



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room - 2nd Floor Norbert Hill Center
January 3, 2024
9:00 a.m.

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

- II. Minutes to be Approved**
 - 1. December 20, 2023 LOC Meeting Minutes (pg. 2)

- III. Current Business**
 - 1. Drug and Alcohol Free Workplace Law Amendments (pg. 4)
 - 2. Clean Air Policy Amendments (pg. 60)

- IV. New Submissions**

- 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
December 20, 2023
9:00 a.m.

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

Others Present: Clorissa N. Leeman, Grace Elliott, Keith Doxtator, Brooke Doxtator, Maureen Perkins, Kristal Hill, Fawn Cottrell

Others Present on Microsoft Teams: Michelle Tipple, Rhiannon Metoxen, Jo Anne House, Matt Denny, Peggy Helm-Quest, Todd Vandenheuvel, Janice Decorah, Rae Skenandore, Connor Kestell, Tony Doxtator, Linda Dallas, Diane Hill, Eric Boulanger, Justin Nishimoto, Tracey Smith, Michelle Tipple, David P. Jordan, James Poels, Fawn Billie, Kristine Hill, Tawny Danforth, Bonnie Pigman, Terri Schiltz

I. Call to Order and Approval of the Agenda

Jameson Wilson called the December 20, 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. December 6, 2023 LOC Meeting Minutes

Motion by Jennifer Webster to approve the December 6, 2023, LOC meeting minutes; seconded by Marlon Skenandore. Motion carried unanimously.

III. Current Business

1. Drug and Alcohol Free Workplace Law Amendments

Motion by Jennifer Webster to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Marlon Skenandore. Motion carried unanimously.

2. Onayote?á·ká ni?i Commission Bylaws

Motion by Jennifer Webster to remove the Onayote?á·ká ni?i Commission Bylaws from the Active Files List; seconded by Marlon Skenandore. Kirby Metoxen and Jonas Hill opposed. Motion carried.



Motion by Jennifer Webster to direct the Legislative Reference Office/Legislative Operating Committee to report out at the next semi-annual GTC meeting regarding development of standing committee for the Onʼayoteʼa·ká niʼi Project Plan; seconded by Marlon Skenandore. Motion carried unanimously.

IV. New Submissions

1. SEOTS Bylaws Amendments

Motion by Jennifer Webster to add the SEOTS Bylaws Amendments to the Active Files List with Jonas Hill as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

V. Additions

VI. Administrative Items

VII. Executive Session

VIII. Adjourn

Motion by Jennifer Webster to adjourn at 9:32 a.m.; seconded by Marlon Skenandore. Motion carried unanimously.



Legislative Operating Committee
January 3, 2024

Drug and Alcohol Free Workplace Law Amendments

Submission Date: 9/7/22	Public Meeting: 2/15/23
LOC Sponsor: Kirby Metoxen and Jonas Hill	Emergency Enacted: N/A

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

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

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

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

12/1/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Cornelius, Daniel Guzman King, Clorissa N. Leeman, Grace Elliott, Carolyn Salutz, Kristal Hill. This was a work

meeting held through Microsoft Teams. The purpose of this work meeting was to review the updated proposed language for the amendments, as well as the Waiver of Exemption of Positive THC Test Results for Pre-Employment Drug Testing resolution.

- 12/7/2 LOC:** Motion by Jennifer Webster to approve the draft of the Drug and Alcohol Free Workplace law amendments and direct that a legislative analysis be completed; seconded by Daniel Guzman King. Motion carried unanimously.
- 12/21/22 LOC:** Motion by Jennifer Webster to approve the legislative analysis of the Drug and Alcohol Free Workplace law amendments; seconded by Daniel Guzman King. Motion carried unanimously.
- 1/4/23 LOC:** Motion by Jennifer Webster to approve the public meeting packet for the proposed amendments to the Drug and Alcohol Free Workplace law and schedule a public meeting to be held on February 15, 2022; seconded by Kirby Metoxen. Motion carried unanimously.
- 1/26/23:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Cornelius, Daniel Guzman King, Clorissa N. Leeman, Mary Cornelissen, Lucy Neville, Fawn Rasmussen, Grace Elliott, Kristal Hill, Peggy Van Gheem, Matt Denny, Whitney Wheelock, Carl Artman, Wendy Alvarez, Lorna Skenandore, Nic Reynolds, Mark Powless, Todd Vanden Heuvel, Carolyn Salutz. This was a work meeting held on Microsoft Teams. The purpose of this work meeting was to review the resolution regarding which employee positions should waive the proposed exemption for positive THC test results in pre-employment drug testing.
- 2/15/23:** *Public Meeting Held.* Present: Jennifer Webster, Kirby Metoxen, Clorissa N. Leeman, Grace Elliott, Brooke Doxtator, Nancy Barton, Linda Dallas, Cathy L. Metoxen, Carol Silva, Dana Thyssen, Jessica Vandekamp, Joy Salzwedel, Kristal Hill, Lucy Neville, Mark Powless, Mary Graves, Mike Debraska, Monica Doxtator, Peggy Van Gheem, Robert Sundquist, Sidney White, Carrie Lindsay, Kristen Jorgenson-Dann, Rachel Fitzpatrick, Stefanie Reinke, Sherrole Benton. This public meeting was held in person in the Norbert Hill Center's Business Committee Conference Room as well as on Microsoft Teams. Six (6) individuals provided oral comments during this public meeting.
- 2/22/23:** *Public Comment Period Closed.* Four (4) individuals provided written comments during the public comment period.
- 10/4/23 LOC:** Motion by Jennifer Webster to add the Drug and Alcohol Free Workplace Law Amendments to the Active Files List with Kirby Metoxen and Jonas Hill as the sponsors; seconded by Jonas Hill. Motion carried unanimously.
- 12/6/23:** *Work Meeting.* Present: Jameson Wilson, Jennifer Webster, Kirby Metoxen, Marlon Skenandore, Jonas Hill, Clorissa Leeman, Grace Elliott, Maureen Perkins, Fawn Cottrell, Kristal Hill. The purpose of this work meeting was to review the proposed amendments to the Drug and Alcohol Free Workplace law that went to public meeting.
- 12/20/23 LOC:** Motion by Jennifer Webster to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Marlon Skenandore. Motion carried unanimously.
- 12/20/23:** *Work Meeting.* Present: Jameson Wilson, Kirby Metoxen, Jennifer Webster, Jonas Hill, Marlon Skenandore, Clorissa Leeman, Brandon Yellowbird Stevens, Grace Elliott, Maureen Perkins, Kristal Hill, Fawn Cottrell. The purpose of this work meeting was to review and consider the public comments received.

Next Steps:

- Approve the updated public comment review memorandum, draft, and legislative analysis.
- Approve the fiscal impact statement request memorandum and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by January 17, 2024.



TO: Legislative Operating Committee (LOC)
 FROM: Clorissa N. Leeman, Legislative Reference Office, Senior Staff Attorney
 DATE: January 3, 2024
 RE: Drug and Alcohol Free Workplace Law Amendments: Public Comment Review with LOC Consideration

On February 15, 2023, a public meeting was held regarding the proposed amendments to the Drug and Alcohol Free Workplace law (“the Law”). The public comment period was then held open until February 22, 2023. The Legislative Operating Committee reviewed and considered the public comments received on December 20, 2023. This memorandum is submitted as a review of the comments received within the public meeting and public comment period.

Comments 1 through 13 – Concern with Exemption for Positive THC Test Results:

202.4. Application

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.

202.8. Drug and Alcohol Testing

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

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

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

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

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

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

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

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

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

Nancy Barton (oral): I wanted to participate today in the Drug and Alcohol Free Workplace law amendments. I haven't participated recently in the LOC. I go back as far as ten (10) years when Doug McIntyre worked in the LOC office and the issues at that time were we were part, people were participating in the public hearing and in the written comments. And at that time it was a common. I guess the dialogue that the Community members are general tribal Council members felt like they're participation wasn't being taken seriously and so that was one of the reasons why I discontinued my participation in the in the LOC process, specifically speaking about this law. You know, I did question how many active files were on the LOC list, and I'm concerned about this coming forward. There today I received a notice that on the quality of life agenda there was a request to pursue developing a detox and treatment center. After reading this law, there was no fiscal impact included, and I'm concerned about that because all of this would include liability and what is the risk of our employees coming to work under the influence of THC? I believe that each and every person has the right to do things that they wanna do in their own personal life. But when you are an employee. Being an employee is a privilege and we have a reputation. We have integrity. And the entities that are, I'm afraid that it will protect it would not protect would be retail gaming. Those people who operate vehicles and are heavy equipment.

Nancy Barton (oral): You know, try to talk to my grandchildren and my children, you know about the use of drugs and about being clean and about having a sober environment and home and lifestyle. And so this was very concerning to me that we would be wasting time at the LOC. It seemed like a very selfish. Umm. Law to come forward because you know, I don't think that it's common that people would agree to having this law come forward. There's, you know, two people here today. So those were the reasons why I decided to come here today and offer my my public comments. So thank you.

Mike Debraska (oral): Thank you, Michael Debraska an all nighter roll 10 number 10738. I have a number of reasons for wanting to comment on this particular amendment to the drug and alcohol policy changes. First off, I don't believe that there should be any changes made to this current drug and alcohol policy. Instead of eliminating the testing for marijuana, I believe we should be having more people subjected to it and having it done specifically for the casino, I think. Poses of a real detriment to the nation. What happens if somebody comes in high? And something happens. It's, as Nancy said, it's not only a liability issue. They are subjecting our money, making revenue stream to all kinds of issues. And I just don't believe this is a very good idea at all.

Mike Debraska (oral): Additionally, there were some comments at lines 58 and 59 on page four of the analysis. Hold on and that states. But the law required the law, then requires the unite of Business committee to adopt, through a resolution, a resolution, a list of all non gaming employment positions that waive the exemption for positive THC results. The law then maintains that requirement that each employee shall participate in reasonable suspicion and follow up testing upon the request of an appropriate authority. And that a negative test result is required to unimpeded is an impediment employment eligibility. So I just, I don't know, I I look at this and I say I think we're treading on some real real dangerous ground here. And I think this is going to be a very slippery slope for the tribe if they were to go ahead with us. So Umm, but as I said I'm, I'm just I'm not in favor of this. If anything, we should be expanding that list, not trying to do away with it. And as I understand, and again, I don't know. I know there's a labor shortage, but to lower

the standards to this, I think especially for our money making operation I think is truly dangerous. So and I have submitted my my questions via online in a Microsoft Word document that I sent them to the LOC e-mail address. Thank you.

Mary Graves (oral): Mary Graves: I'm Mary graves. Hi. I just have a I don't know if I have a comment or if I have a question, but I am not in support of taking THC off of. Umm, the pre employment drug screening and the proposed amendment has some listings for gaming as far as if the position mandates a background check or licensing and doesn't require a commercial driver's license. But for the external or not the non gaming positions, none of those things are required and I don't know how those things being required have anything to do with. A drug test because if you are smoking pot, that's not gonna show up on a background check unless you've been arrested, it's not gonna show up in the licensing application, and you probably already have your CDL, so it won't show up on that. So I don't know how putting those provisions in there addresses anything, and I'm concerned about the. Umm. You can buy weed now. Whether you're smoke it regular or you get it in a cartridge and vape it. Or you can put it under your tongue in a tincture. There's 100 different ways. That's an exaggeration that you can ingest THC. And there's just as many ways that you can. Counter act. The effects and be the drug test. So. I don't want to open the door to potentially employees using a tincture or. Vaping on their break and opening that door to it's OK. I passed my employment and as long as I don't act suspicious, nothing will happen to me and I don't know a lot about the drug itself. But I do have a friend that uses and when that person uses they are more focused than they were prior to, so a supervisor wouldn't necessarily know that they were higher than a kite. So those are my concerns and thank you.

Mark Powless (oral): Mark Powless: Thank you for the opportunity to speak. Mark Powless, general manager. I just want to state for the record that the areas that report to the general manager and I'll I'll run through those quickly, Big Bear Media, Comprehensive Health Division, Comprehensive Housing division, digital technology services, education and Training branch office, environmental, health, safety, land and Agriculture division, Governmental Services Division, Division of Public Works and. Tribal action plan we all met collectively to talk on this topic. All areas unanimously are opposed to allowing the hiring of individuals that test positive for THC. There are a number of of health factors and safety factors in our workplaces where we do not want to take the risk of having an individual under the influence of THC. Working in our workspaces, so again the areas reporting to the general manager unanimously are opposed to hiring any individuals that test positive for THC. Also, one additional note from a social aspect, there is a challenge with sending a message to our community that it is OK to use marijuana, particularly for our youth. Who can be negatively impacted in their physical and emotional development through the use of early marijuana use? It is very challenging for us to send that message to the Community that it's OK to use marijuana regardless of whether or not marijuana is approved in the state or not approved in the state. There are particular health factors for our youth when it comes to using. Marijuana. Thank you.

Mike Debraska (written): I do not believe there should be any changes made to the current Drug & Alcohol Policy of the Oneida Nation with respect to the usage and testing for marijuana until the following comments and questions are answered properly. The comments and questions are as follows:

1. Currently, recreational use of marijuana is illegal in the State of Wisconsin. While medical, in certain instances is allowable for specific diseases, it will have a detrimental affect on the employment base and cause more dissention among employees, fund units, and departments as to who will be tested and when; and

Mike Debraska (written): 3.If the tribe no longer wishes to test or screen for the recreational use of marijuana of those who seek current and future employment with the tribe, could it affect the Gaming Compact with the State of Wisconsin? and

Mike Debraska (written): 4.Will the tribe attempting to change the current Drug & Alcohol policy affect current and future grant monies should the state be notified of this possible change? and

Mike Debraska (written): 5.Which departments and/or fund units will no longer have the testing/screening for possible marijuana use? and

Mike Debraska (written): 6.If police, first responders, and medical staff---this law will not apply to them or they are exempt, If specific employees, fund units, or departments could potentially be exempt from the testing, then isn't the tribe causing dissention amongst the employees, fund units and departments; and

Mike Debraska (written): 9.How will this potential change in testing to the current Drug & Alcohol Policy affect gaming if their employees are allowed to come into work high and potentially risk the damage of the reputation to our money making revenue source of the nation?

When the current questions and comments above are answered satisfactorily, then I may consider changing my view. Until then, if the LOC and BC seriously consider this change, it will all be brought forward by way of petition to be in front of GTC for their input along with the original requestor's name being used and the BC members who supported this idea.

Page 1 – Lines 17-18

Line 24

Page 2 – Lines 15-24 Sec. 3 Consolidation and Outreach

Page 4 – Lines 58-59 Sec. 7 – Other Considerations

Lines 89-92

Julie Barton (written): I respectfully request that these comments would be seriously considered in the decision making for the above law. I do not have a computer and also have arthritis in my hands.

When I first heard that a petition was submitted to “exempt” applicants/potential employees from positive THC test results, which I understand that this positive result would not prevent one from employment.

I was immediately concerned that the Oneida Nation would be taking steps backwards in the already difficult job of fighting drugs.

Many people have been extremely concerned about drug use and how it has progressed from THC to consuming our people which has led to the “hard stuff.”

The efforts to combat drug use began many years ago. Alcohol being the worst enemy than and now. Our community has drugs more dangerous and impairing of the body and mind, results being that drugs, including THC have been just the beginning of the worst, fentanyl etc.

Now someone wants to remove protections in place to weaken the goals of a “Drug Free: Community. Why would we need to change those efforts now when the law before us is only one significant part of the entire fight to combat what is dangerous to everyone.

These comments come from my many years (83) of experience working elsewhere and with the growth of our Oneida Nation. Also, I asked many people I know; family, friends, and professionals; mothers who have lost loved ones. THC seemed to be the introduction to the worst drugs. There is nothing that the THC adds anything to our quality of life or sovereignty to the Oneida Nation.

The drug lords (sellers) persuade the innocent that is OK to acquire a better “high” and the sadness begins in other words we as a Nation have lost those with addiction.

The Nation Chiefs and traditionalists say drug use is not native, there is no association to any tribal ceremonies. It is a mind changer and impairs judgement; experts who have done testing also found that by observation THC affects performance, slow reactions and ineffective in decision making. During my experience and education I observed these behaviors for which we should all be informed about so we don’t have issues beginning with THC, and observing those who may be under the influence. We can’t stand by while THC and other drugs take away our resources, our Oneida people.

Are we promoting drug use or impairment on the job. Is it now ok to be affected and serve our customers, taking care of babies. Under the influence pertains to almost every job. (2,000+)

THC as used as “recreational” has effects lasting 28 days. If the petition passes the employee can “light up” just before work.

I support the efforts of the medical and scientific research as a valuable medical treatment, lawful and legal and well regulated. If all good intentions are used we can let the expert forces do their job. Also CBD and hemp have nothing to with THC if done right.

What about Risk Management. Hopefully we can get their opinion? How do impaired employees affect risks overall. Is it Ok to be impaired while responsible for our valuable resources?

We are experiencing/expressing Sovereignty by having the Drug and Alcohol Workplace Law. Many people have tried and succeeded the difficult task of working toward the “Drug Free Environment.” This effort sounds impossible at times since we know we have it all around us. We’re losing future leaders and talents of promising youth, whom we count on to be our future leaders.

If the petition request is passed it will be a major “step backward” to having the “Good Mind, Body, and Spirit.” Please consider that over 2,000 employees are entrusted with the care of assets that flow through our enterprises daily, our well-being, our babies, elders, our future.

Where and when will a decision be made? I hope ASAP? A No Vote can be done/upheld by strong leadership of the LOC BC and/or GTC.

I also support random drug testing although not specific to the petition, it is part of the overall fight against the fight. This effort was tried in the 90’s but didn’t sit well enough to continue the effort, due to supposed legal issues. Drug testing (for many other drugs) is not considered to violate anyone’s rights, only to protect the tribe and employees as well as customers who may be served by impaired individuals.

If this petition passes and we are trying to fight the overall fight on drugs then what are we doing to all the efforts done now and in the future for a drug free Oneida?

We will have defeated the purpose. Much work is ahead in those efforts! Why give up or change now? We cannot go backward!

I respectfully submit my comments for you as decision makers. I lived in Chicago for 14 years, found a husband, had kids, but always wanted to go home. Then convinced my family and home Oneida would be good for us, and it is.

Many years of experience/employment in Chicago and Oneida have therefore I feel that is the basis for my comments the above allows me the background to share with you the LOC, also please consider that I gather much information from family, friends and professionals, especially focused on those who experienced the effects of those they loved and sometimes lost. THC was always just the beginning as loved ones advanced to the “hard stuff.” We must find the sellers as an important part of the fight the most dangerous.

If you need me to decipher the above, I will help as needed.

The utmost Thank you for your decision making authority to do the best for Oneida.

920-869-2294

Response

The commenters express a variety of concerns regarding potential implications of the proposed amendments to the Drug and Alcohol Free Workplace law, as well as general opposition to the Nation providing an exemption for positive THC test results in certain circumstances.

The proposed amendments to the Drug and Alcohol Free Workplace law focus on pre-employment drug testing. All external applicants are required to participate in pre-employment drug testing. [2 O.C. 202.8-4]. An external applicant is a person who is applying for a position and not currently

employed by the Nation. [2 O.C. 202.3-1(f)]. A negative drug test result is required for employment eligibility. *Id.* The proposed amendments then provide an exemption for positive THC test results in certain circumstances. This means that an external applicant's confirmed positive THC test result shall be exempted from the requirement of a negative drug test result for employment eligibility in the specific circumstances. [2 O.C. 202.8-4(a)]. An external applicant for a position in Gaming, who receives a confirmed positive test result for THC may still qualify for employment if: the position mandates a background check in accordance with 5 O.C. 501.10; the position mandates licensing in accordance with 5 O.C. 501.11; and the position does not require a commercial driver's license or job-related driving. [2 O.C. 202.8-4(a)(1)]. An external applicant for a non-Gaming position who receives a confirmed positive test result for THC may still qualify for employment if the position has not been identified as an employee position which waived the exemption for positive THC test results. [2 O.C. 202.8-4(a)(2)]. The Oneida Business Committee is delegated the responsibility to adopt through resolution a list of all the non-gaming employment positions that waive the exemption for positive THC test results. [2 O.C. 202.8-4(a)(2)(A)].

To clarify, the exemption for positive THC test results applies only to external applicants during pre-employment drug testing. Once an individual is hired by the Nation, the 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. [2 O.C. 202.4-2]. All employees of the Nation are required to participate in reasonable suspicion and follow-up testing upon the request of an appropriate authority. [2 O.C. 202.8-5]. A negative test result is required for unimpeded employment eligibility. *Id.*

The Legislative Operating Committee had great discussion regarding the fact that an external applicant's positive THC test result is not indicative of an individual's intent to continue the use of marijuana once they are hired as an employee of the Nation and the use of drugs is prohibited. The Legislative Operating Committee understands that external applicants may come from, or may have visited, states where the use of marijuana has been legalized. As of April 24, 2023, thirty-eight (38) states, three (3) territories and the District of Columbia allow the medical use of cannabis products; while as of November 8, 2023, twenty-four (24) states, two (2) territories and the District of Columbia have enacted measures to regulate cannabis for non-medical adult recreational use.¹

Allowing an exemption for the pre-employment drug testing of external applicants is a policy decision for the Legislative Operating Committee to make. There are no recommend revisions to the proposed amendments to the Drug and Alcohol Free Workplace law, but it is within the purview of the Legislative Operating Committee to reconsider this policy decision.

LOC Consideration

The Legislative Operating Committee had great discussion on the fact that there appears to be a great misconception on the intent of these proposed amendments to the Drug and Alcohol Free Workplace law – many people believe that the proposed amendments will allow employees of the Nation to engage in the use of drugs without consequence. The Legislative Operating Committee believes that the response provides the clarification that the exemption for positive THC test results

¹ Information found on the Nation Conference of State Legislatures website at [https://www.ncsl.org/health/state-medical-cannabis-laws#:~:text=Non%2DMedical%2FAdult%2DUse,medical%20adult%20\(recreational\)%20use.](https://www.ncsl.org/health/state-medical-cannabis-laws#:~:text=Non%2DMedical%2FAdult%2DUse,medical%20adult%20(recreational)%20use.)

applies only to external applicants during pre-employment drug testing. Once an individual is hired by the Nation, the Nation's policy on drug use for employees remains exactly the same as it is now, and the 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. [2 O.C. 202.4-2]. All employees of the Nation are required to participate in reasonable suspicion and follow-up testing upon the request of an appropriate authority, and a negative test result is required to unimpeded employment eligibility. [2 O.C. 202.8-5].

The proposed amendments to the Drug and Alcohol Free Workplace law were developed by the Legislative Operating Committee elected for the 2020-2023 legislative term. Now that we are in the 2023-2026 legislative term with a new Legislative Operating Committee, the Legislative Operating Committee had further discussion on exemption provided for positive THC test results. The Legislative Operating Committee discussed that allowing non-gaming positions to waive the exemption for positive THC test results for certain positions that have been provided for in a resolution adopted by the Oneida Business Committee may provide for inconsistent and subjective application across the Nation. The Legislative Operating Committee determined that a consistent application of the exemption for positive THC test results would be more beneficial for the Nation, and therefore determined the following revision should be made to the proposed amendments to the Drug and Alcohol Free Workplace law:

202.8. Drug and Alcohol Testing

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

(a) *Exemption for Positive THC Test Result.* An external applicant's confirmed positive THC test result shall be exempted from the requirement of a negative drug test result for employment eligibility unless prohibited by an external licensing or grant requirement.

Comments 14 through 15 – Application to Elected Officials:

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.

(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.

202.4. Application

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.

Nancy Barton (oral): I also have with me a application for elected positions and one of the questions on Page 3 at the bottom #7 is they ask you specifically. If within the last five years you've used illegal drugs and THC is included in that in the state of Wisconsin marijuana, anything that taste test positive for THC is still illegal. So for the business committee to allow this to come forward was very concerning to me that the business committee or the LOC would allow something that's illegal. And I don't know if you're endorsing it or how this got here. My understanding was that it was a negotiation for a petition that was submitted to go to GTC. But going back to the application for elected boards and ask you specifically if you've used controlled substances and it says, for example, marijuana, cocaine, crack cocaine, hash, narcotics and it asks you to answer yes or no to that question. So I I was very concerned about when. I saw this law coming forward, I.

Cathy Metoxen (oral): Cathy Metoxen: Cathy L. Metoxen. I remember being here years ago and I'm going to raise the same questions I raised back then again and one of the things that I look at is, is it gonna be across the board? Is it gonna be fair and equal? I'd like to know is there something specific in here about government officials and administration? You know, the administration, you know, top management, you know, because I've been in situations in this room where I've observed, you know, BC members staggering. And I hear, you know, the, the, the word is out there rumors and when people smell of alcohol the day after partying or something. I mean that all coincides together. And it's the same for. Marijuana, or THC or whatever it is you're looking at. And then I got a question too, is that? It's OK to use it if that's my understanding of what you're. Creating this new amendment for is, does that include the doctors and the specialists and the nurses and everybody? It's gonna be OK for everybody across the board. And if I have a suspicion in this room in the middle of a meeting, can I stop the meeting and request that an individual sitting here at these tables here go to Saint Mary's and get tested just like an employees treated? How do we go about acting in a situation such as that? And is that being looked at and included? Because there is a lot. Lot of things I I've. Oh, it doesn't sound like it. Umm, I've had a situations where I was with somebody and we dropped somebody off at a place where they go get tested and there was a guy walking funny. And I go what's wrong with him? And they said Ohh, he's probably got fake, you know, something on him for his test, you know, so there's all kinds of ways that people look to beat the system, so to speak. So I'm wondering how is that going to be looked at and included in this document for all of the above, including each and every business committee member and their assistance. Because people laugh about it. Of course it's funny, you know. But but people are more willing to sit behind closed doors and gossip and laugh about it than to actually deal with it because nobody wants to deal with family and friends. So that's a situation that I think needs to be included in here and I wanna be able to next time I see somebody who's acting suspicious. And according to this document, it says maybe under the influence of drugs and or alcohol. So specific observations concerning appearance, behavior, speech, or body orders well. If you can't even create a law for to protect our elderly cause, my understanding is there is no law specific to elder abuse right now, and I was helping people for 20 years. How are you gonna do a lot like this? That's gonna be fair and easy and simple to do because it's not a simple thing. And I don't, I don't agree with it either. There's not enough conversation about the situation and I'd like to be able to say I remember when so and so staggered down those steps. In the middle of a meeting, what's gonna happen in that situation? It should have been the people sitting next to him that could smell the Reek Ness. Because I heard it reeks up here, sometimes on individuals. And who's gonna actually

do it and take care of it? Are you just using it to set up certain individuals? That's my question in my mind, through this whole thing, this needs to be more clearly looked at and taken apart, I would say. I guess that's all I have to say for now.

Response

The commenters question the proposed amendments to the Drug and Alcohol Free Workplace law application to members of the Oneida Business Committee or other elected entities.

The Drug and Alcohol Free Workplace law prohibits an employee of the Nation 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. [2 O.C. 202.4-2]. An employee of the Nation is defined as 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. [2 O.C. 202.3-1(e)]. The Drug and Alcohol Free Workplace law further clarifies that an employee does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. *Id.* Therefore, the Drug and Alcohol Free Workplace law does not apply to elected officials, including members of the Oneida Business Committee.

There are no recommended revisions to the proposed amendments to the Drug and Alcohol Free Workplace law based on these comments.

LOC Consideration

The Legislative Operating Committee agreed that there is no revision to the proposed amendments to the Drug and Alcohol Free Workplace law based on these comments since the Drug and Alcohol Free Workplace law does not apply to elected officials, including members of the Oneida Business Committee.

Comments 16 through 19 – Petition S. Benton – Pre-Employment Drug Testing:

Mike Debraska (oral): I had a list of questions like 9 or 10 different questions, but I'm just. I'm gonna submit those via e-mail, but there are some things that I I took a look at within the drafts and within this law itself and I noticed one thing in Section 3 under the analysis, to draft one on page 2 at the top from line 16 through 25, it says representatives from the following departments or entities participated in the development of the amendments to the law. And this legislative analysis, including the Oneida Law Office, Human Resources Department, gaming and employee health nursing. So, I mean, they went through a pretty extensive list with within within the tribal structure itself. But the one thing that wasn't included on here was GTC. And again, I know this was done by way a petition, but I haven't seen a copy of the petition that was submitted. I don't know if a petition ever was submitted. It could be something that's just told to us and there's no justification for it. So I I and within my comments, I also state that that I would like to see a copy of that. Umm, particular petition that was turned in for this?

Sherrole Benton (oral): So in that particular meeting where my where my petition was presented the, the, the, the room was pretty full. There were a lot of people there who were waiting to hear my petition and who I believe would have supported it and passed it. So This is why there was some kind of technicality that the some of the BC members at the time wanted to try out with some new GTC rules. And I agreed to that. So it ended up that my my petition wasn't heard in that particular GTC meeting, you know, like about five or six years ago. So This is why it's now been being developed this way. So I think that even if it, even if my petition were to go to the GTC meeting, I believe it would pass and then the BC and the organization would be doing this work anyways to amend the the the drug law policy. So I'm in support of it and I believe that many, many people are as well because we all know that.

Mike Debraska (written): 2. Who authorized the current Oneida Business Committee to negotiate with a petitioner and under what policy, procedure, SOP, by-law or law? I would also like a copy of the petition that was submitted to the BC for proof that a community member submitted one; and

Mike Debraska (written): 7. Why is the tribe even considering doing this for one individual brining forward what should have been deemed an illegal petition and denied immediately due to recreational use being illegal in the State of Wisconsin?

Response

The commenters discuss and/or question the 2016 *Petition: Benton - Pre-Employment Drug Testing* and how it was handled or relates to the proposed amendments to the Drug and Alcohol Free Workplace law.

On November 21, 2016, the *Petition: Benton – Pre-Employment Drug Testing* was submitted to the Tribal Secretary’s Office and has since been verified by the Trust Enrollments Department. On January 13, 2017, the OBC accepted receipt of the petition and forwarded it for the appropriate analyses, including this legislative analysis. The purpose of the petition is, “to change pre-employment drug testing orders and reduce sensitivity to marijuana because tests for THC aren’t effective measurements for potential employee performance, nor habitual drug use; and THC stays in the body longer than opiates, alcohol, and other drugs.”

On August 30, 2022, the Legislative Operating Committee received a request from the Human Resources Department to add the Drug and Alcohol Free Workplace law amendments to its Active Files List. The Human Resources Department indicated that with the *Benton – Pre-Employment Drug Testing* petition currently pending, they were directed by the Oneida Business Committee to work with the Oneida Law Office on potential proposed language to address the concerns brought forth through this petition. The Legislative Operating Committee added this item to its Active Files List on September 7, 2022.

Although the request from the Human Resources Department mentions the relation between the request for amendments to the Drug and Alcohol Free Workplace law and the *Petition: Benton – Pre-Employment Drug Testing*, it is important to note that ultimately the development of amendments to the Drug and Alcohol Free Workplace law is a separate legislative effort.

If the commenters have questions regarding how the Oneida Business Committee Secretary handled the *Petition: Benton – Pre-Employment Drug Testing*, it is recommended that the commenters reach out directly to the Nation’s Secretary for more information regarding this issue, as this is not information that the Legislative Operating Committee holds.

LOC Consideration

The Legislative Operating Committee reaffirms that ultimately the development of amendments to the Drug and Alcohol Free Workplace law is a separate legislative effort than the *Petition: Benton – Pre-Employment Drug Testing*, and the Legislative Operating Committee would be pursuing this issue even without the petition.

Comments 20 through 22 – Expression of Support for Amendments:

Sherrole Benton (oral): Sherrole Benton: Sherrole Benton. I'm the author of this petition, and when I wrote it. Uh, we. We were looking at the states around us, Umm, legalizing marijuana. And so eventually, the legalization of marijuana will will be well will happen in our state as well. So the reason why I wrote the petition for pre employment testing and and not looking for THC during pre employment. It's so that more, you know, more qualified people could be interviewed and hired for a positions. THC stays in the body in the body, it's stored in the fat cells of the body for up to seven years. So like you know, if a person had had been using, you know, a month ago or a year ago or several years ago, that's possibly gonna show up in a THC test, whereas other drugs and alcohol that are water soluble, those are washed out of the system within 24 to 72 hours. So people who are using harder drugs, like meth and heroin and other narcotics, they're they're they're passing those pre screening during pre employment testing. And they're the ones who are getting. That jobs, and then once they are in a job, you know, they become unreliable employees and you know a lot of supervisors that I talked with when I wrote this petition were really frustrated about that. And they said. They really wouldn't mind if someone who had tested positive for THC got through the screening process and they could interview them, you know, and then have them on the probationary period for employment. So and and as you can see in in in the in the law, once a person is employed, they would still be subject to in drug testing. You know, if there behavior and performance level are are not up to par.

...

So I'm in support of it and I believe that many, many people are as well because we all know that. You know a person who is who is using meth or heroin or other narcotics. You know, once they are on the job, they become unreliable. And this is this is affecting our revenue, it's affecting the quality and leadership and development of our employees. And so I think it's important to pass it, you know to to continue working on this and amend the law. Thank you.

Lisa Liggins (written): I'd like to share my general support for the proposed amendments to the law. I appreciate the work done by the Oneida Law Office, the Human Resources Department, Gaming, and Employee Health Nursing; I'm confident these proposed amendments will address the concerns raised by Sherrole Benton from her 2016 petition as well as the concerns raised by

Gaming Management surrounding pre-employment drug screening.

Sidney White (written): Greetings, I would like to submit my comments for the DRUG AND ALCOHOL-FREE WORKPLACE LAW AMENDMENTS. I support the ‘exemption for positive THC Test’ in 202.8-4. In my professional role, community members share that THC is an effective alternative to prescription opioids in managing chronic pain. I personally observed the onset of the Opioid Crisis directly affecting our Oneida Nation, and greater northeastern Wisconsin Native, community in the past 15+ years of practice. The proliferation of providers freely providing prescription opioids was a direct contributing factor to the epidemic in our community. There are reasons bills were introduced such as H.R. 2917 (IH) - Opioid Crisis Accountability Act of 2019, S.2680 - Opioid Crisis Response Act of 2018, and the Support for Patients and Communities Act. The onset and cessation of prescription opioid abuse directly correlated with increased methamphetamine and heroin use within the area.

This created a subset of people that have effectively recovered from opioid use and methamphetamine/heroin use. In my clinical practice there is a significant amount of community members that suffer from chronic pain syndromes. Many community members have been through the system regarding pain management. Due to their recovery from opioid abuse, they have extreme trepidation and reluctance with prescription narcotics in management of their chronic pain conditions. THC provides these patients the opportunity to effectively manage their chronic pain conditions with avoidance of traditional medicine and low-grade long-term narcotic use. It allows our community members to become more physically active within the community as their pain is self-reported as managed better. The fear of relapse is a very real threat for this population with traditional medicine. The alternative for this subset is THC and managed chronic pain conditions or non-THC and increased pain and dysfunction.

Studies have consistently shown that with managing chronic pain, graded activity, and integration back into the work force consistently generates improved patient outcomes and wellbeing. It is my hope that an ‘exemption for positive THC test’ would allow the recovering opioid addict that successfully manages chronic pain with THC use the opportunity to return to the Oneida Nation workforce.

Thank you for your time and consideration of my public comments regarding the proposed amendments.

Sincerely,
Sidney J. White

Response

The commenters express general support for the proposed amendments to the Drug and Alcohol Free Workplace law. There are no revisions recommended based on these comments.

LOC Consideration

The Legislative Operating Committee appreciates the expression of support for the proposed amendments to the Drug and Alcohol Free Workplace law.

Comment 23 – Clarification of Internal Applicant:

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.

(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.

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.

Lisa Liggins (written): Clarification of the “Internal Applicant” is needed.

- The proposed changes to section 202.8-4. would require external applicants comply with pre-employment drug screening,
- If the intent of the amendments to 202.8-4. is that pre-employment drug screening is only for external applicants, the term, “internal applicant” could be deleted from the law entirely.
 - “Internal applicant” is defined in the law, then referenced in the sections regarding the application of the law and the regarding consequences for prohibited behavior.
 - Line 51 – definition of “internal applicant”
 - Line 287 – Section 202.11-1. references “internal applicant” declining a position before being directed to a testing site.
 - However if an “internal applicant” is no longer required to comply with pre-employment testing, this language should be revised and/or reference to “internal applicant” should be deleted.
 - Line 295 – Section 202.11-3. references consequences and “internal applicant” would face if they fail to show at the testing site as provided in the law.

- However if an “internal applicant” is no longer required to comply with pre-employment testing, this language should be revised and/or reference to “internal applicant” should be deleted.
- If the intent of the amendments to 202.8-4. is that pre-employment drug screening is only for external applicants and internal applicants, then language in 202.8-4. should be revised.

Response

The commenter asks that the application of the proposed amendments to section 202.8-4 of the Drug and Alcohol Free Workplace law be clarified on regard to pre-employment drug testing of internal applicants.

An internal applicant is a person who is applying for a position who is currently employed by the Nation, this includes those employed under a temporary status. [2 O.C. 202.3-1(h)]. The intent of the proposed amendments to section 202.8-4 of the Drug and Alcohol Free Workplace law was not to remove the requirement for internal applicants to participate in pre-employment drug testing when applying for a new position within the organization. It is intended though, that the exemption for positive THC test results for pre-employment drug testing apply only to external applicants.

In an effort to clarify this issue the following revision is recommended:

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

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

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

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

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

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

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

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

LOC Consideration

The Legislative Operating Committee supports the following recommended revision to section 202.8-4 of the proposed amendments to the Drug and Alcohol Free Workplace law:

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

Comment 24 – General Tribal Council Involvement in Legislative Process:

Mike Debraska (written): 8. When will the requested changes be brought forward to General Tribal Council for their input and consideration, if at all, since many other departments and members of management were consulted? and;

Response

The commenter questions if the proposed amendments to the Drug and Alcohol Free Workplace law will be brought before the General Tribal Council for consideration. No, the proposed amendments to the Drug and Alcohol Free Workplace law will not be brought forward to the General Tribal Council for consideration. The Legislative Operating Committee follows the process and procedures set forth by the Legislative Procedures Act, in which the proper time for an individual to provide input is during the public meeting and public comment period. [1 O.C. 109].

The General Tribal Council adopted the Legislative Procedures Act in 2013 to set forth the process for the development and adoption of laws of the Nation by the Oneida Business Committee and General Tribal Council. [1 O.C. 109.1-1]. The Legislative Procedures Act intends to ensure that there is a standard process for developing legislation for the Nation. [1 O.C. 109.1-2]. Although the Legislative Procedures Act is not construed to impede the constitutional right of a member of the Nation under Article III, Section 4 of the Oneida Nation Constitution and Bylaws to petition for a special meeting of the General Tribal Council, the lawmaking requirements provided by the Legislative Procedures Act do apply to all legislation considered by the Oneida Business Committee or the General Tribal Council. [1 O.C. 109.1-3, 109.1-1].

The legislative process begins when any person who is interested in pursuing the development of or amendment to a law of the Nation submits a written request for legislation to the Legislative Reference Office, who then is responsible for placing the request for legislation on the agenda of the next duly called Legislative Operating Committee meeting. [1 O.C. 109.5-1, 109.5-2]. General Tribal Council delegated the Legislative Operating Committee the responsibility for the development of legislation of the Nation. [1 O.C. 109.4-2]. The Legislative Operating Committee is comprised of the five (5) Oneida Business Committee members who do not hold officer positions. [1 O.C. 110.4-1(b)]. Once the Legislative Operating Committee receives a request for legislation, the Legislative Operating Committee then either accepts or denies the request, except that the Legislative Operating Committee is not allowed to deny a request for legislation directed by a General Tribal Council law, resolution, or motion. [1 O.C. 109.5-2(a)-(b)].

Once the Legislative Operating Committee accepts a request for legislation and directs that legislation be developed in accordance with the Legislative Procedures Act, a draft of the legislation is created through research, review of other similar laws, collaboration with affected

entities, and community engagement efforts. The Legislative Procedures Act provides guidance on how a law should be organized, such as different sections that need to be included in a law and what information needs to be addressed in each section, to ensure there is a consistent format amongst all laws of the Nation. [1 O.C. 109.11]. Once a draft of the proposed legislation is approved by the Legislative Operating Committee, a legislative analysis of the draft legislation is completed. [1 O.C. 109.7-1]. The purpose of the legislative analysis is to describe the important features of the legislation being considered and factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. [1 O.C. 109.3-1(g)]. 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. *Id.*

Once a draft and legislative analysis are completed for proposed legislation, the Legislative Operating Committee moves forward with obtaining public review of the proposed legislation. The Legislative Operating Committee determines a public meeting date and then a public meeting notice is created that contains the date, time and place of the public meeting, the time period for the public comment period, and the name, address, phone number, and other appropriate information on where to submit comments on the proposed legislation. [1 O.C. 109.8-2]. At least ten (10) business days before the public meeting is held, the public meeting notice is published in the Kalihwisaks, while the public meeting notice, proposed draft of the legislation, legislative analysis, and fiscal impact statement if available, are published on the Oneida Register on the Nation's webpage found at the following location: <https://oneida-nsn.gov/government/register/>, and electronically noticed to all managers and directors. [1 O.C. 109.8-2]. The managers and directors who receive the public meeting materials are then required by the Legislative Procedures Act to direct employees of the Nation who have special knowledge or expertise on the proposed legislation to provide public comments. [1 O.C. 109.8-4(a)].

The public meeting on the proposed legislation is required to be presided over by at least one (1) member of the Legislative Operating Committee. [1 O.C. 109.8-3(a)]. The purpose of the public meeting is to solicit oral comments from members of the community on the proposed legislation. [1 O.C. 109.8-3]. After the public meeting concludes, the Legislative Operating Committee holds open a public comment period for at least five (5) business days. [1 O.C. 109.8-1(a)]. During the public comment period individuals may submit written comments including data, views, arguments, or concerns to the Oneida Business Committee Secretary or the Legislative Reference Office in person or through United States mail, interoffice mail, e-mail, or fax. [1 O.C. 109.8-1(c), 109.4-4(b)].

Once the public comment period has concluded, the Legislative Operating Committee is required by the Legislative Procedures Act to fully consider all written comments and oral testimony received during the public comment period and any public meeting on the proposed legislation. [1 O.C. 109.8-4]. The Legislative Operating Committee accomplishes this responsibility through the development of a public comment review memorandum that provides the Legislative Operating

Committee's consideration of every comment received, and demonstrates any changes made to the proposed legislation based on the public comments.

A fiscal impact statement is also required for all proposed legislation. [1 O.C. 109.6-1]. A fiscal impact statement provides an estimate of the total fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)]. The Legislative Operating Committee may direct that a fiscal impact statement be submitted by any agency who may receive funding if the legislation is enacted, may administer a program if the legislation is enacted, may have financial information concerning the subject matter of the legislation, or the Finance Department. [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-10-28-20-A, *Further Interpretation of 'Fiscal Impact Statement' in the Legislative Procedures Act*, provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that upon final approval of draft legislation by the Legislative Operating Committee, the Legislative Operating Committee may direct the Finance Department or any agency who may receive funding if the legislation is enacted, may administer a program if the legislation is enacted, may have financial information concerning the subject matter of the legislation to provide a neutral and unbiased fiscal impact statement to the LOC within ten (10) business days for inclusion in adoption materials.

After all the requirements of the Legislative Procedures Act are met and the Legislative Operating Committee is satisfied with proposed legislation, the Legislative Operating Committee then forwards an adoption packet comprised of the proposed legislation, legislative analysis, fiscal impact statement, resolution, statement of effect, and an adoption memorandum to the Oneida Business Committee for consideration. [1 O.C. 109.9-1]. The Oneida Business Committee then either considers whether to approve or deny the adoption of the legislation or forwards the legislation to the General Tribal Council for consideration of adoption. [1 O.C. 109.9-1(a)-(b)]. A law is adopted, amended, or repealed upon the adoption of a resolution. [1 O.C. 109.9-2]. For those laws considered by the Oneida Business Committee a majority vote is required for the adoption of the law, while amendments and repeals of a law are handled in accordance with the laws governing Oneida Business Committee action. [1 O.C. 109.9-2(a)]. The Oneida Business Committee utilizes Robert's Rules of Order, current edition, for the procedural rules of its meetings except as specifically modified by the Constitution and Bylaws of the Oneida Nation. [1 O.C. 117.4-1]. For those laws considered by the General Tribal Council, adoption, amendment, and repeal of laws are done in accordance with the laws governing General Tribal Council action. [1 O.C. 109.9-2(b)]. Any action by the General Tribal Council to overrule previous passed motions or resolution requires a two-thirds (2/3) vote. [1 O.C. 113.3-1(a)(3)].

Once legislation is adopted through resolution by either the Oneida Business Committee or the General Tribal Council the law shall become effective ten (10) business days after the date of adoption unless a different effective date is specified. [1 O.C. 109.9-3]. The Legislative Operating Committee is then responsible for publishing the law in the Oneida Code of laws by the effective

date. [1 O.C. 109.9-4]. The Oneida Code of Laws can be found on the Oneida Register on the Nation's website at the following location: <https://oneida-nsn.gov/government/register/laws/>. Any law adopted in substantial compliance with the Legislative Procedures Act is considered valid. [1 O.C. 109.10-1]. No law can be contested based on non-compliance with the procedural requirements of the Legislative Procedures Act after one (1) year from the effective date of the law. [1 O.C. 109.10-2].

LOC Consideration

The Legislative Operating reaffirms that the proposed amendments to the Drug and Alcohol Free Workplace law will not be brought forward to the General Tribal Council for consideration, and that the processes and procedures set forth by the Legislative Procedures Act have been followed for the development of these proposed amendments.

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

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

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

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

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

202.4. Application

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

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

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

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

94

202.5. Shared Responsibility

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

166 **202.6. Prohibited Behavior**

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

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

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

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

177 (d) Refuses to test.

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

180 181 **202.7. Reasonable Suspicion**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

252

253 **202.9. Refusal to Test**

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

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

258 (b) Refusal to sign the required forms.

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

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

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

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

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

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

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

287 **202.11. Consequences for Prohibited Behavior**

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

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

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

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

306 202.11-5. *Consequences.*

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

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

360
361 **202.13. Other Potential Consequences**
362 202.13-1. The violation of this law may result in consequences to the employee beyond any
363 discipline or corrective action that may be taken. Other potential consequences include the
364 following:
365 (a) *Disqualification of Unemployment Benefits.* An employee who is terminated as a result
366 of a violation of this law may be ineligible for unemployment benefits.
367 (b) *Reduction of Workers Compensation Benefits.* An employee who incurs an injury in a
368 work-related accident that occurred while engaged in a violation of this law may have any
369 workers compensation benefits reduced.
370 (c) *Criminal Penalties.* An employee whose conduct violates state or federal criminal laws
371 may be referred to appropriate law enforcement for criminal prosecution.
372 (d) *Liability for Accidents.* An employee whose conduct in violation of this law causes an
373 accident may be held personally responsible for losses associated with the accident, and the
374 employee may be required to pay for those losses.

375
376 **202.14. Confidentiality**
377 202.14-1. Information related to the application of this law is confidential. Access to this
378 information is limited to those who have a legitimate "need to know" in compliance with relevant
379 laws and personnel policies and procedures.
380 202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential
381 records which are separate from the employee's clinical and personnel files. The employee may
382 request a copy of the employee's records. The records may be requested by a third party in
383 accordance with the Oneida Nation's laws, rules and policies governing employment.

384
385 **202.15. Communication**
386 202.15-1. HRD shall communicate this law to all employees to ensure all employees are aware of
387 their role in supporting this law:
388 (a) All employees shall be given information on how to access this law.
389 (b) This law shall be reviewed in new employee orientation and other means, as deemed
390 appropriate by HRD.
391 (c) All employees shall sign an acknowledgment form stating they have received a copy of
392 this law, have read and understand it, and agree to follow this law.

393
394 *End.*

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

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

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

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

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

202.1. Purpose and Policy

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

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

202.2. Adoption, Amendment, Repeal

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

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

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

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

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

202.3. Definitions

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

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

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

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

- 38 (d) “EHN” means the Oneida Employee Health Nursing Department.
- 39 (e) “Employee” means any individual who is employed by the Nation and is subject to the
40 direction and control of the Nation with respect to the material details of the work performed,
41 or who has the status of an employee under the usual common law rules applicable to
42 determining the employer-employee relationship. “Employee” includes, but is not limited
43 to; an individual employed by any program or enterprise of the Nation, but does not include
44 elected or appointed officials, or individuals employed by a Tribally Chartered Corporation.
45 For purposes of this law, individuals employed under an employment contract as a limited
46 term employee are employees of the Nation, not consultants.
- 47 (f) “External applicant” means a person who is applying for a position and not currently
48 employed by the Nation.
- 49 (g) “HRD” means the Human Resources Department and/or representatives performing
50 Human Resources functions applicable to this law.
- 51 (h) “Internal applicant” means a person who is applying for a position who is currently
52 employed by the Nation, this includes those employed under a temporary status.
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63 included in Schedules I through V, as defined by Section 812 of Title 21 of the United States
64 Code. This also includes prescription medication or over-the-counter medicine used in an
65 unauthorized or unlawful manner.
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67 and signed by the employee and the ONEAP counselor, and the referring supervisor, which
68 sets out the actions the employee needs to complete in order to return to work and remain
69 employed.
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71 Substance Abuse and Mental Health Services Administration.
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73 supervisor due to an absence that is responsible for performance review, corrective action,
74 and day-to-day assignments of duties.
- 75 (q) “Work-related accident” means an unexpected event involving an employee that occurs
76 in the employee’s working environment or during an activity related to work, that:
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78 intervention by a police officer or emergency medical technician, or treatment at a
79 medical facility,
- 80 (2) results in death of the employee or another person, or
- 81 (3) involves any property damage.
- 82

202.4. Application

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

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

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

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

94

202.5. Shared Responsibility

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

166 **202.6. Prohibited Behavior**

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

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

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

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

177 (d) Refuses to test.

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

180 181 **202.7. Reasonable Suspicion**

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

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

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

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

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

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

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

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

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

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

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

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

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

224 (a) Exemption for Positive THC Test Result. An external applicant's confirmed positive THC
225 test result shall be exempted from the requirement of a negative drug test result for
226 employment eligibility unless prohibited by an external licensing or grant requirement.

227 202.8-5. Each employee shall participate in reasonable suspicion and follow-up testing upon the
228 request of an appropriate authority. A negative test result is required for unimpeded employment
229 eligibility.

230 202.8-6. *Dilution of Test Results.* In cases where a drug test result is diluted, a positive dilute of the
231 test result requires that the applicant or employee shall be given a confirmed positive test result,
232 while a negative dilute of the test result requires retesting. EHN shall notify the applicant or
233 employee of the required retesting.

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

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

238

239 **202.9. Refusal to Test**

240 202.9-1. Refusal to test is prohibited behavior as defined in section 202.6. Refusal to test carries
241 the same consequences as a confirmed positive test result. Examples of refusal to test include, but
242 are not limited to:

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

244 (b) Refusal to sign the required forms.

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

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

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

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

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

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

253

254 **202.10. Reasonable Suspicion Testing Waiting Period**

255 202.10-1. This section applies only to current employees who meet the reasonable suspicion
256 standard. It does not apply to applicants of the Nation.

257 202.10-2 During drug and alcohol testing for reasonable suspicion, an employee shall be
258 immediately removed from duty without pay at the time of initiation of the reasonable suspicion
259 drug and alcohol testing and specimen collection until the employer is notified by EHN of negative
260 results on both the drug and alcohol tests, or MRO-verified negative test results.

261 202.10-3. When confirmation of test results are made available to the employer, the supervisor shall
262 notify the employee by telephone and by certified mail using the contact information provided by
263 the employee. The notice to the employee shall identify a reinstatement date if the test was
264 confirmed negative, or applicable consequences if the test was confirmed positive. If the employee
265 is reinstated, back pay shall be provided in accordance with the Back Pay law. However, if the
266 employee fails to return to work on the assigned reinstatement date as instructed in the notice from
267 the supervisor, the supervisor shall discipline the employee in accordance with the Nation's laws,
268 rules and policies governing employment, unless an extension is granted in writing by the supervisor
269 along with the reason for the extension. An employee who is ultimately terminated for failure to
270 return to work on his or her assigned reinstatement date shall not be eligible for employment for one
271 (1) year after the date of termination.

272

273 **202.11. Consequences for Prohibited Behavior**

274 202.11-1. Either an internal applicant or an external applicant may decline the position at any time
275 before being directed to EHN or other designated testing site for the applicant's drug and alcohol
276 testing.

277 202.11-2. *External Applicant.* If an external applicant fails to show at the testing site within the
278 time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
279 section 202.6 that has been documented, the employment offer shall be withdrawn. An external
280 applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the
281 date of the urine drug screening test.

282 202.11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the time
283 allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section
284 202.6, the employment offer shall be withdrawn. The applicant shall be removed from duty and
285 subject to respective consequences of this law. The applicant shall not be eligible for hiring
286 consideration in a different position for one hundred eighty (180) days from the date of the urine
287 drug screening test.

288 202.11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section 202.6-
289 1, and/or fails to cooperate by not responding to contact from the MRO within ten (10) business days
290 (which shall be deemed thereafter as a definite positive test), the employee shall be removed from
291 duty and subject to the respective consequences of this law.

292 202.11-5. *Consequences.*

293 (a) *First Violation.*

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

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

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

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

307 (b) *Second Violation.*

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

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

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

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

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

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

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

331 (c) *Third Violation.*

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

338 339 **202.12. Re-hire**

340 202.12-1. A former employee that was terminated due to violations of this law shall provide, along
341 with the former employee's application for employment, the following:

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

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

346 347 **202.13. Other Potential Consequences**

348 202.13-1. The violation of this law may result in consequences to the employee beyond any
 349 discipline or corrective action that may be taken. Other potential consequences include the
 350 following:

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

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

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

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

361

362 **202.14. Confidentiality**

363 202.14-1. Information related to the application of this law is confidential. Access to this
 364 information is limited to those who have a legitimate “need to know” in compliance with relevant
 365 laws and personnel policies and procedures.

366 202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential
 367 records which are separate from the employee’s clinical and personnel files. The employee may
 368 request a copy of the employee’s records. The records may be requested by a third party in
 369 accordance with the Oneida Nation’s laws, rules and policies governing employment.

370

371 **202.15. Communication**

372 202.15-1. HRD shall communicate this law to all employees to ensure all employees are aware of
 373 their role in supporting this law:

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

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

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

379

380 *End.*

381

382 See GTC-01-31-94-B

383 Adopted – BC-08-17-94

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

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

386 Amended - BC-10-20-99-A

387 Amended - BC-12-05-07-B

388 Amended - BC-12-11-13-F

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

390 Amended - BC-04-12-17-C

391 Amended – BC- - - -

392

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

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

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

202.4. Application

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

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

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

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

94

202.5. Shared Responsibility

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

127

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

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

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

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

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

166 **202.6. Prohibited Behavior**

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

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

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

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

177 (d) Refuses to test.

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

180 181 **202.7. Reasonable Suspicion**

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

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

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

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

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

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

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

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

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

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

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

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

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

223 (a) *Exemption for Positive THC Test Result.* An external applicant’s confirmed positive THC
224 test result shall be exempted from the requirement of a negative drug test result for
225 employment eligibility unless prohibited by an external licensing or grant requirement.

226 202.8-5. Each employee shall participate in reasonable suspicion and follow-up testing upon the
227 request of an appropriate authority. A negative test result is required for unimpeded employment
228 eligibility.

229 202.8-6. *Dilution of Test Results.* In cases where a drug test result is diluted, a positive dilute of the
230 test result requires that the applicant or employee shall be given a confirmed positive test result,
231 while a negative dilute of the test result requires retesting. EHN shall notify the applicant or
232 employee of the required retesting.

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

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

237

238 **202.9. Refusal to Test**

239 202.9-1. Refusal to test is prohibited behavior as defined in section 202.6. Refusal to test carries
240 the same consequences as a confirmed positive test result. Examples of refusal to test include, but
241 are not limited to:

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

243 (b) Refusal to sign the required forms.

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

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

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

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

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

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

252

253 **202.10. Reasonable Suspicion Testing Waiting Period**

254 202.10-1. This section applies only to current employees who meet the reasonable suspicion
255 standard. It does not apply to applicants of the Nation.

256 202.10-2 During drug and alcohol testing for reasonable suspicion, an employee shall be
257 immediately removed from duty without pay at the time of initiation of the reasonable suspicion
258 drug and alcohol testing and specimen collection until the employer is notified by EHN of negative
259 results on both the drug and alcohol tests, or MRO-verified negative test results.

260 202.10-3. When confirmation of test results are made available to the employer, the supervisor shall
261 notify the employee by telephone and by certified mail using the contact information provided by

262 the employee. The notice to the employee shall identify a reinstatement date if the test was
263 confirmed negative, or applicable consequences if the test was confirmed positive. If the employee
264 is reinstated, back pay shall be provided in accordance with the Back Pay law. However, if the
265 employee fails to return to work on the assigned reinstatement date as instructed in the notice from
266 the supervisor, the supervisor shall discipline the employee in accordance with the Nation’s laws,
267 rules and policies governing employment, unless an extension is granted in writing by the supervisor
268 along with the reason for the extension. An employee who is ultimately terminated for failure to
269 return to work on his or her assigned reinstatement date shall not be eligible for employment for one
270 (1) year after the date of termination.

271
272 **202.11. Consequences for Prohibited Behavior**

273 202.11-1. Either an internal applicant or an external applicant may decline the position at any time
274 before being directed to EHN or other designated testing site for the applicant’s drug and alcohol
275 testing.

276 202.11-2. *External Applicant.* If an external applicant fails to show at the testing site within the
277 time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
278 section 202.6 that has been documented, the employment offer shall be withdrawn. An external
279 applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the
280 date of the urine drug screening test.

281 202.11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the time
282 allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section
283 202.6, the employment offer shall be withdrawn. The applicant shall be removed from duty and
284 subject to respective consequences of this law. The applicant shall not be eligible for hiring
285 consideration in a different position for one hundred eighty (180) days from the date of the urine
286 drug screening test.

287 202.11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section 202.6-
288 1, and/or fails to cooperate by not responding to contact from the MRO within ten (10) business days
289 (which shall be deemed thereafter as a definite positive test), the employee shall be removed from
290 duty and subject to the respective consequences of this law.

291 202.11-5. *Consequences.*

292 (a) *First Violation.*

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

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

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

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

306 (b) *Second Violation.*

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

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

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

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

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

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

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

330 (c) *Third Violation.*

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

337
338 **202.12. Re-hire**

339 202.12-1. A former employee that was terminated due to violations of this law shall provide, along
340 with the former employee's application for employment, the following:

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

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

345
346 **202.13. Other Potential Consequences**

347 202.13-1. The violation of this law may result in consequences to the employee beyond any
348 discipline or corrective action that may be taken. Other potential consequences include the
349 following:

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

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

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

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

360

361 **202.14. Confidentiality**

362 202.14-1. Information related to the application of this law is confidential. Access to this
363 information is limited to those who have a legitimate “need to know” in compliance with relevant
364 laws and personnel policies and procedures.

365 202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential
366 records which are separate from the employee’s clinical and personnel files. The employee may
367 request a copy of the employee’s records. The records may be requested by a third party in
368 accordance with the Oneida Nation’s laws, rules and policies governing employment.

369

370 **202.15. Communication**

371 202.15-1. HRD shall communicate this law to all employees to ensure all employees are aware of
372 their role in supporting this law:

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

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

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

378

379 *End.*

380

381 See GTC-01-31-94-B

382 Adopted – BC-08-17-94

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

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

385 Amended - BC-10-20-99-A

386 Amended - BC-12-05-07-B

387 Amended - BC-12-11-13-F

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

389 Amended - BC-04-12-17-C

390 Amended – BC-__-__-__-__

391



DRUG AND ALCOHOL FREE WORKPLACE LAW AMENDMENTS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Amendments	Provide that an external applicant’s confirmed positive THC test result shall be exempted from the requirement of a negative drug test result for pre-employment eligibility unless prohibited by an external licensing or grant requirement. [2 O.C. 202.8-4(a)].
Purpose	The purpose of this law is to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. [2 O.C. 202.1-2].
Affected Entities	Human Resources Department, Oneida Nation employees.
Public Meeting	A public meeting was held on February 15, 2023. The public comment period was held open until February 22, 2023.
Fiscal Impact	A fiscal impact statement has not yet been requested.

SECTION 2. LEGISLATIVE DEVELOPMENT

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

SECTION 3. CONSULTATION AND OUTREACH

- A.** Representatives from the following departments or entities participated in the development of the amendments to the Law and this legislative analysis:
- Oneida Law Office;
 - Human Resources Department;
 - Gaming; and
 - Employee Health Nursing.
- B.** The following laws were reviewed in the drafting of this analysis:
- Drug and Alcohol Free Workplace law;
 - Oneida Personnel Policies and Procedures.

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SECTION 4. PROCESS

- A. The development of the proposed amendments to the Drug and Alcohol Free Workplace law complies with the process set forth in the Legislative Procedures Act (LPA).
- On September 7, 2022, the Legislative Operating Committee added the Law to its Active Files List.
 - On December 7, 2022, the Legislative Operating Committee approved the draft of the proposed amendments to the Law and directed that a legislative analysis be developed.
 - On December 21, 2022, the Legislative Operating Committee approved the legislative analysis.
 - On January 4, 2023, the Legislative Operating Committee approved the public meeting packet for the proposed amendments to the Drug and Alcohol Free Workplace law and scheduled a public meeting to be held on February 15, 2022.
 - On February 15, 2023, the public meeting was held in the Norbert Hill Center’s Business Committee Conference Room as well as on Microsoft Teams. Six (6) individuals provided oral comments during this public meeting.
 - On February 22, 2023, the public comment period closed. Four (4) individuals provided written comments during the public comment period.
 - On October 4, 2023 the Legislative Operating Committee elected for the 2023-2026 legislative term added the Drug and Alcohol Free Workplace Law Amendments to the Active Files List with Kirby Metoxen and Jonas Hill as the sponsors.
 - On December 20, 2023, the Legislative Operating Committee accepted the public comments and the public comment review memorandum and defer to a work meeting for further consideration. The Legislative Operating Committee then reviewed and considered these public comments that same day.
- B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of the amendments to this Law:
- October 31, 2022: LOC work meeting with the Oneida Law Office, Human Resources Department, and Gaming.
 - November 15, 2022: LOC work meeting with the Oneida Law Office, Human Resources Department, Employee Health Nursing, and Gaming.
 - December 1, 2022: LOC work session.
 - January 26, 2023: LOC work meeting with Oneida Law Office, Human Resources Department, Gaming, and the General Manager.
 - December 6, 2023: LOC work session.
 - December 20, 2023: LOC work session.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. *Pre-Employment Drug Testing.* Currently, the Law provides that 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, and that a negative test result is required for employment eligibility. The proposed amendments focus specifically on pre-employment drug testing and how positive THC test results are address by the Nation. The proposed amendments to the Law require that all external and internal applicants participate in pre-employment drug testing, and that a negative drug test result shall be required for employment eligibility. [2 O.C. 202.8-4]. The Law then further provides that an

69 external applicant’s confirmed positive THC test result shall be exempted from the requirement of a
70 negative drug test result for employment eligibility unless prohibited by an external licensing or grant
71 requirement. [2 O.C. 202.8-4(a)].

- 72 ■ *Effect.* The proposed amendments to the Law allow an individual who is seeking employment with
73 the Nation to still be eligible to be hired if the individual tests positive for THC in most situations,
74 unless prohibited by an external licensing or grant requirement. When developing these
75 amendments the Legislative Operating Committee had great discussion regarding the fact that an
76 external applicant’s positive THC test result is not indicative of an individual’s intent to continue
77 the use of marijuana once they are hired as an employee of the Nation and the use of drugs is
78 prohibited. The Legislative Operating Committee understands that external applicants may come
79 from, or may have visited, states where the use of marijuana has been legalized. As of April 24,
80 2023, thirty-eight (38) states, three (3) territories and the District of Columbia allow the medical
81 use of cannabis products; while as of November 8, 2023, twenty-four (24) states, two (2) territories
82 and the District of Columbia have enacted measures to regulate cannabis for non-medical adult
83 recreational use.¹ The exemption for positive THC test results applies only to external applicants
84 during pre-employment drug testing. Once an individual is hired by the Nation, the employee is
85 prohibited from the use of prohibited drugs and alcohol during working hours, when on-call, and
86 when operating a vehicle owned by the Nation or a vehicle rented by the Nation. [2 O.C. 202.4-2].
87 All employees of the Nation are required to participate in reasonable suspicion and follow-up
88 testing upon the request of an appropriate authority. [2 O.C. 202.8-5]. A negative test result is
89 required for unimpeded employment eligibility. *Id.*

91 SECTION 6. EXISTING LEGISLATION

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

- 94 ■ *Oneida Personnel Policies and Procedures.* The purpose of the Oneida Personnel Policies and
95 Procedures is to provide for the Nation’s employee related policies and procedures including
96 recruitment, selection, compensation and benefits, employee relations, safety and health, program
97 and enterprise rules and regulations, and record keeping.
 - 98 ■ Section V.D.3 of the Oneida Personnel Policies and Procedures provides that the Drug
99 and Alcohol Free Workplace Policy shall govern disciplinary actions warranting
100 termination for drug and alcohol related violations.


101 SECTION 7. OTHER CONSIDERATIONS

102 A. *Fiscal Impact.* Under the Legislative Procedures Act, a fiscal impact statement is required for all
103 legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-
104 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*
105 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete
106 a fiscal impact statement at various stages of the legislative process, as well as timeframes for
107 completing the fiscal impact statement.
108

¹ Information found on the Nation Conference of State Legislatures website at [https://www.ncsl.org/health/state-medical-cannabis-laws#:~:text=Non%2DMedical%2FAdult%2DUse,medical%20adult%20\(recreational\)%20use.](https://www.ncsl.org/health/state-medical-cannabis-laws#:~:text=Non%2DMedical%2FAdult%2DUse,medical%20adult%20(recreational)%20use.)

- 109 ▪ *Conclusion.* The Legislative Operating Committee has not yet directed that a fiscal impact
110 statement be completed.
111



TO: Keith Doxtator, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer
FROM: Jameson Wilson, Legislative Operating Committee Chairman 
DATE: January 3, 2024
RE: Drug and Alcohol Free Workplace Law Amendments Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing amendments to the Drug and Alcohol Free Workplace law. The Legislative Procedures Act requires that a fiscal impact statement be provided for all proposed legislation of the Nation. [1 O.C. 109.6-1]. The fiscal impact statement is an estimate of the total fiscal year financial effects associated with the proposed legislation, and should include:

- startup costs;
- personnel;
- office costs;
- documentation costs; and
- an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)].

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [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 the process for directing a fiscal impact statement be completed. This resolution provides that upon final approval of draft legislation by the LOC, the LOC may direct the Finance Department to provide a neutral and unbiased fiscal impact statement to the LOC within ten (10) business days for inclusion in adoption materials.

On January 3, 2024, the Legislative Operating Committee approved the final draft of the proposed amendments to the Drug and Alcohol Free Workplace law. Therefore, the LOC is directing the Finance Department to provide a fiscal impact statement on the proposed amendments to the Drug and Alcohol Free Workplace law by January 17, 2024.

A copy of the proposed amendments to the Drug and Alcohol Free Workplace law, as well as the legislative analysis, have been attached to this memorandum for your convenience.

Requested Action

Provide the LOC a fiscal impact statement of the proposed amendments to the Drug and Alcohol Free Workplace law by January 17, 2024.



Legislative Operating Committee
January 3, 2024

Clean Air Policy Amendments

Submission Date: 1/18/23	Public Meeting: 12/15/23
LOC Sponsor: Jennifer Webster	Emergency Enacted: N/A

Summary: *This item was carried over from last term. On January 10, 2023, the LOC received a request from Retail to consider amendments to the Clean Air Policy to create an exemption for smoking cigars and tobacco in pipes within a premise designated by retail as a tobacco store, on or in premises controlled by Oneida Retail, that sells tobacco product and in which the smoking of only cigars and tobacco in pipes is permitted.*

1/18/23 LOC: Motion by Jennifer Webster to add the Clean Air Policy amendments to the Active Files List with David P. Jordan as the sponsor; seconded by Marie Cornelius. Motion carried unanimously.

1/26/23: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Kristal Hill. This was a work meeting held on Microsoft Teams. The purpose of this work meeting was to review and discuss the proposed draft of amendments to the Clean Air Policy.

2/1/23 LOC: Motion by Marie Cornelius to approve the draft of the Clean Air policy amendments and direct that a legislative analysis be completed; seconded by Daniel Guzman King Motion carried unanimously.

2/20/23: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Marie Cornelius, Clorissa N. Leeman, Debra Danforth, Michelle Tipple, Victoria Flowers, Brittany Nicholas, Kristal Hill. This was a work meeting held on Microsoft Teams. The purpose of this work meeting was to review and discuss the proposed draft of amendments to the Clean Air Policy all allow the Comprehensive Health Division and the Environmental, Health, Safety, Land, And Agriculture Division the opportunity to provide input on the proposed amendments.

3/20/23: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Cornelius, Clorissa N. Leeman, Debra Danforth, Michelle Tipple, Victoria Flowers, Brittany Nicholas, James Petitjean, James Snitgen, Debra Powless, Timothy Skenandore, Carl Artman, Kristal Hill. This was a work meeting held on Microsoft Teams. The purpose of this work meeting was to review and discuss the proposed draft of amendments to the Clean Air Policy all allow the stakeholders the opportunity to provide input on the proposed amendments before the LOC makes a policy decision as to what direction to go with the amendments.

7/10/23 LOC: Motion by Jennifer Webster to approve the updated draft and legislative analysis of the Clean Air Policy amendments; seconded by Kirby Metoxen. Motion carried unanimously.

10/4/23 LOC: Motion by Jonas Hill to add the Clean Air Policy Amendments to the Active Files List with Jennifer Webster as the sponsor; seconded by Marlon Skenandore. Motion carried unanimously.

10/18/23: *Work Meeting.* Present: Jameson Wilson, Marlon Skenandore, Jennifer Webster, Jonas Hill, Clorissa Leeman, Grace Elliott, Maureen Perkins, Fawn Cottrell. The purpose of this work meeting was for the new Legislative Operating Committee to review and approve the draft and legislative analysis for the proposed amendments to the Clean Air Policy.

11/1/23 LOC: 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.

11/1/23: *Phone Call.* Present: Clorissa Leeman, Krystal John. The purpose of this phone call was to follow up on the comments made by Attorney Krystal John during the LOC meeting in regard to the Clean Air Policy Amendments.

12/15/23: *Public Meeting Held.* Present: Jameson Wilson, Jonas Hill, Kirby Metoxen, Clorissa Leeman, Maureen Perkins, Michelle Tipple, Peggy Helm-Quest, Brooke Doxtator, Jim Snitgen. Present on Microsoft Teams: Joel Maxam, Katsitsiyo Danforth, Mark W. Powless, Brittany Nicholas, David Jordan, Kristal Hill, Sharon Mousseau, Mollie Passon, Stefanie Reinke, Debra Santiago, Jennifer Webster, Nina Vang, Grace Elliott, Victoria Flowers. Two (2) individuals provided public comment during this public meeting.

12/26/23: *Public Comment Period Closed.* Four (4) individuals provided written comments 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 discussion.



TO: Legislative Operating Committee (LOC)
 FROM: Clorissa N. Leeman, Legislative Reference Office, Senior Staff Attorney
 DATE: January 3, 2024
 RE: Clean Air Policy Amendments: Public Comment Review

On December 15, 2023, a public meeting was held regarding the proposed amendments to the Clean Air Policy (“the Law”). The public comment period was then held open until December 26, 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 3 – Tobacco Store Exemption:

411.4. Regulation of Smoking

411.4-1. *Prohibition of Smoking.* No person may smoke:

- (a) in any building owned or operated by the Nation;
- (b) within thirty (30) feet of any building owned or operated by the Nation. Receptacles for disposing of smoking materials shall be maintained at least thirty (30) feet from the main entrances of the building; or
 - (1) *Exception.* A person may smoke within thirty (30) feet of the retail outlets or any gaming establishments. Receptacles for disposing of smoking materials may be maintained within thirty (30) feet of the entrances of these buildings.
- (c) in any vehicle owned or operated by the Nation.

411.4-2. *Exemptions.* The following exemptions shall apply to the prohibition of smoking:

- (a) *Cultural Usage.* The reasonable burning of tobacco, sage, cedar, and/or sweetgrass shall be exempted for cultural usage. Employees working in the vicinity of this cultural use shall be notified prior to use.
- (b) *Exempted Locations.* The following locations shall be exempted from the prohibition of smoking:
 - (1) all gaming areas in any building of the Nation;
 - (A) Smoking and non-smoking employee break rooms shall be provided in these buildings and shall have separate ventilation.
 - (B) Employees shall not smoke while working in these buildings, other than in the provided break room.
 - (2) residential buildings that are owned by the Nation, including, but not limited to, single-family dwellings, two (2) family dwellings, and multiple-family dwellings, unless otherwise prohibited by a lease or rental agreement; and
 - (3) a tobacco store, on or in premises controlled by Oneida Retail, that sells tobacco product, unless prohibited by Oneida Retail or the terms and conditions of the lease.

Jim Snitgen (oral): Check, testing. Good afternoon. I'm going to present the comments from the Environmental Health, Safety, Land and Agriculture Division (EHSLAD) on the Clean Air Policy Amendments. The Clean Air Policy amendment under 411.4-2 (b) allows smoking inside tobacco stores and gaming areas of the Nation. EHSLAD does not support the new exemption to prohibition of smoking in tobacco stores, on or in Oneida Retail properties that sells tobacco products. Our Division supports and proposes removing the existing exemption that allows smoking inside all gaming areas. EHSLAD wants to ban indoor smoking in gaming and retail properties because:

Foremost, allowing properties to be exposed to secondhand smoke is a direct conflict of the purpose of the Clean Air Policy. Secondhand smoke is harmful to the health of employees, and it does not create a healthy working environment for employees. CDC informs that secondhand smoke can cause the following in smoking adults, in non-smoking adults: coronary heart disease, stroke, lung cancer, adverse reproductive health effects in women such as low birth weight and that there is no safe level of secondhand exposure.

Number 2. Nation gaming facilities, specifically the casino, became smoke-free indoors during the COVID-19 pandemic and to our knowledge this has not negatively affected business. We support keeping the casino and all interior employee break areas smoke free to protect employee and customer health because any exposure to secondhand smoke is widely recognized as harmful to human health. The Surgeon General report, The Health Consequences of Involuntary Exposure to Tobacco Smoke, found that the only way to eliminate secondhand smoke exposure is to ban indoor smoking completely.

Number 3. We do not support the exemption for smoking inside Oneida retail establishments including any cigar bars operated by retail, because, according to CDC, any exposure to secondhand smoke is harmful to human health and the only way to eliminate exposure, according to the Surgeon General, is to completely ban indoor smoking.

Number 4. Increasing ventilation or filtration will not eliminate health risk of secondhand smoke exposure. According to CDC, HVAC systems can spread secondhand smoke throughout a facility and there is no ventilation or air cleaning system that can eradicate secondhand smoke.

Number 5. We also support keeping the casino and all interior employee break areas smoke free because this will protect cleaning staff from exposure to thirdhand smoke. Thirdhand smoke is the pollutant residue that remains on surfaces after tobacco is smoked. Pollutants include but are not limited to nicotine, formaldehyde, naphthalene which are known to cause cancer.

And finally, smoking inside gaming and retail properties may result in higher maintenance and cleaning bills. Thirdhand smoke is the chemical residue left behind from smoke. According to Cleveland Clinic, it persists on surfaces long after smoking occurs and is hard to clean meaning complete costly replacement of affected materials, and that may be the only solution.

Thank you on behalf of the Environmental, Health, Safety, Land, and Agriculture Division.

Eric McLester – Environmental, Health, Safety, Land, and Agriculture Division (written):

The Clean Air Policy amendment under 411.4-2 (b) allows smoking inside tobacco stores and gaming areas of the Nation. EHSLAD does NOT support the new exemption to prohibition of smoking in "tobacco stores", on or in Oneida Retail properties that sells tobacco products. EHSLAD supports and proposes REMOVING the existing exemption that allows smoking inside all gaming areas. EHSLAD wants to ban indoor smoking in gaming and retail properties because:

1. Foremost, allowing employees to be exposed to secondhand smoke is a direct conflict of the purpose of the Clean Air Policy. Secondhand smoke is harmful to the health of employees, and it does not create a healthy working environment for employees. CDC informs that secondhand smoke can cause the following in non-smoking adults: coronary heart disease, stroke, lung cancer, adverse reproductive health effects in women such as low birth weight and that there is no safe level of secondhand exposure. <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>
2. Nation gaming facilities, specifically the casino, became smoke-free indoors during the COVID-19 pandemic and to our knowledge this has not negatively affected business. We support keeping the casino and all interior employee break areas smoke free to protect employee and customer health because any exposure to secondhand smoke is widely recognized as harmful to human health. The Surgeon General report, The Health Consequences of Involuntary Exposure to Tobacco Smoke, found that the only way to eliminate secondhand smoke exposure is to ban indoor smoking completely.
 - <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>
 - <https://www.ncbi.nlm.nih.gov/books/NBK44326/#rpt-smokeexp.ch10.s68>
3. We do not support the exemption for smoking inside Oneida retail establishments including any cigar bars operated by retail, because, according to CDC, any exposure to secondhand smoke is harmful to human health and the only way to eliminate exposure, according to the Surgeon General, is to completely ban indoor smoking.
 - <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>
 - <https://www.ncbi.nlm.nih.gov/books/NBK44326/#rpt-smokeexp.ch10.s68>
4. Increasing ventilation or filtration will not eliminate health risk of secondhand smoke exposure. According to CDC, HVAC systems can spread secondhand smoke throughout a facility and there is no ventilation or air cleaning system that can eradicate secondhand smoke.
 - <https://www.cdc.gov/tobacco/secondhand-smoke/policy.html>
5. We also support keeping the casino and all interior employee break areas smoke free because this will protect cleaning staff from exposure to thirdhand smoke. Thirdhand smoke is the pollutant residue that remains on surfaces after tobacco is smoked. Pollutants include but are not limited to nicotine, formaldehyde, naphthalene which are known to cause cancer.
 - <https://www.mayoclinic.org/healthy-lifestyle/quit-smoking/expertanswers/third-hand-smoke/faq->

[20057791#:~:text=Thirdhand%20smoke%20is%20made%20up,up%20on%20surfaces%20over%20time.](#)

Michelle Tipple (oral): Good Afternoon. My name is Michelle Tipple. I'm the Community Public Health Officer with the Oneida Nation. So Public Health and the Comprehensive Health Division does not support adding an exemption to this law. To do so, weakens this important public health policy.

Decades of evidence-based research and data demonstrates poor health outcomes related to smoking, including secondhand and thirdhand smoke. So, looking at some of this data, American Indian, Alaskan Native people, compared to other racial and ethnic groups have a higher risk of death and disease caused by using tobacco commercial products such as cigarettes, smokeless tobacco and cigars. Cardiovascular disease, which can be caused by cigarette smoke, is the leading cause of death for American Indian Alaskan Native people. Lung cancer, which can be caused by cigarette smoking and exposure to secondhand smoke, is the leading cause of cancer death among American Indian and Alaskan Native people. Diabetes is the 4th leading cause of death among American Indian Alaskan Native people. The risk of developing Type 2 diabetes is 30 to 40% higher for people who smoke than for people who don't smoke, and smoking can worsen complications from diabetes. Compared to white Wisconsinites, American Indians have a 34% higher risk of dying from cardiovascular disease, 70% higher risk from dying of cancer, lung cancer, excuse me. And a 250% higher risk of dying from diabetes. All of which are known to be caused or worsened by cigarette smoking. There is no safe level of secondhand smoke. None. Even sophisticated ventilation systems do not eliminate the health hazards from secondhand smoke.

Response

The commenters express various concerns with and opposition to the proposed exemption against smoking for a tobacco store, on or in premises controlled by Oneida Retail, that sells tobacco product, unless prohibited by Oneida Retail or the terms and conditions of the lease.

The Clean Air Policy provides that no person may smoke in any building owned or operated by the Nation, in any vehicle owned or operated by the Nation, or within thirty (30) feet of any building owned or operated by the Nation, except that a person may smoke within thirty (30) feet of the retail outlets or any gaming establishments. [4 O.C. 411.4-1]. The Clean Air Policy then goes on to provide exemptions for the prohibition of smoking. [4 O.C. 411.4-2]. The proposed amendments to the Clean Air Policy provide that one such exemption for the prohibition of smoking is a tobacco store, on or in premises controlled by Oneida Retail, that sells tobacco product, unless prohibited by Oneida Retail or the terms and conditions of the lease. [4 O.C. 411.4-2(b)(3)]. Retail shared that if the proposed amendments to the Clean Air Policy are adopted, then they intend to open up a cigar bar at one of the Retail locations.

Whether or not to allow the Clean Air Policy to provide an exemption for the prohibition of smoking to a tobacco store, on or in premises controlled by Oneida Retail, that sells tobacco product, unless prohibited by Oneida Retail or the terms and conditions of the lease is a policy decision for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. Section 411.4-2(b)(3) of the Clean Air Policy should remain as currently drafted and provide an exemption for the prohibition of smoking to a tobacco store, on or in premises controlled by Oneida Retail, that sells tobacco product, unless prohibited by Oneida Retail or the terms and conditions of the lease.
2. Section 411.4-2(b)(3) of the Clean Air Policy should be eliminated from the Law.

LOC Consideration

Comments 4 through 6 – Residential Buildings Exemption:

411.4. Regulation of Smoking

411.4-1. *Prohibition of Smoking.* No person may smoke:

- (a) in any building owned or operated by the Nation;
- (b) within thirty (30) feet of any building owned or operated by the Nation. Receptacles for disposing of smoking materials shall be maintained at least thirty (30) feet from the main entrances of the building; or
 - (1) *Exception.* A person may smoke within thirty (30) feet of the retail outlets or any gaming establishments. Receptacles for disposing of smoking materials may be maintained within thirty (30) feet of the entrances of these buildings.
- (c) in any vehicle owned or operated by the Nation.

411.4-2. *Exemptions.* The following exemptions shall apply to the prohibition of smoking:

- (a) *Cultural Usage.* The reasonable burning of tobacco, sage, cedar, and/or sweetgrass shall be exempted for cultural usage. Employees working in the vicinity of this cultural use shall be notified prior to use.
- (b) *Exempted Locations.* The following locations shall be exempted from the prohibition of smoking:
 - (1) all gaming areas in any building of the Nation;
 - (A) Smoking and non-smoking employee break rooms shall be provided in these buildings and shall have separate ventilation.
 - (B) Employees shall not smoke while working in these buildings, other than in the provided break room.
 - (2) residential buildings that are owned by the Nation, including, but not limited to, single-family dwellings, two (2) family dwellings, and multiple-family dwellings, unless otherwise prohibited by a lease or rental agreement; and
 - (3) a tobacco store, on or in premises controlled by Oneida Retail, that sells tobacco product, unless prohibited by Oneida Retail or the terms and conditions of the lease.

Jim Snitgen (oral): The Clean Air Policy amendment under 411.4-2 {b) allows smoking inside residential buildings that are owned by the Nation unless the lease or rental agreement prohibits

smoking . EHSLAD does NOT support smoking inside residential buildings for the following reasons:

1. Children and families in our community deserve to have access to clean, indoor air. Employees from CHD, EHSLAD, Zoning, and DPW work in CHD housing. Residents and employees are at risk of health problems from secondhand exposure if smoking is allowed in residential units. Specifically, according to CDC, there is no safe level of secondhand smoke exposure. Again, CDC informs that secondhand smoke can cause the following in non-smoking adults: coronary heart disease, stroke, lung cancer, and adverse reproductive health effects in women such as low birth weight. According to CDC, exposure to secondhand smoke can result in respiratory infections, ear infections, and asthma attacks in children and sudden infant death syndrome in babies. Lastly, according to CDC, exposure to secondhand smoke can cause inflammation and negative respiratory effects within one (1) hour of exposure and these effects can continue a minimum of three (3) hours after exposure.

Increasing ventilation or installing air filters inside retail or gaming properties will not eliminate the risks associated with secondhand smoke exposure. According to CDC, HVAC systems can spread secondhand smoke throughout a facility and there is no ventilation or air cleaning system that can eradicate secondhand smoke.

HUD supports smoke-free public housing, HUD I guess, and has mandated this since 2016. The Nation should align with HUD standards for safe, sanitary housing.

According to the 2022 Community Health Assessment by Comprehensive Health Division, self-reported asthma rates for Oneida respondents are higher than those reported for local counties and the state of Wisconsin. According to CDC, secondhand smoke is a known asthma trigger. Banning indoor smoking in residential units will improve indoor air quality for asthma sufferers.

Eric McLester – Environmental, Health, Safety, Land, and Agriculture Division (written):
The Clean Air Policy amendment under 411.4-2 {b) allows smoking inside residential buildings that are owned by the Nation unless the lease or rental agreement prohibits smoking . EHSLAD does NOT support smoking inside residential buildings for the following reasons:

1. Children and families in our community deserve to have access to clean, indoor air. Employees from CHD, EHSLAD, Zoning, and DPW work in CHD housing. Residents and employees are at risk of health problems from secondhand exposure if smoking is allowed in residential units. Specifically:
 - a. According to CDC, there is no safe level of secondhand smoke exposure. Again, CDC informs that secondhand smoke can cause the following in non-smoking adults: coronary heart disease, stroke, lung cancer, and adverse reproductive health effects in women such as low birth weight.
 - i. <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>
 - b. According to CDC, exposure to secondhand smoke can result in respiratory infections, ear infections, and asthma attacks in children and sudden infant death syndrome in babies.
 - i. <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>

- c. According to CDC, exposure to secondhand smoke can cause inflammation and negative respiratory effects within 1 hour of exposure and these effects can] continue a minimum of 3 hours after exposure.
 - i. <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>
2. Increasing ventilation or installing air filters inside retail or gaming properties will not eliminate the risks associated with secondhand smoke exposure. According to CDC, HVAC systems can spread secondhand smoke throughout a facility and there is no ventilation or air cleaning system that can eradicate secondhand smoke.
 - a. <https://www.cdc.gov/tobacco/secondhand-smoke/policy.html>
3. HUD supports smoke-free public housing and has mandated this since 2016. The Nation should align with HUD standards for safe, sanitary housing.
 - a. <https://www.hud.gov/smokefreepublichousing>
4. According to the 2022 Community Health Assessment by Comprehensive Health Division, self-reported asthma rates for Oneida respondents are higher than those reported for local counties and the state of WI. According to CDC, secondhand smoke is a known asthma trigger. Banning indoor smoking in residential units will improve indoor air quality for asthma sufferers.
 - a. (https://www.canva.com/design/DAFapvpYSCo/fvZ6B2fbFDWEJ2xhzHtOw/view?utmcontent=DAFapvpYSCo&utmcampaign=designshare&utmmedium=link&utm_source=publishsharelink#20).
 - b. <https://www.cdc.gov/tobacco/campaign/tips/diseases/secondhand-smoke-asthma.html>
5. Smoking inside gaming and retail properties may result in higher maintenance and cleaning bills. Thirdhand smoke is the chemical residue left behind from smoke. According to Cleveland Clinic, it persists on surfaces long after smoking occurs and is hard to clean meaning complete costly replacement of affected materials may be the only solution. <https://health.clevelandclinic.org/thirdhand-smoke/>

Thank you,

Environmental, Health, Safety, Land, & Ag Division

Comprehensive Housing Division (written): This serves as a written response and feedback from Comprehensive Housing Division as it relates to the proposed amendments to the Clean Air Policy Act. These written comments will provide both the positive and less positive impacts that CHD may encounter.

There is no doubt that providing a smoke free environment & policy will have positive health benefits to all tenants and community members from a health & safety standpoint as it relates to second-hand smoke. It will also reap positive benefits related to property damage and upkeep in units.

CHD can stand behind those positive impacts and can support the policy amendments with the organization, the Oneida Business Committee and the community's support. This support will be crucial in the success of the enforcement of such a policy from Comprehensive Housing Divisions standpoint. There will need to be a clear understanding and acceptance of the consequences that will be associated with enforcing this type of policy.

Some ways that tenants will voice their discontent with the policy and when support will be needed are:

- Venting issues on social media that grabs the attention of the Oneida organization and council
- Bringing issues to the General Manager or Oneida Business Committee, with an expectation of intervention
- Filing a complaint with Oneida Judiciary
- A claim (what CHD would consider a breach in policy) would be that smoking within their unit is their right and a part of their quality of life
- Creating a petition brought to GTC meeting

Additional items to consider as part of CHD's support of the policy are:

- The cost of possible smoking shelters for those wishing to smoke but needing to move 30 feet away from their unit or rental. These have not been budgeted for and will need to be discussed as a potential offering for smokers in residential buildings
- The city of Green Bay Housing Authority has on-site managers which makes it much more efficient for monitoring the policy for enforcement purposes through tenant unit check ins and common hallways for enforcement purposes. CHD does not have on-site managers of their residential units.
- With the Clean Air Policy focusing on the no smoking provision, other things that contaminate the air in residential units should also be considered such as cat/dog/human feces, urine, garbage, and composing garbage in residential units. All of these scenarios also affect clean air and are current issues within tenant units.
- There will be tenants that may side with the stance that nicotine is their crutch for dealing with trauma/stress/alcohol & drug withdrawal and will likely state that we are taking that right from them. While this policy does not prohibit tenants from smoking, for some, this will take away their physical ability to smoke. An example of this would be: a disabled tenant that might have a difficult time getting out of the unit to 30 feet from the building, especially in the cold. Will there be any thought or plans to help support systems for those types of situations? (ie. the social part of not having the ability to smoke, nicotine withdrawal! or other coping methods for dealing trauma/stress etc?). Generationally those affected by not having the physical ability to smoke outdoors and 30+ feet away from a building will likely be in the class of: elder, confined, disabled or a combination of both.
- The HUD policy mentioned in the document of support from EHLISA references the smoke free policy supported by HUD. This reference is HUDs smoke free requirement for Public Housing Agencies (PHA). As a recipient of Indian Housing Block Grants (IHBG) and subject to Native American Housing Assistance and Self-Determination Act (NAHASDA), we are considered an Indian Housing Agency (IHA) and not Public Housing Agency (PHA). Unless specifically identified in written correspondence, CHD is not subject to it. As an Indian Housing Agency, CHD is subject to the Nations Laws and Judiciary Court.

CHD has collaborated with Green Bay Housing Authority to obtain information on how their non-smoking policies are enforced within their residential units. GBHA is a (PHA) and has participated in the HUD smoke-free policy change in 2017/2019. They house a 50-unit complex called Mason Manor on West Mason Street as well as approximately 45 scattered sites. GBHA has a "3 strikes you are out" type of approach with both the first and second offenses including a penalty fine. The entire campus smoke-free. The fines for these types of infractions include:

1. \$100 fine, needing to be paid in full, with no payment plan
2. \$150 fine plus a 5-Day Quit or Cure Notice
3. \$200 fine and a 28 Day No Cure Notice of Eviction

It was our understanding that De Pere Housing Authority has a one strike you are out enforcement approach. Both agencies are PHA's and are subject to HUD's smoke-free policy, making it easier to contend with enforcement related issues.

In ending, Comprehensive Housing will stand behind the Smoke-Free amendments being proposed within the Clean Air Policy Act due to the cleaner benefit and healthier neighbor aspects associated with it. We understand the need and importance that this policy places on the health and safety of the Nations community members and always place emphasis in our own decisions for the best welfare of the people. Additional efforts should include other clean air contaminants that occur within residential units as noted. While we do and will support the needed changes for this policy, it must be understood that with the proposed changes, the ultimate consequence for a breach of a rental agreement is eviction. Even with placing monetary enforcements for breaches of rental agreements, to hold any value, a consequence for nonpayment will be necessary. A strong support from the community, the OBC and the organization will need to be in place in order for CHD to be able to support and enforce upon the proposed changes and hold those breaching rental agreements.

If you have any further questions in regard to this feedback, please contact:

Lisa Rauschenbach
 Comprehensive Housing Division Director
 (920) 869-6174
lrausche@oneidanation.org.

Response

The commenters express opposition to allowing an exemption from the prohibition of smoking for residential buildings that are owned by the Nation, including, but not limited to, single-family dwellings, two (2) family dwellings, and multiple-family dwellings, unless otherwise prohibited by a lease or rental agreement; and express support for prohibiting smoking in residential buildings.

The Clean Air Policy provides that no person may smoke in any building owned or operated by the Nation, in any vehicle owned or operated by the Nation, or within thirty (30) feet of any building owned or operated by the Nation, except that a person may smoke within thirty (30) feet of the retail outlets or any gaming establishments. [4 O.C. 411.4-1].

The Clean Air Policy then goes on to provide various exemptions for the prohibition of smoking in section 411.4-2. Currently, the Clean Air Policy provides that there is an exemption from the prohibition of smoking for residential buildings that are owned by the Nation, including, but not limited to, single-family dwellings, two (2) family dwellings, and multiple-family dwellings. [4 O.C. 411.4-2(b)(2)]. The proposed amendments to the Clean Air Policy clarify this exemption and only allow the exemption for residential buildings unless otherwise prohibited by a lease or rental agreement. [4 O.C. 411.4-2(b)(2)]. This provides greater flexibility to the Comprehensive Housing Division to prohibit smoking within residential buildings and within thirty (30) feet of residential buildings through its lease or rental agreements.

Whether or not to allow the Clean Air Policy to provide an exemption from the prohibition of smoking to residential buildings that are owned by the Nation is a policy decision for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. Section 411.4-2(b)(2) of the Clean Air Policy should remain as currently drafted and provide an exemption from the prohibition of smoking to residential buildings that are owned by the Nation, including, but not limited to, single-family dwellings, two (2) family dwellings, and multiple-family dwellings, unless otherwise prohibited by a lease or rental agreement.
2. Section 411.4-2(b)(2) of the Clean Air Policy should be eliminated from the Law.

LOC Consideration

Comments 7 through 8 – Need to Strengthen Law:

411.4. Regulation of Smoking

411.4-1. *Prohibition of Smoking.* No person may smoke:

- (a) in any building owned or operated by the Nation;**
- (b) within thirty (30) feet of any building owned or operated by the Nation. Receptacles for disposing of smoking materials shall be maintained at least thirty (30) feet from the main entrances of the building; or**
 - (1) *Exception.* A person may smoke within thirty (30) feet of the retail outlets or any gaming establishments. Receptacles for disposing of smoking materials may be maintained within thirty (30) feet of the entrances of these buildings.**
- (c) in any vehicle owned or operated by the Nation.**

411.4-2. *Exemptions.* The following exemptions shall apply to the prohibition of smoking:

- (a) *Cultural Usage.* The reasonable burning of tobacco, sage, cedar, and/or sweetgrass shall be exempted for cultural usage. Employees working in the vicinity of this cultural use shall be notified prior to use.**
- (b) *Exempted Locations.* The following locations shall be exempted from the prohibition of smoking:**

- (1) **all gaming areas in any building of the Nation;**
 - (A) **Smoking and non-smoking employee break rooms shall be provided in these buildings and shall have separate ventilation.**
 - (B) **Employees shall not smoke while working in these buildings, other than in the provided break room.**
- (2) **residential buildings that are owned by the Nation, including, but not limited to, single-family dwellings, two (2) family dwellings, and multiple-family dwellings, unless otherwise prohibited by a lease or rental agreement; and**
- (3) **a tobacco store, on or in premises controlled by Oneida Retail, that sells tobacco product, unless prohibited by Oneida Retail or the terms and conditions of the lease.**

Michelle Tipple (oral): Because this law is opened, we encourage the LOC to consider some amendments that would strengthen this law. Remove the casinos and, as an exception to this law. Since COVID-19 casinos in Wisconsin have successfully operated in a smoke free environment. Secondly, implement smoke free campuses for all Oneida government buildings. The Oneida Comprehensive Health Division implemented smoke free campus back in 2016. So, it can be done. We did it.

There is a lot of data to support the benefits of a smoke, free work environment increases smoking sensation among tobacco users, helps people stop, cuts employee sick days and medical costs, and it increases productivity, improves body, or excuse me, business image - makes a workplace more attractive to job candidates. It decreases the risk of fires and smoke damage to property. It lowers office cleaning and maintenance cost, as discussed for the previous speaker, reduces an employers vulnerability to lawsuits. And it increases the number of visitors and their expenditures to businesses such as hotels, bars, and restaurants.

Now I do intend to submit some written comments as well and I will include more available data with the sources that I use to support these recommendations. We ask the LOC to consider making data driven decisions that support health equity. All employees have an should have access to a healthy work environment as these amendments are being considered. Thank you.

Michelle Tipple (written): Good morning. I am forwarding some additional data from the dental health perspective on behalf of our Assistant Dental Director, Dr Yvonne White. This data supports the need to strengthen Oneida's Clean Air Law- click link below.

<https://www.cdc.gov/tobacco/campaign/tips/diseases/periodontal-gum-disease.html#:~:text=You%20have%20twice%20the%20risk%20for%20gum%20disease%20compared%20with%20a%20nonsmoker.&text=The%20more%20cigarettes%20you%20smoke,you r%20risk%20for%20gum%20disease.&text=The%20longer%20you%20smoke%2C%20the%20 greater%20your%20risk%20for%20gum%20disease.&text=Treatments%20for%20gum%20dise ase%20may,well%20for%20people%20who%20smoke>

What Is Gum Disease?

Gum (periodontal) disease is an infection of the gums and can affect the bone structure that supports your teeth. In severe cases, it can make your teeth fall out. Smoking is an important cause of severe gum disease in the United States.

Gum disease starts with bacteria (germs) on your teeth that get under your gums. If the germs stay on your teeth for too long, layers of plaque (film) and tartar (hardened plaque) develop. This buildup leads to early gum disease, called gingivitis.

When gum disease gets worse, your gums can pull away from your teeth and form spaces that get infected. This is severe gum disease, also called periodontitis. The bone and tissue that hold your teeth in place can break down, and your teeth may loosen and need to be pulled out.

Warning Signs and Symptoms of Gum Disease

- Red or swollen gums
- Tender or bleeding gums
- Painful chewing
- Loose teeth
- Sensitive teeth
- Gums that have pulled away from your teeth

How Is Smoking Related to Gum Disease?

Smoking weakens your body's infection fighters (your immune system). This makes it harder to fight off a gum infection. Once you have gum damage, smoking also makes it harder for your gums to heal.

What does this mean for me if I am a smoker?

- You have twice the risk for gum disease compared with a nonsmoker.
- The more cigarettes you smoke, the greater your risk for gum disease.
- The longer you smoke, the greater your risk for gum disease.
- Treatments for gum disease may not work as well for people who smoke.

Tobacco use in any form—cigarettes, pipes, and smokeless (spit) tobacco—raises your risk for gum disease.

How Can Gum Disease Be Prevented?

You can help avoid gum disease with good dental habits.

- Brush your teeth twice a day.
- Floss often to remove plaque.
- See a dentist regularly for checkups and professional cleanings.
- Don't smoke. If you smoke, quit.

How Is Gum Disease Treated?

Regular cleanings at your dentist's office and daily brushing and flossing can help treat early gum disease (gingivitis).

More severe gum disease may require:

- Deep cleaning below the gum line.
- Prescription mouth rinse or medicine.
- Surgery to remove tartar deep under the gums.
- Surgery to help heal bone or gums lost to periodontitis. Your dentist may use small bits of bone to fill places where bone has been lost. Or your dentist may move tissue from one place in
- your mouth to cover exposed tooth roots.

If you smoke or use spit tobacco, quitting will help your gums heal after treatment.

Response

The commenters express that the Clean Air Policy's prohibition of smoking should be strengthened and increased, instead of providing additional exemptions to the prohibition of smoking through this Law.

Two ways the commenters express that the Clean Air Policy can be strengthened is by removing the exemption for the prohibition of smoking for the casinos, and requiring smoke free campuses for all government buildings in the Nation.

The purpose of the Clean Air Policy is to provide a healthy working and learning environment within buildings and vehicles owned and operated by the Nation by prohibiting smoking. [4 O.C. 411.1-1]. The Clean Air Policy provides that no person may smoke in any building owned or operated by the Nation, in any vehicle owned or operated by the Nation, or within thirty (30) feet of any building owned or operated by the Nation, except that a person may smoke within thirty (30) feet of the retail outlets or any gaming establishments. [4 O.C. 411.4-1].

The Clean Air Policy then goes on to provide various exemptions for the prohibition of smoking such as:

- cultural usage;
- all gaming areas in any buildings of the Nation;
- residential buildings that are owned by the Nation, including, but not limited to, single-family dwellings, two (2) family dwellings, and multiple-family dwellings, unless otherwise prohibited by a lease or rental agreement; and
- a tobacco store, on or in premises controlled by Oneida Retail, that sells tobacco product, unless prohibited by Oneida Retail or the terms and conditions of the lease. [4 O.C. 411.4-2].

Whether to make additional amendments to the Clean Air Policy in an effort to strengthen the prohibition of smoking is a policy consideration for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. The proposed amendments to the Clean Air Policy should remain as currently drafted.
2. The proposed amendments to the Clean Air Policy should be reconsidered in an effort to strengthen the prohibition of smoking within this Law. Two ways the Legislative Operating Committee can consider strengthening the prohibition of smoking is by:

- a. Requiring smoke free campuses for all buildings of the Nation, not retail or gaming locations, by removing the allocation that a person may smoke at least thirty (30) feet away from a building found in section 411.4-1(b) of the Clean Air Policy; or
- b. Removing the exemption from the prohibition of smoking for gaming areas in any buildings of the Nation found in section 411.4-2(b)(1) of the Clean Air Policy.

LOC Consideration

Comment 9 – Application to Radisson Employees:

411.4. Regulation of Smoking

411.4-1. *Prohibition of Smoking.* No person may smoke:

- (a) in any building owned or operated by the Nation;
- (b) within thirty (30) feet of any building owned or operated by the Nation. Receptacles for disposing of smoking materials shall be maintained at least thirty (30) feet from the main entrances of the building; or
 - (1) *Exception.* A person may smoke within thirty (30) feet of the retail outlets or any gaming establishments. Receptacles for disposing of smoking materials may be maintained within thirty (30) feet of the entrances of these buildings.
- (c) in any vehicle owned or operated by the Nation.

411.4-4. *Violations.*

- (a) Any building manager or designated agent of the Nation may file for injunctive relief with the Nation’s Judiciary against any person who repeatedly or willfully violates this law.
- (b) An employee of the Nation who violates this law during their work hours may be subject to the following disciplinary action in accordance with the Nation’s laws and policies governing employment:
 - (1) written warning for a first-time violation;
 - (2) suspended without pay for a second violation; or
 - (3) terminated from employment for any violation thereafter.

Diana King (written): Would this clean air apply to Radisson employees as well? At the main casino we have designated smoking area in ground floor level of the ramp which is all gaming or Radisson employees. People litter their cigarette butts all over the place instead of discarding them in the designated area. I am not sure if our surveillance cameras can detect who is littering the ramp with cigarette butts. It’s disappointing that employees disregard our property and the generous approval of smoking privileges

Response

The commenter questions whether the Clean Air Policy applies to employees of the Radisson, and expresses complaints regarding the littering of cigarette butts.

The Clean Air Policy provides that no person may smoke in any building owned or operated by the Nation, in any vehicle owned or operated by the Nation, or within thirty (30) feet of any building owned or operated by the Nation, except that a person may smoke within thirty (30) feet of the retail outlets or any gaming establishments. [4 O.C. 411.4-1]. The Radisson is not a building owned and operated by the Nation, so the Clean Air Policy would not apply to that location.

The Clean Air Policy does not address the littering of cigarette butts in locations where smoking is allowed or smoking receptacles are found. However, the Nation's Public Peace law does provide that a person commits the civil infraction of littering if he or she deposits, throws, dumps, discards, abandons, leaves any litter on any private property or Tribal property. [3 O.C. 309.10-1]. Any person who violates a provision of the Public Peace law may be subject to the issuance of a citation by an Oneida Policy Department officer. [3 O.C. 309.11-1].

There is no revision to the proposed amendments to the Clean Air Policy recommended based on this comment.

LOC Consideration

Title 4. Environment and Natural Resources – Chapter 411

CLEAN AIR ~~POLICY~~

411.1. Purpose and Policy

~~411.2. Adoption, Amendment, Conflicts~~~~411.2. Adoption, Amendment, Repeal~~

411.3. Definitions

411.4. Regulation of Smoking

3#

411.1. Purpose and Policy

411.1-1. *Purpose.* ~~It is the~~The purpose of this ~~Clean Air Policy~~law is to provide a healthy working and learning environment within buildings and vehicles owned and operated by the ~~Oneida Tribe~~Nation by prohibiting smoking.

411.1-2. *Policy.* ~~The Oneida Tribe~~It is committed~~the policy of the Nation~~to ~~commit to promoting~~ health and wellness in all forms. ~~There is long standing evidence that smoking is harmful to oneself, and that second-hand smoke is harmful to others. In addition, the long-term effects of electronic cigarettes on individuals are unclear. In an effort to provide a healthy environment for children, employees, and visitors, smoking will~~shall be ~~restricted~~prohibited as described within this ~~policy~~law.

34#

411.2. Adoption, Amendment, ~~Conflicts~~Repeal

411.2-1. This ~~Policy~~law was adopted by motion of the Oneida Business Committee on May 25, 1994, and amended by ~~resolution~~resolutions BC-02-24-10-I~~and~~, BC-05-28-14-A~~,~~ and BC- ~~- -~~ .#

411.2-2. This ~~Policy~~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.

411.2-3. Should a provision of this ~~Policy~~law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this ~~Policy~~law which are considered to have legal force without the invalid portions.

411.2-4. In the event of a conflict between a provision of this ~~Policy~~law and a provision of another law, ~~ordinance, policy, regulation, rule, resolution, or motion~~, the provisions of this ~~Policy~~law shall control. ~~Provided that, nothing in this Policy is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.~~

411.2-5. This ~~Policy~~law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

4:#

411.3. Definitions

411.3-1. This section shall govern the definitions of words and phrases used within this ~~Policy~~law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) (a) “Building” means a structure that has a roof and more than two (2) substantial walls.

(b) (b) “Electronic cigarette” means a device that enables a person to ingest nicotine, or other chemicals or substances, by inhaling a vaporized liquid and shall include the cartridges and other products used to refill the device. ~~“Electronic cigarette” shall not include any device that is prescribed by a healthcare professional.~~

(c) (c) “Indoor” means within the exterior walls of any building.

(d) (d) “Main entrance” means the front entrance to any building, or any entrance a majority of the employees and public use to access the building.

(e) (e) “Nation” means the Oneida Nation.

(f) (f) “Smoke” or “Smoking” means the inhalation of:

(1) (1) the smoke of burning tobacco encased in cigarettes, pipes and cigars; or

66# ~~(2)~~ (2) a vaporized liquid from an electronic cigarette, whether the liquid contains
67# or does not contain nicotine.

68# (f) “Tribe”(g) “Tobacco product” means ~~the Oneida Tribe~~ any form of ~~Indians of~~
69# ~~Wisconsin~~ tobacco prepared in a manner suitable for smoking.

6 : #

6 ; # 411.4. Regulation of Smoking

72# 411.4-1. ~~Except as provided in 411.4-1(b)(1) and 411.4-2, no~~ Prohibition of Smoking. No person
73# may smoke:

74# (a) in any building owned or operated by the ~~Tribe~~ Nation;

75# (b) within thirty (30) feet of any building owned or operated by the ~~Tribe~~ Nation.
76# Receptacles for disposing of smoking materials shall be maintained at least thirty (30) feet
77# from the main entrances of the building; or

78# (1) Exception. A person may smoke within thirty (30) feet of the ~~Oneida One~~
79# ~~Stop~~ retail outlets or any gaming establishments. ~~Receptacles for disposing of~~
7 : # smoking materials may be maintained within thirty (30) feet of the entrances of
7 ; # these buildings.

82# (c) in any vehicle owned or operated by the ~~Tribe~~ Nation.

83# 411.4-2. Exemptions. The following exemptions shall apply to the prohibition of smoking:

84# (a) ~~There shall be an exemption for specific cultural uses for the~~ Cultural Usage. The
85# reasonable burning of tobacco, sage, cedar, and/or sweetgrass ~~shall be exempted for~~
86# cultural usage. Employees working in the vicinity of this cultural use shall be notified prior
87# to use.

88# (b) Specifically Exempted Locations. The following locations shall be exempted from ~~this~~
89# ~~policy~~ are the prohibition of smoking:

8 : # (1) all gaming areas in any ~~Tribal~~ building of the Nation;

8 ; # (A) Smoking and non-smoking employee break rooms shall be provided in
92# these buildings and shall have separate ventilation.

93# (B) Employees shall not smoke while working in these buildings, other than
94# in the provided break room.

95# (2) residential buildings that are owned by the ~~Tribe~~ Nation, including, but not
96# limited to, single-family dwellings, two- ~~(2)~~ family dwellings, and multiple-family
97# dwellings; unless otherwise prohibited by a lease or rental agreement; and

98# (3) a tobacco store, on or in premises controlled by Oneida Retail, that sells tobacco
99# product, unless prohibited by Oneida Retail or the terms and conditions of the lease.

9 : # 411.4-3. Posting and Notices. All ~~Tribal~~ buildings of the Nation, except for those ~~listed in~~
9 ; # exempted by section 411.4-2(b); of this Law, shall be posted as “Non-Smoking” on entrances. ~~In~~
: 2# addition, the hallways, restroom facilities, and other public areas of these buildings may also be
: 3# posted as “Non-Smoking.” ~~Signs shall be large enough that they can be viewed and read thirty~~
: 4# (30) feet from the building.

: 5# 411.4-4. Violations.

: 6# (a) Any building manager or designated agent of the ~~Oneida Business Committee~~ Nation
: 7# may file for injunctive relief with the ~~Tribe’s judicial system~~ Nation’s Judiciary against any
: 8# person who repeatedly or willfully violates this policy law.

: 9# (b) An employee of the ~~Tribe~~ Nation who violates this policy law during ~~his or her~~ their

Draft 3 – PM Draft (Redline to Current)

2023 11 01

: : # work hours may be subject to the following disciplinary action in accordance with the
 : ; # Nation’s laws and policies governing employment:
 ; 2# (1) ~~reprimanded~~written warning for a first-time violation;
 ; 3# (2) suspended without pay ~~for one (1) week~~ for a second violation; or
 ; 4# (3) terminated from employment for any violation thereafter.
 ; 5#
 ; 6# *End.*
 ; 7#

 ; 8# Adopted ~~5- OBC motion on 05-25-94, motion, grace~~Grace period for thirty (30) feet until shelters complete, except
 ; 9# for at educational facilities where minors are present.
 ; : # Amended – BC-02-24-10-I
 ; ; # Amended – BC-05-28-14-A
 ; 22# Amended – BC - - -



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING**

Clean Air Policy Amendments

Norbert Hill Center Business Committee Conference Room and Microsoft Teams
December 15, 2023 12:15 p.m.

Present: Jameson Wilson, Jonas Hill, Kirby Metoxen, Clorissa Leeman, Maureen Perkins, Michelle Tipple, Peggy Helm-Quest, Brooke Doxtator, Jim Snitgen.

Present on Microsoft Teams: Joel Maxam, Katsitsiyo Danforth, Mark W. Powless, Brittany Nicholas, David Jordan, Kristal Hill, Sharon Mousseau, Mollie Passon, Stefanie Reinke, Debra Santiago, Jennifer Webster, Nina Vang, Grace Elliott, Victoria Flowers.

Jameson Wilson: Good Afternoon. The time is 12:15 p.m. and today's date is Friday, December 15, 2023. I will now call to order the public meeting for the proposed amendments to the Clean Air Policy.

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

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

Additionally, written comments may be submitted to the Nation's Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Tuesday, December 26, 2023.

In attendance from the LOC is Councilman Kirby Metoxen, Councilman Jonas Hill, and myself, Jameson Wilson, serve as the Legislative Operating Committee Chairman.

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 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 Clean Air Policy.

The purpose of the Clean Air Policy is to provide a healthy working and learning environment within buildings and vehicles owned and operated by the Nation by prohibiting smoking.

Those who wish to speak please raise your hand. Please state your name when making a comment. And we're ready to go.

First, yeah, the first yes, mention your name as you did and move forward with your public comment. If you could come up to the to the desk here and turn the turn the mic on, thank you Jim.

Jim Snitgen: Check, testing. Good afternoon. I'm going to present the comments from the Environmental Health, Safety, Land and Agriculture Division (EHSLAD) on the Clean Air Policy Amendments. The Clean Air Policy amendment under 411.4-2 (b) allows smoking inside tobacco stores and gaming areas of the Nation. EHSLAD does not support the new exemption to prohibition of smoking in tobacco stores, on or in Oneida Retail properties that sells tobacco products. Our Division supports and proposes removing the existing exemption that allows smoking inside all gaming areas. EHSLAD wants to ban indoor smoking in gaming and retail properties because:

Foremost, allowing properties to be exposed to secondhand smoke is a direct conflict of the purpose of the Clean Air Policy. Secondhand smoke is harmful to the health of employees, and it does not create a healthy working environment for employees. CDC informs that secondhand smoke can cause the following in smoking adults, in non-smoking adults: coronary heart disease, stroke, lung cancer, adverse reproductive health effects in women such as low birth weight and that there is no safe level of secondhand exposure.

Number 2. Nation gaming facilities, specifically the casino, became smoke-free indoors during the COVID-19 pandemic and to our knowledge this has not negatively affected business. We support keeping the casino and all interior employee break areas smoke free to protect employee and customer health because any exposure to secondhand smoke is widely recognized as harmful to human health. The Surgeon General report, The Health Consequences of Involuntary Exposure to Tobacco Smoke, found that the only way to eliminate secondhand smoke exposure is to ban indoor smoking completely.

Number 3. We do not support the exemption for smoking inside Oneida retail establishments including any cigar bars operated by retail, because, according to CDC, any exposure to secondhand smoke is harmful to human health and the only way to eliminate exposure, according to the Surgeon General, is to completely ban indoor smoking.

Number 4. Increasing ventilation or filtration will not eliminate health risk of secondhand smoke exposure. According to CDC, HVAC systems can spread secondhand smoke throughout a facility and there is no ventilation or air cleaning system that can eradicate secondhand smoke.

Number 5. We also support keeping the casino and all interior employee break areas smoke free because this will protect cleaning staff from exposure to thirdhand smoke. Thirdhand smoke is the pollutant residue that remains on surfaces after tobacco is smoked. Pollutants include but are not limited to nicotine, formaldehyde, naphthalene which are known to cause cancer.

The Clean Air Policy amendment under 411.4-2 {b) allows smoking inside residential buildings that are owned by the Nation unless the lease or rental agreement prohibits smoking . EHSLAD does NOT support smoking inside residential buildings for the following reasons:

1. Children and families in our community deserve to have access to clean, indoor air. Employees from CHD, EHSLAD, Zoning, and DPW work in CHD housing. Residents and employees are at risk of health problems from secondhand exposure if smoking is allowed in residential units. Specifically, according to CDC, there is no safe level of secondhand smoke exposure. Again, CDC informs that secondhand smoke can cause the following in non-smoking adults: coronary heart disease, stroke, lung cancer, and adverse reproductive health effects in women such as low birth weight. According to CDC, exposure to secondhand smoke can result in respiratory infections, ear infections, and asthma attacks in children and sudden infant death syndrome in babies. Lastly, according to CDC, exposure to secondhand smoke can cause inflammation and negative respiratory effects within one (1) hour of exposure and these effects can continue a minimum of three (3) hours after exposure.

Increasing ventilation or installing air filters inside retail or gaming properties will not eliminate the risks associated with secondhand smoke exposure. According to CDC, HVAC systems can spread secondhand smoke throughout a facility and there is no ventilation or air cleaning system that can eradicate secondhand smoke.

HUD supports smoke-free public housing, HUD I guess, and has mandated this since 2016. The Nation should align with HUD standards for safe, sanitary housing.

According to the 2022 Community Health Assessment by Comprehensive Health Division, self-reported asthma rates for Oneida respondents are higher than those reported for local counties and the state of Wisconsin. According to CDC, secondhand smoke is a known asthma trigger. Banning indoor smoking in residential units will improve indoor air quality for asthma sufferers.

And finally, smoking inside gaming and retail properties may result in higher maintenance and cleaning bills. Thirdhand smoke is the chemical residue left behind from smoke. According to Cleveland Clinic, it persists on surfaces long after smoking occurs and is hard to clean meaning complete costly replacement of affected materials, and that may be the only solution.

Thank you on behalf of the Environmental, Health, Safety, Land, and Agriculture Division.

Jameson Wilson: Thank you Jim. Yeah, I'm sorry, turn your mic on, there you go.

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



Michelle Tipple: Good Afternoon. My name is Michelle Tipple. I'm the Community Public Health Officer with the Oneida Nation. So Public Health and the Comprehensive Health Division does not support adding an exemption to this law. To do so, weakens this important public health policy.

Decades of evidence-based research and data demonstrates poor health outcomes related to smoking, including secondhand and thirdhand smoke. So, looking at some of this data, American Indian, Alaskan Native people, compared to other racial and ethnic groups have a higher risk of death and disease caused by using tobacco commercial products such as cigarettes, smokeless tobacco and cigars. Cardiovascular disease, which can be caused by cigarette smoke, is the leading cause of death for American Indian Alaskan Native people. Lung cancer, which can be caused by cigarette smoking and exposure to secondhand smoke, is the leading cause of cancer death among American Indian and Alaskan Native people. Diabetes is the 4th leading cause of death among American Indian Alaskan Native people. The risk of developing Type 2 diabetes is 30 to 40% higher for people who smoke than for people who don't smoke, and smoking can worsen complications from diabetes. Compared to white Wisconsinites, American Indians have a 34% higher risk of dying from cardiovascular disease, 70% higher risk from dying of cancer, lung cancer, excuse me. And a 250% higher risk of dying from diabetes. All of which are known to be caused or worsened by cigarette smoking. There is no safe level of secondhand smoke. None. Even sophisticated ventilation systems do not eliminate the health hazards from secondhand smoke.

Because this law is opened, we encourage the LOC to consider some amendments that would strengthen this law. Remove the casinos and, as an exception to this law. Since COVID-19 casinos in Wisconsin have successfully operated in a smoke free environment. Secondly, implement smoke free campuses for all Oneida government buildings. The Oneida Comprehensive Health Division implemented smoke free campus back in 2016. So, it can be done. We did it.

There is a lot of data to support the benefits of a smoke, free work environment increases smoking sensation among tobacco users, helps people stop, cuts employee sick days and medical costs, and it increases productivity, improves body, or excuse me, business image - makes a workplace more attractive to job candidates. It decreases the risk of fires and smoke damage to property. It lowers office cleaning and maintenance cost, as discussed for the previous speaker, reduces an employers vulnerability to lawsuits. And it increases the number of visitors and their expenditures to businesses such as hotels, bars, and restaurants.

Now I do intend to submit some written comments as well and I will include more available data with the sources that I use to support these recommendations. We ask the LOC to consider making data driven decisions that support health equity. All employees have an should have access to a healthy work environment as these amendments are being considered. Thank you.

Jameson Wilson: Thank you Michelle.

Kirby Metoxen: Yeah. I just want to thank you guys for coming and presenting here. Umm, I know it's it's got me thinking. Umm. And before we sat here, I was very much in favor of supporting Retail in requesting a procedural exception for one of their properties. So, the numbers and the percentage were just overwhelming. So, I wanna thank you guys for for bringing that to our attention. I appreciate it.

Jameson Wilson: I just wanted to check in with our people that are joining virtually if they had any comments that they wanted to share regarding the Clean Air Policy Act with the Oneida Nation. If not, we will conclude at 12:30, which is now. So, with that, with there being no more speakers, the public meeting for the proposed amendments to the Clean Air Policy is now closed at 12:30 p.m. Written comments may be submitted until close of business on Tuesday, December 26th, 2023. And appreciate everybody joining in person and those that are joining online. That will conclude today's public meeting. Thank you.

-End of Meeting-

From: [Diana L. King](#)
To: [LOC](#)
Subject: Inquiry
Date: Monday, November 20, 2023 10:53:17 AM

Would this clean air apply to Radisson employees as well? At the main casino we have designated smoking area in ground floor level of the ramp which is all gaming or Radisson employees. People litter their cigarette butts all over the place instead of discarding them in the designated area. I am not sure if our surveillance cameras can detect who is littering the ramp with cigarette butts. It's disappointing that employees disregard our property and the generous approval of ***smoking privileges***

Diana L. King

Executive Assistant to Gaming General Manager

O: 920.429.3208 • E: dking@oneidanation.org

P.O. Box 365 • Oneida, WI • 54155 • OneidaCasino.net



Official Casino of the Green Bay Packers

From: [Michelle L. Tipple](#)
To: [LOC](#)
Cc: [Michelle L. Tipple](#); [Yvonne R. White](#); [Debra J. Danforth](#)
Subject: Written comment on amendments to Oneida's Clean Air Law due 12/26/23
Date: Wednesday, December 20, 2023 9:35:27 AM
Attachments: [Smoking, Gum Disease, and Tooth Loss](#) [Overviews of Diseases Conditions](#) [Tips From Former Smokers](#) [CDC 12.19.2023.html](#)

Good morning.

I am forwarding some additional data from the dental health perspective on behalf of our Assistant Dental Director, Dr Yvonne White. This data supports the need to strengthen Oneida's Clean Air Law- click link below.

Michelle Tipple

From: Yvonne R. White <ywhite@oneidanation.org>
Sent: Tuesday, December 19, 2023 4:37 PM
To: Michelle L. Tipple <mtipple@oneidanation.org>
Subject: RE: Request action- written comments for amendments to Oneida's Clean Air Law due 12/26/23

Hello Michelle!

Here is a CDC article that can be added pertaining to Smoking and Periodontitis (AKA Gum Disease)

<https://www.cdc.gov/tobacco/campaign/tips/diseases/periodontal-gum-disease.html#:~:text=You%20have%20twice%20the%20risk%20for%20gum%20disease%20compared%20with%20a%20nonsmoker.&text=The%20more%20cigarettes%20you%20smoke,your%20risk%20for%20gum%20disease.&text=The%20longer%20you%20smoke%2C%20the%20greater%20your%20Orisk%20for%20gum%20disease.&text=Treatments%20for%20gum%20disease%20may,well%20for%20people%20who%20smoke.>

Tips From Former Smokers®

[Tips From Former Smokers® Home](#)

Gum (Periodontal) Disease

[Español \(Spanish\)](#) [Print](#)

What Is Gum Disease?

[Gum \(periodontal\) disease](#) is an infection of the gums and can affect the bone structure that supports your teeth. In severe cases, it can make your teeth fall out. Smoking is an important cause of severe gum disease in the United States.¹

Gum disease starts with bacteria (germs) on your teeth that get under your gums. If the germs stay on your teeth for too long, layers of plaque (film) and tartar (hardened plaque) develop. This buildup leads to early gum disease, called gingivitis.²

When gum disease gets worse, your gums can pull away from your teeth and form spaces that get infected. This is severe gum disease, also called periodontitis. The bone and tissue that hold your teeth in place can break down, and your teeth may loosen and need to be pulled out.³

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Warning Signs and Symptoms of Gum Disease²

- Red or swollen gums
- Tender or bleeding gums
- Painful chewing
- Loose teeth
- Sensitive teeth
- Gums that have pulled away from your teeth

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How Is Smoking Related to Gum Disease?

Smoking weakens your body's infection fighters (your immune system). This makes it harder to fight off a gum infection. Once you have gum damage, smoking also makes it harder for your gums to heal.^{4,5,6}

What does this mean for me if I am a smoker?

- You have twice the risk for gum disease compared with a nonsmoker.¹
- The more cigarettes you smoke, the greater your risk for gum disease.⁵
- The longer you smoke, the greater your risk for gum disease.⁵
- Treatments for gum disease may not work as well for people who smoke.³

Tobacco use in any form—cigarettes, pipes, and smokeless (spit) tobacco—raises your risk for gum disease.⁷

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How Can Gum Disease Be Prevented?

You can help avoid gum disease with good dental habits.³

- Brush your teeth twice a day.
- Floss often to remove plaque.
- See a dentist regularly for checkups and professional cleanings.
- Don't smoke. If you smoke, quit.

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How Is Gum Disease Treated?

Regular cleanings at your dentist's office and daily brushing and flossing can help treat early gum disease (gingivitis).²

More severe gum disease may require:³

- Deep cleaning below the gum line.
- Prescription mouth rinse or medicine.
- Surgery to remove tartar deep under the gums.
- Surgery to help heal bone or gums lost to periodontitis. Your dentist may use small bits of bone to fill places where bone has been lost. Or your dentist may move tissue from one place in your mouth to cover exposed tooth roots.

If you smoke or use spit tobacco, quitting will help your gums heal after treatment.³

Free Quitting Resources

Telephone

- [1-800-QUIT-NOW](#)
- [1-855-DÉJALO-YA](#) (Español)
- [1-800-838-8917](#) (中文)
- [1-800-556-5564](#) (한국어)



**Comprehensive Housing Division
Public Meeting Comments to Clean Air Policy
December 22, 2023**

This serves as a written response and feedback from Comprehensive Housing Division as it relates to the proposed amendments to the Clean Air Policy Act. These written comments will provide both the positive and less positive impacts that CHD may encounter.

There is no doubt that providing a smoke free environment & policy will have positive health benefits to all tenants and community members from a health & safety standpoint as it relates to second-hand smoke. It will also reap positive benefits related to property damage and upkeep in units.

CHD can stand behind those positive impacts and can support the policy amendments with the organization, the Oneida Business Committee and the community's support. This support will be crucial in the success of the enforcement of such a policy from Comprehensive Housing Divisions standpoint. There will need to be a clear understanding and acceptance of the consequences that will be associated with enforcing this type of policy.

Some ways that tenants will voice their discontent with the policy and when support will be needed are:

- Venting issues on social media that grabs the attention of the Oneida organization and council
- Bringing issues to the General Manager or Oneida Business Committee, with an expectation of intervention
- Filing a complaint with Oneida Judiciary
- A claim (what CHD would consider a breach in policy) would be that smoking within their unit is their right and a part of their quality of life
- Creating a petition brought to GTC meeting

Additional items to consider as part of CHD's support of the policy are:

- The cost of possible smoking shelters for those wishing to smoke but needing to move 30 feet away from their unit or rental. These have not been budgeted for and will need to be discussed as a potential offering for smokers in residential buildings
- The city of Green Bay Housing Authority has on-site managers which makes it much more efficient for monitoring the policy for enforcement purposes through tenant unit check ins and common hallways for enforcement purposes. CHD does not have on-site managers of their residential units.



- With the Clean Air Policy focusing on the no smoking provision, other things that contaminate the air in residential units should also be considered such as cat/dog/human feces, urine, garbage, and composing garbage in residential units. All of these scenarios also affect clean air and are current issues within tenant units.
- There will be tenants that may side with the stance that nicotine is their crutch for dealing with trauma/stress/alcohol & drug withdrawal and will likely state that we are taking that right from them. While this policy does not prohibit tenants from smoking, for some, this will take away their physical ability to smoke. An example of this would be: a disabled tenant that might have a difficult time getting out of the unit to 30 feet from the building, especially in the cold. Will there be any thought or plans to help support systems for those types of situations? (ie. the social part of not having the ability to smoke, nicotine withdrawal or other coping methods for dealing trauma/stress etc?). Generationally those affected by not having the physical ability to smoke outdoors and 30+ feet away from a building will likely be in the class of: elder, confined, disabled or a combination of both.
- The HUD policy mentioned in the document of support from EHLISA references the smoke free policy supported by HUD. This reference is HUDs smoke free requirement for Public Housing Agencies (PHA). As a recipient of Indian Housing Block Grants (IHBG) and subject to Native American Housing Assistance and Self-Determination Act (NAHASDA), we are considered an Indian Housing Agency (IHA) and not Public Housing Agency (PHA). Unless specifically identified in written correspondence, CHD is not subject to it. As an Indian Housing Agency, CHD is subject to the Nations Laws and Judiciary Court.

CHD has collaborated with Green Bay Housing Authority to obtain information on how their non-smoking policies are enforced within their residential units. GBHA is a (PHA) and has participated in the HUD smoke-free policy change in 2017/2019. They house a 50-unit complex called Mason Manor on West Mason Street as well as approximately 45 scattered sites. GBHA has a “3 strikes you are out” type of approach with both the first and second offenses including a penalty fine. The entire campus smoke-free. The fines for these types of infractions include:

1. \$100 fine, needing to be paid in full, with no payment plan
2. \$150 fine plus a 5-Day Quit or Cure Notice
3. \$200 fine and a 28 Day No Cure Notice of Eviction

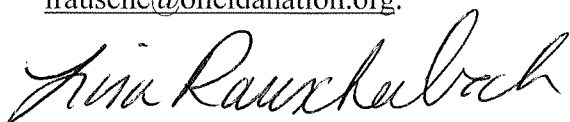
It was our understanding that De Pere Housing Authority has a one strike you are out enforcement approach. Both agencies are PHA’s and are subject to HUD’s smoke-free policy, making it easier to contend with enforcement related issues.

In ending, Comprehensive Housing will stand behind the Smoke-Free amendments being proposed within the Clean Air Policy Act due to the cleaner benefit and healthier neighbor aspects associated with it. We understand the need and importance that this policy places on the health and safety of the Nations community members and always place emphasis in our own decisions for the best welfare of the people. Additional efforts should include other clean air

contaminates that occur within residential units as noted. While we do and will support the needed changes for this policy, it must be understood that with the proposed changes, the ultimate consequence for a breach of a rental agreement is eviction. Even with placing monetary enforcements for breaches of rental agreements, to hold any value, a consequence for non-payment will be necessary. A strong support from the community, the OBC and the organization will need to be in place in order for CHD to be able to support and enforce upon the proposed changes and hold those breaching rental agreements.

If you have any further questions in regard to this feedback, please contact:

Lisa Rauschenbach
Comprehensive Housing Division Director
(920) 869-6174
lrausche@oneidanation.org.



Comments on the Clean Air Policy Amendments

The Clean Air Policy amendment under 411.4-2 (b) allows smoking inside tobacco stores and gaming areas of the Nation. EHSAD **does NOT support the new exemption to prohibition of smoking in “tobacco stores”, on or in Oneida Retail properties that sells tobacco products.** EHSAD supports and proposes **REMOVING** the existing exemption that allows smoking inside all gaming areas. EHSAD wants to ban indoor smoking in gaming and retail properties because:

1. Foremost, allowing employees to be exposed to secondhand smoke is a direct conflict of the purpose of the Clean Air Policy. **Secondhand smoke is harmful to the health of employees, and it does not create a healthy working environment for employees.** CDC informs that secondhand smoke can cause the following in non-smoking adults: **coronary heart disease, stroke, lung cancer, adverse reproductive health effects in women such as low birth weight and that there is no safe level of secondhand exposure.** <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>
2. **Nation gaming facilities, specifically the casino, became smoke-free indoors during the COVID-19 pandemic and to our knowledge this has not negatively affected business.** We support keeping the casino and all interior employee break areas smoke free to protect employee and customer health because any exposure to secondhand smoke is widely recognized as harmful to human health. **The Surgeon General report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, found that the only way to eliminate secondhand smoke exposure is to ban indoor smoking completely.**
 - <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>
 - <https://www.ncbi.nlm.nih.gov/books/NBK44326/#rpt-smokeexp.ch10.s68>
3. We do not support the exemption for smoking inside Oneida retail establishments including any cigar bars operated by retail, because, **according to CDC, any exposure to secondhand smoke is harmful to human health and the only way to eliminate exposure, according to the Surgeon General, is to completely ban indoor smoking.**
 - <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>
 - <https://www.ncbi.nlm.nih.gov/books/NBK44326/#rpt-smokeexp.ch10.s68>
4. **Increasing ventilation or filtration will not eliminate health risk of secondhand smoke exposure. According to CDC, HVAC systems can spread secondhand smoke throughout a facility and there is no ventilation or air cleaning system that can eradicate secondhand smoke.**
 - <https://www.cdc.gov/tobacco/secondhand-smoke/policy.html>

5. We also support keeping the casino and all interior employee break areas smoke free because this will **protect cleaning staff from exposure to thirdhand smoke. Thirdhand smoke is the pollutant residue that remains on surfaces after tobacco is smoked. Pollutants include but are not limited to nicotine, formaldehyde, naphthalene which are known to cause cancer.**
 - o <https://www.mayoclinic.org/healthy-lifestyle/quit-smoking/expert-answers/third-hand-smoke/faq-20057791#:~:text=Thirdhand%20smoke%20is%20made%20up,up%20on%20surfaces%20over%20time.>

The Clean Air Policy amendment under 411.4-2 (b) allows smoking inside residential buildings that are owned by the Nation unless the lease or rental agreement prohibits smoking . EHSLAD does NOT support smoking inside residential buildings for the following reasons:

1. Children and families in our community deserve to have access to clean, indoor air. Employees from CHD, EHSLAD, Zoning, and DPW work in CHD housing. Residents and employees are at **risk of health problems from secondhand exposure** if smoking is allowed in residential units. Specifically:
 - a. According to CDC, there is **no safe level of secondhand smoke exposure**. Again, CDC informs that **secondhand smoke can cause the following in non-smoking adults: coronary heart disease, stroke, lung cancer, and adverse reproductive health effects in women such as low birth weight.**
 - i. <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>
 - b. According to CDC, **exposure to secondhand smoke can result in respiratory infections, ear infections, and asthma attacks in children and sudden infant death syndrome in babies.**
 - i. <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>
 - c. According to CDC, **exposure to secondhand smoke can cause inflammation and negative respiratory effects within 1 hour of exposure and these effects can continue a minimum of 3 hours after exposure.**
 - i. <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>
2. **Increasing ventilation or installing air filters inside retail or gaming properties will not eliminate the risks associated with secondhand smoke exposure.** According to CDC, **HVAC systems can spread secondhand smoke throughout a facility and there is no ventilation or air cleaning system that can eradicate secondhand smoke.**
<https://www.cdc.gov/tobacco/secondhand-smoke/policy.html>
3. **HUD supports smoke-free public housing and has mandated this since 2016. The Nation should align with HUD standards for safe, sanitary housing.**
<https://www.hud.gov/smokefreepublichousing>
4. According to the 2022 Community Health Assessment by Comprehensive Health Division, **self-reported asthma rates for Oneida respondents are higher than those**

reported for local counties and the state of WI. According to CDC, secondhand smoke is a known asthma trigger. Banning indoor smoking in residential units will improve indoor air quality for asthma sufferers.

(https://www.canva.com/design/DAFapvpYSCo/fvZ6B2fbFDWEJ2xhz_HtOw/view?utm_content=DAFapvpYSCo&utm_campaign=designshare&utm_medium=link&utm_source=publishsharelink#20).

<https://www.cdc.gov/tobacco/campaign/tips/diseases/secondhand-smoke-asthma.html>

5. Smoking inside gaming and retail properties may result in higher maintenance and cleaning bills. Thirdhand smoke is the chemical residue left behind from smoke. According to Cleveland Clinic, it persists on surfaces long after smoking occurs and is hard to clean meaning complete costly replacement of affected materials may be the only solution. <https://health.clevelandclinic.org/thirdhand-smoke/>

Thank you,

Environmental, Health, Safety, Land, & Ag Division



January 2024

January 2024

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February 2024

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MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
<p>Jan 1, 24</p> <p>8:00am New Year's Day</p>	<p>2</p>	<p>3</p> <p>8:30am LOC Prep Meeting (Microsoft Teams Meeting);</p> <p>9:00am Legislative Operating Committee Meeting (Microsoft)</p> <p>1:30pm LOC Work Session (Microsoft)</p>	<p>4</p>	<p>5</p>
<p>8</p> <p>1:30pm Investigative Leave Policy (Microsoft Teams Meeting) - Grace L. Elliott</p>	<p>9</p>	<p>10</p>	<p>11</p> <p>10:00am LOC Work Session (Microsoft Teams Meeting; BC_Exec_Conf_Room) - Clorissa N. Leeman</p>	<p>12</p> <p>10:00am Real Property Law Amendments (Microsoft Teams Meeting) - Grace L. Elliott</p>
<p>15</p>	<p>16</p>	<p>17</p> <p>8:30am LOC Prep Meeting (Microsoft Teams Meeting);</p> <p>9:00am Legislative Operating Committee Meeting (Microsoft)</p> <p>1:30pm LOC Work Session (Microsoft)</p>	<p>18</p>	<p>19</p>
<p>22</p>	<p>23</p>	<p>24</p>	<p>25</p> <p>10:00am LOC Work Session (Microsoft Teams Meeting; BC_Exec_Conf_Room) - Clorissa N. Leeman</p>	<p>26</p>
<p>29</p>	<p>30</p>	<p>31</p>	<p>Feb 1</p>	<p>2</p>