opportunity to change the approach to corrective action. Adopting an approach of investing in employee training, mentoring, and coaching will yield better results than focusing on how complaints are handled and any subsequent disciplinary actions. Generally, preventive efforts produce better long-term results than reactionary efforts. Our workforce is our community and our community is our workforce. Increasing training and education efforts will create a net benefit for our community.
 - Many sections of the document remained untouched even though they are not followed or have become obsolete. These sections should be removed or revised.
- Major changes have been proposed. Perhaps a better stepped approach (before committing to major changes) is an initial internal procedure change to gather appropriate data for sound decision making. Require all employee complaints to be submitted to the Human Resources Department (HRD). HRD will route the complaints to the appropriate Supervisor. The Supervisor will investigate and follow through with appropriate actions. These results will be submitted in a summary report to HRD. After a period of one year the data can be assessed for areas of improvement and subsequent policy/procedure changes.

Line Specific Comments

253 *The Oneida Nation exists to serve the needs of the Oneida people and*
 254 *therefore accords Oneida Preference to enrolled members of the Oneida Nation*
 255 *Members where such preference is not otherwise prohibited.*

- Extend Oneida Preference to all members of the Haudenosaunee. We have a shared history, culture, and family lines. Our ancestors took great measures to preserve the unity of the Haudenosaunee. Our hiring practices should reflect who we are as a people.

596 *a. Tribal holidays consist of the following:*

- Add Martin Luther King Jr. Day. MLK Day is a Federal holiday. Many area businesses and schools close or take time to recognize his accomplishments for people of color.

610 *b. To be eligible for a paid holiday, employees must work the preceding and following*
 611 *scheduled work days (except for employees who are on a prescheduled work leave*
 612 *or an approved extended sick leave.) Employees who are granted a sick day directly*
 613 *prior to a holiday must certify that they were capable of working the holiday in order*
 614 *to qualify for a paid holiday.*

- From an administrative perspective this can be cumbersome. Grant the holiday regardless of whether or not they work the preceding and following scheduled workdays.

615 *c. All regular employees will be given holiday pay for the maximum pay of eight (8)*
 616 *hours per day.*

- Grant holiday pay based on the regularly scheduled hours for that position. If an employee works 10-hour shifts, provide holiday pay of 10 hours, when applicable.

636 *c. Except as provided for in section g, the accrual of personal days shall be as follows:*
 637 *(BC Resolution – 4-11-13-F)*

638 *1) 0-3 years of service - 6 days per year;*
 639 *2) 4-7 years of service - 8 days per year;*
 640 *3) 8-14 years of service - 10 days per year;*
 641 *4) 15+ years of service - 12 days per year;*

642 *d. Except as provided for in section g, the accrual of vacation days shall be as follows:*

643 *1) 0-3 years of service - 12 days per year*
 644 *2) 4-7 years of service - 15 days per year;*
 645 *3) 8-15 years of service - 20 days per year;*
 646 *4) 15+ years of service - 25 days per year.*

- Start to scale back the accrual of personal and vacation days by eliminating the accruals for 15+ years of service for both personal and vacation. Prior to Trade Back For Cash in 2022 91

employees were maintaining a balance of 250 or more personal/vacation hours. Of those, 73% had 15 or more years of service. Additionally, employees are gaining an additional holiday (Indigenous People's Day) with the approval of these amendments.

*659 1) Employees who have used the Oneida Nation-sponsored loan program will be
660 required to honor the terms of the loan agreement.*

- This program no longer exists. Strike these lines from the Personnel Policies and Procedures.

*696 ii. Only those employees who are unable to utilize their personal and/or
697 vacation time due to working conditions, such as a shortage in staffing, as
698 determined by the Human Resources Executive Director or
699 designee, will have the opportunity to trade back hours on a quarterly basis.
700 1. Employees will receive their trade back within sixty (60) days after
701 opting to trade back hours.*

- This opportunity no longer exists. Strike these lines from the Personnel Policies and Procedures.

*726 a. All regular employees will be given a three (3) five (5) day leave without loss of pay for
727 funeral services for immediate family. Immediate family includes:
728 Husband Mother Brother Great-grandparent
729 Wife Father Sister Great-grandchildren
730 Mother-in-law Son Grandparent Spouse's great-grandparents
731 Father-in-law Daughter Grandchild Spouse's grandparents
732 Daughter-in-law Sister-in-law Brother-in-law*

- Extend the definition of 'immediate family' to include Aunts and Uncles

757 4. Maternity Leave

*758 a. Maternity leave will be granted for a period of six (6) weeks without pay.
759 1) An employee may elect to cover any portion of this time by using accumulated
760 sick days.
761 2) Any maternity-related absences for longer than six (6) weeks must be taken as a
762 medical leave of absence.*

- To be reflective of our cultural values and high regard for our women and the family unit, provide paid maternity leave. This will help to reduce stress for our families and allow attention to focus on the newborn. Our community is our workforce and our workforce is our community.

850 B. EVALUATIONS

*851 1. Evaluation reports will be used in determining all promotions, transfers and salary
852 adjustments.*

- This section is obsolete. The Oneida Nation does not offer promotions and evaluations are not provided when determining transfers. With that being said, areas would like the opportunity to view recent evaluations when considering transfers into their department.

880 C. CAREER DEVELOPMENT

881 1. Oneida Nation employees are encouraged to develop their skills and abilities by

882 pursuing education at a local educational institution. (BC Action, 9-9-92)

883 a. Oneida Nation employees must provide a general Career Development Plan to the

884 supervisor listing the goals and objectives of the training and education to be

885 undertaken.

- This process is not followed within the Oneida Nation. Either strike these lines from the Personnel Policies and Procedures or enforce with all staff. Additionally, these aspects of training and education should be an emphasis of the Nation but do not have the funding to support. A concerted effort should be placed on improving our policies, procedures, and funding of employee training and education.

886 2. Oneida Nation employees may be eligible for assistance for one (1) course per semester.

887 The employee must attempt to arrange to take the class outside his/her normal working

888 hours.

889 a. Where a class conflicts with the employee's work schedule, the needs of the Tribal

890 unit take precedence; however, the supervisor shall attempt to accommodate the

891 employee's request.

892 b. In no case shall the accommodation exceed actual class hours plus reasonable travel

893 time.

894 c. Employees must obtain the approval of their immediate supervisor to take a course

895 on work time.

896 3. The supervisor's approval and estimated cost must be submitted to the HRD Office, the

897 Area Manager and the General Manager. (HR Interpretation, 12-8-16)

898 4. The cost of the books, tuition and fees for the course shall be paid by the Nation through

899 funds budgeted in programs or through the Higher Education program.

900 a. Reimbursement for books, tuition and fees is contingent upon the employee

901 receiving at least a C (2.0 on a 4.0 point scale).

902 b. Employees who receive less than the required grade point will be required to

903 reimburse the program for whatever costs were incurred.

- This section is not funded or utilized within the Oneida Nation. Either strike these lines from the Personnel Policies and Procedures or fund and utilize. If utilizing I refer back to my previous statement of taking the time to improve our policies, procedures, and funding of employee training and education. Regarding this specific section I recommend revising to encompass not only a course, but also a certificate, training or similar program.

1) Employee Disagreements

970 a) An employee who alleges they have a disagreement with another employee

971 may file a complaint with the employee's EEO Department.

972 a.b) Within two (2) working days of the receipt of the complaint, the EEO
 973 Department shall provide the supervisor of the employee with the complaint.
 974 b.c) The supervisor will shall have ten (10) working days to investigate the
 975 complaint and attempt to resolve the disagreement complaint.

- This section does not allow for an assessment of merit of complaints. Will a complaint dating back 1 year be investigated? Will frivolous complaints be investigated? Additionally, how will complaints between employees in different Divisions or different Departments be handled. Will the investigating employee address both employees?

991 When the supervisor's investigation is complete, the supervisor shall
 992 contact the EEO Officer to mutually determine an appropriate resolution.
 993 c.1. If the supervisor cannot come to a mutual determination with the EEO
 994 Officer as to an appropriate resolution for the complaint, then the
 995 supervisor shall provide written justification for non-agreement on the
 996 resolution to both the Area Manager to attempt a resolution and the
 997 Human Resources Executive Director.

1179 i. Any deviation from the recommended progressive order made by the
 1180 supervisor shall be justified in writing and approved by the EEO
 1181 Department.

- In both sections the time for the EEO office to respond is not defined. A supervisor has a defined timeframe to respond. If the EEO office is not timely it will delay completion of the investigation/resolution.

1022 e) If the employee is not satisfied with the supervisor's final resolution, they may
 1023 refile their complaint with the EEO Department for resolution by the Area
 1024 Manager.

- Allowing appeals of employee disagreements may be difficult in practice. One reason is because frivolous complaints are currently allowed in the proposed amendment. To investigate a frivolous complaint twice will be a huge use of time and energy, and reduction in efficiency for management. Additionally, it is not uncommon for a supervisor to investigate an employee disagreement and not be able to provide full details of the outcome to the complainant. It is a violation of confidentiality for a supervisor to share the disciplinary action of one employee with any other employee. Therefore, a complainant may simply be told, "The matter was investigated and the employee was addressed appropriately." If it is appealed and the Area Manager provides the same response, the complainant may not accept the response leaving everyone feeling as though the process was an unnecessary use of time and energy. Recommendations include 1) allow for a process to remove frivolous complaints and 2) include the EEO Officer in the process for appeals. The EEO Officer can review the corrective measures taken to address an employee(s) and determine if an appeal has merit.

1167 2) A supervisor Disciplinary actions shall be initiated by an EEO Officer as the

*1168 resolution of an EEO Violation complaint or an Illegal Activities complaint
1169 investigation.*

- Moving disciplinary actions out of the hands of supervisors and into the hands of EEO Officer will create a difficult dynamic in departments. Some of the reasons include:
 - If a supervisor witnesses or receives a report of an employee contributing to a hostile workplace or bullying, will the supervisor be able to take immediate action in the workplace? Must the issue be reported to the EEO office and work its way through the process before being addressed? If so, the result is the inability to address workplace issues in a timely manner.
 - This change will send a message that either supervisors are deemed incompetent or not trusted to address workplace issues. The result is decreased morale.
 - The EEO officers do not understand the dynamics of departments and the backgrounds of workplace relationships. They do not have the depth of understanding that supervisors have to address issues.
 - Some supervisors address matters more effectively through coaching and mentoring or through mediation. This revised process ignores and stifles those strengths in supervisors.
 - There is the potential that different employees under the same supervisor will be treated differently for the same violation if their matter is addressed by different EEO Officers, leading to inconsistent corrective actions.
- There is no verbiage around matters where EEO Officers should not be involved and required to recuse themselves. For example, an EEO Officer should not be investigating or disciplining in a matter involving one of their family members.
- Will a Supervisor be able to appeal an EEO decision? EEO Officers may be involved in favoritism, overlooking key information, missing deadlines, etc. Supervisors should have the ability to appeal an EEO decision prior to issuing a disciplinary decision to an employee.



MEMORANDUM

TO: Legislative Operating Committee
CC: Todd VanDen Heuvel, Human Resources Executive Director

FROM: Peggy A. Van Gheem, Staff Attorney
Krystal L. John, Staff Attorney
Kelly M. McAndrews, Senior Staff Attorney

DATE: January 19, 2023

SUBJECT: Comments on proposed amendments to Oneida Personnel Policies and Procedures

On December 7, 2022, the Legislative Operating Committee released to the public for the first time a draft of comprehensive amendments to the Oneida Personnel Policies and Procedures. Neither the Oneida Law Office nor any department/division management personnel besides the Human Resources Department were notified about or involved in any work meetings, discussions, drafting, or other development of the OPPP amendments.

Establishing the Nation's Workplace Culture

A workplace culture is the shared values, belief systems, attitudes and the set of assumptions that people in a workplace share. Dr. Pragya Agarwal, *How To Create A Positive Workplace Culture*, Forbes (August 29, 2018). A positive workplace culture values, supports and nurtures *all* the organization's employees. *Id.* The importance of carefully crafting a positive workplace culture is increasingly a topic among human resources professionals who note, "[a]ll leaders have a responsibility to be intentional and systematic about designing the culture they want, rather than settling for the culture that is created by chance." Starner, Tom, *6 Policies to Help HR be More Strategic About Culture*, Human Resources Executive (September 9, 2021). Additionally, experts have noted, "[t]he new remote and hybrid work environments have not only made culture more important than ever, but they've forced leaders to rethink their strategy for building culture." *Id.*

The Oneida Personnel Policies and Procedures is the primary document responsible for setting the Nation's workplace culture – it defines the Nation's employment goals and sets human resources standards for the Nation. A serious concern related to the proposed amendments to the OPPP is the overall tone of the document and how that tone may have a negative impact on the workplace culture. The underlying tone of this document communicates that the Nation's supervisors cannot be trusted, that supervisors' experiences are not valued and that the OPPP and HRD are needed to protect "employees." This is most glaring in the Complaints, Disciplinary Actions, and Grievances section. For example, the introductory paragraph reads:

Disciplinary procedures provide a systematic process for handling problem employees and correcting unacceptable behavior. Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives and handles grievances.

There are a couple important things to note about this section. First, when compared to the current OPPP, the reference to also serving to protect the Nation has been removed. Second, the line about protecting employees from inconsistent and unfair treatment really stands out. When put together, it takes the section out of balance. By reading in between the lines, the organization would be sending the message that corrective actions are for “problem employees” and that, if left to their own devices, supervisors would treat their employees inconsistently and unfairly. A much simpler drafting of the policy, without reference to “problem employees” or to the need to protect employees from supervisors would foster a much more positive workplace culture. For example: Disciplinary procedures provide a systematic process for correcting unacceptable employment behavior/performance. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense.

This tone is carried throughout proposed Section V.D., to the extent that all these actions funnel through the Equal Employment Officer and route disciplines for any EEO and/or illegal activities violations exclusively through the EEO Department. The breadth of illegal activities is wide and often implicated when terminating an employee for reasons other than progressive discipline. There is a question as to the capacity of the EEO Department to perform these investigations for the Nation’s entire employment body even if only considering time and resources. But it is also an issue of subject matter expertise. While the EEO has the subject matter expertise in human resources policies, the supervisors have critical subject matter expertise that cannot be removed from the process without sacrificing the integrity of the investigation. For example, supervisors are the subject matter experts related to the interactions between the employees involved, the employment standards and expectations for the positions involved, and most importantly, the day-to-day operations of their department, including any operating systems for access to documents. Removing supervisors from investigations does not serve the employees’ or the Nation’s best interests.

The proposed OPPP amendments fall short of building a positive workplace culture that values, supports and nurtures *all* the organization’s employees when the policy does not value, support and nurture the Nation’s management team. I strongly encourage the drafting team to consider workplace culture when setting the tone of the amended-OPPP. I encourage the Nation to consider whether its HRD should be a processor of human resources documents and policies (similar to most HRDs) or whether the Nation’s HRD will have decision making authorities on behalf of the Nation (which is very uncommon). It would be helpful to spend some time identifying an overall policy and goal of the Nation in terms of employment and to keep that at the forefront in each section of the document rather than trying to identify the policy and goals section by section – which create internal conflict within the document and creates confusion as to the Nation’s employment intentions.

Comments Specific to Each Amendment Section

Throughout OPPP amendments

The title “HRD Manager” is updated to “Human Resources Executive Director” throughout the OPPP. This change presents no legal issues.

Section III, Selection Policy

Section III.A., Oneida Preference and Indian Preference Statement of Policy

The proposed amendments update the language of the Oneida Preference and Indian Preference Statement of Policy. In this section, updated language does not substantially change the underlying policy and does not create any legal issues.

Section III.B., Hiring Procedure

The proposed amendments eliminate almost all OPPP language regarding recruitment and hiring topics, such as identifying vacancies, developing job descriptions, applications, advertising vacancies, screening for positions, interviews, and selection of a candidate. In place of such language, the proposed amendments delegate rulemaking authority to the Human Resources Department as follows:

c. Hiring and Selection Rules.

- 1) The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the hiring and selection of employees of the Nation. (*OPPP Amendments (clean copy), Draft 1, lines 295-298*)

Section III.C. Internal Position Posting (formerly Transfers and Promotions Policy)

Similarly, the proposed amendments eliminate almost all OPPP language regarding transfers and promotions, internal postings, applicant pool, and reassignments and, again, delegate rulemaking authority to HRD, specifically:

1. Internal Position Posting and Reassignment Rules

- a. The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for internal position posting and reassignment of employees of the Nation. (*OPPP Amendments, Draft 1, lines 306-309*)

Section III.B.2.b., Personnel Commission Role

The current OPPP defines the Personnel Commission Role as follows:

b. Personnel Commission Role

- 1) The Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of employees of the Nation.

The proposed amendments narrow down the Personnel Commission Role:

b. Personnel Commission Role

- 1) The Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of employees of the Nation and to shield those employees from inconsistent and unfair treatment by:
 - a) Protecting against issues of nepotism;
 - b) Enforcing Oneida and Indian preference.¹ (*OPPP Amendments, Draft 1, lines 280-284*)

In addition, the current OPPP direct the involvement of Personnel Commissioners in particular screening and interview processes, specifically as one member of the Screening Committee “to conduct the screening of applicants” (OPPP III.B.2.f.2)) and as two members of the Interview Committee (OPPP III.B.2.g.1)). The proposed amendments generally direct the Oneida Personnel Commission to “participate in the hiring selection process, including job description pre-screens and interviews” and “ensure compliance with the Nation’s laws and policies regarding . . . 1. Oneida and Indian preference; 2. Nepotism; 3. Conflicts of Interest; 4. Veteran status; and 5. Physical capacity requirements.” The Commission is further directed to comply with its own bylaws. (*OPPP Amendments, Draft 1, lines 285-294*).

While the current OPPP specifies how Personnel Commissioners are involved in screening and interview processes, the proposed amendments do not identify any specific duties through which the Commission will “participate” and “ensure compliance.” The Commission’s current bylaws have similar language² to the OPPP amendments and, therefore, do not identify specific duties for Commissioners in the screening and interview processes. (*Oneida Personnel Commission By-Laws, Article I. Authority, Section 1-3 and 1-5(e)*) The Personnel Commission could amend its bylaws to describe its participation in the Nation’s hiring processes.³ (*See Oneida Personnel Commission By-Laws, Article VII. Amendments*). If the amended OPPP does not direct the Personnel Commissioners’ duties in the screening and interview processes, who has the authority to direct them? The authority of and involvement by the Oneida Personnel Commission has always been defined by Oneida Law and not through departmental rulemaking. The proposed amendments do not state why this change is needed.

¹ Language added through the proposed OPPP amendments is identical to language in the Commission’s Bylaws describing its authority. *See Oneida Personnel Commission By-Laws, Section 1-3(a)*.

² The Personnel Commission bylaws include an additional area of authority under Section 1-3: “(3) Hearing and deciding appeals of disciplinary action filed by employees of the Nation.” Section 1-5(e) includes a corresponding responsibility to “[c]onduct grievance hearings in accordance with the Oneida Personnel Policies and procedures and Oneida Business Committee Resolution BC-03-13-19-C.” Through a series of Business Committee resolutions and GTC directives that are not relevant to this legal review, the Personnel Commission was dissolved and then reinstated in 2018.

³ At this time, the Personnel Commission has 1 member; all other seats are vacant.

Section III.D., Original Probation

The proposed language clarifies that an employee will be on probation for 3 months “after being hired, transferred, or reassigned” into a position.⁴ (*OPPP Amendments, Draft 1, lines 311-313*) The amendments also permanently remove probationary pay from Oneida law.⁵

In addition, the proposed amendments permanently remove appeal rights of probationary employees who are terminated “for cause,” which “consist[s] of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position.”⁶ (*OPPP Amendments, Draft 1, lines 325-326*)

Section IV, Compensation and Benefits

Section IV.A.4., Holidays

The proposed amendments establish a new holiday – Indigenous Peoples’ Day – for Oneida employees. (*OPPP Amendments, Draft 1, line 406*) In the United States, Indigenous Peoples’ Day is celebrated on the second Monday of October.

Section IV.A.5., Vacation/Personal Days

The current OPPP provides that all employees are paid out for unused personal and vacation time upon separation from employment. (*OPPP Section IV.A.5.h.*) The proposed amendments disallow payout of personal or vacation time to employees “who are terminated during their original probation period.” (*OPPP Amendments, Draft 1, lines 463-464*) The amendments do not distinguish between probationary employees who are “terminated” and those who are separated for other reasons, such as a quit. It is unclear whether the word “terminated” is used to mean any separation of a probationary employee from their employment or if it means, very specifically, termination. This should be clarified, perhaps through use of the word “separated” in place of “terminated.”

Section IV.D.2., Leaves

The current OPPP allow regular employees a three-day leave of absence upon the death of an immediate family member or, upon approval of a supervisor, upon the death of other persons if the employee is responsible for funeral arrangements. (*OPPP Section IV.D.2.*) The proposed amendments extend the length of funeral leave in both cases to five days. (*OPPP Amendments, Draft 1, lines 527-536*)

In all other circumstances, the current OPPP provide up to one day of funeral leave. (*OPPP IV.D.2.c.*) The proposed amendments shorten permissible leave to three hours when the employee is neither an immediate family member nor responsible for funeral arrangements of the

⁴ The Business Committee enacted this amendment on an emergency basis in November 2021 (*BC Resolution #11-24-21-A*) and has subsequently reenacted and extended the amendment. (*See BC Resolution 05-11-22-A and 11-07-22-A*).

⁵ Probationary pay is 5% below the posted rate of pay for the position. The Business Committee adopted an emergency amendment to the same effect in November 2021 (*BC Resolution #11-24-21-A*) and has subsequently reenacted and extended the amendment. (*See BC Resolution 05-11-22-A and 11-07-22-A*).

⁶ The Business Committee enacted this amendment on an emergency basis in May 2022 (*BC Resolution #05-11-22-A*) and extended the same amendment in November 2022 (*See BC Resolution 11-07-22-A*).

deceased. (*OPPP Amendments, Draft 1, lines 537-538*) Proposed changes to the Leaves section of the OPPP present no legal issues.

Section V., Employee Relations

Section V.D., Complaints, Disciplinary Actions, and Grievances - Introduction

The current OPPP include an introductory paragraph to the Complaints, Disciplinary Actions, and Grievances section. (*OPPP V.D.*) This introductory language is frequently cited by the Oneida Judiciary when framing employee grievance decisions. (*See e.g. Thundercloud v. HRD et al.*, 20-EMP-002, p.4 (July 2, 2020); *Kriescher v. Suquet*, 12-AC-010, p. 6 (Oct. 23, 2012); *Oneida Bingo & Casino v. Martin*, 11-AC-002, p. 3-4, 9 (June 1, 2011); *Oneida Bingo & Casino v. Jones*, 14 O.N.R. 36, 41 (Sept. 23, 2008)). Therefore, the introductory language establishes the Nation's employment philosophy regarding Complaints, Disciplinary Actions, and Grievances.

Currently, OPPP V.D. describes the purposes of the disciplinary process as “provid[ing] a systematic process for handling problem employees,” “correct[ing] unacceptable behavior,” and “protect[ing] the Nation.” (*OPPP V.D.*) The proposed amendments condense the express purposes for disciplinary action to “provide a systematic process correcting (*sic*) unacceptable and problematic behaviors in employees.” (*OPPP Amendments, Draft 1, lines 702-3*)

The purpose of grievance procedures in the current OPPP is to “provide a systematic process for hearing and evaluating job related disputes” and “protect employees from inconsistent and unfair treatment.” (*OPPP V.D.*) The proposed amendments shift the focus of grievance procedures to employee protection:

Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. (*OPPP Amendments, Draft 1, lines 703-4*)

As the introductory language is an important signal of the Nation's employment values and is relied upon by Oneida Courts, the language should accurately reflect the Nation's regard for the value of all employees within the organization, front-line through General Managers, in all divisions and non-divisional.

Section V.D.1., Complaints

The current OPPP provides a process for employees to file a complaint against another employee in Section V.D.1.

1. Complaints (current OPPP)

- a. Should an employee have a disagreement with another employee, he/she may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor.
- b. The supervisor will investigate the complaint and attempt to resolve the disagreement.
- c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she may ask the Area Manager to attempt a resolution.
- d. There is no further appeal of this process.

Currently, an employee files a complaint with the supervisor of the employee who is the subject of the complaint. (*OPPP V.D.1.a.*) The OPPP gives the supervisor discretion in how to investigate and the timeline for a resolution and response. (*OPPP V.D.1.b.*) The complaining employee may appeal the supervisor's response to the supervisor's supervisor (the area manager), but no further appeal is allowed. (*OPPP V.D.1.c. and V.D.1.d.*) (See e.g. Mays v. Boucher, 15-AC-005, p.5 (July 29, 2015); and Oneida Compliance Division v. Metoxen, 5 O.N.R. 3-103, 107 (Oct. 25, 1999)). The current complaint process is designed to be flexible, allowing supervisors to address issues before they erupt in litigation. The proposed amendments drastically expand the complaint process, potentially involving Oneida personnel up to the General Manager in complaints that begin at any level of the organization.

Section V.D.1.a., General

Amendments to the OPPP include a new introduction to the Complaint section:

1. Complaints

a. General

- 1) The Nation recognizes that all employees have the right to file a complaint against another employee, and that all complaint investigations shall be handled with the utmost fairness, respect, and equality.
- 2) The Nation recognizes there are various levels of severity of complaints, and dependent on the severity of the complaint, not all complaints shall follow the same process.
- 3) An employee found to have given false information or made a false claim shall face disciplinary action in accordance with the appropriate policies and procedures.
- 4) Access to complaint information shall be limited to those who have a legitimate need to know.
- 5) Retaliation of any form against an employee for filing a complaint shall be strictly prohibited. (*OPPP Amendments, Draft 1, lines 709-23*)

As written, the introduction language raises some issues. Declaring that “employees have the right to file a complaint against another employee” is unnecessary because the Complaint process would not be written into the law if employees did not have a right to it. In addition, other basic employment processes – receipt of wages, use of accrued vacation or personal time, non-discriminatory supervision – are not delineated as “rights” in the OPPP. The proposed language of OPPP V.D.1.a.1) begs the question: Why should the complaint process be elevated as a “right” above other essential employment processes?

The draft amendment also proposes new language regarding release of complaints, as “complaint information” would be released to “those who have a legitimate need to know.” The scope of what may be released – the “complaint information” in proposed OPPP V.D.1.a.4) – is undefined. Does that refer to only the complaint itself? Or does it mean notes, documents, recordings, and other information collected during the supervisor's investigation? Also left undefined is who will determine whether a requester has a “legitimate need to know.” And are there any factors that will be balanced against the “legitimate need” or is the requester's “legitimate need” sufficient to access the “complaint information?” These questions lead to

uncertainty for supervisors, area managers, employees, and those responsible for releasing information.

As written, the amendments potentially allow the employee who is the subject of a complaint to receive a copy of it, since the employee who is the subject of a complaint and subsequent investigation certainly has a “legitimate need to know.” This directly contradicts established Oneida law and caselaw. Both the current OPPP and the proposed amendments address the confidentiality of personnel records in Section IX. Current Oneida Law and the proposed amendments require an employee’s written consent prior to release of employee records “to any person or agent of any organization.”⁷ (*OPPP Section IX.A.*) Oneida caselaw emphasizes that a complaint will not be released to the employee who is the subject of it. In Somers v. OBC Officers, the Oneida Appeals Court determined that an employee’s due process rights were not violated when the Business Committee, in their role as Somers’ supervisors, refused to provide her with a copy of a complaint they were investigating. (18-AC-007, p. 4 (August 23, 2017)). The Appellate Court listed several reasons why a complaint should not be released to the employee who is the complaint’s subject, specifically:

- (1) Releasing a complaint to the subject employee “can create more issues between the employee, supervisor, and other employees within the organization.” *Id.* at 3-4.⁸
- (2) The “supervisor is simply trying to determine if the allegations of the complaints have merit and if so, to address them administratively.” *Id.* at 4.
- (3) “An effective investigator will only disclose details of the complaint that are necessary for the inquiry” for the purpose of “elicit[ing] extemporaneous responses that are not just responses to the person making the complaint or the accusations in the complaint.” *Id.*

The proposed amendments may contradict established Oneida Law by allowing disclosure of a complaint to the subject employee without written consent. Adopting the amendments as written would potentially overturn Oneida caselaw, which is based on long-standing HRD practice and advice. The reasons for this proposed change are not apparent from the current draft.

Section V.D.1.b., Types of Complaints

The amendments break Complaints into three categories: (1) Employee Disagreements; (2) EEO Violations; and (3) Illegal Activities.⁹ Each type of Complaint follows a separate process.

⁷ OPPP Section IX – Privacy and Confidentiality of Employee Records refers specifically to collection and release of employee records by the Human Resources Department. Under the proposed amendments, after a supervisor concludes their investigation and resolution of a complaint, the supervisor “shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes,” thereby creating an employee record that is subject to OPPP Section IX.

⁸ The Court relied upon testimony from Geraldine Danforth, HRD Area Manager for 16 years, for a description of reasons why a complaint should not be released to the subject employee. Ms. Danforth “testified on two different occasions that an investigator should never give the complaint to the employee.” 18-AC-007, p. 3.

⁹ By establishing Complaint categories and giving those categories precise definitions, it is likely the proposed language will eliminate complaints that could be filed under the more general language of the current OPPP. For example, if an employee wishes to complain about another employee’s incompetency, incapacity to perform job duties, or failure to perform adequately, those complaints do not seem to fit under any proposed Complaint

Section V.D.1.c.1), Employee Disagreements

Employee Disagreements are “when an employee alleges they are having problems, misunderstandings, or frustrations with another employee.” (*OPPP Amendments, Draft 1, lines 725-7*) The complaint process for an Employee Disagreement is described as follows:

1) Employee Disagreements

- a) An employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department.
- b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the supervisor of the employee with the complaint.

It is not clear whether the proposed amendments require an employee to file a written complaint or if an oral complaint to the EEO is sufficient. This should be clarified.

The proposed amendments require the EEO to “provide the supervisor of the employee with the complaint.” It is not clear which supervisor will be provided the complaint: the supervisor of the employee who made the complaint or the supervisor of the employee whose behavior led to the Employee Disagreement. If the amendments require the EEO to provide the complaint to the supervisor of the complaining employee, that could be problematic if the complainant’s supervisor is the subject of the complaint. The proposed amendments should have clearer language in Section V.D.1.c.1) b. regarding which supervisor will receive the complaint.

- c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

Throughout the amended OPP section regarding Complaints, timelines are counted in “working days” but no definition of “working day” is provided in the amendments¹⁰. A possible definition for “working day” is: Any day that is not a weekend or a recognized Oneida holiday.

- i. The supervisor’s ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department.

Oneida Courts have further defined what it means for a supervisor or area manager to “receive” documents during the grievance appeal process and it would be helpful to include the same clarification in the proposed amendments. In *Lecker v. Powless*, an employee alleged the area manager decision was untimely. (22-AC-004, p. 2 (June 7, 2022)). After multiple recusals, Lecker’s appeal of her termination was upheld by Area Manager Powless. *Id.* The Court of Appeals determined the Area Manager decision was timely and declined the grievance appeal. *Id.* The Court emphasized it is the Area Manager’s actual receipt of an appeal that starts the

category. Will employees choose not to file complaints if they cannot figure out the right category? Or will such Complaints be rejected by the EEO? The proposed amendments are silent on this question.

¹⁰ The phrase “working day” is used throughout the current OPPP and not defined. The amendments are an opportunity to define an important term that is central to complaint and disciplinary process.

timeline. *Id.* The amendments should include language to better align with the Lecker decision, such as:

The Area Manager receives an appeal when they personally receive the grievance, after all possible recusals have been resolved.

ii. The supervisor shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

Altogether, the proposed Complaint section places an incredible burden on supervisors, area managers, and, in some cases, even General Managers. A part of that burden is found in Section V.D.1.c.1)c.ii. and other similarly-worded sections. (*See e.g.* V.D.1.c.1)e.iv. regarding area manager investigation and V.D.1.c.1) f.iv.1.c. regarding General Manager investigation of complaints). Under the proposed amendments, supervisors (and area managers and General Managers) will be required to meet with the employee who filed the complaint and “all other parties mentioned in the complaint.”¹¹ The amendments do not grant the supervisor, area manager, or General Manager any discretion in determining which individuals have information relevant to the Employee Disagreement. A complaining employee could name numerous individuals in the complaint, which would necessitate a supervisor meeting with each and every one of them. In addition, use of the term “parties” rather than “employees” means the supervisor would be required to meet with individuals outside the organization. The proposed amendments do not provide any discretion for supervisors, area managers, or General Managers to conduct an investigation tailored to the complaint.

1. Meetings between the supervisor and employees may occur in person, through video conferencing, or over the telephone.
2. The supervisor shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the supervisor shall move forward with the investigation based on the information they have.

The proposed amendment language does not define when or how an employee is “unavailable” to meet. The Oneida Judiciary provided guidance on when an employee may be considered unavailable to meet. The Oneida Court of Appeals, in Skenandore v. Smith et al., found that a supervisor must provide an employee at least 24-hours’ notice prior to a requested meeting for the employee’s no-show to count as a refusal to meet. (21-AC-008, p. 4 (April 11, 2022)) (“[P]roviding less than 24-hour notice to attend a meeting on a voicemail, especially when the meeting has not been confirmed, is not judicious good sense.”). In addition, a supervisor may be required to follow-up with an employee who does not respond to a meeting request, rather than allowing the meeting time to pass and proceeding with discipline. *Id.* at 5. The proposed amendments do not explain why the principles –and the rule of law – of Skenandore have been left out of the OPPP amendments.

¹¹ It is interesting that the amendments would not require the supervisor to meet with the employee who is the subject of the complaint if such employee is not, in fact, named in the complaint. This may be an oversight, but it seems essential to creating an effective resolution to an Employee Disagreement.

Also, while the supervisor is permitted to move forward with an investigation if the complaining employee or subject employee are unavailable, the amendments do not have similar instructions when any “other party” is unavailable. It is unclear whether the supervisor’s attempts to meet with “all other parties” must be documented and whether unavailability affects the investigation in any way. This topic should be addressed to provide clear guidance to supervisors, area managers, and General Managers.

- iii. If the supervisor cannot complete the investigation within the ten (10) working day timeframe, the supervisor may request a one (1) time five (5) working day extension from the EEO Department.
- iv. When the supervisor’s investigation is complete, the supervisor shall contact the EEO Officer to mutually determine an appropriate resolution.
 - 1. If the supervisor cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the supervisor shall provide written justification for non-agreement on the resolution to both the Area Manager and the Human Resources Executive Director.
- v. The supervisor shall send the final resolution to their Area Manager to ensure accountability.
- vi. The supervisor shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.

Sections V.D.1.c.1)c)iii. - vi. of the proposed amendments create additional burdens for supervisors when resolving Employee Disagreement Complaints. The current OPPP gives the supervisor discretion to “attempt to resolve the disagreement” and, if the resolution is not satisfactory to the complaining employee, allows the employee to appeal one time to the area manager. (*current OPPP V.D.1.b. and c. (See excerpt at p. 4, above)*). Under the amended process, a supervisor – and an area manager and the General Manager – is no longer trusted to resolve complaints that are based on an employee’s frustration or misunderstanding with another employee. (*OPPP amendments, Draft 1, lines 726-7*) The supervisor, area manager, and General Manager would be required to consult with the EEO to resolve an employee’s frustration or to properly address an employee’s misunderstanding.¹² It is unclear what has prompted this wholesale removal of discretion from supervisors, area managers, and General Managers. The foundation for and philosophy behind this change is not explained in the proposed amendments.

Under the proposed amendments, Section V.D.1.c.1)c)vi. requires the supervisor to send the final resolution to the EEO Department “for filing and reporting purposes.” It is not clear what reporting is required or permitted for resolutions to Employee Disagreement Complaints. As outlined above, OPPP Section IX protects personnel records from disclosure absent written permission from the subject employee. The amendments should more clearly define – and perhaps limit – reporting of Complaint resolutions.

¹² And, it is important to note at this point, if the supervisor, area manager, or General Manager does not follow this process, they may be disciplined.

- d) If the supervisor fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the Area Manager.
 - i. The notice shall notify the Area Manager that the complaint was not addressed within the allotted ten (10) working days.
 - ii. The notice shall inform the Area Manager that the supervisor violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.
 - iii. The notice shall address the appropriate accountability of the supervisor.
 - 1. If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.
 - iv. The notice shall direct the Area Manager to complete the complaint investigation within ten (10) working days of receiving the notice from EEO.

The proposed amendments add a significant “accountability” process to the Complaint section. If a supervisor “fails” to investigate and resolve a complaint within 10 days¹³, the EEO Department is compelled to send notice to the area manager. It is not clear what constitutes a supervisor’s failure to investigate and resolve a complaint. Historically, these questions have been examined and resolved by an Oneida hearing body, which provides an opportunity for both sides to be heard and supplies written decisions that guide future actions of supervisors throughout the organization. Such important due process and notice functions will be missed if these determinations are made by the EEO Department.

In addition, the EEO determination occurs without giving the supervisor an opportunity to explain why the deadline was missed. While the proposed amendments provide ample process for employees to complain and appeal, supervisors (and area managers and General Managers who respond to complaints) are not afforded the same right to be heard. Instead, the EEO unilaterally determines both that the supervisor, area manager, or General Manager was “negligent in the performance of assigned duties” and assigns “appropriate accountability.” It is unclear from the proposed language what might be used to hold the supervisor accountable. Is it discipline? An entry in the personnel file of the offending supervisor? As the EEO’s notice will describe the supervisor’s actions as “negligence in the performance of assigned duties,” which is an action subject to discipline under both the current OPPP and the proposed amendments, it would appear that accountability will be in the form of discipline. And the area manager would be required to issue the discipline without hearing the supervisor’s perspective. A unilateral finding that an employee (here, a supervisor) was negligent in the performance of their duties

¹³ Although a supervisor may request an additional five days to resolve a complaint under proposed Section V.D.1.c.1)c)iii., the “accountability” process does not recognize any extensions. A supervisor failure to investigate and resolve in 10 working days, rather than 15, compels the EEO to send notice to the area manager.

without granting any opportunity for the employee (supervisor) to explain their actions is counter to the remainder of the proposed OPPP amendments.

In addition, the proposed amendments remove the area manager's or General Manager's discretion to address the supervisor's actions, since the next step is to notify the General Manager of the area manager's failure to address the situation (or at least to address it to the EEO's satisfaction). It is not clear what philosophy supports the removal of discretion from most levels of management.

e) If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.

i. Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.

ii. The Area Manager shall have ten (10) working days to complete their investigation.

iii. The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.

iv. The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

1. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.

2. The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.

v. When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.

1. If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.

vi. The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department 840 for filing and reporting purposes.

vii. The Area Manager's resolution shall be final.

f) If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

- i. The notice shall notify the General Manager level position that the complaint was not addressed within the additional ten (10) working days.
- ii. The notice shall inform the General Manager level position that the Area Manager violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.
- iii. The notice shall address the appropriate accountability of the Area Manager.
- iv. The notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.

1. Investigation Procedure for all General Manager Level Positions, not the Oneida Business Committee

- a. The General Manager level position shall complete the investigation and reach a resolution within ten (10) working days of receiving the notice from EEO.
- b. The General Manager level position's ten (10) working day timeframe begins the day after the General Manager level position receives the complaint from the EEO Department.
- c. The General Manager level position shall meet with the employee 868 filing the complaint as well as all other parties mentioned in the complaint.
 - i. Meetings between the General Manager level position and the employees may occur in person, through video conferencing, or by telephone.
 - ii. The General Manager level position shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the General Manager level position shall move forward with the investigation based on the information they have.
- d. When the General Manager level position's investigation is complete, the General Manager level position shall contact the EEO Officer to mutually determine an appropriate resolution.
 - i. If the General Manager level position cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the General Manager level position shall provide written justification for non-agreement on the resolution to the Human Resources Executive Director.
- e. The final resolution shall be sent to the EEO Department for filing and reporting purposes.

- f. The General Manager level position's resolution of the complaint shall be final.
- 2. Investigation Procedure for the Oneida Business Committee
 - a. When the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.

The proposed amendments significantly and, perhaps, unnecessarily complicate the employee complaint process. An Employee Disagreement based on a problem, misunderstanding, or frustration may be elevated to the General Manager, which could be as many as five levels of supervision above the complaining employee. It is difficult to estimate how many additional complaints might require area managers' and General Managers' attention under the amended process. Of course, it is not just the additional complaints that will become burdensome. The Complaint investigation and resolution process itself will bury supervisors, area managers, and General Managers. With present labor market conditions and a shortage of workers in most Oneida departments, supervisors and area managers are regularly covering work duties and filling vacancies. If supervisors are regularly faced with the choice between, on the one hand, being disciplined for an untimely response to a complaint or, on the other hand, an unattended cashier till, patients who cannot get in for required medical visits, lack of supervision in a Head Start classroom, or being unavailable for required testimony in Indian Child Welfare hearings, supervisors will simply choose to leave the Oneida organization and go elsewhere. Supervisors, including area managers and General Managers, are employees, too. They deserve trust and respect in the form of discretion to investigate and resolve employee complaints that are based on "frustration and misunderstandings."

Section V.D.1.c.2), EEO Violations

The second category of Complaints is EEO Violations, which "occurs when an employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed." (*OPPP amendments, Draft 1, lines 728-42*). The proposed amendments define "Sexual Harassment" using language from current OPPP Section V.D.2.c)5), specifically:

- i. Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 - 1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - 2. submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or
 - 3. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Over time, the definition of sexual harassment has expanded beyond what is in the current OPPP and proposed for the amendments. Comprehensive amendments to the OPPP provide an opportunity to update the scope of prohibited sexually harassing behavior under Oneida law. The United States Equal Employment Opportunity Commission¹⁴ includes in its definition all harassment “because of a person’s sex” and “offensive remarks about a person’s sex.” (*U.S. Equal Employment Opportunity Commission, Sexual Harassment*, last visited 12/22/2022, www.eeoc.gov/sexual-harassment). Most importantly, harassment “does not have to be of a sexual nature” to be prohibited as sexual harassment. *Id.* Also, sexual harassment can be perpetrated by a man or a woman and the harasser and victim may be of the same sex or opposite sex. *Id.* The amendments should include an updated scope of sexually harassing behaviors.

The proposed Complaint process for EEO violations is as follows:

2) EEO Violations

- a) An employee may file a EEO Violation complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer’s ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an EEO Violation complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.¹⁵
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
 - i) The EEO Officer’s resolution shall be final. (*OPPP amendments, Draft 1, lines 896-917*)

The most notable aspect of the EEO Violations Complaint process is the lack of oversight, especially when this section is compared to the Employee Disagreements Complaint process. While supervisors, area managers, and General Managers throughout the organization will be found “negligent in the performance of their assigned duties” and be subject to “appropriate accountability” if they “fail to complete [an] investigation and resolve the complaint,” the EEO Officers have no oversight and no threatened discipline. The proposed amendments are very

¹⁴ As a federally-recognized Indian tribe, the Oneida Nation is exempt from Title VII of the Civil Rights Act of 1964 and not subject to EEOC jurisdiction. EEOC definitions may guide the Nation in forming a sexual harassment policy.

¹⁵ The proposed Amendments do not state what happens if the EEO and HR Executive Director cannot mutually agree. A possible solution is for the Executive Director decision to control in those instances.

focused on EEO oversight of supervisor, area manager, and General Manager investigations, decision-making, and follow-through. But there is a complete lack of oversight for the EEO Officers themselves when they are investigating and resolving EEO Violation Complaints.

The proposed amendments require the EEO Officer to notify the supervisor of the employee who is the subject of the complaint to state, among other things, “the final resolution shall be sent to their supervisor to ensure accountability.” (*OPPP amendments, Draft 1, lines 907-908*). It is unclear which supervisor will receive the “final resolution.” The language may refer to the supervisor of the employee being complained about or it may refer to the supervisor’s supervisor (in other words, two levels of supervision above the employee being complained about). The language should more clearly specify who will receive the final resolution.

In addition, the language declaring the EEO’s resolution of a Complaint as “final” should be more clear. If the meaning of “final” is that the EEO’s resolution cannot be appealed to any hearing body, such limitation should be explicit.

Section V.D.1.c.3), Illegal Activities

The proposed amendments add a new Complaint process centered on employee allegations of illegal activities. Illegal activities are defined within the amendments at Section V.D.1.b.3):

3) Illegal Activities

- a) An illegal activities violation occurs when an employee alleges:
 - i. They witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;
 - ii. They witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;
 - iii. They witnessed or have knowledge of the use or possession of an illegal controlled substance; or
 - iv. They witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions. (*OPPP amendments, Draft 1, lines 743-754*)

The OPPP are Oneida law and must be confined to matters over which the Oneida Nation can exercise its jurisdiction. For the purpose of employment regulation, this is generally considered to include activities that occur within the workplace, activities that are part of an employee’s work duties, or activities that substantially affect an employee’s ability to perform their work duties. The proposed amendments do not confine the definition of “Illegal Activities” to activities that are under the Nation’s jurisdiction, which can pose a problem for enforcement of the Law. Only amended Section V.D.1.c.3)a)ii refers to an employee “witness[ing] or hav[ing] knowledge of a possession of a dangerous or unauthorized material . . . in the workplace.” (*OPPP amendments, Draft 1, lines 747-8*) (emphasis added). Similar language should be added to Sections i, iii, and iv.

The proposed amendments also describe a process for Illegal Activities Complaints.

3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
 - i) The EEO Officer's resolution shall be final.
- j) If the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.
 - i. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint. (*OPPP amendments, Draft 1, lines 918-946*)

The Illegal Activities complaint process mirrors the EEO Violations complaint process for the most part, so the comments are similar. (*See EEO Violations, above*). In summary, when compared to the Employee Disagreement Complaint process, there is a lack of oversight for EEO Officer investigation and resolution of Illegal Activities. Also, it is unclear which supervisor will receive "the final resolution" identified in Section V.D.1.c.3)d)iii. Finally, it is not clear what is meant by, "The EEO Officer's resolution shall be final."

Proposed Section V.D.1.c.3.g. would require the EEO Office to meet with the HR Executive Director to "mutually determine an appropriate resolution." When there is the possibility of illegal activity within an Oneida workplace or a crime against the Nation, such discussion should involve an attorney(s) from the Oneida Law Office. The Nation's attorneys both represent the interest of the Nation and directly advise the Oneida Business Committee about legal implications of potential illegal activity within the organization.

In addition, while the Illegal Activities complaint process requires an EEO Officer to forward information to a local law enforcement agency if the Officer reaches a "conclusion that an illegal

activity did occur,” this requirement falls far short of what is actually needed in these circumstances. If grant funds are implicated in any way, grant requirements must be considered and a report(s) made to relevant granting agency(ies). In addition, illegal activity typically impacts compacts, contracts, memoranda of understanding or agreement, and other intergovernmental agreements. The Oneida Law Office is involved in cases of illegal activity to ensure that the requirements of all applicable agreements are fulfilled. In almost every case, the matter is reported to the Business Committee with the appropriate confidentiality and context. Simply saying that the EEO will refer the matter to a local law enforcement agency does not address all the implications of an Illegal Activities investigation. This language should be expanded to ensure that the Oneida Law Office is involved and all reports are made.

The Illegal Activities Complaint process raises an additional concern. Section V.D.1.c.3)j)i. seems to direct “local law enforcement agenc[ies]” to “utilize their investigation and accountability processes for the complaint.” Every local law enforcement agency, including the Oneida Police Department, uses its discretion to determine an approach to every complaint they receive. It is not necessary to direct law enforcement agencies as proposed in the OPPP amendments.

Another concern is the proposed Amendments would require the EEO Officers to investigate the functions, records, systems, and policies of a department that the EEO likely has no experience in. Such investigations are currently delegated to supervisors who understand and work directly in their departments. Supervisors may request assistance from professional investigators in Oneida Internal Security. An EEO Officer’s unfamiliarity with the subject matter and processes can increase the time, effort, and resources needed for an investigation. It will also likely affect the ability of law enforcement to conduct an effective investigation, if needed. It is not clear why this responsibility has been removed from the supervisors.

Section V.D.2., Discipline

The current OPPP provide a process for direct supervisors to discipline their employees for infractions enumerated within the Law. *See* OPPP V.D.2. Under current law, if anyone other than an immediate supervisor uncovers information or performs an investigation that reveals a basis for possible discipline, the matter is referred to the direct supervisor to perform the discipline. (*See e.g.* Investigative Leave, 2 O.C. 208.7-3; *and* OPPP §V.D.5)a)1.c., Sexual Harassment Policy). Throughout the investigation and disciplinary process in place at this time, supervisors are given discretion to determine how an investigation is conducted, whether a discipline is justified, and the severity of the discipline. Oneida Courts have affirmed supervisor discretion, holding, for example, that a supervisor has discretion to not terminate an employee who accumulates three disciplinary notices, even though such termination is provided for in the OPPP. (Moore v. Skenandore, 15-AC-011, p. 4 (November 10, 2015)) (*See also* Oneida Bingo & Casino, Table Games Dept. v. Hoffman, 09-AC-007, p. 9 (Aug. 19, 2009)) (“It is the discretion of the supervisor to determine if a discipline is warranted and if so the severity of the discipline. . . . Having found that Ms. Hoffman did not adhere to the attendance and punctuality rules, it is the supervisor that should be permitted and has the authority in deciding what if any consequences should be applied to their employee’s work performance.”)

Current law also places certain constraints on the supervisor's discretion, specifically: (1) any deviation from progressive discipline must be justified (OPPP V.D.2.b.)¹⁶; (2) five-day timeline to issue discipline after supervisor concludes the investigation (OPPP V.D.5.b.); (3) in the event of a suspension or termination, supervisor must consult with an EEO Officer to mutually determine the discipline (OPPP V.D.5.f.1)).¹⁷ In addition to the constraints imposed by the OPPP, supervisors' disciplinary decisions are regularly reviewed by area managers and the Courts. It is not clear why the proposed amendments reach even further in constraining supervisor and area manager discretion.

Unlike the current OPPP, the proposed amendments would establish a disciplinary process that may be initiated by either the direct supervisor or the EEO Officer.

2. Discipline

a. Initiation of Disciplinary Action.

- 1) Disciplinary actions shall be initiated by an immediate supervisor for the purpose of correcting unsatisfactory work performance or as the resolution of an Employee Disagreement complaint investigation.
- 2) Disciplinary actions shall be initiated by an EEO Officer as the resolution of an EEO Violation complaint or an Illegal Activities complaint investigation. (*OPPP amendments, Draft 1, lines 947-953*).

The proposed amendments permit discipline by either an employee's direct supervisor or an EEO Officer, depending on the basis for the discipline. In situations where a supervisor "fails to investigate and resolve [an Employee Disagreement] complaint," the EEO will direct the Area Manager or, ultimately, the General Manager to "resolve the complaint." (*OPPP amendments, Draft 1, lines 794-6 and 856-8*). Where supervisor discretion and supervisor-initiated disciplines have had long standing in the OPPP and are supported by the Courts, it is not clear what philosophy has led to such a change in the proposed amendments.

b. Determination of Disciplinary Action.

- 1) All disciplinary actions shall commensurate¹⁸ with the seriousness of the unsatisfactory performance or violation.
- 2) Disciplinary actions shall be considered in progressive order.
 - a) The progressive order for discipline is as follows, unless otherwise noted:
 - i. Written warning (W);
 - ii. Suspension (S);
 - iii. Termination (T).
 - b) Deviation from Progressive Order

¹⁶ Justification of deviation from progressive discipline is typically included in the written summary that accompanies the Disciplinary Action Form. The justification may then be reviewed by the area manager, in the event the employee appeals.

¹⁷ OPPP V.D.5.f.1) requires the supervisor to mutually determine suspensions and terminations with the HRD Manager. In practice, this function has been delegated to the EEO Officers.

¹⁸ It's possible Section V.D.2.b.1) is intended to read, "All disciplinary actions shall be commensurate with the seriousness of the unsatisfactory performance or violation."

- i. Any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.
- ii. Any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and approved by the Human Resources Executive Director, or designee.

The proposed amendments would require a supervisor to obtain EEO approval of any deviation from progressive discipline, within the timeline for issuing discipline. The amendments do not provide an opportunity to appeal the EEO decision regarding deviation.

3) Accumulated Disciplinary Actions Warranting Termination

- a) The following accumulations of disciplinary actions shall warrant the termination of an employee:
 - i. Three (3) upheld warning notices within any twelve (12) month period;
 - ii. Two (2) upheld suspensions within any twelve (12) month period; or
 - iii. Any combination of three (3) upheld warning notices and/or upheld suspensions within any twelve (12) month period.

Proposed language regarding accumulated disciplines is substantially similar to language in the current OPPP and presents no legal issues.

The amendments include lists of actions that may constitute unsatisfactory¹⁹ work performance, which are substantially similar to the lists of actions in the current law. (*See OPPP amendments, Draft 1, lines 983-1066*). A significant change in the proposed amendments is found in Section V.D.2.c.2)d)xiii., which proposes to define “prohibited drug” as follows:

- xiii. The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or prohibited drugs on or about Oneida Nation premises while on duty. (S/T)
 - 1. Prohibited drug means marijuana,²⁰ cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens,

¹⁹ In the current OPPP, the list of actions is referred to as “unacceptable” work performance. *See* OPPP V.D.2.c.

²⁰ Many states have decriminalized marijuana for medical or recreational use, or both. In Wisconsin, where state law maintains criminal penalties, several municipalities have decriminalized marijuana possession, including Appleton and Green Bay, though such municipalities may permit civil monetary penalties. As a federal grant recipient, the Oneida Nation is required to comply with the Drug Free Workplace Act of 1988, which requires “publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person’s workplace and specifying the actions that will be taken against employees for violations of such prohibition.” 41 USC §701(a)(1)(A). Marijuana is currently included on the federal list of controlled substances.

methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

As the laws regarding the legality of marijuana continue to change, it may be advisable to not include a list of specific drugs as “prohibited.” To stay current with any potential changes to drug laws, proposed Section V.D.2.c.2)d)xiii.1. could state:

1. Prohibited drug means any substances included in Schedules I through V, as established by 21 United States Code §812. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

Section V.D.2.d., Disciplinary Procedure

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

- 1) The supervisor or EEO Officer shall fill out a disciplinary action form within five (5) working days of either:
 - a) the resolution of a complaint from which it has been determined that disciplinary action is warranted, or
 - b) the determination that disciplinary action is warranted based on the unsatisfactory work performance of an employee.
- 2) The supervisor or EEO Officer shall fill out the disciplinary action form in its entirety and ensure the information contained on the form is complete and accurate. The disciplinary action form shall include at a minimum the following information:
 - a) Statement of the behavior for which the disciplinary action is being taken;
 - b) The time and date of its occurrence; and
 - c) The specific policy section under which action is being taken.
- 3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action. (*OPPP Amendments, Draft 1, lines 1067-84*)

It is not clear what qualifies as “promptly” meeting with a disciplined employee. Under the proposed amendments, the EEO Department can refer a supervisor who “fails to follow the Nation’s disciplinary procedures” for discipline. *See OPPP Amendments, Draft 1, lines 1136-41.* If an employee (here, a supervisor) is subject to discipline for certain actions or inaction, the employer should inform the employee of exactly what behaviors are required to avoid discipline. The proposed amendments do not adequately inform supervisors how to avoid discipline by promptly meeting with an employee.

Additionally, supervisors have an interest in not having a discipline overturned for procedural errors. (See Oneida Bingo and Casino v. Oneida Human Resources Dept., 02-AC-007, 8 O.N.R. 3-138, 139 (Aug. 12, 2002) (“[T]he supervisor is not presenting this grievance to the Personnel Commission in her personal capacity. She is bringing this action as a representative of the Oneida Bingo and Casino, which is Mr. Haven’s employer. And the Oneida Bingo and Casino does have an interest in upholding Mr. Haven’s suspension from employment. . . . [T]he Bingo and Casino as an entity has an interest in maintaining itself and its processes.”) For supervisors to avoid having their disciplines overturned, they need to be told the details of the disciplinary process. Requiring a “prompt” meeting is not detailed enough. For these reasons, proposed OPPP V.D.2.d.3) should include a specific timeline for supervisors and EEO Officers to meet with an employee who is being disciplined.

Furthermore, it is not clear what is included as a “corrective action” that must be identified during the disciplinary meeting. Is the discipline – written warning, suspension, termination – the corrective action? Or would something else – a restriction on employee’s authority, a corrective plan, a mitigation agreement – qualify as a corrective action? In order to provide notice to the supervisor and to help the supervisor implement discipline that will be upheld, the types of “corrective action” need to be identified in the Amendments.

- a) The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.
- b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:
 - i. Understands the reason for the disciplinary action;
 - ii. Understands the expected work performance in light of the disciplinary action; and
 - iii. Understands the consequences of continued unacceptable behavior.
- 4) The employee being disciplined shall sign the disciplinary action form.
 - a) Should an employee being disciplined refuse to discuss²¹ the action with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.
- 5) Within one (1) working day of the conclusion of the meeting with the employee, the supervisor or EEO Officer shall provide copies of the signed disciplinary action form, or disciplinary action form noting the date of refusal, to the:
 - a) Employee being disciplined;
 - b) Human Resources Executive Director;
 - c) Supervisor;

²¹ It is not clear if there is a difference between an employee’s refusal to meet and a “refusal to discuss.” Oneida hearing bodies and Courts have created significant precedent regarding an employee’s refusal to meet for an investigation or discipline. See *e.g. Thundercloud et al. v. Skenandore*, 21-AC-008 (April 11, 2022). The Amendments should make clear whether such precedent holds its value by using the phrase “refuse to meet.”

- d) Area Manager; and
 - e) Appropriate General Manager level position.
- 6) Should a disciplinary action result in the suspension of an employee, the following guidelines shall apply:
- a) Consultation on Suspensions
 - i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine the length of the suspension.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension.
 - b) Suspensions shall be limited to a maximum period of three (3) weeks.
 - i. Suspensions that are overturned in the grievance process shall result in the employee receiving back pay for the time they were suspended.
- 7) Should a disciplinary action result in the termination of an employee, the following guidelines shall apply:
- a) Consultation on Termination
 - i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine that the termination is the appropriate disciplinary action.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action. (*OPPP Amendments, Draft 1, lines 1085-1125*).

The proposed OPPP Amendments regarding mutual determination of suspension length and of termination are substantially similar to the current OPPP and do not present any new legal issues.

- b) Terminations that are overturned in the grievance process shall result in the employee receiving back pay for the time they were terminated. (*OPPP Amendments, Draft 1, lines 1126-7*).

Both the suspension and termination sections of the proposed amendments require back pay in the event a discipline is overturned. (*OPPP Amendments, Draft 1, lines 1115-6 and lines 1126-7*). The recently-amended Back Pay Law clearly defines eligibility for and calculation of Back Pay. *See* 2 O.C. 206, Back Pay. Proposed language in the amendments that requires back pay “for the time they were suspended” or “for the time they were terminated” is not very specific. However, the Back Pay Law is quite specific about these calculations. The proposed amendments should require back pay “in conformance with Oneida Law,” as this is simpler and less confusing.

- 8) The Human Resources Department may void a disciplinary action for clear procedural errors.

- a) The EEO Officer may void a disciplinary action taken by a supervisor for clear procedural errors.
- b) The Human Resources Executive Director, or designee, may void a disciplinary action taken by an EEO Officer for clear procedural errors.
- c) Notification of a voided disciplinary action shall be sent to the supervisor or EEO Officer and the employee which identifies the procedural error. (*OPPP Amendments, Draft 1, lines 1128-35*).

The proposed amendments explicitly permit the EEO Officers to void a disciplinary action imposed by a supervisor if there are “clear procedural errors.” However, without a description of what constitutes clear procedural error, the amendments do not give supervisors sufficient notice of when their disciplines may be overturned. As described above, supervisors have an interest in issuing disciplines that will not be overturned. Therefore, the proposed amendments need a clearer definition of “clear procedural error.” In addition, the determination of whether a procedural error occurred has always been made by either the Personnel Commission or the Oneida Judiciary Trial Court. This allows for presentation of evidence by both sides and it provides written opinions that other supervisors can use to guide their disciplines in the future. Allowing EEO Officers to simply void disciplines eliminates these important due process and notice functions.

- 9) For any supervisor who fails to follow the Nation’s disciplinary procedures, the EEO Department shall send a letter to the Area Manager.
 - a) The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee.
 - b) The letter shall address the appropriate accountability of the supervisor. (*OPPP Amendments, Draft 1, lines 1136-41*).

In Section V.D.2.d.9), the draft amendments appear to replace current accountability measures – namely, allowing an area manager or an Oneida Court to overturn a faulty discipline – with accountability in the form of more discipline as recommended by the EEO Department. The proposed amendments do not identify what “appropriate accountability” will be addressed in the letter to the area manager and, further, do not identify consequences if the area manager does not follow up as recommended. It is not clear what philosophy prompts the imposition of more discipline as an answer to improper discipline. This form of accountability should be reconsidered.

Section V.D.3., Grievance

The proposed amendments divide employee grievance appeals according to the basis for the grieved discipline. Disciplines that arise from EEO Violations and Illegal Activities Complaints would be appealed directly to the Oneida Judiciary – Trial Court. (*OPPP Amendments, Draft 1, lines 1150-53*). Disciplines based on Employee Disagreement Complaints and Unsatisfactory

Work Performance would be appealed to the area manager and then to the Oneida Personnel Commission.²²

3. Grievance (Grievance Flowchart)

a. General

- 1) An employee who receives a disciplinary action which they believe is improper may grieve the action.
- 2) The grievance process shall be conducted with utmost consideration for due process within the time limits set forth herein but will allow and account for recognized holidays of the Nation and unforeseen circumstances, such as illnesses, deaths in the immediate family of principals.

b. Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline.

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines²³: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

1) Appeal to the Area Manager

- a) The employee (petitioner) shall file an appeal in writing with the Area Manager and the Human Resources Executive Director, or designee, within ten (10) working days from the day the employee receives the disciplinary action. (*OPPP Amendments, Draft 1, lines 1142-62*).

Both employees and management have an interest in clarifying when notice is received, especially when the date of receipt determines the timeline for appeal. Opening the OPPP to comprehensive amendment provides an opportunity to emphasize that an employee cannot avoid service of a disciplinary action (or other notice) by refusing to retrieve or sign for their mail. (*See e.g. Oneida Bingo & Casino v. Metoxen*, 97-EP-0018, 4 O.N.R. 3-1, 2 (January 8, 1998) ("A party cannot avoid the time lines set forth in the Blue Book by intentionally refusing to sign for the certified letter that serves as notice.") For example, Section V.D.3.c.1)a) could state that an employee who does not retrieve or sign for their mail will be deemed in receipt of the discipline on the date that delivery was first attempted.²⁴

²² The Oneida Personnel Commission is not taking grievance appeals at this time. The Oneida Nation website shows only 1 active Commissioner. Until the Personnel Commission is prepared to exercise hearing authority, all grievance appeals under current OPPP V.D.6 are brought to the Oneida Trial Court. See BC Resolution #03-13-19-C.

²³ Although "guidelines" is in the current OPPP, the LOC may want to replace it with "requirements" for a stronger statement.

²⁴ Similar language regarding a timeline that begins upon actual receipt is found at proposed OPPP V.D.3.b)2), regarding filing a grievance appeal with the Oneida Personnel Commission. (*OPPP Amendments, Draft 1, lines 1488-92*). Both sections would benefit from clarification regarding when notice is deemed received.

- i. The employee may seek the assistance of an advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.²⁵
- b) The Area Manager, for all disciplinary action investigations, shall have ten (10) working days from the receipt of the employee's appeal to complete the investigation.
 - i. The supervisor²⁶ shall meet with the following individuals during the disciplinary action investigation:
 - 1. Employee filing the appeal of the discipline;
 - 2. Supervisor who issued the discipline; and
 - 3. Any other witnesses mentioned in the appeal that were not mentioned in the disciplinary action.
 - ii. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.
 - iii. The Area Manager shall document all attempts made to meet with an employee. If an employee is unavailable to meet within the grievance timelines, the Area Manager shall move forward with the investigation based on the information they have.
 - iv. One (1) extension of no more than five (5) working days may be requested of and granted by the Human Resources Executive Director, or designee, at their discretion. (*OPPP Amendments, Draft 1, lines 1163-83*).

Under the proposed amendments, the area manager who responds to a grievance appeal must follow a process similar to that placed on the supervisor in proposed OPPP V.D.1.c., regarding supervisor investigation and resolution of Employee Disagreements. The legal issues presented by proposed OPPP V.D.3.c.1)b) are similar to those identified Pages 9-15 this memo.

- c) The Area Manager shall take one of the following actions:
 - i. Uphold the disciplinary action;
 - ii. Modify the disciplinary action; or
 - iii. Overturn the disciplinary action.
 - 1. If a suspension or termination is overturned, the employee (petitioner) shall be reinstated to the position the employee was suspended or terminated from with full back pay. (*OPPP Amendments, Draft 1, lines 1184-90*).

²⁵ This section is duplicative when compared to proposed OPPP V.D.3.c.2)i)ii. As described in a subsequent section of the memo, I proposed deleting V.D.3.c.2)i)ii (which should be renumbered in any case, since it uses "i" as both the lowercase letter i and as small Roman Numeral i).

²⁶ This should probably be "area manager" rather than supervisor.

The recently-amended Back Pay Law addresses all requirements for reinstatement and back pay. Therefore, it is sufficient in these amendments to state, “If a suspension or termination is overturned, reinstatement and back pay will be in conformance with Oneida Law.”

- d) The Area Manager shall file²⁷ their decision with the employee and the Human Resources Executive Director, or designee. The decision of the Area Manager shall include:
 - i. a reason for the decision;
 - ii. an explanation of the decision; and
 - iii. the action to be taken as a result of it.
- e) An Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline. (*OPPP Amendments, Draft 1, lines 1191-98*).

The proposed amendments again suggest disciplinary action for area managers who do not follow the grievance process. This raises several concerns, which are addressed on Page 12 of this memo. In addition, area managers are entrusted with greater levels of responsibility in the organization. A threat of discipline for not following the grievance process seems counter to the level of trust otherwise granted to employees at this level of management. It is not clear what philosophy underlies this proposed change.

Section V.D.3.c.2), Appeal to the Oneida Personnel Commission²⁸

Overall, the proposed amendments would not significantly change the law regarding Oneida Personnel Commission (OPC) hearings. The current draft would have the Government Administrative Office receive and distribute information and organize OPC hearings, rather than the Human Resources Department. (*See OPPP Amendments, Draft 1, lines 1199-1300*). This proposed change will require training for GAO personnel.

At proposed Section V.D.3.c.2.i)ii., the amendments retain current OPPP language regarding an employee’s right to an advocate. However, this section has caused confusion throughout the grievance process. Since this right would be described in proposed OPPP V.D.3.c.1)a)i., the language at V.D.3.c.2.i)ii can be deleted.

The amendments would add language regarding where grievance appeals shall be filed if the Oneida Personnel Commission is not active, specifically:

- k) If the Oneida Personnel Commission is unable to fulfill its responsibility to hear an appeal of an Area Manager’s decision, then the employee may appeal the Area Manager’s decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee’s receipt of the Area

²⁷ Filing documents implies that such documents are deposited with a court or other hearing body. Where the area manager is providing copies of their decision to certain individuals, they should be required to “send” or “provide” their decision to the employee and HRD Executive Director.

²⁸ As noted previously in this memo, the Oneida Personnel Commission is not a functioning body and, with only one member, it is not certain when they will be able to hear grievance appeals.

Manager's decision. (*OPPP Amendments, Draft 1, lines 1296-1300*).

The language of proposed OPPP V.D.3.c.2)k) should reflect the language of BC Resolution #03-13-19-C regarding the Personnel Commission's capacity and readiness to hearing grievance appeals. Use of the phrase "unable to fulfill its responsibility to hear an appeal" permits filing grievance appeals at the Oneida Judiciary-Trial Court outside of the circumstances identified in BC Resolution #03-13-19-C.

Section VI, Safety and Health

Section VII, Program/Enterprise Rules & Regulations

Section VIII, Recordkeeping

Section IX, Privacy and Confidentiality of Employee Records

The proposed amendments to the OPPP do not make any changes to Sections VI through IX. There are no outstanding legal issues presented by these sections that require amendment.

Proposed Amendments Create Uncertainty and Conflict

The proposed amendments insert the HRD Director and EEO into the disciplinary process in a new way. The amendments delegate quasi-judicial²⁹ authority to the EEO, vesting broad discretion to the EEO. This delegation of authority is potentially problematic for several reasons.

First, the amendments contain vague and undefined language, thereby opening up EEO enforcement to subjective criteria. For example, the proposed EEO violation section indicates an "EEO violation occurs when an employee alleges they are being bullied, working in a hostile-working environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed." Sec. V.D.I.2. As written, a mere *allegation* constitutes a *violation*. It is unknown if this presumption is intentional in the drafting. Aside from "sexual harassment," the concepts (terms) of "being bullied," "hostile-working environment," "being discriminated against," "being harassed," "being intimidated," and "being retaliated against" are undefined in the proposed amendments and process is lacking. Although there is no federal employment law against "bullying,"³⁰ some of the behaviors that may fall under such a label may generally fall under discrimination. Without highlighting the complexities of application of federal and state employment laws to tribal employers, those established laws have defined meanings and processes for topics such as discrimination, hostile-work environment, and

²⁹ To describe an activity (as opposed to "ministerial") is "quasi-judicial" is to say that the activity involves the exercise of discretion and judgment in the application of a rule to specific facts. The concept of quasi-judicial immunity is a common law concept that may also be codified in law. Although the contours of quasi-judicial immunity remain unsettled, quasi-judicial immunity extends beyond to traditional "judges" to those employees/officials and members of adjudicatory bodies whose duties are functionally equivalent to those of a judge or prosecutor. The caselaw on quasi-judicial and quasi-judicial function (and immunity) is lengthy, but an example appears in *Wilson v. Ill. Dep't of Financial and Professional Regulation*, 376 F. Supp.3d 849 (March 25, 2019); *Snyder v. Nolan*, 380 F.3d 279 (August 13, 2004). Even agencies, those with functions such as the FTC, have been determined to be quasi-judicial agencies. *Morrison v. Olson*, 487 U.S. 654, 687 (June 29, 1988).

³⁰ <https://www.stopbullying.gov/resources/laws/federal.gov>

retaliation. And, yet, no such definitions or processes have made their way into the proposed amendments.

Second, the proposed changes and delegation of quasi-judicial authority may implicate liability and premium concerns that are best explored with the Nation's Risk Management Department. The Nation has vigorously defended its employees to both state and federal regulatory agencies when external discrimination complaints have been leveled against them and when external litigation occurs. In such instances, the legal defenses³¹ are generally known. With the proposed amendments, the EEO is tasked with making a legal determination that may have a legal effect on the Nation, both with the Nation's court system and potentially with external regulatory agencies. It becomes more complex to defend against an employment or external discrimination complaint, for example, when a finding of wrongdoing ("violation") has already occurred or has been predetermined. This issue also raises questions concerning policy coverage and individual liability when there is a "violation" and external litigation occurs. A standard immunity defense in external courts requires, generally, that a tribal employee (supervisor, for example) be acting within their official capacity and scope of authority. A quasi-judicial *final* determination of a violation by the EEO in these instances may negate the "scope authority" argument and, additionally, policy coverage. *See for example, Hardin v. White Mountain Apache Tribe*, 779 F.2d 476 (1985); *Landreman v. Martin*, 191 Wis. 2d 787, 530 N.W.2d 62 (Ct. App. 1995); *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269 (1991).

Third, the proposed amendments create at least four types of conflict: (1) conflict between the EEO's responsibilities; (2) conflict between the EEO and supervisors; (3) conflict between employees and supervisors; and, (4) conflict between the EEO's role and the Judiciary's role.³² Currently, the EEOs position themselves as "neutrals" in the discipline process, primarily providing process guidance to supervisors while also providing similar process information to

³¹ By its own terms, Title VII does not apply to Indian tribes. 42. U.S.C. § 2000e(b); *Morton v. Mancari*, 417 U.S. 535 (June 17, 1974); www.eeoc.gov/laws/guidance/policy-statement-indian-preference-under-title-viiian *Preference under Title VII | U.S. Equal Employment Opportunity Commission (eeoc.gov)*; www.eeoc.gov/laws/guidance/section-2-threshold-issues2 *Threshold Issues | U.S. Equal Employment Opportunity Commission (eeoc.gov)*.

³² The EEO position predates the Judiciary, which was implemented into the Nation's Constitution in 2017. The proposed amendments seem to be a step backwards by delegating quasi-judicial authority to the EEO—after the Nation has so carefully transferred quasi-judicial authority to the Judiciary where possible. *For example* BC Resolution 09-27-17-E. The General Tribal Council adopted the Judiciary at its January 7, 2013 meeting by resolution GTC-01-07-13-B. Broadly, the Judiciary was established to administer the law and ensure justice through the Oneida Nation's own court system. Formalizing the court system reinforced Oneida Nation's status as sovereign nation evidenced by the exercise of its inherent authority to make, execute, apply, and enforce its own laws, and to apply its own customs and traditions in matters affecting the Oneida people. In the spring of 2015, through the BIA's Secretarial Election process, Oneida Nation's membership voted to amend the Oneida Nation Constitution by adopting Article V, Judiciary. Although the GTC already approved the Judiciary, Article V constitutionally established the judiciary as a separate power, existing to exercise the judicial authority of the Oneida Nation. Although there was a challenge to the Secretarial Election, the election was upheld and Oneida's constitution was amended. *Genskow v. Midwest Regional Dir.*, 62 IBIA 155 (02/11/2016). The General Tribal Council confirmed the results of the secretarial election, by adopting resolution GTC-03-19-17-A. This resolution confirmed the Oneida Judiciary in the Oneida Nation Constitution and made a broad authorization of judicial authority.

employees subject to discipline.³³ Under the proposed structure, the EEO would continue to offer supervisors guidance on the disciplinary process, but the EEO is also inserted into the process as an authority that metes out discipline. Under the proposed structure, the EEO would make a final determination (and seemingly discipline) on those newly categorized EEO violations against the same supervisors.³⁴ The EEO office may be responsible to provide support to. The EEO may require a specific disciplinary outcome from supervisors continuing through the General Manager level.³⁵ The EEO will absolutely determine negligence occurred if the disciplinary timeline is not adhered to.³⁶ The EEO will be inserted the investigation of illegal activities.³⁷ And the EEO will void a disciplinary action for a “clear” procedural error. V.D.1. and 2. The EEO would no longer be a neutral. Even with this new quasi-judicial authority the EEO remains in a position where they are offering guidance to supervisors in the disciplinary process. This is a conflict of role that also has the real ability to create conflict between the EEO and the supervisors they are advising.³⁸

It is unclear what has necessitated some of the proposed amendments, including the new EEO violation section. Certainly, the proposed complaint section containing the new EEO violations of the law invites “complaints” from employees to file against other employees. It is not far reaching to presume that an employee subject to discipline may feel as if the discipline is an act of being “bullied” and may, in turn, file an EEO complaint. This scenario creates a conflict within the EEO role because it creates conflict between the EEO and the supervisor, as well as the EEO and the employee. Additionally, although the EEO has been a neutral witness concerning HRD-related processes and interpretations, insertion of the EEO into the quasi-judicial role may cause confusion at all levels, including the Judiciary, where it may be necessary to determine whether EEO is a witness or a party in employment litigation.

Last, in addition to lacking definition, the delegation of quasi-judicial authority to the EEO lacks process and potentially delegates unfettered authority. Not only are undefined but specified allegations deemed “violations” when they are alleged, but the law lacks a process that is specific enough to allow an accused employee to ask questions, present evidence or otherwise

³³ Employees (regardless of Tribal status) subject to discipline also have access to the GTC Legal Resource Center for representation on employment matters. See Oneida General Tribal Council, 2nd Reconvened Special Meeting from Aug. 10, 2016, Meeting Minutes- Draft, p. 39 (November 14, 2016).

³⁴ As well as other employees.

³⁵ This creates questions of structure if the EEO is not in the chain of command or organizational chart. Additionally, while the EEO is required to know the employment process, the EEO may not be in the best position to understand the nuances of the facts and responsibilities of the position.

³⁶ Regardless or reason.

³⁷ It is unclear how the EEO is more suited to perform these investigations over a supervisor with immediate knowledge of the facts and operations of a department. While an “illegal activities” section of the law may be helpful for those supervisors performing complex employment investigations with criminal implications (for example: embezzlement, theft from an employer, misuse of federal funds, fraud, and computer crimes) by providing additional process guidance and potentially extended timeframes, it is not clear that the EEO is in the best position to do this. As drafted, it is also not clear if “illegal activities” are only those few violations listed. Still, the EEO would then replace the Supervisor and the EEO “neutral” role would be negated. This has potential to cause confusion, particularly at the Judicial level.

³⁸ And will potentially chill an already difficult disciplinary process.

refute or address any allegations. Although the EEO is acting in a quasi-judicial capacity, the administrative process that tends to exist for quasi-judicial decisions is lacking.³⁹

It is not necessary, in fact it is a duplication of services, to push employee advocacy and/or quasi-judicial responsibilities onto the Equal Employment Officer. EEOs must know the Nation's human resources policies and must be able to inform employees regarding access to those policies. However, the EEO should not be providing employees interpretations of policies (unless it is a formal interpretation issued in writing by HRD as a whole) and should not be advising employees as to potential legal courses of action following a discipline aside from providing a referral to the GTC Legal Resource Office. That is because the Nation is already employing an entire office to do just this – the GTC Legal Resource Center is responsible for providing legal representation to Oneida Nation employees involved in the disciplinary process at no cost. It is the GTC Legal Resource Center that should provide interpretations of policy for employee's use in their defense and guidance through the employment process.

In addition, the Oneida Judiciary Trial Court and Appellate have subject matter and personal jurisdiction over the Nation's employment matters. It is both clumsy and redundant to add an additional layer of what essentially amounts to judicial review by inserting EEO ability to void disciplines issued by supervisor and potentially upheld by area managers for "clear procedural errors." Moreover, a "clear procedural error" is not the standard the Judiciary is required to use when evaluating whether a discipline should be overturned for a procedural irregularity. The Judiciary must consider whether, "[p]rocedural irregularities were exhibited during the appeal process *that were harmful to one of the parties to the grievance.*" OPPP, Section V, 3.C(2)(e)ii. It is the Trial Court who should evaluate if there was a deviation of process and, if there was, whether the deviation was significant enough to merit overturning the discipline.⁴⁰ A procedural error alone is not enough for the Judiciary to overturn, but is enough for the EEO to void a discipline. To avoid confusion, the proposed amendments should maintain the Oneida Judiciary's jurisdiction over employment matters and avoid a costly duplication of services. The Oneida Judiciary should be the only party outside of the chain of command that is able to overturn a disciplinary action, whether that be for lack of support of the discipline or a failure of process.

³⁹ Although the Judiciary contains such process, such a process should be available when administrative quasi-judicial determinations are made.

⁴⁰ A statistical review of Oneida Judiciary Trial Court decisions from 2018-2022 shows that 83% of the published employee grievance decisions are based, in whole or in part, on issues of procedural error. The proposed amendments are not filling a gap in the employee grievance process, as the Oneida Trial Court addresses questions of procedural error in almost every one of its grievance decisions. The reasons to keep procedural error issues with the Trial Court are discussed elsewhere in this memo.

Memo

To: LOC

From: Tina Jorgensen, Governmental Services Director

CC: Mark W. Powless, General Manager

Date: January 19, 2023

Re: Personnel Policies and Procedures Amendments Comments

Please include the following in the comments for the proposed law amendments of the Personnel Policies and Procedures.

Section III – Selection Policy

- Currently, you can post for Oneida enrolled only or open to all. I would like to add the following categories:
 - Six Nations tribal members or Haudenosaunee or Confederacy something to that effect
 - All enrolled tribal members from a federally recognized tribe.
- Additionally, I think our Oneida family members in Canada that are not considered “federally recognized” should be considered eligible for enrollment and listed somewhere or defined in the policies.
- I agree with the Personnel Commission ensuring compliance with specific processes. I would like that to be the only responsibility of the Personnel Commission during hiring. For instance, in the past, the Personal Commission scored the applicants during the interview. I do not believe this should be a future responsibility of the Personnel Commission as they are not the experts on the questions and answers. They do not know the dynamics of the department and what type of employee the Supervisor is looking for.
- QUESTION: Can an employee move onto the Judiciary if they are not satisfied with the Personnel Commission decision?

- Regarding internal posting: If a department has a succession plan with employees that have been working on obtaining the qualifications of a position, the Supervisor should NOT have to post externally. If the position has been offered to all in the department and no Oneida enrolled are interested, the Supervisor should be able to hire the other employees based on the succession plan.

Section IV – Compensation and Benefits

- QUESTION regarding meeting attendance: If an employee is going to be paid honorarium for presenting at a meeting, can they use personal or vacation time to receive the honorarium?
- Funeral leave – Aunts and uncles are considered with high regard in families and play a role in a child's life traditionally. Aunt and Uncle should be added to the immediate family list for funeral leave.

Section V – Employee Relations

- Complaints – Employee disagreements should NOT be submitted to EEO department as this removes the responsibility of the Supervisor. I can agree that the complaint is CC'd to EEO but not filed with EEO. This appears to be recommended to implement due to a lack of trust and that Supervisors are not doing their job. I don't believe a process like this should be implemented for that reason. We should train Supervisors and work with Area Managers to hold those Supervisors accountable instead of taking away their ability to do their job and give it to someone else.
- When investigating a complaint for an employee disagreement, I have noticed that it can take much longer than 10 working days to complete the investigation. I think 30 days for the investigation is reasonable. Some examples of needing longer:
 - Employees who are involved in the investigation may not be available.
 - Sometimes the employee disagreements between two can require the Supervisor to meet with all employees.
 - When the disagreement revolves under lack of understanding a process, a policy may be identified as necessary, vetted, created and routed for signature.
- QUESTION: What if a Supervisor becomes aware of an issue and it is not really a complaint but could result in discipline? Does EEO need to be informed? What is the role of EEO in these cases? I don't agree EEO

should take on the responsibility of the Supervisor. I do agree EEO should be involved as FYI and offer assistance with the investigation.

- It is very easy for an employee to claim they are working in a hostile work environment. It was mentioned in a few of my employee disagreements and investigations and was due to the employee being held accountable for their actions. I agree with EEO being involved but I disagree that the EEO department being responsible.
- QUESTION: Can an employee move to the Judiciary when not satisfied with the outcome of their complaint?
- Again, I do not agree with the EEO department having the ability to discipline. This takes away from the role of the Supervisor.
- QUESTION: If the employee appealing a discipline is not satisfied with the decision of the Personnel Commission, can they appeal to the Judiciary?

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



Policy Change Comments

Personnel Commission:

The Personnel Commission Role is to a) Protecting against issues of nepotism; and b) Enforcing Oneida and Indian preference. Lines 301 through 306. However, lines 307 through 362 are inconsistent by directing the OPC to ensure compliance with the Nation's laws and policies in the area of Conflicts of Interest, Veteran Status, and Physical Capacity requirement. One would think the Personnel Commission would act only within the boundaries of their role.

Finally, it seems strange that the Personnel Policies and Procedures would have authority to direct the Personnel Commission to follow their bylaws. This should be a matter of law, not policy. Additionally, the Commission's bylaws should be consistent with the established role to protect against issues of nepotism and enforcement of Indian Preference. Activities outside this area would be beyond the scope authorized by the GTC.

Accrued Personal and Vacation time:

Lines 661 and 662 state, Employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck.

I don't understand the need to not pay a terminated employee the compensation they earned. This seems contrary to our values and promotes an undesired behavior of not saving time off for emergencies. This could create an economic problem in the future if an employee is injured or sick but is always keeping their accrual balance at or near zero, and therefore has no safety net to get through the emergency.

Leave of Absence:

Line 751 requires 15 working days prior written notice of intent to return to work by the employee. There is an interpretation that says one day notice is required for LOAs shorter than 15 working days. Overall, the 15-day requirement seems out of date, particularly when the employee and supervisor should maintain communications through the period of leave. One day notice should be sufficient and earlier notice would be courteous.

The other thought is what constitutes notice of intent to return? If an employee provides a return-to-work letter from a doctor with a date to return is that intent to return?

COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Line 908 should be changed to problematic behaviors "from" employees.

There does not seem to be the same level of accountability for EEO as there is for a supervisor in the Complaint and Grievance processes.

TO: Legislative Operating Committee
FROM: Vanessa Miller
RE: Amendments to Oneida Personnel Policies and Procedures
DATE: 1/19/2023

Please accept this communication as my public comment regarding the amendments to the Oneida Personnel Policies and procedures being made to address the selection process, as well as the complaint, discipline, and grievance procedures.

I. Complaints

With these changes, the complaint process will be split into three (3) different pathways: 1. Employee disagreement complaints; 2. EEO Violation Complaints; and 3. Illegal Activity Complaints. The supervisor investigates pathway one, while EEO investigates pathways 2 and 3.

While these three pathways do seem to distinguish and make separation between complaints so that they may be handled accordingly per the proposed processes, it appears that there is still room for gray area and overlapping. For instance, an employee disagreement that involves EEO policy violation would seem to be overlapping in nature. How would these complaints be vetted through to determine which pathway they are to go down, and to ensure that a standardized process is used in determining such? In addition, it is not clear what the various EEO violations are or mean as they are not defined.

Further, I share concern that during the process of EEO investigations of EEO policy violations, efforts in coaching and mentoring being made by the supervisor may be lost when a separate department is potentially issuing disciplinary action. While I recognize that discretion will still certainly be key while EEO performs their investigation, supervisor efforts and up close understanding of situations, cultural climate, personalities, environmental climate, etc. is necessary if the goal is changed behavior and changed work performance.

J. Discipline

The legal analysis states that “Previously, the Law provided that the supervisor must consider each disciplinary action in progressive order and justify a deviance from that recommended progression. The proposed amendments now provide greater clarification on this issue, and provide that disciplinary action shall be considered in progressive order (written warning ♦ suspension ♦ termination), and that any deviation from the recommended progressive order made by the

supervisor shall be justified in writing and approved by the EEO Department, while any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and approved by the Human Resources Executive 284 Director, or designee. [Section V(D)(2)(b)(2)]”

My concern with this proposition is there appears to be room for misinterpretation regarding “progression discipline.” As written, this analysis states that “the Law provided that the supervisor must consider each disciplinary action in progressive order...” In the decision of Appellant Case No. 17-AC-008, Dated November 20, 2017 (Falck V. Thumer), the following was ordered:

Thurner also argues that progressive discipline is applicable only for “repeated violations of the same type” and Flack erred in progressively disciplining her for unrelated violations. This would mean that because Thurner was disciplined for three different type of unacceptable work performance....she would be able to have three separate progressive disciplinary tracks ongoing for each type of violation. This is a clearly erroneous position and not what V.D.2.a.3) directs supervisors to do. The progressive disciplinary process can be cumulative if disciplinary actions occur within a certain time frame.

My comment would be to clarify in this amendment the definition of progressive discipline in its application so that it is clear that it may be cumulative in nature regarding different types of behavior or policy violations.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
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AGENDA REQUEST FORM

- 1) Request Date: February 22, 2023
- 2) Contact Person(s): Clorissa N. Leeman
 Dept: Legislative Reference Office (LRO)
 Phone Number: (920) 869-4417 Email: cleeman@oneidanation.org
- 3) Agenda Title: Petition: L. Dallas - Alcohol and Drug Addiction Treatment Assistance
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
On 2/22/23 the OBC adopted a motion to acknowledge receipt of this
petition and direct that the LRO complete a statement of effect with status
updates to be submitted for the March 22, 2023, OBC meeting agenda.
Materials can be found at the Members Only web page.

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

- | | |
|----------|----------|
| 1) _____ | 3) _____ |
| 2) _____ | 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:


- 7) Do you consider this request urgent? ☒ Yes ☐ No

If yes, please indicate why:

Statement of effect is due at the March 22, 2023 OBC meeting.

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

Signature of Requester:
Clorissa N. Leeman

 Digitally signed by Clorissa N. Leeman
 Date: 2023.02.22 10:55:05 -06'00'

Please send this form and all supporting materials to:

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

DRAFT**B. OTHER****1. Defer the Oneida Youth Leadership Institute report to the March 22, 2023, regular Business Committee meeting (01:24:21)**

Sponsor: Marlon Skenandore, Chair/Oneida Youth Leadership Institute

Motion by David P. Jordan to defer the Oneida Youth Leadership Institute report to the March 22, 2023, regular Business Committee meeting, seconded by Jennifer Webster. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

Item XV. was addressed next.

XIV. GENERAL TRIBAL COUNCIL**A. Schedule the 2023 semi-annual General Tribal Council meeting (00:44:44)**

Sponsor: Lisa Liggins, Secretary

Motion by Jennifer Webster to schedule the 2023 semi-annual General Tribal Council meeting for Monday, July 24, 2023, at 6:00 p.m., seconded by David P. Jordan. Motion carried:

Ayes: David P. Jordan, Lisa Liggins, Brandon Stevens, Jennifer Webster

Opposed: Marie Cornelius, Kirby Metoxen

Not Present: Tina Danforth, Daniel Guzman King

For the record: Councilwoman Marie Cornelius stated I will not be available on that date, thank you.

B. Approve three (3) requested actions - Petitioner Linda Dallas re: Alcohol and Drug Addiction Treatment Assistance (00:54:52)

Sponsor: Lisa Liggins, Secretary

Motion by Lisa Liggins to approve acknowledge receipt of the petition from Linda Dallas regarding Alcohol and Drug Addiction Treatment Assistance, seconded by Jennifer Webster. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

Motion by Jennifer Webster to direct the Business Committee Direct Report Offices to complete and submit their administrative impact statements of the petition to the Tribal Secretary mailbox by Wednesday, March 15, 2023, seconded by Lisa Liggins. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

Motion by David P. Jordan to direct the Law, Finance, and Legislative Reference Offices to complete, respectively, the legal review, fiscal impact statement, and statement of effect with status updates to be submitted for the March 22, 2023, regular Business Committee meeting agenda and the first BC meeting of the month thereafter or until the final documents are submitted, seconded by Jennifer Webster. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King



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AGENDA REQUEST FORM

- 1) Request Date: February 22, 2023
- 2) Contact Person(s): Clorissa N. Leeman
 Dept: Legislative Reference Office (LRO)
 Phone Number: (920) 869-4417 Email: cleeman@oneidanation.org
- 3) Agenda Title: Petition: L. Dallas - FY-2023 Budget
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
On 2/22/23 the OBC adopted a motion to acknowledge receipt of this
petition and direct that the LRO complete a statement of effect with status
updates to be submitted for the March 22, 2023, OBC meeting agenda.
Materials can be found at the Members Only web page.

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

- | | |
|----------|----------|
| 1) _____ | 3) _____ |
| 2) _____ | 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:

- 7) Do you consider this request urgent? ☒ Yes ☐ No
 If yes, please indicate why:
Statement of effect is due at the March 22, 2023 OBC meeting.

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

Signature of Requester:
Clorissa N. Leeman

Digitally signed by Clorissa N. Leeman
 Date: 2023.02.22 09:52:59 -06'00'

Please send this form and all supporting materials to:

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

DRAFT

C. Approve three (3) requested actions - Petitioner Linda Dallas re: General Tribal Council Directive for the Oneida Business Committee to stay out of day-to-day business (01:00:23)

Sponsor: Lisa Liggins, Secretary

Motion by Jennifer Webster to approve acknowledge receipt of the petition from Linda Dallas regarding the General Tribal Council Directive for the Oneida Business Committee to stay out of day-to-day business, seconded by Kirby Metoxen. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

Motion by Jennifer Webster to direct the Business Committee Direct Report Offices to complete and submit their administrative impact statements of the petition to the TribalSecretary mailbox by Wednesday, March 15, 2023, seconded by Kirby Metoxen. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

Motion by David P. Jordan to direct the Law, Finance, and Legislative Reference Offices to complete, respectively, the legal review, fiscal impact statement, and statement of effect with status updates to be submitted for the March 22, 2023, regular Business Committee meeting agenda and the first BC meeting of the month thereafter or until the final documents are submitted, seconded by Jennifer Webster. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

D. Approve three (3) requested actions - Petitioner Linda Dallas re: FY-2023 Budget (01:02:55)

Sponsor: Lisa Liggins, Secretary

Motion by Jennifer Webster to approve acknowledge receipt of the petition from Linda Dallas regarding the FY-2023 budget, seconded by Kirby Metoxen. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

Motion by Jennifer Webster to direct the Business Committee Direct Report Offices to complete and submit their administrative impact statements of the petition to the TribalSecretary mailbox by Wednesday, March 15, 2023, seconded by Lisa Liggins. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

Motion by David P. Jordan to direct the Law, Finance, and Legislative Reference Offices to complete, respectively, the legal review, fiscal impact statement, and statement of effect with status updates to be submitted for the March 22, 2023, regular Business Committee meeting agenda and the first BC meeting of the month thereafter or until the final documents are submitted, seconded by Jennifer Webster. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King



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AGENDA REQUEST FORM

- 1) Request Date: February 22, 2023
- 2) Contact Person(s): Clorissa N. Leeman
 Dept: Legislative Reference Office (LRO)
 Phone Number: (920) 869-4417 Email: cleeman@oneidanation.org
- 3) Agenda Title: Petition: L. Dallas -GTC Directive for OBC to Stay Out of Day-to-Day Business
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
On 2/22/23 the OBC adopted a motion to acknowledge receipt of this
petition and direct that the LRO complete a statement of effect with status
updates to be submitted for the March 22, 2023, OBC meeting agenda.
Materials can be found at the Members Only Webpage.
 –

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

- | | |
|----------|----------|
| 1) _____ | 3) _____ |
| 2) _____ | 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:

- 7) Do you consider this request urgent? ☒ Yes ☐ No

If yes, please indicate why:

Statement of effect is due on March 22, 2023

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

Signature of Requester:
Clorissa N. Leeman

Digitally signed by Clorissa N. Leeman
 Date: 2023.02.22 09:46:46 -06'00'

Please send this form and all supporting materials to:

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

DRAFT

C. Approve three (3) requested actions - Petitioner Linda Dallas re: General Tribal Council Directive for the Oneida Business Committee to stay out of day-to-day business (01:00:23)

Sponsor: Lisa Liggins, Secretary

Motion by Jennifer Webster to approve acknowledge receipt of the petition from Linda Dallas regarding the General Tribal Council Directive for the Oneida Business Committee to stay out of day-to-day business, seconded by Kirby Metoxen. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

Motion by Jennifer Webster to direct the Business Committee Direct Report Offices to complete and submit their administrative impact statements of the petition to the TribalSecretary mailbox by Wednesday, March 15, 2023, seconded by Kirby Metoxen. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

Motion by David P. Jordan to direct the Law, Finance, and Legislative Reference Offices to complete, respectively, the legal review, fiscal impact statement, and statement of effect with status updates to be submitted for the March 22, 2023, regular Business Committee meeting agenda and the first BC meeting of the month thereafter or until the final documents are submitted, seconded by Jennifer Webster. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

D. Approve three (3) requested actions - Petitioner Linda Dallas re: FY-2023 Budget (01:02:55)

Sponsor: Lisa Liggins, Secretary

Motion by Jennifer Webster to approve acknowledge receipt of the petition from Linda Dallas regarding the FY-2023 budget, seconded by Kirby Metoxen. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

Motion by Jennifer Webster to direct the Business Committee Direct Report Offices to complete and submit their administrative impact statements of the petition to the TribalSecretary mailbox by Wednesday, March 15, 2023, seconded by Lisa Liggins. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

Motion by David P. Jordan to direct the Law, Finance, and Legislative Reference Offices to complete, respectively, the legal review, fiscal impact statement, and statement of effect with status updates to be submitted for the March 22, 2023, regular Business Committee meeting agenda and the first BC meeting of the month thereafter or until the final documents are submitted, seconded by Jennifer Webster. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King



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AGENDA REQUEST FORM

- 1) Request Date: February 22, 2023
- 2) Contact Person(s): Clorissa N. Leeman
 Dept: Legislative Reference Office (LRO)
 Phone Number: (920) 869-4417 Email: cleeman@oneidanation.org
- 3) Agenda Title: Petition: L. Zeise - Uncap All Employee Wages
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
On 2/22/23 the OBC adopted a motion to acknowledge receipt of this
petition and direct that the LRO complete a statement of effect with status
updates to be submitted for the March 22, 2023, OBC meeting agenda.
Materials can be found at the Members Only web page.

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

- | | |
|----------|----------|
| 1) _____ | 3) _____ |
| 2) _____ | 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:

- 7) Do you consider this request urgent? ☒ Yes ☐ No

If yes, please indicate why:

Statement of effect is due at the March 22, 2023 OBC meeting.

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

Signature of Requester:
Clorissa N. Leeman

Digitally signed by Clorissa N. Leeman
 Date: 2023.02.22 09:58:20 -06'00'

Please send this form and all supporting materials to:

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

DRAFT

- E. Approve three (3) requested actions - Petitioner Lloyd Zeise re: Uncap All Employee Wages (01:05:07)**
 Sponsor: Lisa Liggins, Secretary

Motion by David P. Jordan to approve acknowledge receipt of the petition from Lloyd Zeise regarding the Uncap All Employee Wages, seconded by Jennifer Webster. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
 Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

Motion by David P. Jordan to direct the Business Committee Direct Report Offices to complete and submit their administrative impact statements of the petition to the TribalSecretary mailbox by Wednesday, March 15, 2023, seconded by Jennifer Webster. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
 Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

Motion by David P. Jordan to direct the Law, Finance, and Legislative Reference Offices to complete, respectively, the legal review, fiscal impact statement, and statement of effect with status updates to be submitted for the March 22, 2023, regular Business Committee meeting agenda and the first BC meeting of the month thereafter or until the final documents are submitted, seconded by Marie Cornelius. Motion carried:

Ayes: Marie Cornelius, David P. Jordan, Lisa Liggins, Kirby Metoxen,
 Brandon Stevens, Jennifer Webster

Not Present: Tina Danforth, Daniel Guzman King

Item XV.A.1. was addressed next.

March 2023

March 2023							April 2023						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4							1
5	6	7	8	9	10	11	2	3	4	5	6	7	8
12	13	14	15	16	17	18	9	10	11	12	13	14	15
19	20	21	22	23	24	25	16	17	18	19	20	21	22
26	27	28	29	30	31		23	24	25	26	27	28	29
							30						

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
Feb 27	28	Mar 1	2	3
		8:30am LOC Prep (Microsoft Teams Meeting; BC_Conf_Room) -	1:00pm Furlough & Layoff law amendments work meeting (Microsoft Teams Meeting) - Carolyn A. Salutz	10:00am Oneida Higher Education Scholarship Law (Microsoft Teams Meeting) - Grace L. Elliott
		9:00am Legislative Operating Committee Meeting (Microsoft Teams Meeting;		
6	7	8	9	10
10:00am OLIPP Law Work Meeting (Microsoft Teams Meeting) - Clorissa N. Leeman	9:30am Investigative Leave Policy (Microsoft Teams Meeting) - Grace L. Elliott		10:30am Personnel Commission bylaws work meeting (Microsoft Teams	
			1:30pm LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Leeman	
13	14	15	16	17
		8:30am LOC Prep (Microsoft Teams Meeting; BC_Conf_Room) -		
		9:00am Legislative Operating Committee Meeting (Microsoft Teams Meeting;		
20	21	22	23	24
9:00am Clean Air Policy Amendments (Microsoft Teams Meeting) - Clorissa N. Leeman			9:30am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Leeman	
27	28	29	30	31
10:00am Oneida Language Code Work Meeting (Microsoft Teams Meeting) - Clorissa N. Leeman			9:30am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Leeman	