



**LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**  
Business Committee Conference Room - 2nd Floor Norbert Hill Center  
December 6, 2023  
9:00 a.m.

- I. Call to Order and Approval of the Agenda**
  
- II. Minutes to be Approved**
  - 1. November 1, 2023 LOC Meeting Minutes (pg. 2)
  
- III. Current Business**
  - 1. Audit Committee Bylaws Amendments (pg. 5)
  
- IV. New Submissions**
  - 1. Drug and Alcohol Free Workplace Law Amendments (pg. 20)
  
- V. Additions**
  
- VI. Administrative Updates**
  
- VII. Executive Session**
  
- VIII. Recess/Adjourn**



## LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Microsoft Teams<sup>1</sup>  
November 1, 2023  
9:00 a.m.

**Present:** Jameson Wilson, Marlon Skenandore, Jonas Hill. Jennifer Webster, Kirby Metoxen

**Others Present:** Clorissa N. Leeman, Grace Elliott, Carolyn Salutz, Kristal Hill, Fawn Cottrell, Maureen Perkins, Fawn Billie, Brooke Doxtator, Janice Decorah, Carrie Lindsey, Joy Salzwedel, Keith Doxtator, Krystal John, Laura Laitinen-Warren, Lisa Moore, Lori Hill, Katsitsiyo Danforth, Eric Boulanger, Peggy Helm-Quest, Raquel Hill, Rae Skenandore, Trina Schuyler, Carl Artman, Eric McLester, Debra Santiago, Matt Denny, Mark W. Powless, Mark A. Powless, Todd Vanden Heuvel, James Poels, Patricia Garvey, Kaylynn Gresham.

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

Jameson Wilson called the November 1, 2023, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster approve the agenda; seconded by Jonas Hill. Motion carried unanimously.

### II. Minutes to be Approved

#### 1. October 18, 2023 LOC Meeting Minutes

Motion by Kirby Metoxen to approve the October 18, 2023, LOC meeting minutes and forward to the Oneida Business Committee; seconded by Jennifer Webster. Motion carried unanimously.

### III. Current Business

#### 1. Clean Air Policy Amendments

Motion by Jennifer Webster to approve the public meeting packet for the Clean Air Policy Amendments with noted change to the public meeting notice, and forward the Clean Air Policy Amendments to a public meeting to be held on December 15, 2023; seconded by Kirby Metoxen. Motion carried unanimously.

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<sup>1</sup> Due to the Norbert Hill Center's Oneida Business Committee Conference Room being closed as a result of maintenance issues, this Legislative Operating Committee meeting was held solely on Microsoft Teams.



#### **IV. New Submissions**

##### **1. Oneida Nation Commission on Aging Bylaws Amendments**

Motion by Jennifer Webster to add the Oneida Nation Commission on Aging Bylaws Amendments to the Active Files List with Jennifer Webster as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

##### **2. Southeastern Wisconsin Oneida Tribal Services Advisory Board Bylaws Amendments**

Motion by Jennifer Webster to deny the request to add the Southeastern Wisconsin Oneida Tribal Services Advisory Board Bylaws Amendments to the Active Files List, and send it back to SEOTS with a request to bring forward clarification on what they are looking for; seconded by Marlon Skenandore. Motion carried unanimously.

##### **3. Oneida General Welfare Law Amendments**

Motion by Jennifer Webster to add the Oneida General Welfare law amendments to the Active Files List with Jonas Hill and Jameson Wilson as the sponsors; seconded by Kirby Metoxen. Motion carried unanimously.

##### **4. Onlayote?a·ká ni?i Commission Bylaws**

Motion by Jennifer Webster to add the Onlayote?a·ká ni?i Commission Bylaws to the Active Files List with Jameson Wilson as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

#### **V. Additions**

#### **VI. Administrative Items**

##### **1. E-Poll Results: Approval of the LOC and LRO Annual Reports for GTC**

Motion by Jennifer Webster to enter into the record the results of the October 23, 2023, e-poll entitled, Approval of the LOC and LRO Annual Reports for GTC; seconded by Kirby Metoxen. Motion carried unanimously.

##### **2. Legislative Operating Committee Community Meeting Notice**

Motion by Jonas Hill to approve the Legislative Operating Committee community meeting notice and schedule the community meeting to take place on December 6, 2023; seconded by Jennifer Webster. Motion carried unanimously.

##### **3. Legislative Operating Committee Fiscal Year 2023 Fourth Quarter Report**

Motion by Jennifer Webster to approve the Legislative Operating Committee Fiscal Year 2023 Fourth Quarter Report and forward to the Oneida Business Committee; seconded by Jonas Hill. Motion carried unanimously.

#### **VII. Executive Session**

**VIII. Adjourn**

Motion by Jennifer Webster to adjourn at 9:45 a.m.; seconded by Jonas Hill. Motion carried unanimously.



Legislative Operating Committee  
December 6, 2023

# Audit Committee Bylaws Amendments

<b>Submission Date:</b> 10/4/23	<b>Public Meeting:</b> N/A
<b>LOC Sponsor:</b> Kirby Metoxen	<b>Emergency Enacted:</b> N/A <b>Expires:</b> N/A

**Summary:** *On September 13, 2023, the Oneida Business Committee adopted a motion to direct the Legislative Operating Committee to review the Audit Committee bylaws dated December 14, 2022, specifically Section 1-4.b.1.A. that prohibits the Treasurer from serving on the Audit Committee and determine if amendments are appropriate. Treasurer Lawrence Barton also submitted a request to the LOC for this item.*

**10/4/23 LOC:** Motion by Jennifer Webster to add the Audit Committee Bylaws Amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Jonas Hill. Motion carried unanimously.

**10/18/23:** *Work Meeting.* Present: Jameson Wilson, Kirby Metoxen, Marlon Skenandore, Jonas Hill, Jennifer Webster, Clorissa Leeman, Grace Elliott, Fawn Cottrell, Kristal Hill, Maureen Perkins. The purpose of this work meeting was for the LOC to be updated on the initial research completed for the request to remove the prohibition of the Treasurer from serving on the Audit Committee from the Audit Committee bylaws, and to discuss next steps.

**10/23/23:** *Work Meeting.* Present: Clorissa Leeman, Jo Anne House, Kelly McAndrews. This work meeting was held over Microsoft Teams. The purpose of this work meeting was to gather input from the Oneida Law Office regarding the request to remove the prohibition of the Treasurer from serving on the Audit Committee from the Audit Committee bylaws.

**11/1/23:** *Work Meeting.* Present: Jameson Wilson, Kirby Metoxen, Jennifer Webster, Marlon Skenandore, Jonas Hill, Clorissa Leeman, Grace Elliott, Fawn Cottrell, Kristal Hill, Maureen Perkins. During this work meeting the LOC was updated on the insight provided from the Oneida Law Office regarding removing the prohibition of the Treasurer from serving on the Audit Committee. LOC determined that moving forward that prohibition should be removed from the bylaws.

## Next Steps:

- Accept the Audit Committee bylaws amendments and legislative analysis.
- Forward the Audit Committee bylaws amendments to the Oneida Business Committee for consideration.



## AUDIT COMMITTEE BYLAWS

### Article I. Authority

1-1. *Name.* The name of this committee shall be the Audit Committee, hereinafter referred to as "Committee."

1-2. *Authority.* By the authority of the Oneida Business Committee, the Committee was created by adoption of the Audit Law Resolution BC-07-15-98-C which has been updated to Internal Audit BC 08 09 17 B. Through Internal Audit BC 08 09 17 B, the Committee has been delegated the authority to ensure the integrity of the Oneida Nation's financial reporting and audit systems. Definitions for the words used throughout these bylaws shall be taken from Internal Audit BC 08 09 17 B. All words not defined in Internal Audit BC 08 09 17 B shall be used in their ordinary and everyday sense.

1-3. *Office.* The office of the Committee shall be located within the exterior boundaries of the Oneida Reservation and its mailing address shall be P.O. Box 365, Oneida, WI 54155.

1-4. *Membership.*

- a. Number of members. The Committee shall consist of five (5) members.
- b. How elected or appointed.
  1. Four (4) Committee members shall be Oneida Business Committee members, ~~excluding the Treasurer,~~ selected by a majority of the Oneida Business Committee.
    - A. Any member of the Oneida Business Committee, ~~with the exception of the Treasurer,~~ may serve as Ad Hoc when needed.
  2. One (1) Committee member shall be a member of the community who meets the qualifications of 1-4(d).
    - A. The Committee member from the Community shall be selected through the application and appointment process set forth in those sections of the Boards, Committees and Commissions law that govern the appointment of persons to entities of the Nation that are subject to the law.
- c. How vacancies are filled. Vacancies on the Committee shall be filled in accordance with section 1-4(b) for the remainder of the outstanding term.
- d. Qualifications of members.
  1. The appointed Committee member shall be at least twenty-one (21) years of age and be an enrolled member of the Oneida Nation.
  2. Committee members shall be both independent and financially literate or have access to financial expertise, whether in the form of the Chief Financial Officer, a single individual serving on the Committee, or collectively among Committee members. Components of financial expertise include:
    - A. The ability to assess the general application of the principles and standards in connection with the accounting for estimates, accruals, and reserves.
    - B. An understanding of internal controls.
    - C. An understanding of the procedures for financial reporting.
    - D. An understanding of Audit Committee functions and responsibilities.
- e. Term of office.
  1. The terms of the Audit Committee members shall coincide with the term of the Oneida Business Committee.
  2. The term of the appointed community member shall expire midway through the term of the Oneida Business Committee.
  3. Defining independence of each Committee member is important for the Nation and no Committee member may:
    - A. Be employed by any entity of the Nation.

- B. Provide contract services to the Nation.
  - C. Be a member of any other of the Nation's boards, committees or commissions, other than the Oneida Business Committee.
  - D. Represent any interests other than the Oneida Nation's while acting as a member of the Committee.
4. Committee members shall strictly adhere to the Oneida Nation's laws and policies, establishing ethical standards and/or conflicts of interest, and any code of conduct. All work shall be performed in accordance with the International Professional Practices Framework. Failure to do so may result in the removal from the Committee or termination of an appointment.

## Article II. Officers

- 2-1. The Committee shall have two (2) officers: Chairperson and Vice-Chairperson. The terms of office for the officers shall coincide with the terms of the Oneida Business Committee members.
- a. If selected to serve on the Committee, the Oneida Business Committee Treasurer shall not serve as Chairperson or Vice-Chairperson of the Committee.
- 2-2. *Chairperson Duties.* The Chairperson shall preside over all meetings and may not vote except in the case of a tie. The Chairperson shall be responsible for calling meetings and notifying members with the assistance of the Internal Audit Department.
- 2-3. *Vice-Chairperson Duties.* The Vice-Chairperson shall assist the Chairperson with his or her duties, at the request of the Chairperson, and shall preside over all meetings in the Chairperson's absence.
- 2-4. *How Officers are Chosen.* The Chairperson and Vice-Chairperson shall be chosen from the Oneida Business Committee representatives by all Committee members present at the first meeting held after the Committee is appointed.
- 2-5. *Personnel.* The Committee shall recruit and hire a qualified Internal Audit Manager to lead the internal audit function and to assure unbiased audit and investigative processes and reporting.

## Article III. Meetings

- 3-1. All meetings of the Audit Committee are to be closed session as required by the International Professional Practices Framework with the exceptions below. Notice of Committee meetings shall be provided to members and to the public in accordance with these bylaws and the applicable provisions of the Nation's Open Records and Open Meetings law.
- 3-2. The Committee shall meet on a monthly basis within the Reservation boundaries.
- a. All Committee members are expected to attend each meeting.
  - b. The Committee may invite entity representatives, auditors or others to attend meetings and provide pertinent information.
  - c. The Committee may hold meetings in executive session with auditors, legal counsel, and entity representatives as invited.
- 3-3. *Emergency and Special Meetings.* Emergency or special meetings of the Committee may be called by the Chairperson or upon written request of any two (2) members. The Chairperson shall designate a time and place for holding an emergency or special meeting.
- 3-4. *Virtual Meetings.* Virtual meetings are allowed in accordance with Audit Committee Virtual meetings SOP.
- 3-5. *Notice of Emergency or Special Meeting.* Notice of an emergency or special meeting shall be:
- a. *Members.* The Committee shall provide notice to members at least forty-eight (48)



hours prior to the date set for any such meeting, unless, for good cause, such notice is impossible or impractical. Notice may be communicated in person, or through electronic communication.

3-6. *Quorum*. A quorum shall consist of a majority of current members of the Committee and shall include the Chairperson or Vice-Chairperson.

3-7. *Order of Business*. The regular meetings of the Committee shall follow the order of business as set out herein:

- I. Call to Order.
- II. Approval of Agenda
- III. Approval of Minutes
- IV. Old Business
- V. New Business
- VI. Tabled Business
- VII. Executive Session
- VIII. Adjourn

3-8. *Voting*. Decisions of the Committee shall be based on a majority of a quorum of members present at a meeting. The officer presiding at a meeting shall vote only in case of a tie.

- a. Electronic e-polls are allowed as long as they are conducted in accordance with Conducting Electronic Voting (E-Polls) SOP.

3-9. *Stipends*.

- a. *Audit Committee Meetings*. The appointed Committee member shall be paid a meeting stipend of seventy-five dollars (\$75.00) per any meeting provided that the meeting has established a quorum.
- b. *Oneida Business Committee Meetings – Presentation of Annual Audit*. The appointed Committee member shall be paid a stipend of seventy-five dollars (\$75.00) for attending the Oneida Business Committee meeting when the annual audit is presented by the external auditors.

#### **Article IV. Reporting**

4-1. Agenda items shall be in an identified format.

4-2. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the Committee.

4-3. Handouts, reports, memoranda and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented.

4-4. The Committee shall report to the Oneida Business Committee and to the General Tribal Council, when appropriate, relative to audits, financial reports, management reports and recommended corrective measures.

4-5. The Committee shall report to the Oneida Business Committee, as often as deemed appropriate, the approved Committee minutes, audit reports and appropriate supporting information.

- a. Minutes and audit reports require Oneida Business Committee acceptance in order to finalize the audit records.

#### **Article V. Amendments**

5-1. The Bylaws of the Committee shall be amended with the approval of a quorum of the Committee and upon subsequent approval by the Oneida Business Committee.

#### **Article VI. Responsibilities**

- 149 6-1. The Committee shall have oversight of the activities of the internal audit function in  
150 independent assignments related to auditing, evaluating, and special investigations related  
151 to detecting fraudulent financial reporting and conducting investigations into fraud and  
152 theft in the Oneida Nation's entities. The Committee shall perform all work in accordance  
153 with the International Professional Practices Framework.
- 154 6-2. *Enforcement.* The Committee shall have the ability to utilize all existing enforcement  
155 authorities to carry out their responsibilities to achieve their purpose, including:  
156 a. Request the Business Committee to compel entity representatives to attend meetings  
157 in order to represent issues.  
158 b. Request the Business Committee to compel entity representatives to comply with audit  
159 requests and reply to audit reports.  
160 c. Instruct the external auditor and the internal auditor that the Committee expects to be  
161 advised if there are any areas that require its special attention.  
162 d. Request the Business Committee to issue notices of noncompliance to entity employees  
163 in accordance with the disciplinary provisions relating to work performance and  
164 personal actions, as provided for in the Oneida Nation's Personnel Policies and  
165 Procedures.  
166 e. Request the Business Committee to issue notices of violation of Oath of Office, as  
167 appropriate, to entity members.  
168 f. Seek improvements to assure the Oneida Nation's laws and policies establishing ethical  
169 standards and/or conflicts of interest, as well as any code of conduct implemented are  
170 current and adequate to ensure fairness for all and equity by protecting the resources.
- 171 6-3. *Financial Statements.* The Committee shall review and discuss annual statements and  
172 Managements Discussion & Analysis (MD&A) with auditors.
- 173 6-4. *Internal Control.* The Committee shall ensure that entities have developed and follow an  
174 adequate system of internal control, including:  
175 a. Compliance with legal and regulatory requirements.  
176 b. Risk assessment and risk management.  
177 c. Adopt a code of ethics which includes monitoring and enforcement.  
178 d. Establish procedures for the receipt, retention, and treatment of complaints; establish a  
179 confidential anonymous submission by individuals for concerns regarding questionable  
180 matters.  
181 e. Ensure open communication and information flow with entities, internal auditors and  
182 external auditors.
- 183 6-5. *External Audit.* The Committee shall be responsible for evaluating and recommending to the  
184 Oneida Business Committee, an independent public accounting firm for the annual or any  
185 special audit, unless there is a prior alternative written agreement in place delegating the  
186 responsibility for a given special audit. When an external auditor is hired, the Committee  
187 shall:  
188 a. Verify the qualifications of the external auditor.  
189 b. Oversee the performance of the external audit.  
190 c. Assure all reports from the external auditor go directly to the Committee.
- 191 6-6. *Compliance.* The Committee shall review the effectiveness of the system for monitoring  
192 compliance with laws and regulations and the results of an entity's investigation and follow-  
193 up of any instances of non-compliance. Special audits and/or investigations may be  
194 recommended by the Audit Committee.
- 195 6-7. *Other Responsibilities.* The Committee shall complete a self-evaluation annually to identify  
196 improvement opportunities. This includes comparing the Committee's performance to its  
197 bylaws, any formal guidelines and rules, and against best practices. Such review is  
198 confidential and may or may not include evaluations of particular members.



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125 the Oneida Business Committee meeting when the annual audit is presented by the external  
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- 135 4-4. The Committee shall report to the Oneida Business Committee and to the General Tribal  
136 Council, when appropriate, relative to audits, financial reports, management reports and  
137 recommended corrective measures.
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139 appropriate, the approved Committee minutes, audit reports and appropriate supporting  
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142 finalize the audit records.

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155 authorities to carry out their responsibilities to achieve their purpose, including:  
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157 in order to represent issues.  
158 b. Request the Business Committee to compel entity representatives to comply with audit  
159 requests and reply to audit reports.  
160 c. Instruct the external auditor and the internal auditor that the Committee expects to be  
161 advised if there are any areas that require its special attention.  
162 d. Request the Business Committee to issue notices of noncompliance to entity employees  
163 in accordance with the disciplinary provisions relating to work performance and  
164 personal actions, as provided for in the Oneida Nation's Personnel Policies and  
165 Procedures.  
166 e. Request the Business Committee to issue notices of violation of Oath of Office, as  
167 appropriate, to entity members.  
168 f. Seek improvements to assure the Oneida Nation's laws and policies establishing ethical  
169 standards and/or conflicts of interest, as well as any code of conduct implemented are  
170 current and adequate to ensure fairness for all and equity by protecting the resources.
- 171 6-3. *Financial Statements.* The Committee shall review and discuss annual statements and  
172 Managements Discussion & Analysis (MD&A) with auditors.
- 173 6-4. *Internal Control.* The Committee shall ensure that entities have developed and follow an  
174 adequate system of internal control, including:  
175 a. Compliance with legal and regulatory requirements.  
176 b. Risk assessment and risk management.  
177 c. Adopt a code of ethics which includes monitoring and enforcement.  
178 d. Establish procedures for the receipt, retention, and treatment of complaints; establish a  
179 confidential anonymous submission by individuals for concerns regarding questionable  
180 matters.  
181 e. Ensure open communication and information flow with entities, internal auditors and  
182 external auditors.
- 183 6-5. *External Audit.* The Committee shall be responsible for evaluating and recommending to the  
184 Oneida Business Committee, an independent public accounting firm for the annual or any  
185 special audit, unless there is a prior alternative written agreement in place delegating the  
186 responsibility for a given special audit. When an external auditor is hired, the Committee  
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188 a. Verify the qualifications of the external auditor.  
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- 191 6-6. *Compliance.* The Committee shall review the effectiveness of the system for monitoring  
192 compliance with laws and regulations and the results of an entity's investigation and follow-  
193 up of any instances of non-compliance. Special audits and/or investigations may be  
194 recommended by the Audit Committee.
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196 improvement opportunities. This includes comparing the Committee's performance to its  
197 bylaws, any formal guidelines and rules, and against best practices. Such review is  
198 confidential and may or may not include evaluations of particular members.







## Audit Committee Bylaws Amendments Legislative Analysis

### SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
<b>Intent of the Amendments</b>	<ul style="list-style-type: none"> <li>▪ Eliminate the prohibition of the Oneida Business Committee Treasurer from serving on the Audit Committee. <i>[Bylaws Section 1-4.b.1]</i>; and</li> <li>▪ Clarify that if serving on the Audit Committee, the Oneida Business Committee Treasurer shall not serve as Chairperson or Vice-Chairperson of the Audit Committee. <i>[Bylaws Section 2-1.a]</i>.</li> </ul>
<b>Purpose</b>	The Audit Committee is as a standing committee of the Oneida Business Committee (“OBC”) that was established pursuant to the Nation’s Internal Audit law, which was adopted and subsequently amended through resolutions BC-07-15-98-C and BC-08-09-17-B, to oversee the internal audit process, including, but not limited to, any and all violations of the Nation’s policies, laws, rules and directives. <i>[1 O.C. 108.1-1]</i> .
<b>Related Legislation</b>	Oneida Nation Constitution, Internal Audit law, Social Media Policy, Travel and Expense Policy, Conflict of Interest law, Open Records and Open Meetings law; Vehicle Driver Certification and Fleet Management law; Computer Resources Ordinance.
<b>Enforcement/Due Process</b>	Committee members are required to strictly adhere to the laws, as well as policies, of the Nation regarding ethics and/or conflicts of interest and any code of conduct, including the International Professional Practices Framework. A failure to adhere to the above could result in a member’s removal from the Committee or a termination of his/her appointment. <i>[Committee Bylaws 1-4(e)(4)]</i> . The Internal Audit law grants the Committee the authority to utilize all existing enforcement mechanisms to carry out its responsibilities as set forth therein. <i>[1 O.C. 108.4-2]</i> .
<b>Public Meeting</b>	Public meetings are not required for bylaws.
<b>Fiscal Impact</b>	A fiscal impact statement is not required for bylaws.

### SECTION 2. BACKGROUND

- 1
- 2 A. Bylaws provide a framework for the operation and management of a board, committee or commission
- 3 of the Nation; the government of its members; and the regulation of its affairs.
- 4 B. The Audit Committee was established pursuant to the Internal Audit law, which was adopted and
- 5 subsequently amended by resolutions BC-07-15-98-C and BC-08-09-17-B, respectively. *[1 O.C.*
- 6 *108.2-1]*. The Committee is a standing committee of the Oneida Business Committee that oversees
- 7 the internal audit process, including, but not limited to, any investigations into complaints alleging or
- 8 suspecting improprieties and/or violations of the Nation’s policies, laws, rules and directives. *[1 O.C.*
- 9 *108.4-1]*.
- 10 C. On September 13, 2023, the Oneida Business Committee adopted a motion to direct the Legislative
- 11 Operating Committee to review the Audit Committee bylaws dated December 14, 2022, specifically
- 12 Section 1-4.b.1.A. that prohibits the Treasurer from serving on the Audit Committee and determine if
- 13 amendments are appropriate. Treasurer Lawrence Barton also submitted a request to the Legislative
- 14 Operating Committee for this item. On October 4, 2023, the Legislative Operating Committee added
- 15 the Audit Committee Bylaws Amendments to the Active Files List.

- 16 D. The Committee’s current bylaws were adopted in December of 2022. As a standing committee of the  
17 OBC, the Audit Committee is not subject to the Boards, Committees and Commissions law, and thus,  
18 amendments to its bylaws do not have to conform to the provisions therein that govern the bylaws of  
19 other boards, committees and commissions of the Nation not exempted therefrom. [1 O.C. 105.1-  
20 1(a)].  
21  
22

### 23 SECTION 3. AMENDMENTS

24 This section details the proposed amendments to the Audit Committee bylaws.

#### 25 A. Article I. Authority.

- 26     ▪ **Section 1-4 – Membership.** Section 1-4 of the Committee’s bylaws currently provides that  
27 “Four (4) Committee members shall be Oneida Business Committee members, excluding the  
28 Treasurer, selected by a majority of the Oneida Business Committee.” [Bylaws 1-4.b.1]. The  
29 bylaws then go on to state that “Any member of the Oneida Business Committee, with the  
30 exception of the Treasurer, may serve as Ad Hoc when needed.” [Bylaws 1-4.b.1.A]. Under  
31 the proposed amendments to the bylaws, the prohibition of the Treasurer from serving on the  
32 Audit Committee was removed and this section, will now also read that “Four (4) Committee  
33 members shall be Oneida Business Committee members selected by a majority of the Oneida  
34 Business Committee Any member of the Oneida Business Committee may serve as Ad Hoc  
35 when needed.” [Proposed Bylaws 1-4.b.1].

- 36     ▪ **Impact:** This amendment allows the Oneida Business Committee Treasurer to serve on the  
37 Audit Committee.

#### 38 B. Article II. Officers.

- 39     ▪ **Section 2-1 – Officers.** Section 2-1 of the Committee’s bylaws currently provides that the  
40 Committee shall have two (2) officers: Chairperson and Vice-Chairperson. [Bylaws 2-1].  
41 Under the proposed amendments to the bylaws, a new provision was added which would  
42 provide that if selected to serve on the Committee, the Oneida Business Committee Treasurer  
43 shall not serve as Chairperson or Vice-Chairperson of the Committee. [Proposed Bylaws 2-  
44 1.a].

- 45     ▪ **Impact:** This amendment prohibits the Treasurer from serving as the Audit Committee  
46 Chairperson or Vice-Chairperson. The Treasurer already serves as the Chairperson of the  
47 Finance Committee.  
48  
49

### 50 SECTION 4. LEGISLATION RELATED TO BOARDS, COMMITTEES AND COMMISSIONS

51 Below is a summary of laws referenced in and related to the proposed amendments to the Audit  
52 Committee bylaws.  
53

- 54 A. **Oneida Nation Constitution.** The Constitution of the Oneida Nation contains a provision that allows  
55 for the creation of committees for the proper conduct of tribal business of the Nation. [Oneida Nation  
56 Constitution, Article IV, Section 1(g)].

- 57     a. There are no conflicts between the proposed bylaws amendments and the Oneida Nation  
58 Constitution.  
59

- 60 B. **Internal Audit Law [1 O.C. Chapter 108].** The Internal Audit law creates a process by which  
61 internal audits are conducted upon the Nation’s entities and delegates responsibilities for the purpose  
62 of conducting such audits. [1 O.C. 108.1-1]. The Audit Committee, established by the Internal Audit  
63 law, is a standing committee of the Oneida Business Committee with the responsibility for overseeing  
64 the internal audit process, including, but not limited to, any and all investigations into complaints

65 received alleging or suspecting improprieties and/or violations of the Nation’s policies, laws, rules  
66 and directives. [1 O.C. 108-4-1].

67 a. There are no conflicts between the proposed bylaws amendments and the Nation’s  
68 Internal Audit law.  
69

70 **C. Conflict of Interest Law [2 O.C. Chapter 217].** The Conflict of Interests law ensures that all  
71 employees, contractors, elected officials, officers, political appointees, appointed and elected  
72 members and all others who may have access to information or materials that are confidential or may  
73 be used by competitors of the Nation’s enterprises or interests be subject to specific limitations to  
74 which such information and materials may be used in order to protect the interests of the Nation. [2  
75 O.C. 217.1-1]. A conflict of interest means any interest, real or apparent, whether it be personal,  
76 financial, political, or otherwise, in which an elected official, officer, political appointee, employee,  
77 contractor, or appointed or elected member, or their immediate family members, friends or associates,  
78 or any other person with whom they have contact, have that conflicts with any right of the Nation to  
79 property, information, or any other right to own and operate activities free from undisclosed  
80 competition or other violation of such rights of the Nation. [2 O.C. 217.3-1(b)]. In addition, conflict  
81 of interest also means any financial or familial interest an elected official, officer, political appointee,  
82 employee, contractor, or appointed or elected member or their immediate family members may have  
83 in any transaction between the Nation and an outside party. *Id.* All elected officials, officers, political  
84 appointees, and elected or appointed members of the Nation are required to disclose any conflicts of  
85 interest. [2 O.C. 217.4-2(c)]. A member of the Oneida Business Committee who fails to disclose a  
86 conflict of interest may be subject to removal pursuant to the Removal Law or penalties pursuant to  
87 laws of the Nation regarding penalties. [2 O.C. 217.6-2].

88 a. There are no conflicts between the proposed bylaws amendments and the Nation’s  
89 Internal Audit law.



# LOC AGENDA REQUEST FORM



PLEASE COMPLETE THE FOLLOWING INFORMATION:

1) Date: November 16, 2023 Person submitting request: Larry Barton, Treasurer

2) Council Member, Entity, or other person requesting this draft: \_\_\_\_\_

3) Phone Number: Day 920-869-4394 Evenings \_\_\_\_\_ E-mail: lbarton2@oneidation.org

4) Persons to contact for questions about this draft (names and phone numbers) \_\_\_\_\_  
Larry Barton 920-869-4394

5) Describe the issue, including any helpful examples.  
Requiring all incumbent Business Committee members to submit to pre-employment and random drug screening during the 3(three) year term

6) Describe how you would like to resolve the issue:  
Change all existing policies and procedures, Laws and guidelines be formally amended that exempts the Oneida Business Committee from pre-employment and random drug screening.

7) Please list other departments or persons you have brought your concern to:  
\_\_\_\_\_  
\_\_\_\_\_

8) Do you consider this request urgent? No If yes, please indicate why: \_\_\_\_\_

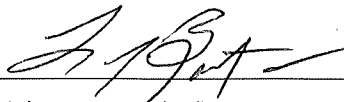
9) Should we give this request priority over any pending request of this Council Member, entity or person? No

Please attach a copy of any correspondence or other material that may help us, including an electronic version if available.

If you know of any laws, ordinances or resolutions that might be affected list them or provide a marked-up copy.

12-11-13 Drug and Alcohol Free Workplace Law Legal Analysis: Applicants and Employees lines 61-66; BC Resolution 4-12-17-C Drug and Alcohol Free Workplace Law Amendments, amended Title 2. Employment - Chapter 202 Drug and Alcohol Free Workplace Law

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

Signature of Requester:  Date: November 16, 2023  
(Signature required)


**Legislative Operating Committee (LOC)**

P.O. Box 365  
Oneida, WI 54155  
Phone: 920-869-4240



## Memorandum

To: Legislative Operating Committee

From: Larry Barton, Treasurer 

Date: November 16, 2023

Re: Requiring All Incumbent Business Committee Members to Submit to Pre-Employment and Random Drug Screening during the 3(three) year term

- 
1. Request the Legislative Operating Committee change all existing policies and procedures, Laws and guidelines be formally amended and adopted to require the Oneida Business Committee submit a pre-employment drug screening prior to Inauguration and formal Oath of Office. This requirement is applicable to all elected Business Committee members both Incumbent and newly elected and returning Business Committee members at conclusion of elections and prior to taking office.
  2. Require all incumbent Business Committee members to submit to random drug testing during the 3 (three) year term.

This request attempts to close a visible double-standard which requires prospective employees to submit to a drug screen test, while elected leadership is exempt from the existing pre-employment work standard. Response from leadership and the Legislative Operating Committee to combat the scourge of addiction requires setting the example consistent with existing policies.

12-11-13 BC Pkg

**Analysis**  
**Application and Scope**

*Prohibited Drugs*

A new definition is added for “prohibited drugs,” and it includes all of the controlled substances identified in schedules I-V under federal law, including marijuana, cocaine, opiates, amphetamines, PCP, Quaaludes, hallucinogens, barbiturates, and narcotics. The definition also adds prescription and over-the-counter (OTC) medications used in an unauthorized or unlawful manner. This means that improper use of prescription/OTC medications is treated as a positive drug test result and the employee would be subject to the same consequences as if s/he failed a drug test. *See 3-1(i).*

*Applicants and Employees*

The amended Policy not only sets out provisions for employees, but also for internal and external job applicants. A definition for “employee” is added, which includes individuals employed under an employment contract as a limited term employee. The definition clarifies that elected officials, appointed officials, employees of a Tribally-chartered corporation, and consultants, are not considered employees and thus not subject to this Law. *See 3-1(c).*

*Types of Testing*

Currently, the Policy only specifically provides for what amounts to “reasonable suspicion” drug/alcohol testing. By comparison, the amended Policy provides for five other types of testing in addition to reasonable suspicion testing, as shown on the following chart:

<b>Type of testing</b>	<b>Who can be tested?</b>	<b>When is this testing required?</b>	<b>Who pays for testing?</b>
<b>Reasonable suspicion</b>	Any employee	When reasonable suspicion is established.	Tribe
<b>Pre-employment</b>	Internal and external applicants (transfers and new hires)	Before the applicant can be hired or transfer positions.	Tribe
<b>Work-related accidents</b>	Any employee involved in a work-related accident	Immediately following the accident	Employee or Tribe
<b>Follow-up</b>	Any employee, following a violation of this Policy	Whenever it is required by a Return-to-Work Agreement	Employee
<b>Return-to-Duty</b>	Employees who have committed a second violation of this Policy	Before a suspended employee can return to work.	Employee
<b>Re-hire after termination</b>	Former employees, who were terminated for a third violation of this Policy, seeking to be re-hired.	Before the employee is eligible for re-hire.	Employee

***Reasonable Suspicion Testing***

An employee can still be directed to submit to drug and/or alcohol testing if his or her supervisor establishes sufficient reason to believe that the employee is under the influence. However, the supervisor is no longer required to first get authorization from his or her own supervisor before sending the employee for testing. *See 7-2 and the current Policy, 7-4.*

The Policy no longer identifies 14 signs that an employee could be under the influence. Instead, the supervisor establishes reasonable suspicion through “specific, contemporaneous and articulable observations” about the employee that are consistent with possible drug/alcohol use. *See 7-1 and the current Policy, 7-3.*

81 Two new requirements are added: Employees must immediately and confidentially report another  
 82 employee's suspicious behavior to that employee's supervisor; and supervisors must maintain the  
 83 confidentiality of anyone who reports suspicious behavior. *See 5-2(d) and 5-3(b).*

84 The amendments also clarify that employees are removed from duty until negative test results for  
 85 both alcohol and drugs are received. This appears to mean that in all reasonable suspicion testing, the  
 86 employee will be tested for both drugs and alcohol. *See 10-1.*

#### 87 ***Pre-employment drug screening***

88 Although the Tribe already requires pre-employment drug screening, it is not mentioned in the current  
 89 Policy. The amended Policy adds provisions for both internal applicants (current employees seeking to  
 90 transfer positions) and external applicants (not currently employed by the Tribe). If any applicant does not  
 91 pass the pre-employment drug screening or has engaged in prohibited behavior, the employment offer is  
 92 withdrawn. Internal applicants would also be removed from their current duty and subject to the consequences  
 93 of this Policy. *See 3-1(d) and (f), 11-2 and 11-3.*

#### 94 ***Work-related accident testing***

95 New provisions require drug and alcohol testing when an employee is involved in a work-related  
 96 accident. "Work related accident" is defined as an unexpected event involving an employee that occurs  
 97 in the employee's working environment or during an activity related to work, that:

- 98 • results in an injury to the employee and requires medical intervention by a police officer or  
 99 emergency medical technician, or treatment at a medical facility,
- 100 • results in death of the employee or another person, or
- 101 • involves any property damage. *See 3-1(m).*

102 An employee involved in a work-related accident is required to immediately inform his/her supervisor of the  
 103 accident, and, upon arriving at a medical facility, is required to inform the medical care provider that the  
 104 accident was work-related. Testing must be conducted by certified drug and alcohol technicians or police  
 105 personnel immediately following an accident, and if it is not, then the employee's supervisor is required to  
 106 direct the employee to Employee Health Nursing (EHN) or its designee to be tested. Employees must be  
 107 tested within one hour of being directed to do so by their supervisor, or within an hour of being treated and  
 108 released from a medical facility. Refusal to submit to any post-accident testing requested by medical  
 109 personnel, police or EHN is treated as a refusal to test under this Policy. *See 8-3 and 9-1(g) and (i).*

### 110 **Additional Changes to the Policy**

#### 111 **Alcohol and Drug Use On Official Tribal Business or During Other Traveling**

112 A new rule prohibits employees from using intoxicants and prohibited drugs while on official  
 113 business travel, but only while the conference or meeting is in session<sup>2</sup>. *See 4-2.*

114 A new provision states that an employee is not exempt from this Policy if they travel to another  
 115 jurisdiction and consume drugs that are legal in that jurisdiction. For example, if an employee travels to a  
 116 country where marijuana use is legal, and consumes marijuana, and later returns to work and tests positive for  
 117 drugs, then s/he would be subject to the consequences of this Policy for failing a drug test. *See 4-3.*

#### 118 **Off-Duty Use of Prohibited Drugs or Alcohol**

119  
 2 The Tribe's Travel and Expense Policy also prohibits the "use of intoxicants, which would impair a traveler's ability to represent, or which would discredit, and or embarrass the Oneida Tribe and its members" and provides that "Illegal drugs or barbiturates shall not be used while representing the Oneida Tribe and its members." *See the Travel & Expense Policy, 14-4 and 14-5.*

120 New provisions are added to address off-duty employees who are not on call: If an employee is called  
 121 in for emergency/unplanned work, but was using prohibited drugs or alcohol before the call; the employee  
 122 should decline to report to work until the effects have left his or her system. Such refusal to report to work  
 123 shall not be viewed as improper, and no disciplinary action will rise specifically from such refusal. *See 5-5.*

#### 124 **Consent Form Requirement**

125 New provisions require employees to sign consent forms for drug and alcohol testing upon  
 126 the request of a supervisor, a certified drug and alcohol technician, EHN or police personnel in  
 127 accordance with this Policy; and require supervisors to send a copy of “the consent to submit to  
 128 drug and alcohol testing form signed by the employee to EHN.” This appears to refer to any form  
 129 the supervisor requires the employee to sign, not consent forms provided by technicians or police  
 130 personnel. *See 5-2(f), 5-3(h) and 9-1(f).*

#### 131 **Prescription Medications**

132 A new provision is added which states that employees may not sell or share their prescription  
 133 medications, or take medications prescribed to another person. *See 5-6(c).*

134 The amended Policy still requires employees to notify their supervisors of certain medication use  
 135 before reporting to work, but the requirements are slightly different. Under the amendments, employees are  
 136 required to report any controlled substances – not only prescriptions but also illegal drugs and OTC  
 137 medications. *See 5-6 and the Current Policy, 6-2.*

138 The amendments add requirements for prescription/OTC drug use:

- 139 • An employee may be required to get a written statement from their doctor or pharmacist, explaining  
 140 any work restrictions or potential impact on performance or safety. *See 5-6(b).*
- 141 • If necessary, the employee’s doctor or a Medical Review Officer (MRO) may be consulted to  
 142 determine if the medication might impact the employee’s performance or pose a hazard. *See 5-6(d).*
- 143 • Supervisors must monitor employees who are under the influence of medications that could  
 144 compromise the safety of the employee or others. *See 5-3(d).*
- 145 • Currently, employees may be reassigned while taking prescription drugs. Under the amended Policy,  
 146 an employee’s duties can instead be temporarily modified, but only for up to 180 days. The  
 147 amendments add that the modification of duties will result in the appropriate modification of pay, as  
 148 established by the Human Resources Department. *See 5-6(e).*

#### 149 **Suspension Pending Results of a Drug or Alcohol Test**

150 Employees must still be suspended pending the results of a drug/alcohol test. The Policy no longer  
 151 states the employee will receive “full back pay,” if the results are negative; instead it states an employee will  
 152 receive back pay in accordance with the Back Pay Policy. *See 10-2 and the current Policy, 9-5.*

#### 153 **Limiting Back Pay**

154 A new requirement is added to ensure that employees do not draw out a suspension while knowing  
 155 that they will receive full pay for all of the time missed from work: when a supervisor is providing notice of  
 156 negative test results to a suspended employee, the supervisor must also provide a reinstatement date. If the  
 157 employee does not return to work on the reinstatement date, the supervisor is required to discipline the  
 158 employee, unless the supervisor had granted an extension in writing. *See 10-2.*

#### 159 **Role of the MRO, Employee Responsibility to Respond to Requests**

160 New provisions identify and designate responsibilities to the Medical Review Officer (MRO). Once  
 161 confirmed drug test results come back from the lab, the MRO is the doctor who receives and verifies those  
 162 results and evaluates medical explanations for certain test results (for example, whether a person has a valid  
 163 prescription that would account for a positive result.) *See 3-1(g) and 8-2(a).*



164 The MRO can direct that additional testing be conducted. Employees are required to cooperate with  
 165 any requests made by the MRO and to return the MRO's calls within 24 hours, or else the employee will not  
 166 receive back pay for any time between the MRO's call and the employee's return call. If an employee does not  
 167 respond to contact from the MRO within ten business days, the test shall be treated as if there were positive  
 168 test results, and the employee will be subject to the respective consequences of this policy. See 5-2(e) and 11-  
 169 4.

#### 170 **Refusal to submit to drug/alcohol testing**

171 The current Policy says employees "may" refuse to submit to requests for alcohol/drug testing, but it  
 172 also identifies penalties for refusal. The amendments clarify that testing is not optional – it is a condition of  
 173 employment and refusal is prohibited behavior. See 5-2(c), 6-1(d), 8-4 and 9-1; and the current Policy, 8-1.

174 The amendments also broaden the scope of "refusal to test" to include failure to cooperate with any  
 175 part of the testing process, as well as several other behaviors – such as tampering with the specimen, providing  
 176 an insufficient sample, behaving discourteously and disrupting the collection process, or if the employee fails  
 177 to inform a medical facility that s/he needs to undergo drug and alcohol testing following a work-related  
 178 accident. See 9-1.

#### 179 **Consequences for prohibited behavior**

##### 180 *ONEAP Referrals and Return-To-Work Agreements*

181 Most violations will still result in the employee being referred to the Oneida Nation Employee  
 182 Assistance Program (ONEAP), for assessment by a counselor, who will create a Return to Work Agreement  
 183 (RTWA) that outlines the conditions an employee must follow in order to return to work and remain  
 184 employed. Employees must still sign and submit the agreement to their supervisor within ten days, or will be  
 185 terminated. The amendments add that Supervisors must also sign the RTWA. See 11-5, 5-3(g) and the current  
 186 Policy, 9-6(d).

##### 187 **Progressive Penalties for Refusal to Test and Positive Test Results**

188 The amendments add that regardless of the progressive penalties for violations, any employee who is  
 189 caught using, possessing or selling prohibited drugs will immediately be terminated from employment with  
 190 the Tribe. See 6-1(a).

191 The amendments also add that the progressive penalties, as discussed below, apply to a lifetime of  
 192 employment with the Tribe, instead of to the current employment. This means that if an employee is penalized  
 193 for a first offense under this Policy, but then leaves the Tribe and works elsewhere for several years, but then  
 194 returns to work for the Tribe, then the next offense would be treated as a second offense instead of as a first  
 195 offense again. See 11-5(b)(1), and (c)(1).

- 196 • **First Offense – Refusal to test.** The supervisor no longer has discretion – referring the employee to  
 197 ONEAP is mandatory. The employee must submit a RTWA within ten days, instead of "appropriate  
 198 documentation" within five days. The employee is suspended until s/he submits the RTWA to his/her  
 199 supervisor, instead of for "up to five days".
- 200 • **First Offense – Positive Test Results.** The penalties remain the same.
- 201 • **Second Offense – Refusal to Test or Positive Test Result.** Instead of automatically suspending  
 202 employees for five days, the employee is suspended until three things have occurred:  
 203 1. Sufficient progress in a treatment program (within 30 days)  
 204 2. The employee pays for and passes drug/alcohol test at a SAMHSA facility, and  
 205 3. ONEAP notifies the supervisor that the employee may return to work.
- 206 • **Third Offense – Refusal to Test or Positive Test Result.** The employee is still terminated and ineligible  
 207 for re-hire for one year. The amendments add:

- If the employee later seeks to be re-hired by the Tribe, then s/he must submit two things with any job application: 1) proof of completing a certified AODA program, and 2) proof of a negative drug screening and alcohol test conducted at a SAMSHA facility.
- An employee terminated for a third offense will not be eligible for re-hire until s/he has received forgiveness from the Tribe pursuant to the Pardon and Forgiveness Law. *See 12-1 and 11-5(c)(1).*

#### **Return-to-duty, follow-up and re-hire testing**

Return-to-duty, follow-up and re-hire testing are all paid for by the employee instead of by the Tribe. After a first violation of this Policy, an employee may be subject to return-to-duty testing or follow-up testing – this is up to the ONEAP counselor. After a second violation, an employee must complete a return-to-duty drug and alcohol screening at a SAMHSA-certified facility within 30 days, and participate in follow-up testing as directed by the ONEAP counselor – all of which is done at the employee’s own expense. *See 11-5(a) and 11-5(b)(3).*

#### **Ineligibility for re-hire or transfer, for things other than a third offense**

An employee who is terminated for failing to sign and submit an RTWA to their supervisor within ten days is still ineligible for re-hire for one year. The amendments add that an employee who is terminated for failure to return to work on his or her assigned reinstatement date, or for failing to abide by the terms of a RTWA, is also ineligible for re-hire for one year. *See 11-5, 12-1 and 10-2.*

The amendments also add that if an external applicant fails the pre-employment drug test, then s/he would be ineligible for hiring for 180 days after the failed drug test, and if an internal applicant fails the pre-employment drug test, then s/he would be ineligible to transfer from his or her current position for 180 days after the failed drug test. *See 11-2 and 11-3.*

#### **Drug and Alcohol Testing**

The amended Policy no longer specifically requires that the least intrusive, most specific tests be used, whenever testing is necessary. The amended Policy adds that to ensure the fairness of this Policy, all forensic testing shall be conducted according to the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMSHA) guidelines for Federal Workplace Drug testing Programs. *See 8-1 and the current Policy, 9-1 and 9-2.*

#### *Specific Testing Authorized Under the Policy*

<b>Test Type</b>	<b>Current Policy (Section 9-2)</b>	<b>Amended Policy (Section 8-2)</b>
<b>Urine Testing</b>	Urine drug testing administered by EHN or a facility approved by HRD.	FDA-approved urine tests.
<b>Alcohol-Breath Testing</b>	Preliminary Breathalyzer test or alcohol sensor intoxometer administered by EHN or a facility approved by HRD.	National Highway Transportation Safety Administration (NHTSA) certified evidential breath testing devices.
<b>Saliva testing</b>	Not mentioned	NHTSA certified saliva-screening devices

The amended Policy also adds that urine tests, breath testing devices, and saliva screening devices must be operated by “technicians” whose training terminology, procedures, methods, equipment, forms, and quality assurance comply with best practices. EHN does not actually have specific technicians for operating drug and alcohol tests/devices, but the nurses at EHN are “technically trained” to conduct such testing. *See 8-2.*

The amendments add that urine must be retested if a test result is diluted or the test was cancelled. If the re-test results in a negative-dilute, the applicant will be given a negative test result. If the re-test results in a

245 positive-dilute, it is treated as a positive test result. Other testing may also be required at the direction of the  
246 MRO. *See 8-5.*

247 **Employee Records, Confidentiality**

248 The current Policy only states that employee drug/alcohol testing records may be placed in the  
249 employee’s health file and used in any grievance matter. The amendments add that all testing information is  
250 maintained in confidential records, separate from the employee’s clinical and personnel files. Access to that  
251 information is limited to those with a legitimate “need to know” in compliance with “relevant laws and  
252 personnel policies and procedures.” *See 14-1, 14-2, and the current Policy, 9-7.*

253 **Other Potential Liabilities**

254 Currently, the Policy states that these drug/alcohol tests may never be used by the Tribe to prosecute  
255 an employee in a criminal venue. The amended Policy instead provides that employees whose conduct  
256 violates state or federal criminal laws may be referred to appropriate authorities for prosecution. *See 13-1 and*  
257 *the current Policy, 9-7.*

258 The amended Policy also identifies other consequences an employee might face for violating this  
259 Policy: ineligibility for unemployment benefits; reduced workers compensation benefits; and personal liability  
260 for losses related to a work-related accident. *See 13-1.*

261 **Other**

262 The Tribe has two other drug/alcohol substance abuse policies that apply to employees, specifically  
263 those who are required to hold a Commercial Driver’s License or who perform certain safety-specific  
264 functions governed by federal law. The Oneida Nation DOT – Highway FMCSA Substance Abuse Policy,  
265 and the Oneida Nation DOT – Transit FTA Substance Abuse Policy, are not referenced here, but employees  
266 to whom those Policies apply would be advised of those separate requirements at orientation and it appears  
267 they would have to sign separate documents agreeing they would abide by the applicable policy or policies.

268 Sections 2-2 and 2-4 are revised to ensure the Adoption, Amendment, Repeal provisions are  
269 consistent with the Legislative Procedures Act, as adopted by GTC on January 7, 2013.

270 A public meeting was held on September 19, 2013, and the public comments received at that meeting  
271 and during the following Public Comment Period have been reviewed and considered for this draft.

272  
273 Submitted by: Taniquelle J. Thurner, Legislative Analyst  
274 Legislative Reference Office

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275 **Drug and Alcohol Free Workplace Policy**

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276 **Article I. Purpose and Policy**

277  
278 1-1. The Tribe is committed to protecting the safety, health and well-being of all employees, and  
279 other individuals in the workplace. The Tribe recognizes that alcohol abuse and drug use pose a  
280 significant health and safety threat to customers and other employees. The Tribe also recognizes  
281 that alcohol/drug abuse and addiction are treatable illnesses. The Tribe realizes that early  
282 intervention and support may improve the success of rehabilitation.

283  
284 1-2. It is the policy of the Tribe to establish a drug and alcohol-free workplace program that  
285 balances respect for individuals with the need to maintain an alcohol and drug-free environment.  
286 The Tribe encourages employees to voluntarily seek help for their personal drug and alcohol-  
287 related problems.

288

# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## BC Resolution # 04-12-17-C Drug and Alcohol Free Workplace Law Amendments

- 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 Drug and Alcohol Free Workplace Policy (the "Policy") was adopted by the Oneida Business Committee by resolution BC-10-25-95-A and amended by BC-12-11-13-F; and
- WHEREAS,** the federal Occupational Safety and Health Administration (OSHA) adopted amendments to 29 CFR 1904, a final rule which became effective on November 1, 2016, and which prohibited employers from retaliating against workers who report work-related injuries and illnesses; and
- WHEREAS,** the prohibition of retaliation against workers who report work-related injuries and illnesses includes limiting post-incident drug and alcohol testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use; and
- WHEREAS,** the Oneida Business Committee adopted emergency amendments to the Policy pursuant to Resolution BC-10-26-16-D in accordance with the emergency adoption process set forth in the Legislative Procedures Act (LPA); and
- WHEREAS,** the emergency amendments brought the Policy into compliance with OSHA requirements by removing the requirement that all employees must immediately undergo mandatory drug and alcohol testing following a workplace accident; and
- WHEREAS,** the emergency amendments to the Policy expire April 26, 2017; and
- WHEREAS,** the adoption of the emergency amendments to the Policy on a permanent basis are necessary to remain compliant with OSHA requirements; and
- WHEREAS,** although the permanent amendments contain the removal of mandatory drug and alcohol testing requirements following a workplace accident, employees are still required to immediately report all workplace accidents to their supervisor and can undergo drug and alcohol testing at any time if there is reasonable suspicion that the employee is under the influence of alcohol or drugs; and
- WHEREAS,** additional permanent amendments include changing the Policy to a law to align with the Legislative Operating Committee's directive that all legislation is to be classified as laws moving forward; and

- WHEREAS,** amendments clarify that the Law applies to all employees when operating a vehicle owned by the Nation or a vehicle rented by the Nation in addition to during working hours and when on-call; and
- WHEREAS,** amendments add the responsibility of providing the appropriate information to EHN in the event a medical condition prevents the employee from properly completing drug and alcohol testing so alternative drug and alcohol testing measures can be taken by EHN; and
- WHEREAS,** amendments clarify that a supervisor's decision made in regard to reasonable suspicion drug and alcohol testing of an employee is final and non-appealable; and
- WHEREAS,** amendments clarify how diluted drug test results will be handled; and
- WHEREAS,** in accordance with the LPA, a public meeting was held regarding the Drug and Alcohol Free Workplace law amendments on March 2, 2017, with a comment period closing on March 9, 2017. Those comments were accepted and considered by the Legislative Operating Committee at the April 5, 2017, Legislative Operating Committee meeting; and

**NOW THEREFORE BE IT RESOLVED,** that the amendments to the Drug and Alcohol Free Workplace law are hereby adopted and are effective immediately.

#### CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 6 members were present at a meeting duly called, noticed and held on the 12<sup>th</sup> day of April, 2017; that the forgoing resolution was duly adopted at such meeting by a vote of 5 members for, 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.

  
Lisa Summers, Tribal Secretary  
Oneida Business Committee

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

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

<p>202.1. Purpose and Policy</p> <p>202.2. Adoption, Amendment, Repeal</p> <p>202.3. Definitions</p> <p>202.4. Application</p> <p>202.5. Shared Responsibility</p> <p>202.6. Prohibited Behavior</p> <p>202.7. Reasonable Suspicion</p> <p>202.8. Drug and Alcohol Testing</p>	<p>202.9. Refusal to Test</p> <p>202.10. Reasonable Suspicion Testing Waiting Period</p> <p>202.11. Consequences for Prohibited Behavior</p> <p>202.12. Re-hire</p> <p>202.13. Other Potential Consequences</p> <p>202.14. Confidentiality</p> <p>202.15. Communication</p>
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### 202.1. Purpose and Policy

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

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

### 202.2. Adoption, Amendment, Repeal

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

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

202.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

202.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

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

### 202.3. Definitions

202.3-1. This section shall govern the definitions of words or phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

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

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

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

(d) “EHN” means the Oneida Employee Health Nursing Department.

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

#### **202.4. Application**

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

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

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

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

#### **202.5. Shared Responsibility**

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

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

- (a) Be free from the effects of prohibited drugs, and/or alcohol during working hours, and/or when scheduled to be on-call.
- (b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any prohibited drugs while working.
- (c) Comply with drug and alcohol testing if directed to do so upon the request of an appropriate authority.
- (d) Confidentially report suspicious behavior of an employee immediately to the supervisor of the employee in question.
- (e) Cooperate with the requests made by EHN and the MRO. The employee shall return the call of the MRO within twenty-four (24) hours of the call being made to the employee. An employee who fails to cooperate and does not contact the MRO within twenty-four (24) hours of receiving contact shall not receive back pay for any time between the date the MRO placed the call until the time the employee does return the call of the MRO.
- (f) Sign a consent form to be tested for alcohol and drugs when requested by an appropriate authority.
- (g) Provide the appropriate information to EHN in the event a medical condition prevents the employee from properly completing drug and alcohol testing so alternative drug and alcohol testing measures can be taken by EHN.

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

- (a) Be familiar with this law and any related policies and procedures.
- (b) Investigate reported suspicious behaviors while maintaining the confidentiality of the person who reported the suspicious behavior.
- (c) Promptly intervene with an employee who is believed to be under the influence of prohibited drugs and/or alcohol.
- (d) Monitor the employee under the influence of prescription and/or over-the-counter medications that could compromise the safety of the employee, fellow employees, or the public.
- (e) Send the employee through the contracted transportation service for reasonable suspicion drug and alcohol testing.



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

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

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

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

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

## **202.6. Prohibited Behavior**

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

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

- (b) Fails to inform his or her supervisor of being under the influence of prescription medication and/or over-the-counter medication(s) which may affect the employee's job performance or safety of the employee, fellow employees, public, or assets of the Nation.
- (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses prescription medications.
- (d) Refuses to test.
- (e) Has a confirmed positive test result after completing a drug and/or alcohol test through EHN or a medical facility, or has a confirmatory test come back as positive.

### **202.7. Reasonable Suspicion**

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

- (a) Specific observations concerning appearance, behavior, speech, or body odors of the employee consistent with possible drug use or alcohol misuse.
- (b) The observations may include indications of the chronic and withdrawal effects of prohibited drugs or alcohol.

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

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

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

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

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

- (a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory which is certified by the U.S. Department of Health and Human Services using its confirmation methods and established cut-off levels. Laboratory-confirmed results shall undergo the verification process by a MRO.
- (b) Confirmation breath alcohol testing shall be performed using an NHTSA certified evidential breath testing device.

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

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

202.8-4. Each employee, as a condition of employment, shall participate in pre-employment, reasonable suspicion, and follow-up testing upon the request of an appropriate authority.

202.8-5. A negative test result is required for employment eligibility.

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

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

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

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

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

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

(b) Refusal to sign the required forms.

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

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

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

(f) Failing to test or to re-test.

(g) Failing to appear within two (2) hours after an order or request is made for testing or re-testing.

(h) Behaving in a confrontational or discourteous manner that disrupts the collection process.

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

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

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

202.10-3. When confirmation of test results are made available to the employer, the supervisor shall notify the employee by telephone and by certified mail using the contact information provided by the employee. The notice to the employee shall identify a reinstatement date if the test was confirmed negative, or applicable consequences if the test was confirmed positive. If the employee is reinstated, back pay shall be provided in accordance with the Back Pay law. However, if the employee fails to return to work on the assigned reinstatement date as instructed in

the notice from the supervisor, the supervisor shall discipline the employee in accordance with the Nation's laws, rules and policies governing employment, unless an extension is granted in writing by the supervisor along with the reason for the extension. An employee who is ultimately terminated for failure to return to work on his or her assigned reinstatement date shall not be eligible for employment for one (1) year after the date of termination.

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

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

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

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

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

202.11-5. *Consequences.*

(a) *First Violation.*

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

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

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

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

(b) *Second Violation.*

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

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

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

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

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

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

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

(c) *Third Violation.*

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

**202.12. Re-hire**

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

(a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and

(b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed within the last thirty (30) days. This drug screening and alcohol test shall be done at the former employee's own expense.

**202.13. Other Potential Consequences**

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

(a) *Disqualification of Unemployment Benefits.* An employee who is terminated as a result of a violation of this law may be ineligible for unemployment benefits.

(b) *Reduction of Workers Compensation Benefits.* An employee who incurs an injury in a work-related accident that occurred while engaged in a violation of this law may have any workers compensation benefits reduced.

(c) *Criminal Penalties.* An employee whose conduct violates state or federal criminal laws may be referred to appropriate law enforcement for criminal prosecution.

(d) *Liability for Accidents.* An employee whose conduct in violation of this law causes an accident may be held personally responsible for losses associated with the accident, and the employee may be required to pay for those losses.

#### **202.14. Confidentiality**

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

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

#### **202.15. Communication**

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

(a) All employees shall be given information on how to access this law.

(b) This law shall be reviewed in new employee orientation and other means, as deemed appropriate by HRD.

(c) All employees shall sign an acknowledgment form stating they have received a copy of this law, have read and understand it, and agree to follow this law.

*End.*

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See GTC-01-31-94-B

Adopted – BC-08-17-94

Emergency Amended - BC-04-20-95-C

Adopted - BC-10-25-95-A (repealed previous versions)

Amended - BC-10-20-99-A

Amended - BC-12-05-07-B

Amended - BC-12-11-13-F

Emergency Amended - BC-10-26-16-D

Amended - BC-04-12-17-C

# December 2023

December 2023						
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January 2024						
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MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
Nov 27	28	29	30	Dec 1
4 2:00pm Intro to: Oneida Higher Education Scholarship Code (Microsoft Teams Meeting) - Grace L. Elliott	5	6 8:30am LOC Prep Meeting (Microsoft Teams) 9:00am Legislative Operating Committee 1:30pm LOC Work Session (Microsoft) 5:30pm Legislative Operating Committee	7	8 9:00am Real Property Law Amendments (Microsoft Teams Meeting) - Grace L. Elliott
11	12 1:30pm LOC Work Session (Microsoft Teams Meeting; BC_Exec_Conf_Room) - Clorissa N. Leeman	13	14	15 12:15pm PUBLIC MEETING: Clean Air Policy Amendments (BC_Conf_Room) - LOC
18	19	20 8:30am LOC Prep Meeting (Microsoft Teams Meeting); 9:00am Legislative Operating Committee Meeting (Microsoft) 1:30pm LOC Work Session (Microsoft)	21	22 12:00pm Christmas Eve
25 8:00am Christmas	26	27	28 1:00pm LOC Work Session (Microsoft Teams Meeting; BC_Exec_Conf_Room) - Clorissa N. Leeman	29