

TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Leeman, Legislative Reference Office, Senior Staff Attorney
DATE: July 18, 2023
RE: Oneida Personnel Policies and Procedures Amendments: Public Comment Review with LOC Consideration



On January 12, 2023, a public meeting was held regarding the proposed amendments to the Oneida Personnel Policies and Procedures (“the Law”). The public comment period was then held open until January 19, 2023.

The Legislative Operating Committee held work meetings on the following dates to review and consider all public comments received:

- March 1, 2023;
- March 9, 2023;
- March 15, 2023;
- March 23, 2023; and
- March 30, 2023.

This memorandum is submitted as the Legislative Operating Committee’s review and consideration of the comments received during the public meeting and public comment period.

Ultimately, based on the public comments received, the Legislative Operating Committee determined that the proposed amendments to the Oneida Personnel Policies and Procedures needs further drafting and collaboration with affected entities before this legislative proposal can proceed forward in the legislative process.

Comments 1 through 5 – Definition of Immediate Family:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

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

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

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

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

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

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

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

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

Mark Powless (written):

726 a. All regular employees will be given a three (3) five (5) day leave without loss of pay for 727 funeral services for immediate family. Immediate family includes:

728 Husband Mother Brother Great-grandparent

729 Wife Father Sister Great-grandchildren

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

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

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

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

Jessica Vandekamp (written): 3. Funeral Leave

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

Response

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

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

- Husband;
- Wife;
- Mother;
- Father;
- Brother;
- Sister;

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

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

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

LOC Consideration

The Legislative Operating Committee determined that the definition of immediate family as provided for in section IV.D.2.a of the Law should be expanded to include aunts or uncles in recognition of unique family structures of tribal families.

Comments 6 through 9 – Support of Funeral Leave Provisions:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

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

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

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

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



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

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

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

Jessica Vandekamp (written): 3. Funeral Leave

- Agree with 5 days for immediate family.

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

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

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

Response

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

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

LOC Consideration

The Legislative Operating Committee appreciates the expression of support from the commenters and agrees there is no action necessary based on these comments.

Comment 10 – Expansion of Funeral Leave for Assisting with a Funeral:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

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

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

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

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

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

Jessica Vandekamp (written): 3. Funeral Leave

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

Response

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined that the provisions on funeral leave as provided for in section IV.D.2 of the Law should be expanded to address an employee who is not necessarily

responsible for making funeral arrangements for the deceased, but is still assisting with the funeral in some capacity. The Legislative Operating Committee discussed that the a supervisor should be allowed the discretion to expand the three (3) hours to eight (8) hours for an employee is provided for funeral leave for an individual who is not immediate family if not making funeral arrangements, but who is still assisting with the funeral in some capacity.

Comments 11 through 12 – Maternity Leave:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

4. Maternity Leave

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

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

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

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

Mark Powless (written):

757 4. Maternity Leave

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

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

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

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

Response

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

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

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

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

LOC Consideration

The Legislative Operating Committee had great discussion and ultimately determined that they would support exploring the Nation providing a paid maternity leave of twelve (12) weeks for mothers, and even some paternity leave for fathers. The Legislative Operating Committee agrees that families are of the utmost importance to the Nation, and the time between a newborn child and its parents should be respected and encouraged. The Legislative Operating Committee understands that providing paid maternity leave would potentially have large fiscal effects, and therefore determined additional research and collaboration with Finance would be necessary to determine potential options for addressing paid maternity leave for the Nation.

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

SECTION III – SELECTION POLICY

A. ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

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

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

B. HIRING PROCEDURE

1 Statement of Policy

- a. The Oneida Nation is an equal employment opportunity employer and follows nondiscriminatory policies in hiring.**

b. **The Oneida Nation is a firm advocate of the 1964 Civil Rights Act (as amended) and the 1968 Indian Civil Rights Act (as amended) and will make every effort to ensure compliance with each Act; however:**

c. **The Oneida Nation follows the principles of Indian Preference in the implementation of hiring practices (see the Oneida Preference and Indian Preference Statement of Policy).**

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

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

Section III – Selection Policy

• Currently, you can post for Oneida enrolled only or open to all. I would like to add the following categories:

- o Six Nations tribal members or Haudenosaunee or Confederacy something to that effect
- o All enrolled tribal members from a federally recognized tribe.

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

Mark Powless (written): Line Specific Comments

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

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

Response

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

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

1. Enrolled members of the Oneida Nation;

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

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

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

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

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

1. The priorities of Indian Preference in staffing decisions as provided in Section III.A of the Law shall remain as currently drafted.
2. The priorities of Indian Preference in staffing decisions as provided in Section III.A of the Law should be revised to be more inclusive of all members of the Haudenosaunee. The Legislative Operating Committee may consider whether all members of the

Haudenosaunee should receive the same level of preference as members of the Oneida Nation, or how preference is utilized in the postings of vacant job positions.

LOC Consideration

The Legislative Operating Committee determined that the Indian Preference in staffing decisions as provided in Section III.A of the Law should be revised to be more inclusive of all members of the Haudenosaunee. The Legislative Operating Committee discussed that the new levels for Indian Preference in staffing should be:

1. Enrolled members of the Nation;
2. Individuals eligible for enrollment in the Nation;
3. Documented first generation descendants of the Nation;
4. Documented members of the Haudenosaunee;
5. Members or descendants of other federally recognized tribes; and
6. Others (non-Indians).

The Legislative Operating Committee determined that the Human Resources Department will need to develop a standard operating procedures which provides how documented membership in the Haudenosaunee is verified.

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

SECTION III – SELECTION POLICY

D. ORIGINAL PROBATION

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

1. **Status as a Probationary Employee**
 - a. **Probationary employees shall accrue vacation and personal days during the probation period and shall receive holiday pay.**
 - b. **Probationary employees may be terminated for cause at any time during the probation period. Cause shall consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position.**
 - c. **Termination of an employee for cause during their original probationary period shall not be subject to appeal.**

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

Response

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

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

LOC Consideration

The Legislative Operating Committee appreciates the expression of support, and agrees there is no revision to the Law needed based on this comment.

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

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

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

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

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

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

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

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

termination. This should be clarified, perhaps through use of the word “separated” in place of “terminated.”

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

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

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

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

Response

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

Previously, the Law provided that employees who are terminated during the probation period will receive credit for accrued vacation/personal days in their final paycheck. To improve the Nation's hiring capacity and service delivery in the tight labor markets that resulted from the COVID-19 pandemic the Oneida Business Committee adopted emergency amendments to the Law through resolution BC-11-24-21-A which eliminated Section III.D.3.b which stated that employees who are terminated during the probationary period will receive credit for accrued vacation/personal days in their final paycheck. Then additional emergency amendments to the Law were made through resolution BC-05-11-22-A to clarify an inconsistency that was erroneously made with Section IV.A.5.h with the prior emergency amendments. Section IV.A.5.h of the Oneida Personnel Policies and Procedures stated that upon termination from Oneida Nation employment, employees will be paid for any unused personal and/or vacation days. This additional emergency amendment clarified that employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck. [Section IV.A.5.h.2].

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

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined the following revision to the Law should be made based on these comments:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

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

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

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

Comment 22 – Additional Duties Compensation:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

o. Additional Duties Compensation

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

Response

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

LOC Consideration

The Legislative Operating Committee determined that it will be necessary to reach out to the Human Resources Department to determine if there is additional documentation that addresses compensation for additional duties. The Legislative Operating Committee also determined that then this issue should be addressed or defined in the Law.

Comment 23 – Meeting Attendance Organized under Leaves:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

1. Meeting Attendance

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

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

Response

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined that further research should be completed to determine if there is a better place within the Law that this provision can be organized under.

Comment 24 – Honoraria for Meeting Attendance Leave:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

1. Meeting Attendance

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

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

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

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

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

Response

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined that section IV.D.1 of the Law and the provisions governing the receipt of stipends or honorarium for attending a meeting with an outside organization during working hours needs further discussion and clarification in the Law. The Legislative Operating Committee discussed that if an employee takes personal, vacation, or unpaid time off from work, then the employee should be exempt from the requirement to forfeit any amount in excess of fifty dollars (\$50) from their regular paycheck for attending a meeting with an outside organization during working hours.

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

SECTION V – EMPLOYEE RELATIONS

B. EVALUATIONS

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

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

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

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

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

Hiring and Selection

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

- 166 e. Temporary employees will be paid within the Grade in which the job is classified
and
167 salary will be negotiated within the first three (3) steps of respective grade.
168 1) Any negotiated salary beyond step three will require written justification and
169 approval from the respective General Manager. (H.R. Interpretation, 12-8-16)

Response

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

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

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

SECTION V – EMPLOYEE RELATIONS

B. EVALUATIONS

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

LOC Consideration

The Legislative Operating Committee determined the following revision should be made to the Law:

SECTION V – EMPLOYEE RELATIONS

B. EVALUATIONS

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

Comments 27 through 29 – Career Development:

SECTION V – EMPLOYEE RELATIONS

C. CAREER DEVELOPMENT

- 1. Oneida Nation employees are encouraged to develop their skills and abilities by pursuing education at a local educational institution. (BC Action, 9-9-92)**
 - a. Oneida Nation employees must provide a general Career Development Plan to the supervisor listing the goals and objectives of the training and education to be undertaken.**
- 2. Oneida Nation employees may be eligible for assistance for one (1) course per semester. The employee must attempt to arrange to take the class outside his/her normal working hours.**
 - a. Where a class conflicts with the employee’s work schedule, the needs of the Tribal unit take precedence; however, the supervisor shall attempt to accommodate the employee’s request.**
 - b. In no case shall the accommodation exceed actual class hours plus reasonable travel time.**

- c. **Employees must obtain the approval of their immediate supervisor to take a course on work time.**
- 3. **The supervisor's approval and estimated cost must be submitted to the HRD Office, the Area Manager and the General Manager. (HR Interpretation, 12-8-16)**
- 4. **The cost of the books, tuition and fees for the course shall be paid by the Nation through funds budgeted in programs or through the Higher Education program.**
 - a. **Reimbursement for books, tuition and fees is contingent upon the employee receiving at least a C (2.0 on a 4.0 point scale).**
 - b. **Employees who receive less than the required grade point will be required to reimburse the program for whatever costs were incurred.**

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

Mark Powless (written):

880 C. CAREER DEVELOPMENT

881 1. Oneida Nation employees are encouraged to develop their skills and abilities by
882 pursuing education at a local educational institution. (BC Action, 9-9-92)

883 a. Oneida Nation employees must provide a general Career Development Plan to the
884 supervisor listing the goals and objectives of the training and education to be
885 undertaken.

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

Mark Powless (written):

886 2. Oneida Nation employees may be eligible for assistance for one (1) course per semester.
887 The employee must attempt to arrange to take the class outside his/her normal working
888 hours.

889 a. Where a class conflicts with the employee's work schedule, the needs of the Tribal
890 unit take precedence; however, the supervisor shall attempt to accommodate the
891 employee's request.

892 b. In no case shall the accommodation exceed actual class hours plus reasonable travel
893 time.

894 c. Employees must obtain the approval of their immediate supervisor to take a course
895 on work time.

896 3. The supervisor's approval and estimated cost must be submitted to the HRD Office, the
897 Area Manager and the General Manager. (HR Interpretation, 12-8-16)

898 4. The cost of the books, tuition and fees for the course shall be paid by the Nation through
899 funds budgeted in programs or through the Higher Education program.

900 a. Reimbursement for books, tuition and fees is contingent upon the employee
901 receiving at least a C (2.0 on a 4.0 point scale).

902 b. Employees who receive less than the required grade point will be required to

903 reimburse the program for whatever costs were incurred.

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

Response

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

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

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

LOC Consideration

The Legislative Operating Committee determined that section V.C. of the Law regarding career development should be discussed with the Human Resources Department to determine if this practice is still being utilized within the Nation, or if these provisions need to be removed from the Law, so that this provision of the Law can be further clarified.

Comments 30 through 31 – Recordkeeping Requirements:

SECTION VIII – RECORDKEEPING

A. PERSONNEL OFFICE

- 1. Basic records to be retained include:**
 - a. Reference Data**
 - b. Job Descriptions**
 - c. Resumes and Applications**
 - d. Interview notes/selection information**
 - e. Resignations**
 - f. Employee tax exemption claims**
 - g. Disciplinary action information**

- h. Performance evaluations
 - i. Insurance coverage/changes
 - j. Transfers
2. The Personnel Office shall keep and maintain a complete record of each employee throughout his/her term of employment.
- a. Oneida Nation employees shall have access to their employment file.
 - b. Employment files kept by the Personnel Office shall be considered confidential information. Release of any information to a third party must have the consent of the employee in writing.

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

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

Response

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

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

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

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

LOC Consideration

The Legislative Operating Committee supports the recommendation that collaboration with the Human Resources Department is necessary to review section VIII.A.1 and determine what records are currently maintained by the Human Resources Department so the Law can be revised to adequately capture what the Law should require for recordkeeping.

Comments 32 through 33 – Indigenous Peoples’ Day:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

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

a. Tribal holidays consist of the following:

- 1) **One-half Day Christmas Eve**
- 2) **Christmas Day**
- 3) **New Year's Day**
- 4) **Memorial Day**
- 5) **Veteran's Day**
- 6) **Independence Day**
- 7) **Labor Day**
- 8) **Indigenous Peoples’ Day**
- 9) **Thanksgiving Day**
- 10) **Indian Day (day after Thanksgiving)**
- 11) **One-half day Good Friday**
- 12) **Code Talker’s Day (Oneida Day, Friday prior to Memorial Day)**

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

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

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

Response

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

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

LOC Consideration

The Legislative Operating Committee appreciates the support, and determined that no revision to the Law is needed based on this comment.

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

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY



4. **Holidays (Work Standard, 11-7-14)**
 - a. **Tribal holidays consist of the following:**
 - 1) **One-half Day Christmas Eve**
 - 2) **Christmas Day**
 - 3) **New Year's Day**
 - 4) **Memorial Day**
 - 5) **Veteran's Day**
 - 6) **Independence Day**
 - 7) **Labor Day**
 - 8) **Indigenous Peoples' Day**
 - 9) **Thanksgiving Day**
 - 10) **Indian Day (day after Thanksgiving)**
 - 11) **One-half day Good Friday**
 - 12) **Code Talker's Day (Oneida Day, Friday prior to Memorial Day)**

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

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

Response

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

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

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

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

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

4. **Holidays (Work Standard, 11-7-14)**
 - a. **Tribal holidays consist of the following:**
 - 1) **One-half Day Christmas Eve**
 - 2) **Christmas Day**
 - 3) **New Year's Day**

- 4) Memorial Day
- 5) Veteran's Day
- 6) Independence Day
- 7) Labor Day
- 8) Indigenous Peoples' Day
- 9) Thanksgiving Day
- 10) Indian Day (day after Thanksgiving)
- 11) One-half day Good Friday
- 12) Code Talker's Day (Oneida Day, Friday prior to Memorial Day)
- 13) Martin Luther King Jr. Day

LOC Consideration

The Legislative Operating Committee determined that section IV.A.4.a of the Law should remain as currently drafted, and Martin Luther King Jr. Day should not be included as an official holiday recognized by the Nation.

Comment 35 – Floating Holidays:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

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

a. Tribal holidays consist of the following:

- 1) **One-half Day Christmas Eve**
- 2) **Christmas Day**
- 3) **New Year's Day**
- 4) **Memorial Day**
- 5) **Veteran's Day**
- 6) **Independence Day**
- 7) **Labor Day**
- 8) **Indigenous Peoples' Day**
- 9) **Thanksgiving Day**
- 10) **Indian Day (day after Thanksgiving)**
- 11) **One-half day Good Friday**
- 12) **Code Talker's Day (Oneida Day, Friday prior to Memorial Day)**

Jessica Vandekamp (written): 1. Floating Holidays. To propose the Oneida Nation provides up to two (2) floating holidays to each employee that will substitute up to two (2) current public paid holidays. This can promote diversity and respect for employees who have different cultures, religious beliefs, or traditions. The day the employee decides to take off is at their discretion and approved by the immediate supervisor.

Benefits for Employee:

1. Allowing employees to celebrate a holiday, religious event or cultural event that has meaning to them respects individual's differences. (Ex: Oneida ceremonies, birthdays, Martin Luther King Jr. Day, Hmong New Year, etc.)
2. Happy employees are productive employees when you allow them to take time off that matters to them.

Benefits for the Nation:

1. May lower payroll for premium pay when employees choose floating holidays rather than work public holidays.
2. Scheduling may improve in departments and be more flexible in Enterprises & Gaming.

Policy Considerations:

1. Are not eligible for premium pay.
2. Employee may choose floating holiday(s) at the beginning of each calendar year.
3. Must be scheduled and approved in advance by the employee's immediate supervisor.
4. Will not carry over to the next calendar year.
5. Cannot be cashed out or paid upon termination of employment.
6. Floating holidays only count towards religious holidays, cultural holidays, employee birthday, state/federal holiday, wedding anniversary, or special occasion mutually agreed upon by the employee & supervisor.

Response

The commenter requests that the Legislative Operating Committee consider allowing up to two (2) floating holidays to each employee that will substitute up to two (2) current paid holidays for employees of the Nation.

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

The Legislative Operating Committee may consider whether the Law should allow an employee to substitute up to two (2) official recognized holidays of the Nation for floating holidays that can be taken on a date mutually agreed upon between the employee and their immediate supervisor. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.A.4.a of the Law should remain as currently drafted.
2. Section IV.A.4.a of the Law should be revised to allow an employee to substitute up to two (2) official recognized holidays of the Nation for floating holidays that can be taken on a date mutually agreed upon between the employee and their immediate supervisor. If the Legislative Operating Committee makes this determination then it is recommended that the Legislative Operating Committee collaborate with the Human Resources Department to determine how floating holidays should be addressed and implemented for the Nation. For example, the use of floating holidays may have different implementation implications for

different parts of the organization. On the enterprise side of the organization, areas such as Gaming and Retail are typically open and operational on holidays recognized by the Nation, so allowing an employee to regularly work on a holiday and instead substitute the holiday time for a different day may just require administrative tracking. On the program side of the organization, many of the areas or departments are closed and non-operational on holidays recognized by the Nation, so allowing an employee to work on a holiday will need different considerations.

LOC Consideration

The Legislative Operating Committee determined that section IV.A.4.a of the Law should remain as currently drafted. The Legislative Operating Committee determined that the administrative difficulties of support a floating holiday would be great, and also determined that a floating holiday is no different than an additional eight (8) hours of personal or vacation time, and the Nation already provides a generous amount of personal and vacation time to employees.

Comment 36 – Eligibility for Holiday Pay:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

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

b. To be eligible for a paid holiday, employees must work the preceding and following scheduled work days (except for employees who are on a prescheduled work leave or an approved extended sick leave.) Employees who are granted a sick day directly prior to a holiday must certify that they were capable of working the holiday in order to qualify for a paid holiday.

Mark Powless (written):

610 b. To be eligible for a paid holiday, employees must work the preceding and following
611 scheduled work days (except for employees who are on a prescheduled work leave
612 or an approved extended sick leave.) Employees who are granted a sick day directly
613 prior to a holiday must certify that they were capable of working the holiday in order
614 to qualify for a paid holiday.

- From an administrative perspective this can be cumbersome. Grant the holiday regardless of whether or not they work the preceding and following scheduled workdays.

Response

The commenter provides that section IV.A.4.b of the Law's requirement that to be eligible for a paid holiday, employees must work the preceding and following scheduled work days is cumbersome from an administrative perspective, and should be simplified and removed.

Section IV.A.4.b of the Law provides that to be eligible for a paid holiday, employees must work the preceding and following scheduled work days, except for employees who are on a prescheduled work leave or an approved extended sick leave. The Law then goes on to state that employees who

are granted a sick day directly prior to a holiday must certify that they were capable of working the holiday in order to qualify for a paid holiday.

The Legislative Operating Committee may consider whether the requirement to work the preceding and following scheduled work days in order to be eligible for holiday pay should remain as a requirement in the Law. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.A.4.b of the Law should remain as currently drafted, and an employee should be required to work the preceding and following scheduled work days in order to be eligible for holiday pay.
2. Section IV.A.4.b of the Law should be revised to eliminate any administrative burden, and the requirement that an employee work the preceding and following scheduled work days in order to be eligible for holiday pay be removed. If the Legislative Operating Committee makes this determination then the following revision is recommended:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

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

~~b. — To be eligible for a paid holiday, employees must work the preceding and following scheduled work days (except for employees who are on a prescheduled work leave or an approved extended sick leave.) Employees who are granted a sick day directly prior to a holiday must certify that they were capable of working the holiday in order to qualify for a paid holiday.~~

LOC Consideration

Ultimately, the Legislative Operating Committee supports that section IV.A.4.b of the Law be revised to eliminate any administrative burden, and the requirement that an employee work the preceding and following scheduled work days in order to be eligible for holiday pay be removed. The Legislative Operating Committee determined that this issue should be brought to Gaming and Retail for further discussion to determine the potential effects of this decision, and whether Gaming and Retail need to be treated differently than how the programs are handled.

Comment 37 – Maximum Paid Holiday Hours:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

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

c. All regular employees will be given holiday pay for the maximum pay of eight (8) hours per day.

Mark Powless (written):

615 c. All regular employees will be given holiday pay for the maximum pay of eight (8) hours per day.

- Grant holiday pay based on the regularly scheduled hours for that position. If an employee works 10-hour shifts, provide holiday pay of 10 hours, when applicable.

Response

The commenter requests that the Legislative Operating Committee consider revising section IV.A.4.c of the Law, and grant holiday pay based on the regularly scheduled hours for that position.

Section IV.A.4.c of the Law provides that all regular employees will be given holiday pay for the maximum pay of eight (8) hours per day. The commenter points out that there are some employees within the Nation that regularly work shifts of more than eight (8) hours.

The Legislative Operating Committee may consider whether the eight (8) hour maximum for holiday pay should remain in the Law. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.A.4.c of the Law should remain as currently drafted, and an employee employees should only be given holiday pay for the maximum pay of eight (8) hours per day
2. Section IV.A.4.c of the Law should be revised so that an employee is eligible to receive holiday pay for all regularly scheduled hours worked during a holiday. If the Legislative Operating Committee makes this determination then the following revision is recommended:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

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

- c. All regular employees ~~will~~ shall be given holiday pay for the hours worked during a holiday ~~maximum pay of eight (8) hours per day.~~

LOC Consideration

The Legislative Operating Committee determined that section IV.A.4.c of the Law should be revised so that an employee is eligible to receive holiday pay for all regularly scheduled hours worked during a holiday. The Legislative Operating Committee determined that the following revision should be made to the Law:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

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

- c. All regular employees ~~will~~ shall be given holiday pay for the hours worked during a holiday ~~maximum pay of eight (8) hours per day.~~

The Legislative Operating Committee also determined that Finance, Gaming, and Retail should be collaborated with regarding this decision to determine any potential impacts that could need further discussion or consideration.

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

c. Except as provided for in section g, the accrual of personal days shall be as follows: (BC Resolution – 4-11-13-F)

- 1) 0-3 years of service - 6 days per year;
- 2) 4-7 years of service - 8 days per year;
- 3) 8-14 years of service - 10 days per year;
- 4) 15+ years of service - 12 days per year;

d. Except as provided for in section g, the accrual of vacation days shall be as follows:

- 1) 0-3 years of service - 12 days per year
- 2) 4-7 years of service - 15 days per year;
- 3) 8-15 years of service - 20 days per year;
- 4) 15+ years of service - 25 days per year.

Mark Powless (written):

636 c. Except as provided for in section g, the accrual of personal days shall be as follows:

637 (BC Resolution – 4-11-13-F)

638 1) 0-3 years of service - 6 days per year;

639 2) 4-7 years of service - 8 days per year;

640 3) 8-14 years of service - 10 days per year;

641 4) 15+ years of service - 12 days per year;

642 d. Except as provided for in section g, the accrual of vacation days shall be as follows:

643 1) 0-3 years of service - 12 days per year

644 2) 4-7 years of service - 15 days per year;

645 3) 8-15 years of service - 20 days per year;

646 4) 15+ years of service - 25 days per year.

• Start to scale back the accrual of personal and vacation days by eliminating the accruals for 15+ years of service for both personal and vacation. Prior to Trade Back For Cash in 2022 91 employees were maintaining a balance of 250 or more personal/vacation hours. Of those, 73% had 15 or more years of service. Additionally, employees are gaining an additional holiday (Indigenous People’s Day) with the approval of these amendments.

Response

The commenter requests that the Legislative Operating Committee consider how the accrual of personal and vacation time is handled by the Nation and eliminate the additional accrual category for employees with more than fifteen (15) years of service.

The Law provides that every Oneida Nation employee, except temporary employees, shall be allowed personal and vacation days with pay to the extent that personal days and vacation are accumulated. [OPPP Section IV.A.5.a]. The amount of personal and vacations days shall be

determined by continuous service for the Nation. [OPPP Section IV.A.5.b]. The Law provides the following for the accrual of personal and vacation time:

- Accrual of Personal Days:
 - 0-3 years of service - 6 days per year;
 - 4-7 years of service - 8 days per year;
 - 8-14 years of service - 10 days per year;
 - 15+ years of service - 12 days per year;
- Accrual of Vacation Days:
 - 0-3 years of service - 12 days per year;
 - 4-7 years of service - 15 days per year;
 - 8-15 years of service - 20 days per year;
 - 15+ years of service - 25 days per year. [OPPP Section IV.A.5.c-d].

The Legislative Operating Committee may consider whether the accrual rates for personal and vacation time provided for in section IV.A.5.c-d of the Law should be revised. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.A.5.c-d of the Law should remain as currently drafted, and there should be no change to the accrual rates for personal and vacation time.
2. Section IV.A.5.c-d of the Law should be revised to address the accrual rates for personal and vacation time. The Legislative Operating Committee may consider how the accrual rates should be revised, and if they should be reduced or if certain accrual rate levels should be eliminated. If the Legislative Operating Committee makes the determination to eliminate the accrual rates for personal and vacation time for those employees who have more than fifteen years of service, as suggested by the commenter, then the following revision is recommended:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

c. Except as provided for in section g, the accrual of personal days shall be as follows: (BC Resolution – 4-11-13-F)

- 1) 0-3 years of service - 6 days per year;
- 2) 4-7 years of service - 8 days per year;
- 3) ~~8+14~~ years of service - 10 days per year;
- 4) ~~15+ years of service - 12 days per year;~~

d. Except as provided for in section g, the accrual of vacation days shall be as follows:

- 1) 0-3 years of service - 12 days per year
- 2) 4-7 years of service - 15 days per year;
- 3) ~~8+15~~-years of service - 20 days per year;
- 4) ~~15+ years of service - 25 days per year.~~

LOC Consideration

The Legislative Operating Committee discussed and determined that accruals for employees will need to be reconsidered and reduced in the future as it may not be sustainable to continue the current accrual rates in the future as the employment base grows. The Legislative Operating

Committee determined that further discussion and consideration of this matter with the Human Resources Department and Finance may be necessary. The Legislative Operating Committee also discussed the fact that if accruals are changed in the future, they would support changing the accruals for any future employees but grandfathering current employees in with the current accrual rates.

Comment 39 – Combination of Personal and Vacation Time:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

c. Except as provided for in section g, the accrual of personal days shall be as follows: (BC Resolution – 4-11-13-F)

- 1) 0-3 years of service - 6 days per year;
- 2) 4-7 years of service - 8 days per year;
- 3) 8-14 years of service - 10 days per year;
- 4) 15+ years of service - 12 days per year;

d. Except as provided for in section g, the accrual of vacation days shall be as follows:

- 1) 0-3 years of service - 12 days per year
- 2) 4-7 years of service - 15 days per year;
- 3) 8-15 years of service - 20 days per year;
- 4) 15+ years of service - 25 days per year.

Jessica Vandekamp (written): 6. Paid Time Off

- Why do we have to separate personal/vacation?
- Most employees use interchangeably.
- Combine p/v time to one large amount of PTO, load at the beginning of the year rather than accumulate.

Response

The commenter questions why the Law differentiates between “personal” and “vacation” time since they are typically used interchangeably by an employee, and suggests that the Law be revised to combine personal time and vacation time into one allocation of personal time off. The commenter also then suggests that the Law be revised so that yearly accruals are provided to an employee in one lump sum at the beginning of the year instead of accumulated throughout the year through weekly accrual rates.

The Law provides that every Oneida Nation employee, except temporary employees, shall be allowed personal and vacation days with pay to the extent that personal days and vacation are accumulated. [OPPP Section IV.A.5.a]. The amount of personal and vacations days shall be determined by continuous service for the Nation. [OPPP Section IV.A.5.b]. The Law provides the following for the accrual of personal and vacation time:

- Accrual of Personal Days:
 - 0-3 years of service - 6 days per year;

- 4-7 years of service - 8 days per year;
- 8-14 years of service - 10 days per year;
- 15+ years of service - 12 days per year;
- Accrual of Vacation Days:
 - 0-3 years of service - 12 days per year;
 - 4-7 years of service - 15 days per year;
 - 8-15 years of service - 20 days per year;
 - 15+ years of service - 25 days per year. *[OPPP Section IV.A.5.c-d].*

Personal Days can be used for any reason so long as the request is approved by the employee's supervisor at least twenty-four (24) hours in advance, unless the absence is due to illness or unforeseen circumstances. *[OPPP Section IV.A.5.i].* In the case of illness or unforeseen circumstance, the supervisor shall be notified no later than fifteen (15) minutes before the scheduled starting time. *[OPPP Section IV.A.5.i.1].* An employee shall notify his or her supervisor of an intent to use personal days in the following ways: for three (3) to five (5) days - one (1) week advance notification, and for six (6) days or more days - two (2) weeks advance notification. *[OPPP Section IV.A.5.j].* An employee shall notify his or her supervisor one (1) day in advance if he or she will take off one (1) or two (2) days of vacation. *[OPPP Section IV.A.5.k].* Three (3) to five (5) days of vacation require a one (1) week advance notification, while six (6) or more days of vacation require at least two (2) weeks advance notification. *[OPPP Section IV.A.5.k.1-2].* Programs and enterprises may institute stricter standards of notification. *[OPPP Section IV.A.5.i.2, and IV.A.5.k].*

It is unknown why personal and vacation time are differentiated in the Law. The provisions for advance notification of the use of personal and vacation time are very similar for each category, except that personal time may be notified less than twenty-four (24) hours in advance in certain circumstances.

The Legislative Operating Committee may consider how the Nation handles the separation of personal and vacation time accruals. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.A.5.c-d of the Law should remain as currently drafted, and there should be no change to the separation of personal and vacation time accrual rates.
2. Section IV.A.5.c-d of the Law should be revised to combine the accrual rates for personal and vacation time. If the Legislative Operating Committee makes this determination, then the following revision is recommended:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. ~~Vacation/Personal Days~~ Personal Time Off

c. Except as provided for in section g, the accrual of personal time off (PTO) ~~days~~ shall be as follows: (BC Resolution – 4-11-13-F)

- 1) 0-3 years of service – ~~18~~ 6 days per year;
- 2) 4-7 years of service – ~~23~~ 8 days per year;
- 3) 8-14 years of service – ~~30~~ 10 days per year;
- 4) 15+ years of service – ~~37~~ 12 days per year;

~~d. Except as provided for in section g, the accrual of vacation days shall be as follows:~~

- ~~1) 0-3 years of service 12 days per year~~
- ~~2) 4-7 years of service 15 days per year;~~
- ~~3) 8-15 years of service 20 days per year;~~
- ~~4) 15+ years of service 25 days per year.~~

All other references to personal or vacation time throughout the Law would also have to be updated and revised.

Additionally, the Legislative Operating Committee may consider whether the amount of personal and vacation time provided to an employee should be accrued throughout the year, as is the current practice, or provided to the employee in one lump sum at the beginning of the year. If the Legislative Operating Committee would like to explore this issue, then it is recommended that the Legislative Operating Committee collaborate with the Finance Administration to determine the potential fiscal impacts of providing personal and vacation time to an employee as a lump sum at the beginning of the year.

LOC Consideration

The Legislative Operating Committee determined that section IV.A.5.c-d of the Law should remain as currently drafted, and there should be no change to the separation of personal and vacation time accrual rates due to the fact that the separation of vacation and personal accruals provides different requirements for notification of utilization of vacation or personal accruals to the supervisor. The Legislative Operating Committee also discussed the potential for providing personal and vacation time to an employee in one lump sum at the beginning of a year instead of an employee accruing the personal and vacation time throughout the year. The Legislative Operating Committee expressed concerns with front loading personal and vacation time at the beginning of the year, discussing a situation in which an employee may use all of their personal and vacation time at the beginning of the year and then end their employment with the Nation. Ultimately, the Legislative Operating Committee determined that the topic of personal and vacation time accruals needs further discussion and consideration.

Comment 40 – Discontinuance of Oneida Nation Sponsored Loan Program:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

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

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

Mark Powless (written):

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

- This program no longer exists. Strike these lines from the Personnel Policies and Procedures.

Response

The commenter provides that the Oneida Nation sponsored loan program no longer exists, and therefore the language referencing this loan program found in section IV.A.5.h.1 should be removed from the Law.

Section IV.A.5.h. of the Law provides that upon termination from Oneida Nation employment, employees will be paid for any unused personal and/or vacation days. The Law then states that employees who have used the Oneida Nation-sponsored loan program will be required to honor the terms of the loan agreement.

The following revision is recommended based on the comment that the Oneida Nation sponsored loan program is no longer utilized:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

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

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

LOC Consideration

The Legislative Operating Committee determined that the Nation is not in a position to offer a loan program to employees, and therefore the reference to the Oneida Nation sponsored loan program in section IV.A.5.h. of the Law should be eliminated.

Comment 41 – Trade Back for Cash:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

n. **Trade-back for Cash - Each fiscal year, the Oneida Business Committee shall analyze fiscal conditions to determine whether employees may trade back personal and/or vacation hours for cash that fiscal year.**

1) **If the Oneida Business Committee approves trade-back for cash, they shall also determine whether (i) and/or (ii) applies: (See Revision)**

i. **All employees will have the opportunity to trade-back hours one time that year.**

1. **By August 15, each employee who has accumulated twenty-four (24) hours or more of vacation and/or personal days may opt to trade in his/her hours for cash.**

2. Employees will receive their trade back on or before September 30 of that year.
 - ii. Only those employees who are unable to utilize their personal and/or vacation time due to working conditions, such as a shortage in staffing, as determined by the Human Resources Executive Director or designee, will have the opportunity to trade back hours on a quarterly basis.
 1. Employees will receive their trade back within sixty (60) days after opting to trade back hours.
- 2) When trade-back for cash is approved by the Oneida Business Committee, the following standards shall apply:
 - i. Employees must decide which status (vacation or personal or both) from which their trade back will be drawn.
 - ii. Employees may not trade for cash more than eighty (80) hours in one year. (GTC Resolution, 5-23-11-B)

Mark Powless (written):

696 ii. Only those employees who are unable to utilize their personal and/or
 697 vacation time due to working conditions, such as a shortage in staffing, as
 698 determined by the Human Resources Executive Director or
 699 designee, will have the opportunity to trade back hours on a quarterly basis.
 700 1. Employees will receive their trade back within sixty (60) days after
 701 opting to trade back hours.

- This opportunity no longer exists. Strike these lines from the Personnel Policies and Procedures.

Response

The commenter provides that the opportunity for Trade Back for Cash as provided in section IV.A.5.n. of the Law no longer exists, so this provision of the Law should be eliminated.

Section IV.A.5.n. of the Law provides that each fiscal year, the Oneida Business Committee is responsible for analyzing fiscal conditions to determine whether employees may trade back personal and/or vacation hours for cash that fiscal year. If the Oneida Business Committee approves trade-back for cash, they shall also determine whether all employees will have the opportunity to trade back hours one time that year, or if only those employees who are unable to utilize their personal and/or vacation time due to working conditions, such as a shortage in staffing, as determined by the Human Resources Executive Director or designee, will have the opportunity to trade back hours on a quarterly basis. If all employees are allowed to trade back personal or vacation time for cash, then by August 15, each employee who has accumulated twenty-four (24) hours or more of vacation and/or personal days may opt to trade in his/her hours for cash. Employees will receive their trade back on or before September 30 of that year. If only certain employees are allowed to trade back their personal or vacation time for cash then employees will receive their trade back within sixty (60) days after opting to trade back hours. Overall, when trade-back for cash is approved by the Oneida Business Committee, employees must decide which status

(vacation or personal or both) from which their trade back will be drawn, and employees are limited to trading back no more than eighty (80) hours in one year.

Trade Back for Cash was most recently used in 2022. The Oneida Business Committee adopted resolution BC-07-13-22-G, *Authorization of 80 Hours of Trade Back for Cash for Fiscal Year 2022*. Through this resolution the Oneida Business Committee declared that there shall be authorized a one-time Trade Back for Cash for Fiscal Year 2022 which shall be capped at eighty (80) hours of personal and/or vacation time for eligible employees in accordance with Section IV.A.5.n. of the Oneida Personnel Policies and Procedures.

The Legislative Operating Committee may consider whether Trade Back for Cash program as provided for in section IV.A.5.n of the Law should remain in the Law or be eliminated. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.A.5.n. of the Law should remain as currently drafted, and the Trade Back for Cash program should remain in the Law. This provides the Oneida Business Committee the flexibility to determine if the fiscal conditions of the Nation provide the opportunity for this program to be utilized.
2. Section IV.A.5.n. of the Law should be revised to eliminate the Trade Back for Cash program. If the Legislative Operating Committee makes the determination then the following revision is recommended:

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

5. Vacation/Personal Days

~~n. — Trade back for Cash — Each fiscal year, the Oneida Business Committee shall analyze fiscal conditions to determine whether employees may trade back personal and/or vacation hours for cash that fiscal year.~~

~~1) — If the Oneida Business Committee approves trade back for cash, they shall also determine whether (i) and/or (ii) applies: (See Revision)~~

~~i. — All employees will have the opportunity to trade back hours one time that year.~~

~~1. — By August 15, each employee who has accumulated twenty four (24) hours or more of vacation and/or personal days may opt to trade in his/her hours for cash.~~

~~2. — Employees will receive their trade back on or before September 30 of that year.~~

~~ii. — Only those employees who are unable to utilize their personal and/or vacation time due to working conditions, such as a shortage in staffing, as determined by the Human Resources Executive Director or designee, will have the opportunity to trade back hours on a quarterly basis.~~

~~1. — Employees will receive their trade back within sixty (60) days after opting to trade back hours.~~

~~2) — When trade back for cash is approved by the Oneida Business Committee, the following standards shall apply:~~

- i. ~~Employees must decide which status (vacation or personal or both) from which their trade back will be drawn.~~
- ii. ~~Employees may not trade for cash more than eighty (80) hours in one year. (GTC Resolution, 5-23-11-B)~~

LOC Consideration

The Legislative Operating Committee determined that section IV.A.5.n. of the Law should remain as currently drafted, and the Trade Back for Cash program should remain in the Law as this provision provides the Oneida Business Committee the flexibility to determine if the fiscal conditions of the Nation provide the opportunity for this program to be utilized.

Comment 42 – Promotions as a Result of Evaluations:

SECTION V – EMPLOYEE RELATIONS

B. EVALUATIONS

- 1. Evaluation reports will be used in determining all promotions, transfers and salary adjustments.**

Mark Powless (written):

850 B. EVALUATIONS

851 1. Evaluation reports will be used in determining all promotions, transfers and salary
852 adjustments.

This section is obsolete. The Oneida Nation does not offer promotions and evaluations are not provided when determining transfers. With that being said, areas would like the opportunity to view recent evaluations when considering transfers into their department.

Response

The commenter provides that section V.B.1 of the Law is obsolete since the Nation does not provide promotions, and evaluations are not provided when determining transfers.

Section V.B.1 of the Law provides that evaluation reports will be used in determining all promotions, transfers, and salary adjustments.

It is recommended that the Legislative Operating Committee review with the Human Resources Department what an evaluation could be used for, and clarify this section accordingly. Specifically, it should be determined whether evaluations are provided when transfer considerations are made. If it determined that evaluations are not used for determining promotions or transfers, then the following revisions is recommended:

SECTION V – EMPLOYEE RELATIONS

B. EVALUATIONS

- 1. Evaluation reports will be used in determining ~~all promotions, transfers and~~ salary adjustments.

LOC Consideration

The Legislative Operating Committee determined that the Law should be revised to remove the references to promotions and transfers in section V.B.1. of the Law.

Comment 43 – Title of Human Resources Executive Director:

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Throughout OPPP amendments The title “HRD Manager” is updated to “Human Resources Executive Director” throughout the OPPP. This change presents no legal issues.

Response

The commenter’s highlight that throughout the Law the title of “HRD Manager” has been updated to “Human Resources Executive Director” and this revision reflects no legal issue.

After the draft of proposed amendments to this Law was sent to public meeting it was brought to the Legislative Operating Committee’s attention that the proper title is Executive Human Resources Director. It is recommended that “Human Resources Executive Director” is revised to “Executive Human Resources Director” throughout the Law.

LOC Consideration

The Legislative Operating Committee agrees with the recommendation that “Human Resources Executive Director” is revised to “Executive Human Resources Director” throughout the Law.

Comment 44 – Oneida Preference and Indian Preference Statement of Policy:

SECTION III – SELECTION POLICY

A. ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

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

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

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section III, Selection Policy



Section III.A., Oneida Preference and Indian Preference Statement of Policy

The proposed amendments update the language of the Oneida Preference and Indian Preference Statement of Policy. In this section, updated language does not substantially change the underlying policy and does not create any legal issues.

Response

The commenters highlight that there has been slight modification to the verbiage used in the Oneida preference and Indian preference statement of policy found in section III.A of the Law. This language does not alter the intent of the Oneida preference and Indian preference statement of policy.

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

LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment.

Comments 45 through 46 – Use of Administrative Rulemaking:

SECTION III – SELECTION POLICY

B. HIRING PROCEDURE

2. Hiring Guidelines

c. Hiring and Selection Rules.

1) The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the hiring and selection of employees of the Nation.

C. INTERNAL POSITION POSTING - The Oneida Nation encourages movement within and among units in order to make the best possible use of human resources to meet the Oneida Nation’s goals and objectives. Supervisors and employees are encouraged to work together to create an environment in which employees constantly strive to improve their skills and abilities and managers constantly seek to provide challenging and rewarding work experiences.

1. Internal Position Posting and Reassignment Rules.

a. The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for internal position posting and reassignment of employees of the Nation.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section III.B., Hiring Procedure

The proposed amendments eliminate almost all OPPP language regarding recruitment and hiring topics, such as identifying vacancies, developing job descriptions, applications, advertising

vacancies, screening for positions, interviews, and selection of a candidate. In place of such language, the proposed amendments delegate rulemaking authority to the Human Resources Department as follows:

c. Hiring and Selection Rules.

1) The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the hiring and selection of employees of the Nation. (OPPP Amendments (clean copy), Draft 1, lines 295-298)

Section III.C. Internal Position Posting (formerly Transfers and Promotions Policy)

Similarly, the proposed amendments eliminate almost all OPPP language regarding transfers and promotions, internal postings, applicant pool, and reassignments and, again, delegate rulemaking authority to HRD, specifically:

1. Internal Position Posting and Reassignment Rules

a. The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for internal position posting and reassignment of employees of the Nation. (OPPP Amendments, Draft 1, lines 306-309)

Lisa Duff on behalf of Gaming Senior Management (written): 3) Gaming is requesting the LOC consider a process that gives management (to include gaming management) representation and joint rulemaking authority over all rules for which HRD is delegated rulemaking authority in the draft OPPP. Failure to include management in this drafting process and the importance of a seat at the table in the drafting process should be noted because once documents are made public, certain things can be difficult to walk back from. This supports the need for joint authority to ensure management's voice is guaranteed to be incorporated into HRD rules rather than merely receiving the opportunity to provide public comment – as is the case in this instance. Please note that the last time employment matters were considered the LOC recognized the importance of including management and, at Gaming's request, included 2 gaming HRD representatives on the drafting team to provide a perspective from the profit centers who rely on these processes to operate businesses that funds the lion's share of the Nation's operations.

388 2) The HRD Office shall ~~notify screened-out applicants within five (5) working~~
389 ~~days~~ after the initial screening and reserve these applications be delegated rulemaking
390 authority in the general recruiting pool.

Response

Some of the commenters summarize the proposed revisions to the Law regarding the hiring and selection process, and the internal transfer process. The proposed amendments to the Law eliminate much of the process and procedures currently contained in the law regarding the hiring and selection process, and instead provides that the HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the hiring and selection of employees of the Nation. [Section III.B.2.c]. The proposed amendments to the Law also eliminate much of the process and procedures currently

contained in the law regarding the transfers and promotions, internal postings, applicant pool, and reassignments and instead provides that the HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the internal position posting and reassignment of employees of the Nation. [Section III.C.1].

The other commenters ask the Legislative Operating Committee to consider a joint delegation of rulemaking authority to management when rulemaking authority is delegated to the Human Resources Department, in an effort to recognize the importance of including management in the development of policies.

The Legislative Operating Committee may consider what the most appropriate delegation of rulemaking authority is under the Law. The Legislative Operating Committee may make one of the following determinations:

1. Sections III.B.2.c. and III.C.1 of the Law should remain as currently drafted and provide delegations of rulemaking authority to the Human Resources Department.
2. Sections III.B.2.c. and III.C.1 of the Law should be redrafted to include a joint delegation of rulemaking authority to include management. If the Legislative Operating Committee makes this determination then the following revision to the Law is recommended:

SECTION III – SELECTION POLICY

B. HIRING PROCEDURE

2. Hiring Guidelines

c. Hiring and Selection Rules.

- 1) The ~~HRD Office~~ Human Resources Executive Director, General Manager, Gaming General Manager, and Retail General Manager shall be delegated joint rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the hiring and selection of employees of the Nation.

C. INTERNAL POSITION POSTING - The Oneida Nation encourages movement within and among units in order to make the best possible use of human resources to meet the Oneida Nation's goals and objectives. Supervisors and employees are encouraged to work together to create an environment in which employees constantly strive to improve their skills and abilities and managers constantly seek to provide challenging and rewarding work experiences.

1. Internal Position Posting and Reassignment Rules.

- a. The ~~HRD Office~~ Human Resources Executive Director, General Manager, Gaming General Manager, and Retail General Manager shall be delegated joint rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for internal position posting and reassignment of employees of the Nation.

LOC Consideration

The Legislative Operating Committee discussed the fact that the Human Resources Department is delegated rulemaking authority in the proposed amendments to the Law because it is the Human Resources Department that is the experts and authority on employment practices in the Nation. The Legislative Operating Committee believes that all areas – and therefore all General Managers of the Nation – should have input on employment practices to provide insight into what

each specific area of the Nation may need, but that the public comment process provided in the Administrative Rulemaking law provides that opportunity to provide input. The Legislative Operating Committee then had discussion on whether employment policies of the Nation should apply across the board to all areas, or if in the future it may be necessary that the enterprises have different employment policies than the Nation's programs. Overall, the Legislative Operating Committee determined this issue needs further discussion and consideration with the Human Resources Department and all General Managers of the Nation.

Comment 47 – Complaint Procedure in Law:

SECTION V – EMPLOYEE RELATIONS

1. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

a. General

b. Types of Complaints

c. Complaint Procedures

1) Employee Disagreements

- a) An employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department.**
- b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the supervisor of the employee with the complaint.**
- c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.**
 - i. The supervisor's ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department.**
 - ii. The supervisor shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.**
 - 1. Meetings between the supervisor and employees may occur in person, through video conferencing, or over the telephone.**
 - 2. The supervisor shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the supervisor shall move forward with the investigation based on the information they have.**
 - iii. If the supervisor cannot complete the investigation within the ten (10) working day timeframe, the supervisor may request a one (1) time five (5) working day extension from the EEO Department.**
 - iv. When the supervisor's investigation is complete, the supervisor shall contact the EEO Officer to mutually determine an appropriate resolution.**
 - 1. If the supervisor cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the supervisor shall provide written justification for non-agreement on the resolution to both the Area Manager and the Human Resources Executive Director.**

- v. The supervisor shall send the final resolution to their Area Manager to ensure accountability.
 - vi. The supervisor shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.
- d) If the supervisor fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the Area Manager.
- i. The notice shall notify the Area Manager that the complaint was not addressed within the allotted ten (10) working days.
 - ii. The notice shall inform the Area Manager that the supervisor violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.
 - iii. The notice shall address the appropriate accountability of the supervisor.
 - 1. If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.
 - iv. The notice shall direct the Area Manager to complete the complaint investigation within ten (10) working days of receiving the notice from EEO.
- e) If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.
- i. Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.
 - ii. The Area Manager shall have ten (10) working days to complete their investigation.
 - iii. The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.
 - iv. The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - 1. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.
 - 2. The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.
 - v. When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.

1. **If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.**
- vi. **The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.**
- vii. **The Area Manager's resolution shall be final.**
- f) **If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.**
 - i. **The notice shall notify the General Manager level position that the complaint was not addressed within the additional ten (10) working days.**
 - ii. **The notice shall inform the General Manager level position that the Area Manager violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.**
 - iii. **The notice shall address the appropriate accountability of the Area Manager.**
 - iv. **The notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.**
1. **Investigation Procedure for all General Manager Level Positions, not the Oneida Business Committee**
 - a. **The General Manager level position shall complete the investigation and reach a resolution within ten (10) working days of receiving the notice from EEO.**
 - b. **The General Manager level position's ten (10) working day timeframe begins the day after the General Manager level position receives the complaint from the EEO Department.**
 - c. **The General Manager level position shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.**
 - i. **Meetings between the General Manager level position and the employees may occur in person, through video conferencing, or by telephone.**
 - ii. **The General Manager level position shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the General Manager level position shall move**

forward with the investigation based on the information they have.

- d. When the General Manager level position's investigation is complete, the General Manager level position shall contact the EEO Officer to mutually determine an appropriate resolution.
 - i. If the General Manager level position cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the General Manager level position shall provide written justification for non-agreement on the resolution to the Human Resources Executive Director.
 - e. The final resolution shall be sent to the EEO Department for filing and reporting purposes.
 - f. The General Manager level position's resolution of the complaint shall be final.
 2. Investigation Procedure for the Oneida Business Committee
 - a. When the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.
- 2) EEO Violations
- a) An employee may file a EEO Violation complaint with the EEO Department.
 - b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
 - c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
 - d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
 - e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an EEO Violation complaint.
 - g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
 - h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
 - i) The EEO Officer's resolution shall be final.
- 3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
 - b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
 - c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
 - d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
 - e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.
 - g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
 - h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
 - i) The EEO Officer's resolution shall be final.
 - j) If the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.
- d. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.

Melanie Burkhart (oral): Yes, thank you. I just have a, a comment on the complaint area. I disagree with having the complaint process included in the law, because then that ties our hands in terms of needing to be able to update a process because it's part of a law. So, I don't think that should be included in the law. Thank you.

Response

The commenter provides that she disagrees with including the complaint procedure in the Law because it results in a lack of flexibility in updating the complaint procedures to meet the needs of the Nation, since any changes to the Law would have to follow the legislative process.

The Legislative Operating Committee has to weigh what procedures and processes should be included in the Law and what procedures and processes should be provided for in other manners such as administrative rules or standard operating procedures.

The Legislative Operating Committee may consider whether the complaint procedures should remain included in the Law, or be delegated to be provided in a different manner. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section V.A.1.c. of the Law should remain as currently drafted, and the complaint procedures should be included in the Law itself.
2. Section V.A.1.c of the Law should be revised to remove the complaint procedure from the Law itself and instead delegate authority for the complaint procedure to be provided for through an administrative rule. If the Legislative Operating Committee makes this determination, then the following revision is recommended:

SECTION V – EMPLOYEE RELATIONS

A. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

i. The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding complaint procedures.

Note: All other complaint procedure language would be removed from the Law.

LOC Consideration

The Legislative Operating Committee determined that section V.A.1.c of the Law should be revised to remove the complaint procedure from the Law itself and instead delegate authority for the complaint procedure to be provided for through an administrative rule.

Comment 48 – Approval of a Leave of Absence:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

3. Leave of Absence (Work Standard, 6-10-14)

a. A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the Nation.

1) Leaves of absence will not exceed three (3) months.

i. All leaves of absence shall be approved by the Supervisor.

ii. Requests shall be documented and submitted to the supervisor with as much advance notice as possible.

iii. Disposition of requests will be made on the basis of staffing requirements.

2) Upon returning, the employee will be reinstated in the former position with full status and benefits. Holiday, vacation, and sick leave will not be accrued during the leave of absence.

3) No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her

intent to return to the position. Notice must be presented to the supervisor.

i. Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process.

Lisa Rauschenbach (written): Leave of Absence should also include the Area Manager. There should be more than just a Supervisor approval to ensure areas are covered.

Response

The commenter provides that approval of a leave of absence should include the approval of the Area Manager and not just a supervisor.

The proposed amendments to section IV.D.3. provides that all leaves of absence shall be approved by the supervisor. Currently, the Law requires that a leave of absence be approved by the Supervisor, Area Manager, HRD Manager and General Manager. The level of approval needed for a leave of absence was reduced to alleviate the administrative burden of obtaining approval from four (4) individuals and simplify the process.

The Legislative Operating Committee may consider whether a leave of absence should require approval beyond just the supervisor. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.D.3. of the Law should remain as currently drafted, and all leaves of absence shall be approved by the Supervisor.
2. Section IV.D.3. of the Law should be revised to require that the Area Manager, in addition to the supervisor, approve a leave of absence. If the Legislative Operating Committee makes this determination, then the following revision is recommended:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

3. Leave of Absence (Work Standard, 6-10-14)
 - a. A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the Nation.
 - 1) Leaves of absence will not exceed three (3) months.
 - i. All leaves of absence shall be approved by the Supervisor and Area Manager.
 - ii. Requests shall be documented and submitted to the supervisor with as much advance notice as possible.
 - iii. Disposition of requests will be made on the basis of staffing requirements.
 - 2) Upon returning, the employee will be reinstated in the former position with full status and benefits. Holiday, vacation, and sick leave will not be accrued during the leave of absence.

- 3) No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.
 - i. Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process.

LOC Consideration

The Legislative Operating Committee determined that section IV.D.3. of the Law should be revised to require that the Area Manager, in addition to the supervisor, approve a leave of absence.

Comment 49 – Intent to Return to Work:

SECTION IV - COMPENSATION AND BENEFITS

D. LEAVES

3. **Leave of Absence (Work Standard, 6-10-14)**
 - a. **A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the Nation.**
 - 1) **Leaves of absence will not exceed three (3) months.**
 - i. **All leaves of absence shall be approved by the Supervisor.**
 - ii. **Requests shall be documented and submitted to the supervisor with as much advance notice as possible.**
 - iii. **Disposition of requests will be made on the basis of staffing requirements.**
 - 2) **Upon returning, the employee will be reinstated in the former position with full status and benefits. Holiday, vacation, and sick leave will not be accrued during the leave of absence.**
 - 3) **No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.**
 - i. **Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process.**

Shannon Stone (written): Leave of Absence: Line 751 requires 15 working days prior written notice of intent to return to work by the employee. There is an interpretation that says one day notice is required for LOAs shorter than 15 working days. Overall, the 15-day requirement seems out of date, particularly when the employee and supervisor should maintain communications through the period of leave. One day notice should be sufficient and earlier notice would be courteous.

The other thought is what constitutes notice of intent to return? If an employee provides a return-to-work letter from a doctor with a date to return is that intent to return?

Response

The commenter provides that the requirement that no later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position may be outdated and too long, and instead one (1) day notice should be sufficient. The commenter additionally asks for clarification on what constitutes a notice of intent to return.

Section IV.D.3.a.3. of the Law provides that no later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his or her intent to return to the position. The notice must be presented to the supervisor, and failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process.

A fifteen (15) day notice period for an employee's intent to return to their position after a leave of absence may be included to ensure that there is adequate time for a department and supervisor to plan and prepare for an employee's return. The Legislative Operating Committee may consider whether the fifteen (15) day notice requirement should be shortened. The Legislative Operating Committee may make one of the following considerations in regard to this comment:

1. Section IV.D.3.a.3 of the Law should remain as currently drafted, and the requirement that no later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his or her intent to return to the position should remain in the Law.
2. Section IV.D.3.a.3 of the Law should be revised to shorten the amount of working days prior to the expiration of the leave period the employee must give notice in writing of his or her intent to return to the position. If the Legislative Operating Committee makes this determination, then the following revision is recommended:
 - 3) No later than ~~fifteen (15)~~ X working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.
 - i. Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process.

The Legislative Operating Committee should also consider whether the Law should address the amount of notice that is required for an employee to provide written notice of their intent to return to work after a leave of absence if the leave of absence is less than fifteen (15) days in length. If the Legislative Operating Committee determines the Law should address leave of absences less than fifteen (15) days in length, then the following revision is recommended:

- 3) For a leave of absence longer fifteen (15) days or longer, no later than ~~fifteen (15)~~ X working days prior to the expiration of the leave period the employee ~~shall~~ must give notice in writing of his/her intent to

return to the position. For a leave of absence less than fifteen (15) days, no later than X working days prior to the expiration of the leave period the employee shall give notice in writing of their intent to return to the position. Notice ~~shall~~ ~~must~~ be presented to the supervisor.

- i. Failure to provide written notice ~~shall~~ ~~will~~ be interpreted to mean that the employee does not intend to return following the leave. The position ~~shall~~ ~~will~~ be posted and filled through the selection process.

The Legislative Operating Committee may also consider whether the Law needs additional clarification as to what constitutes written notice.

LOC Consideration

The Legislative Operating Committee determined that this topic needs further discussion and consideration to find a balance between ensuring enough notification is provided to the supervisor regarding when to expect an employee to return, while also eliminating any undue burden to the employee. The Legislative Operating Committee also determined that "written notice" needs to be defined in the Law.

Comments 50 through 89 – Authority of the Supervisor and the EEO Department:

Lisa Rauschenbach (written): The Complaint process is taking the majority of the authority away from the Supervisor and giving it to the EEO Officers.

- EEO department currently only has two employees. They are difficult to get ahold of currently.
- The EEO Officers don't know the day to day operations in departments nor the personalities of employees. This is what the Supervisor is for. The majority of a Supervisor's job is to manage employees.
- The EEO Officer will also have the ability to discipline employees with the approval process going to the HRD Executive Director.
- The EEO Officer will have 10 days to investigate a complaint, allowing interviews of all necessary staff. This is a potential disruption thru a department.
- In the EEO Officer investigation they notify the Supervisor and at the end they meet with the Human Resources Executive Director to determine the final resolution and the EEO Officer's resolution is final.

Ultimately, this is taking the authority away from the Supervisors, crippling them within their departments and giving all authority to HRD department. It opens the door for individuals to make accusations against co-workers with no documentation, proof/evidence. It provides the ability to disrupt departments for investigations and too much room for abuse of power.

If there is an issue with toxic work environments then the managers/directors should be held accountable to make the work conditions better and safe for all their staff. The disciplinary process should remain the same.

The Blue book is written for employees and supervisors and not EEO. EEO should remain a neutral entity at all times. The Personnel Policies book should be written for supervisors.

Instead of taking away managers and supervisors authority, why not build them up? These changes affect the authority that supervisors/managers have and give it directly to HRD and the EEO officers.

EEO/HRD should never have the authority to discipline outside of their department.

These amendments sound like EEO is frustrated with poor management and has decided to take away the managers ability to manage. These amendments sound like they would create more chaos within an area than help it.

Supervisors know their frontline staff intimately and are better equipped to handle complaints and disciplines. How will an EEO know an employee and their work habits, ethics etc when investigating a complaint?

The EEO should never be responsible party for issuing a discipline.

Kelly Skenandore-Holtz (oral): Good Afternoon, Kelly Skenandore-Holtz. I have some comments and questions about the section where EEO will be initiating disciplinary action in lieu of the supervisors in an EEO issue or illegal activity, I believe is the verbiage. My question is, what research has been done regarding the implications of this decision? Umm, in the operations of the organization. What other alternatives have been explored versus EEO issuing the disciplines?

And then a comment that, there is, it feels as though there is a lot of support for leadership development in this organization and this process eliminates umm, the need for leadership development. It eliminates the ability for supervisors to take the action. It also eliminates supervisors' authority. And is there a set process of how if EEO is issuing disciplinaries, what it will be the process as to how they determine what level of disciplinary action will take place and then what will be the appeal process, if anything, for supervisors that don't agree with the level of discipline that has been issued.

Tina Jorgensen (oral): I was going to submit written comments in addition, but I think I'd like to also reiterate what Kelly had said about the complaint process. I disagree with changing the complaint process and putting it in the hands of fully of the EEO Department. It appears in reading through those flow charts and through the proposed amendments that there is, this is being put in, and this is my opinion, that it's being put in place because there's a distrust in the supervisors actually doing their duties and responsibilities with the complaint process and holding employees accountable. And we have in the past, several times, put things in place because of distrust. And I think instead there should be more efforts to educate supervisors, maybe require more leadership development. And educate on the process and the responsibilities. And then also for area managers to hold those in, those supervisors or managers accountable instead of putting this in the hands of a different department.

Louise Cornelius (oral): : I just wanted to add my comments to Kelly Skenandore-Holtz on the umm, on the EEO process on the disciplinary action, I don't agree with them issuing the disciplinary action. I think again, I concur with her, and it eliminates the supervisor's authority. They're not familiar with what exactly is going on when those type of things are required, but I do, umm I do know that they do consult with them before issuing any type of disciplinary action with our employees. So, I think that works fine as it is, not to give them that authority. Thank you.

Matthew W. Denny (written): In regards to the OPP Amendments...I am against the proposed amendment that allows the EEO office to investigate and issue disciplinary action. For whatever reason!

As it was explained by Matt J Denny, EEO Director, that the purpose of this amendment is because supervisors do not do or know how to do disciplinary action when it comes to EEO violations and/or Illegal activities.

This is a problem with the training of the supervisor and/or Area Manager. The problem is not solved by taking this duty away from the supervisor, and giving it to another entity who does not discipline. The problem gets fixed by training the supervisor, and holding them accountable when they do not perform their duties correctly, just like any other employee. This seems to be the real issue to the problem.

The EEO office has been designated as an impartial entity in regards to disciplinary actions. They currently have authority to void disciplinary actions that have clear procedural errors. This office looks out for employees of the Nation, and the Nation, not just the Nation. Giving them authority to discipline employee takes away their impartial status in the disciplinary procedure, and makes them a tool of the Nation only. The proposal also talks about who hears appeals of EEO initiated disciplines, which is different then any other procedure. This causes confusion and is unnecessary.

By having a properly trained Supervisors and Area Managers, this issue, large or small, will be fixed. Giving another entity who is not the employee's supervisor, disciplinary authority, is NOT the answer, and opens doors that should not be opened. Ignorance and laziness of Supervisors and Area Managers must be addressed by HRD and the OBC with training. Proposed solution: Make this issue an requirement for Supervisors/Area Managers before they can discipline, just like Interview Training is required before Hiring. Make EEO do the training. Good Day.

Jackie Smith (written): 3. Reconsider the power and authority of the EEO department in managing complaints

- a. It is not recommended that HRD EEO has the ability to determine the outcome of an employee in a complaint investigation without input and possibly appeal rights of the supervisor.
- b. HRD as an overall program hasn't been held accountable to deliver on current HRD laws, it is uncertain how this lack of oversight and accountability will be managed in the future.

Lisa Duff on behalf of Gaming Senior Management (written): Complaints, Disciplinary Actions and Grievance Processes
Personnel Policies and Procedures Amendments

Section V- Employee Relations

Line 704-707: In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives and handle grievances.

Blue book is written for employees and supervisors, not EEO. EEO should not have authority to take disciplinary action on an employee. EEO is HRD who should remain a neutral entity at all times.

Lisa Duff on behalf of Gaming Senior Management (written): EEO Violations: Agree that EEO violations should be investigated by EEO but they should not have the authority to discipline. HRD needs to remain neutral and not be involved in disciplining an employee they do not supervise. EEO should continue to submit their recommendation to the immediate supervisor of the employee after they have completed their investigation. HR's job is to support the nations employees, supervisors, managers etc., not to dictate how they operate or take over their job responsibilities. EEO must ensure that the supervisor is taking proper corrective measures and advise the decision makers on processes and points of law as well as informing them how historical cases have been treated, to ensure consistency. EEO should not be disciplining an employee they do not supervise.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1069-1070: The supervisor or EEO Officer shall fill out a disciplinary action form within five (5) working days or either:

Remove “or EEO Officer” from this process. This should not be within their authority to discipline employees they do not supervise. The current disciplinary procedure first states “Supervisor becomes aware of unsatisfactory work performance or violation. Supervisor investigates through a meeting with the employee(s) and determines whether disciplinary action is warranted” This is one of the most important steps in the procedure. It clearer written the current way than what is written in the new process lines 1071 -1074.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1071-1074: the resolution of a complaint from which it has been determined that disciplinary action is warranted, or the determination that disciplinary action is warranted based on the unsatisfactory work performance of an employee.

Line 1075: The supervisor or EEO Officer shall fill out the disciplinary action form...

Remove “or EEO Officer” as this should not be within their authority as they are not the immediate supervisor of the employee.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1082-1084: The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.

Remove “or EEO Officer” as this should not be within EEO authority, as they need to remain a neutral entity.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1085-1086: The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.

Remove “or EEO Officer” as they should not be disciplining employees they do not supervise.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1087: During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee...

Remove “or EEO Officer” should not have authority to discipline employees they do not supervise as HR needs to remain a neutral entity.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1095-1096: “or EEO Officer” is mentioned twice and should be removed from the procedure as it is not within the EEO Officers authority issue disciplinary action against an employee they do not supervise.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1099: the supervisor or EEO Officer shall provide copies of the signed disciplinary action...

Remove “or EEO Officer” as it should not be within EEO’s authority to issue disciplinary action to employees they do not supervise. EEO needs to remain a neutral entity.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1132-1133: The Human Resources Executive Director, or designee, may void a disciplinary action taken by an EEO Officer for clear procedural errors.

Remove these lines as EEO Officers should not have authority to issue disciplinary actions against employees they do not supervise.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1134-1135: Notification of a voided disciplinary action shall be sent to the supervisor or EEO Officer and the employee which identifies the procedural error.

Remove “or EEO Officer” as they should not have authority to issue disciplinary action to employees they do not immediately supervise. Only the immediate supervisor has authority to take action against an employee.

Lisa Duff on behalf of Gaming Senior Management (written): Complaint Procedures
Line 784-788: If the supervisor cannot come to mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the supervisor shall provide written justification for non-agreement on the resolution to both the Area Manager and the Human Resources Executive Director.

Why? What is the purpose of this? The process is long enough without adding another step. It is the discretion of the supervisor as to what they are going to do, not EEO.

Lisa Duff on behalf of Gaming Senior Management (written): Line 789-790: The supervisor shall send the final resolution to their Area Manager to ensure accountability.

What does this mean, to ensure accountability??? What is area manager supposed to do about it? Again, it is the discretion of the supervisor.

Lisa Duff on behalf of Gaming Senior Management (written): Line 802: The notice shall address the appropriate accountability of the supervisor.

What does this mean? Line 799-801 already states the notice shall inform the area manager that the supervisor violated the complaint process by being negligent and failed to properly investigate a complaint, so what does line 802 mean? This line doesn't seem necessary.

Lisa Duff on behalf of Gaming Senior Management (written): Line 803-808: If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

So, it's up to EEO to determine if an Area Manager fails to take appropriate action to address the supervisor? So, if EEO don't like or agree with what the Area Manager did, this goes to the General Manager? This is too much authority for EEO. First off, in gaming there are many levels of management and the General Manager may not be the appropriate person in the chain of command. Only an immediate supervisor can take corrective action with an employee and in most cases the Gaming General Manager is not the immediate supervisor of an area manager. Secondly, why are there so many levels now in the complaint process? This is way too much. The Gaming General Manager doesn't need to be involved in, nor do they have the time for front line complaints that EEO is not satisfied with how they were handled all the way up the chain of command. Does the Business Committee really want to be involved in employee complaints that EEO is not satisfied with how they were handled? The current blue book has four (4) sentences on how to handle a complaint. This new complaint process is now five (5) pages. This is way too much. Why is it so long?

Lisa Duff on behalf of Gaming Senior Management (written): Line 833-837: If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.

Why? What is the purpose of this, it's just another step that is unnecessary? It's up to the Area Manager what they are going to do, it's not up to EEO. And what if this step doesn't happen, what does this change?

Lisa Duff on behalf of Gaming Senior Management (written): Line 842-846: If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

This is now the third (3rd) step in the complaint process. Why is it necessary to have so many levels involved? The General Manager may not be the supervisor of the Area Manager in gaming as there are many levels in the chain of command so why is going to the General Manager? The GM cannot take action on an Area Manager they do not supervise. The process is too long. Should the Oneida Business Committee really be involved in day-to-day complaints that employees file, that EEO is not satisfied with how they were handled? The current complaint process is short and sweet, easy to follow, this recommended process is too lengthy and has too many levels of management involved.

Lisa Duff on behalf of Gaming Senior Management (written): Line 854-855: The notice shall address the appropriate accountability of the Area Manager.

It's not clear as to what this means as prior to this step, the EEO sends a notice to the General Manager informing them the Area Manager violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint. Seems another unnecessary step.

Lisa Duff on behalf of Gaming Senior Management (written): Line 905-906: Know the EEO Officer shall be responsible for implementing the final resolution;

EEO Officer should not be responsible for implementing the final resolution, they should send their recommendation to the immediate supervisor of the employee to implement.

Lisa Duff on behalf of Gaming Senior Management (written): Line 928-929: Know the EEO Officer shall be responsible for implementing the final resolution; and;

EEO should not be responsible for implementing the final resolution (discipline) they should be sending their recommendation to the immediate supervisor of the employee. EEO should not have discipline authority of employees they do not supervise.

Lisa Duff on behalf of Gaming Senior Management (written): Discipline Line 952-953: Disciplinary actions shall be initiated by an EEO Officer as the resolution of an EEO Violation complaint or an illegal activities complaint investigation.

Remove this sentence. Disciplinary procedures should only be initiated by the immediate supervisor. EEO keeps record of disciplinary actions on file, they should not be issuing them and tracking their own disciplines. EEO needs to remain neutral. I agree EEO can investigate these complaints but send their recommendation to the immediate supervisor to address. Giving EEO Officers the ability to discipline employees they do not supervise is too much authority, as that is the job of the immediate supervisor, not EEO.

Lisa Duff on behalf of Gaming Senior Management (written): Disciplinary Procedure Line 1067-1068: The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

Remove “or EEO Officer” as they should not have authority to discipline employee’s they do not supervise.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1111-1113: If the EEO Office is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension.

Remove these lines as EEO should not be disciplining employees they do not supervisor. It is not within their authority.

If allowed, what is the process if they don’t agree to the length of suspension? It should be the same as managements process.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1123-1125: If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action.

Remove these lines as the EEO Officers should not have the authority to issue disciplinary action to employees they do not supervise. EEO Officers at HR need to remain neutral, not go against employees.

If allowed, what is the process if they don’t mutually agree to the termination? It should be the same process as managements.

Mark Powless (written):

1167 2) A supervisor Disciplinary actions shall be initiated by an EEO Officer as the
1168 resolution of an EEO Violation complaint or an Illegal Activities complaint
1169 investigation.

- Moving disciplinary actions out of the hands of supervisors and into the hands of EEO Officer will create a difficult dynamic in departments. Some of the reasons include:
 - o If a supervisor witnesses or receives a report of an employee contributing to a hostile workplace or bullying, will the supervisor be able to take immediate action in the workplace? Must the issue be reported to the EEO office and work its way through the process before being addressed? If so, the result is the inability to address workplace issues in a timely manner.
 - o This change will send a message that either supervisors are deemed incompetent or not trusted to address workplace issues. The result is decreased morale.

- o The EEO officers do not understand the dynamics of departments and the backgrounds of workplace relationships. They do not have the depth of understanding that supervisors have to address issues.
- o Some supervisors address matters more effectively through coaching and mentoring or through mediation. This revised process ignores and stifles those strengths in supervisors.
- o There is the potential that different employees under the same supervisor will be treated differently for the same violation if their matter is addressed by different EEO Officers, leading to inconsistent corrective actions.

Tina Jorgensen (written): Section V – Employee Relations

- Complaints – Employee disagreements should NOT be submitted to EEO department as this removes the responsibility of the Supervisor. I can agree that the complaint is CC'd to EEO but not filed with EEO. This appears to be recommended to implement due to a lack of trust and that Supervisors are not doing their job. I don't believe a process like this should be implemented for that reason. We should train Supervisors and work with Area Managers to hold those Supervisors accountable instead of taking away their ability to do their job and give it to someone else.

Tina Jorgensen (written): Again, I do not agree with the EEO department having the ability to discipline. This takes away from the role of the Supervisor.

Vanessa Miller (written): Further, I share concern that during the process of EEO investigations of EEO policy violations, efforts in coaching and mentoring being made by the supervisor may be lost when a separate department is potentially issuing disciplinary action. While I recognize that discretion will still certainly be key while EEO performs their investigation, supervisor efforts and up close understanding of situations, cultural climate, personalities, environmental climate, etc. is necessary if the goal is changed behavior and changed work performance.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Establishing the Nation's Workplace Culture

A workplace culture is the shared values, belief systems, attitudes and the set of assumptions that people in a workplace share. Dr. Pragya Agarwal, How To Create A Positive Workplace Culture, Forbes (August 29, 2018). A positive workplace culture values, supports and nurtures all the organization's employees. Id. The importance of carefully crafting a positive workplace culture is increasingly a topic among human resources professionals who note, "[a]ll leaders have a responsibility to be intentional and systematic about designing the culture they want, rather than settling for the culture that is created by chance." Starner, Tom, 6 Policies to Help HR be More Strategic About Culture, Human Resources Executive (September 9, 2021). Additionally, experts have noted, "[t]he new remote and hybrid work environments have not only made culture more important than ever, but they've forced leaders to rethink their strategy for building culture." Id.

The Oneida Personnel Policies and Procedures is the primary document responsible for setting the Nation's workplace culture – it defines the Nation's employment goals and sets human resources standards for the Nation. A serious concern related to the proposed amendments to the OPPP is the overall tone of the document and how that tone may have a negative impact on the workplace culture. The underlying tone of this document communicates that the Nation's supervisors cannot

be trusted, that supervisors' experiences are not valued and that the OPPP and HRD are needed to protect "employees." This is most glaring in the Complaints, Disciplinary Actions, and Grievances section. For example, the introductory paragraph reads:

Disciplinary procedures provide a systematic process for handling problem employees and correcting unacceptable behavior. Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives and handles grievances.

There are a couple important things to note about this section. First, when compared to the current OPPP, the reference to also serving to protect the Nation has been removed. Second, the line about protecting employees from inconsistent and unfair treatment really stands out. When put together, it takes the section out of balance. By reading in between the lines, the organization would be sending the message that corrective actions are for "problem employees" and that, if left to their own devices, supervisors would treat their employees inconsistently and unfairly. A much simpler drafting of the policy, without reference to "problem employees" or to the need to protect employees from supervisors would foster a much more positive workplace culture. For example: Disciplinary procedures provide a systematic process for correcting unacceptable employment behavior/performance. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense.

This tone is carried throughout proposed Section V.D., to the extent that all these actions funnel through the Equal Employment Officer and route disciplines for any EEO and/or illegal activities violations exclusively through the EEO Department. The breadth of illegal activities is wide and often implicated when terminating an employee for reasons other than progressive discipline. There is a question as to the capacity of the EEO Department to perform these investigations for the Nation's entire employment body even if only considering time and resources. But it is also an issue of subject matter expertise. While the EEO has the subject matter expertise in human resources policies, the supervisors have critical subject matter expertise that cannot be removed from the process without sacrificing the integrity of the investigation. For example, supervisors are the subject matter experts related to the interactions between the employees involved, the employment standards and expectations for the positions involved, and most importantly, the day-to-day operations of their department, including any operating systems for access to documents. Removing supervisors from investigations does not serve the employees' or the Nation's best interests.

The proposed OPPP amendments fall short of building a positive workplace culture that values, supports and nurtures all the organization's employees when the policy does not value, support and nurture the Nation's management team. I strongly encourage the drafting team to consider workplace culture when setting the tone of the amended-OPPP. I encourage the Nation to consider whether its HRD should be a processor of human resources documents and policies (similar to most HRDs) or whether the Nation's HRD will have decision making authorities on behalf of the Nation (which is very uncommon). It would be helpful to spend some time identifying an overall policy and goal of the Nation in terms of employment and to keep that at the forefront in each section of the document rather than trying to identify the policy and goals section by section –

which create internal conflict within the document and creates confusion as to the Nation's employment intentions.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Another concern is the proposed Amendments would require the EEO Officers to investigate the functions, records, systems, and policies of a department that the EEO likely has no experience in. Such investigations are currently delegated to supervisors who understand and work directly in their departments. Supervisors may request assistance from professional investigators in Oneida Internal Security. An EEO Officer's unfamiliarity with the subject matter and processes can increase the time, effort, and resources needed for an investigation. It will also likely affect the ability of law enforcement to conduct an effective investigation, if needed. It is not clear why this responsibility has been removed from the supervisors.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.2., Discipline
The current OPPP provide a process for direct supervisors to discipline their employees for infractions enumerated within the Law. See OPPP V.D.2. Under current law, if anyone other than an immediate supervisor uncovers information or performs an investigation that reveals a basis for possible discipline, the matter is referred to the direct supervisor to perform the discipline. (See e.g. Investigative Leave, 2 O.C. 208.7-3; and OPPP §V.D.5)a)1.c., Sexual Harassment Policy). Throughout the investigation and disciplinary process in place at this time, supervisors are given discretion to determine how an investigation is conducted, whether a discipline is justified, and the severity of the discipline. Oneida Courts have affirmed supervisor discretion, holding, for example, that a supervisor has discretion to not terminate an employee who accumulates three disciplinary notices, even though such termination is provided for in the OPPP. (Moore v. Skenandore, 15-AC-011, p. 4 (November 10, 2015)) (See also Oneida Bingo & Casino, Table Games Dept. v. Hoffman, 09-AC-007, p. 9 (Aug. 19, 2009)) ("It is the discretion of the supervisor to determine if a discipline is warranted and if so the severity of the discipline. . . . Having found that Ms. Hoffman did not adhere to the attendance and punctuality rules, it is the supervisor that should be permitted and has the authority in deciding what if any consequences should be applied to their employee's work performance.")

Current law also places certain constraints on the supervisor's discretion, specifically: (1) any deviation from progressive discipline must be justified (OPPP V.D.2.b.)¹⁶; (2) five-day timeline to issue discipline after supervisor concludes the investigation (OPPP V.D.5.b.); (3) in the event of a suspension or termination, supervisor must consult with an EEO Officer to mutually determine the discipline (OPPP V.D.5.f.1)).¹⁷ In addition to the constraints imposed by the OPPP, supervisors' disciplinary decisions are regularly reviewed by area managers and the Courts. It is not clear why the proposed amendments reach even further in constraining supervisor and area manager discretion.

Unlike the current OPPP, the proposed amendments would establish a disciplinary process that may be initiated by either the direct supervisor or the EEO Officer

- 2. Discipline
 - a. Initiation of Disciplinary Action.

- 1) Disciplinary actions shall be initiated by an immediate supervisor for the purpose of correcting unsatisfactory work performance or as the resolution of an Employee Disagreement complaint investigation.
- 2) Disciplinary actions shall be initiated by an EEO Officer as the resolution of an EEO Violation complaint or an Illegal Activities complaint investigation. (OPPP amendments, Draft 1, lines 947-953).

The proposed amendments permit discipline by either an employee’s direct supervisor or an EEO Officer, depending on the basis for the discipline. In situations where a supervisor “fails to investigate and resolve [an Employee Disagreement] complaint,” the EEO will direct the Area Manager or, ultimately, the General Manager to “resolve the complaint.” (OPPP amendments, Draft 1, lines 794-6 and 856-8). Where supervisor discretion and supervisor-initiated disciplines have had long standing in the OPPP and are supported by the Courts, it is not clear what philosophy has led to such a change in the proposed amendments.

¹⁶ Justification of deviation from progressive discipline is typically included in the written summary that accompanies the Disciplinary Action Form. The justification may then be reviewed by the area manager, in the event the employee appeals.

¹⁷ OPPP V.D.5.f.1) requires the supervisor to mutually determine suspensions and terminations with the HRD Manager. In practice, this function has been delegated to the EEO Officers.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

- iii. If the supervisor cannot complete the investigation within the ten (10) working day timeframe, the supervisor may request a one (1) time five (5) working day extension from the EEO Department.
- iv. When the supervisor’s investigation is complete, the supervisor shall contact the EEO Officer to mutually determine an appropriate resolution.
 1. If the supervisor cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the supervisor shall provide written justification for non-agreement on the resolution to both the Area Manager and the Human Resources Executive Director.
- v. The supervisor shall send the final resolution to their Area Manager to ensure accountability.
- vi. The supervisor shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.

Sections V.D.1.c.1)c)iii. - vi. of the proposed amendments create additional burdens for supervisors when resolving Employee Disagreement Complaints. The current OPPP gives the supervisor discretion to “attempt to resolve the disagreement” and, if the resolution is not satisfactory to the complaining employee, allows the employee to appeal one time to the area manager. (current OPPP V.D.1.b. and c. (See excerpt at p. 4, above)). Under the amended process, a supervisor – and an area manager and the General Manager – is no longer trusted to resolve complaints that are based on an employee’s frustration or misunderstanding with another employee. (OPPP amendments, Draft 1, lines 726-7) The supervisor, area manager, and General Manager would be required to consult with the EEO to resolve an employee’s frustration or to properly address an employee’s misunderstanding.¹² It is unclear what has prompted this wholesale

removal of discretion from supervisors, area managers, and General Managers. The foundation for and philosophy behind this change is not explained in the proposed amendments.

¹² And, it is important to note at this point, if the supervisor, area manager, or General Manager does not follow this process, they may be disciplined.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

e) If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.

i. Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.

ii. The Area Manager shall have ten (10) working days to complete their investigation.

iii. The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department. iv. The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

1. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.

2. The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.

v. When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.

1. If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.

vi. The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department 840 for filing and reporting purposes.

vii. The Area Manager's resolution shall be final.

f) If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

i. The notice shall notify the General Manager level position that the complaint was not addressed within the additional ten (10) working days. ii. The notice shall inform the General Manager level position that the Area Manager violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.

iii. The notice shall address the appropriate accountability of the Area Manager.

iv. The notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.

1. Investigation Procedure for all General Manager Level Positions, not the Oneida Business Committee

a. The General Manager level position shall complete the investigation and reach a resolution within ten (10) working days of receiving the notice from EEO.

b. The General Manager level position's ten (10) working day timeframe begins the day after the General Manager level position receives the complaint from the EEO Department.

c. The General Manager level position shall meet with the employee 868 filing the complaint as well as all other parties mentioned in the complaint.

i. Meetings between the General Manager level position and the employees may occur in person, through video conferencing, or by telephone.

ii. The General Manager level position shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the General Manager level position shall move forward with the investigation based on the information they have.

d. When the General Manager level position's investigation is complete, the General Manager level position shall contact the EEO Officer to mutually determine an appropriate resolution.

i. If the General Manager level position cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the General Manager level position shall provide written justification for non-agreement on the resolution to the Human Resources Executive Director.

e. The final resolution shall be sent to the EEO Department for filing and reporting purposes.

f. The General Manager level position's resolution of the complaint shall be final.

2. Investigation Procedure for the Oneida Business Committee

a. When the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.

The proposed amendments significantly and, perhaps, unnecessarily complicate the employee complaint process. An Employee Disagreement based on a problem, misunderstanding, or frustration may be elevated to the General Manager, which could be as many as five levels of supervision above the complaining employee. It is difficult to estimate how many additional complaints might require area managers' and General Managers' attention under the amended

process. Of course, it is not just the additional complaints that will become burdensome. The Complaint investigation and resolution process itself will bury supervisors, area managers, and General Managers. With present labor market conditions and a shortage of workers in most Oneida departments, supervisors and area managers are regularly covering work duties and filling vacancies. If supervisors are regularly faced with the choice between, on the one hand, being disciplined for an untimely response to a complaint or, on the other hand, an unattended cashier till, patients who cannot get in for required medical visits, lack of supervision in a Head Start classroom, or being unavailable for required testimony in Indian Child Welfare hearings, supervisors will simply choose to leave the Oneida organization and go elsewhere. Supervisors, including area managers and General Managers, are employees, too. They deserve trust and respect in the form of discretion to investigate and resolve employee complaints that are based on “frustration and misunderstandings.”

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Proposed Amendments Create Uncertainty and Conflict

The proposed amendments insert the HRD Director and EEO into the disciplinary process in a new way. The amendments delegate quasi-judicial²⁹ authority to the EEO, vesting broad discretion to the EEO. This delegation of authority is potentially problematic for several reasons.

First, the amendments contain vague and undefined language, thereby opening up EEO enforcement to subjective criteria. For example, the proposed EEO violation section indicates an “EEO violation occurs when an employee alleges they are being bullied, working in a hostile-working environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed.” Sec. V.D.I.2. As written, a mere allegation constitutes a violation. It is unknown if this presumption is intentional in the drafting. Aside from “sexual harassment,” the concepts (terms) of “being bullied,” “hostile-working environment,” “being discriminated against,” “being harassed,” “being intimidated,” and “being retaliated against” are undefined in the proposed amendments and process is lacking. Although there is no federal employment law against “bullying,”³⁰ some of the behaviors that may fall under such a label may generally fall under discrimination. Without highlighting the complexities of application of federal and state employment laws to tribal employers, those established laws have defined meanings and processes for topics such as discrimination, hostile-work environment, and retaliation. And, yet, no such definitions or processes have made their way into the proposed amendments.

Second, the proposed changes and delegation of quasi-judicial authority may implicate liability and premium concerns that are best explored with the Nation’s Risk Management Department. The Nation has vigorously defended its employees to both state and federal regulatory agencies when external discrimination complaints have been leveled against them and when external litigation occurs. In such instances, the legal defenses³¹ are generally known. With the proposed amendments, the EEO is tasked with making a legal determination that may have a legal effect on the Nation, both with the Nation’s court system and potentially with external regulatory agencies. It becomes more complex to defend against an employment or external discrimination complaint, for example, when a finding of wrongdoing (“violation”) has already occurred or has been predetermined. This issue also raises questions concerning policy coverage and individual liability

when there is a “violation” and external litigation occurs. A standard immunity defense in external courts requires, generally, that a tribal employee (supervisor, for example) be acting within their official capacity and scope of authority. A quasi-judicial final determination of a violation by the EEO in these instances may negate the “scope authority” argument and, additionally, policy coverage. See for example, *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476 (1985); *Landreman v. Martin*, 191 Wis. 2d 787, 530 N.W.2d 62 (Ct. App. 1995); *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269 (1991).

Third, the proposed amendments create at least four types of conflict: (1) conflict between the EEO’s responsibilities; (2) conflict between the EEO and supervisors; (3) conflict between employees and supervisors; and, (4) conflict between the EEO’s role and the Judiciary’s role.³² Currently, the EEOs position themselves as “neutrals” in the discipline process, primarily providing process guidance to supervisors while also providing similar process information to employees subject to discipline.³³ Under the proposed structure, the EEO would continue to offer supervisors guidance on the disciplinary process, but the EEO is also inserted into the process as an authority that metes out discipline. Under the proposed structure, the EEO would make a final determination (and seemingly discipline) on those newly categorized EEO violations against the same supervisors³⁴ the EEO office may be responsible to provide support to. The EEO may require a specific disciplinary outcome from supervisors continuing through the General Manager level.³⁵ The EEO will absolutely determine negligence occurred if the disciplinary timeline is not adhered to.³⁶ The EEO will be inserted the investigation of illegal activities.³⁷ And the EEO will void a disciplinary action for a “clear” procedural error. V.D.1. and 2. The EEO would no longer be a neutral. Even with this new quasi-judicial authority the EEO remains in a position where they are offering guidance to supervisors in the disciplinary process. This is a conflict of role that also has the real ability to create conflict between the EEO and the supervisors they are advising.³⁸

It is unclear what has necessitated some of the proposed amendments, including the new EEO violation section. Certainly, the proposed complaint section containing the new EEO violations of the law invites “complaints” from employees to file against other employees. It is not far reaching to presume that an employee subject to discipline may feel as if the discipline is an act of being “bullied” and may, in turn, file an EEO complaint. This scenario creates a conflict within the EEO role because it creates conflict between the EEO and the supervisor, as well as the EEO and the employee. Additionally, although the EEO has been a neutral witness concerning HRD-related processes and interpretations, insertion of the EEO into the quasi-judicial role may cause confusion at all levels, including the Judiciary, where it may be necessary to determine whether EEO is a witness or a party in employment litigation.

Last, in addition to lacking definition, the delegation of quasi-judicial authority to the EEO lacks process and potentially delegates unfettered authority. Not only are undefined but specified allegations deemed “violations” when they are alleged, but the law lacks a process that is specific enough to allow an accused employee to ask questions, present evidence or otherwise refute or address any allegations. Although the EEO is acting in a quasi-judicial capacity, the administrative process that tends to exist for quasi-judicial decisions is lacking.³⁹

It is not necessary, in fact it is a duplication of services, to push employee advocacy and/or quasi-judicial responsibilities onto the Equal Employment Officer. EEOs must know the Nation’s human

resources policies and must be able to inform employees regarding access to those policies. However, the EEO should not be providing employees interpretations of policies (unless it is a formal interpretation issued in writing by HRD as a whole) and should not be advising employees as to potential legal courses of action following a discipline aside from providing a referral to the GTC Legal Resource Office. That is because the Nation is already employing an entire office to do just this – the GTC Legal Resource Center is responsible for providing legal representation to Oneida Nation employees involved in the disciplinary process at no cost. It is the GTC Legal Resource Center that should provide interpretations of policy for employee’s use in their defense and guidance through the employment process.

²⁹ To describe an activity (as opposed to “ministerial”) is “quasi-judicial” is to say that the activity involves the exercise of discretion and judgment in the application of a rule to specific facts. The concept of quasi-judicial immunity is a common law concept that may also be codified in law. Although the contours of quasi-judicial immunity remain unsettled, quasi-judicial immunity extends beyond to traditional “judges” to those employees/ officials and members of adjudicatory bodies whose duties are functionally equivalent to those of a judge or prosecutor. The caselaw on quasi-judicial and quasi-judicial function (and immunity) is lengthy, but an example appears in *Wilson v. Ill. Dep’t of Financial and Professional Regulation*, 376 F. Supp.3d 849 (March 25, 2019); *Snyder v. Nolan*, 380 F.3d 279 (August 13, 2004). Even agencies, those with functions such as the FTC, have been determined to be quasi-judicial agencies. *Morrison v. Olson*, 487 U.S. 654, 687 (June 29, 1988).

³⁰ <https://www.stopbullying.gov/resources/laws/federal.gov>

³¹ By its own terms, Title VII does not apply to Indian tribes. 42. U.S.C. § 2000e(b); *Morton v. Mancari*, 417 U.S. 535 (June 17, 1974); www.eeoc.gov/laws/guidance/policy-statement-indian-preference-under-title-viiian Preference under Title VII | U.S. Equal Employment Opportunity Commission (eeoc.gov); www.eeoc.gov/laws/guidance/section-2-threshold-issues2 Threshold Issues | U.S. Equal Employment Opportunity Commission (eeoc.gov).

³² The EEO position predates the Judiciary, which was implemented into the Nation’s Constitution in 2017. The proposed amendments seem to be a step backwards by delegating quasi-judicial authority to the EEO—after the Nation has so carefully transferred quasi-judicial authority to the Judiciary where possible. For example BC Resolution 09-27-17-E. The General Tribal Council adopted the Judiciary at its January 7, 2013 meeting by resolution GTC-01-07-13-B. Broadly, the Judiciary was established to administer the law and ensure justice through the Oneida Nation’s own court system. Formalizing the court system reinforced Oneida Nation’s status as sovereign nation evidenced by the exercise of its inherent authority to make, execute, apply, and enforce its own laws, and to apply its own customs and traditions in matters affecting the Oneida people. In the spring of 2015, through the BIA’s Secretarial Election process, Oneida Nation’s membership voted to amend the Oneida Nation Constitution by adopting Article V, Judiciary. Although the GTC already approved the Judiciary, Article V constitutionally established the judiciary as a separate power, existing to exercise the judicial authority of the Oneida Nation. Although there was a challenge to the Secretarial Election, the election was upheld and Oneida’s constitution was amended. *Genskow v. Midwest Regional Dir.*, 62 IBIA 155 (02/11/2016). The General Tribal Council confirmed the results of the secretarial election, by adopting resolution GTC-03-19-17-A. This resolution confirmed the Oneida Judiciary in the Oneida Nation Constitution and made a broad authorization of judicial authority.

³³ Employees (regardless of Tribal status) subject to discipline also have access to the GTC Legal Resource Center for representation on employment matters. See Oneida General Tribal Council, 2nd Reconvened Special Meeting from Aug. 10, 2016, Meeting Minutes- Draft, p. 39 (November 14, 2016).

³⁴ As well as other employees.

³⁵ This creates questions of structure if the EEO is not in the chain of command or organizational chart. Additionally, while the EEO is required to know the employment process, the EEO may not be in the best position to understand the nuances of the facts and responsibilities of the position.

³⁶ Regardless or reason.

³⁷ It is unclear how the EEO is more suited to perform these investigations over a supervisor with immediate knowledge of the facts and operations of a department. While an “illegal activities” section of the law may be helpful for those supervisors performing complex employment investigations with criminal implications (for example: embezzlement, theft from an employer, misuse of federal funds, fraud, and computer crimes) by providing additional process guidance and potentially extended timeframes, it is not clear that the EEO is in the best position to do this. As drafted, it is also not clear if “illegal activities” are only those few violations listed. Still, the EEO would then replace the Supervisor and the EEO “neutral” role would be negated. This has potential to cause confusion, particularly at the Judicial level.

³⁸ And will potentially chill an already difficult disciplinary process.

³⁹ Although the Judiciary contains such process, such a process should be available when administrative quasi-judicial determinations are made.

Response

The commenters express concern with the delegation of authority to the EEO Department to investigate complaints in certain circumstances and issue disciplines as a result of those complaints. The commenters feel that this change to the Law is encroaching on the authority of supervisors, and that instead of delegating what traditionally has been the authority of supervisors to the EEO Department, more efforts should be made to train supervisors to handle these responsibilities themselves.

The proposed amendments to section V.D.1.b of the Law separate complaints into three (3) categories: Employee Disagreements, EEO violations, and Illegal Activities. Supervisors are responsible for handling the investigations for Employee Disagreement complaints, while the EEO Department is responsible for handling the investigations or EEO Violations and Illegal Activities complaints. Disciplinary action shall be initiated by an immediate supervisor for the purpose of correcting unsatisfactory work performance or as the resolution of an Employee Disagreement complaint investigation. [OPPP Section V..2.a.1]. While disciplinary actions shall be initiated by an EEO Officer as the resolution of an EEO Violation complaint or an Illegal Activities complaint investigation. [OPPP Section V..2.a.2]. The intent of the proposed amendments to the complaint and disciplinary procedures found in the Law was to move the higher level complaints to an area that can specialize in those complaint investigations, and to ensure that the body completing the investigation and gathering all the information is the body that ultimately determines the conclusion of the investigation and issues and corresponding discipline.

The Legislative Operating Committee may reconsider the complaint and discipline provisions found in section V.D of the Law in light of the concerns expressed by the commenters, and determine moving forward how best to address who should have the authority to investigate complaints and issue disciplines.

LOC Consideration

The Legislative Operating Committee determined that the complaint and discipline provisions found in section V.D of the Law should be revised to leave the authority to investigate complaints and issue disciplines with supervisors and not the EEO Department.

Comments 90 through 95 – Role of the Personal Commission:

SECTION III – SELECTION POLICY

B. HIRING PROCEDURE

2. Hiring Guidelines

a. **All Supervisors of the Oneida Nation shall undergo both training upon hiring and periodic retraining in EEO and laws, rules, and regulations of the Nation.**

b. Personnel Commission Role

1) **The Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of employees of the Nation and to shield those employees from inconsistent and unfair treatment by:**

a) **Protecting against issues of nepotism;**

b) **Enforcing Oneida and Indian preference.**

2) **The Personnel Commission is directed to:**

i. **Participate in the hiring selection process, including job description pre-screens and interviews, to ensure compliance with the Nation’s laws and policies regarding the following subject matters:**

1. **Oneida and Indian preference;**

2. **Nepotism;**

3. **Conflicts of interest;**

4. **Veteran status; and**

5. **Physical capacity requirements.**

ii. **Comply with the Oneida Personnel Commission Bylaws**

Wendy Alvarez (written): Good afternoon, I would like to submit some comments based on the Proposed Amendments to the Oneida Policies and Procedures. Line 301 What is the OPC role? Are we going to meet with them to review how this will look?

Shannon Stone (written): Personnel Commission: The Personnel Commission Role is to a) Protecting against issues of nepotism; and b) Enforcing Oneida and Indian preference. Lines 301 through 306. However, lines 307 through 362 are inconsistent by directing the OPC to ensure compliance with the Nation’s laws and policies in the area of Conflicts of Interest, Veteran Status,

and Physical Capacity requirement. One would think the Personnel Commission would act only within the boundaries of their role.

Finally, it seems strange that the Personnel Policies and Procedures would have authority to direct the Personnel Commission to follow their bylaws. This should be a matter of law, not policy. Additionally, the Commission's bylaws should be consistent with the established role to protect against issues of nepotism and enforcement of Indian Preference. Activities outside this area would be beyond the scope authorized by the GTC.

Jessica Vandekamp (written): 2. Personnel Commission. Remove any responsibilities of being a hearing body for employment appeals and to participate in the hiring process. I believe this commission has outlived its purpose for the Nation's hiring and it impedes upon a smooth and timely hiring process.

Tina Jorgensen (written): I agree with the Personnel Commission ensuring compliance with specific processes. I would like that to be the only responsibility of the Personnel Commission during hiring. For instance, in the past, the Personal Commission scored the applicants during the interview. I do not believe this should be a future responsibility of the Personnel Commission as they are not the experts on the questions and answers. They do not know the dynamics of the department and what type of employee the Supervisor is looking for.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section III.B.2.b., Personnel Commission Role

The current OPPP defines the Personnel Commission Role as follows:

b. Personnel Commission Role

- 1) The Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of employees of the Nation.

The proposed amendments narrow down the Personnel Commission Role:

b. Personnel Commission Role

- 1) The Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of employees of the Nation and to shield those employees from inconsistent and unfair treatment by:
 - a) Protecting against issues of nepotism;
 - b) Enforcing Oneida and Indian preference.¹ (OPPP Amendments, Draft 1, lines 280-284)

In addition, the current OPPP direct the involvement of Personnel Commissioners in particular screening and interview processes, specifically as one member of the Screening Committee "to conduct the screening of applicants" (OPPP III.B.2.f.2)) and as two members of the Interview Committee (OPPP III.B.2.g.1)). The proposed amendments generally direct the Oneida Personnel Commission to "participate in the hiring selection process, including job description pre-screens and interviews" and "ensure compliance with the Nation's laws and policies regarding . . . 1. Oneida and Indian preference; 2. Nepotism; 3. Conflicts of Interest; 4. Veteran status; and 5.

Physical capacity requirements.” The Commission is further directed to comply with its own bylaws. (OPPP Amendments, Draft 1, lines 285-294).

While the current OPPP specifies how Personnel Commissioners are involved in screening and interview processes, the proposed amendments do not identify any specific duties through which the Commission will “participate” and “ensure compliance.” The Commission’s current bylaws have similar language² to the OPPP amendments and, therefore, do not identify specific duties for Commissioners in the screening and interview processes. (Oneida Personnel Commission By-Laws, Article I. Authority, Section 1-3 and 1-5(e)) The Personnel Commission could amend its bylaws to describe its participation in the Nation’s hiring processes.³ (See Oneida Personnel Commission By-Laws, Article VII. Amendments). If the amended OPPP does not direct the Personnel Commissioners’ duties in the screening and interview processes, who has the authority to direct them? The authority of and involvement by the Oneida Personnel Commission has always been defined by Oneida Law and not through departmental rulemaking. The proposed amendments do not state why this change is needed.

¹ Language added through the proposed OPPP amendments is identical to language in the Commission’s Bylaws describing its authority. See Oneida Personnel Commission By-Laws, Section 1-3(a).

² The Personnel Commission bylaws include an additional area of authority under Section 1-3: “(3) Hearing and deciding appeals of disciplinary action filed by employees of the Nation.” Section 1-5(e) includes a corresponding responsibility to “[c]onduct grievance hearings in accordance with the Oneida Personnel Policies and procedures and Oneida Business Committee Resolution BC-03-13-19-C.” Through a series of Business Committee resolutions and GTC directives that are not relevant to this legal review, the Personnel Commission was dissolved and then reinstated in 2018.

³ At this time, the Personnel Commission has 1 member; all other seats are vacant.

Lisa Summers and Brooke Doxtator (written): 2. The Government Administrative Office is not in support of the changes outlined in lines 1487 to 1595 of the redline version that replaces the Human Resources Department with Government Administrative Office as this time.

a. There are several things we would like addressed before proceeding with these changes:

ii. That the Oneida Business Committee (OBC) makes a determination on next steps regarding implementing a functioning Oneida Personnel Commission.

1. The Commission has not been functioning since 2018. The GAO has brought several posting requests and information before the OBC for additional guidance and direction.

2. The OPC has encountered issues finding qualified applicants to apply for the Commission, and has had issues with the members completing their trainings.

3. The OPC was placed in “Temporary Closure Status” from April 8, 2020, to June 14, 2021, due to the COVID pandemic; however, since reactivating the OPC, they have been unable to meet due a lack of members, nor have member completed proper training as identified in item #2 above.

Response

The commenters questions what the role of the Oneida Personnel Commission is under the proposed amendments to the Law.

Section III.B.2.b of the Law discusses the role of the Oneida Personnel Commission. The Law provides that the Oneida Personnel Commission was established to represent the Oneida Community-at-large in the selection of employees of the Nation and to shield those employees from inconsistent and unfair treatment by protecting against issues of nepotism and enforcing Oneida and Indian preference. The Law then directs the Oneida Personnel Commission to participate in the hiring selection process, including job description pre-screens and interviews, to ensure compliance with the Nation’s laws and policies regarding the following subject matters:

- Oneida and Indian preference;
- Nepotism;
- Conflicts of interest;
- Veteran status; and
- Physical capacity requirements.

Section III.B.2.b of the Law then also directs that the Oneidas Personnel Commission comply with the Oneida Personnel Commission Bylaws. Section V.D.3.c.2. then allows an employee to appeal the Area Manager’s grievance decision to the Oneida Personnel Commission and provides the process and procedures for how the Oneida Personnel Commission handles that grievance.

It is recommended that the Legislative Operating Committee consider further clarifying the role of the Oneida Personnel Commission in the Law, so that the specific duties and responsibilities of the Oneida Personnel Commission is clearly provided. The Legislative Operating Committee may also want to consider whether the role the Oneida Personnel Commission played in the past is still necessary today.

LOC Consideration

The Legislative Operating Committee determined that the Oneida Personnel Commission should remain in the Law. The Legislative Operating Committee determined that hearing authority should be moved from the Oneida Personnel Commission to the Oneida Judiciary, leaving the Oneida Personnel Commission with a new limited role in regard to the hiring and selection process. The Legislative Operating Committee determined the Law should be clarified to accurately describe the role of the Oneida Personnel Commission in the hiring and selection process.

Comments 96 through 98 – Relationship between the Oneida Personnel Commission and the Judiciary:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

3. Grievance

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines:

- 2) **Appeal to the Oneida Personnel Commission (BC Resolution, 3-18-19)**
- a) **An employee may appeal the Area Manager’s decision to the Oneida Personnel Commission by filing a grievance with the Government Administrative Office on behalf of the Oneida Personnel Commission within ten (10) working days from the employee’s receipt of the Area Manager’s decision.**
 - b) **The Government Administrative Office shall notify the Human Resources Executive Director of the appeal of the Area Manager’s decision within one (1) business day of receipt of the appeal.**
 - c) **The Government Administrative Office shall collect all information the Area Manager used in making the decision to uphold or modify the disciplinary action.**
 - d) **The Government Administrative Office shall provide the information obtained to the Oneida Personnel Commission members selected to serve as the hearing body for the appeal.**
 - e) **The Oneida Personnel Commissioners shall review all the information submitted by the employee petitioner and the Government Administrative Office to determine if one (1) or both conditions exist;**
 - i. **The decision of the Area Manager is clearly against the weight of the evidence; or**
 - ii. **Procedural irregularities were exhibited during the appeal process that were harmful to one of the parties to the grievance.**
 - f) **If Oneida Personnel Commission members selected to serve as the hearing body for the appeal find one (1) or both conditions exist, the Government Administrative Office shall convene the Oneida Personnel Commission to hear the grievance.**
 - g) **If the Oneida Personnel Commission members find that neither condition exists, the Oneida Personnel Commission shall deny the appeal for a hearing and affirm the decision of the Area Manager.**
 - h) **Convening a Hearing**
 - i. **The Government Administrative Office shall schedule a time and location for the grievance hearing and shall confirm the participation of the Oneida Personnel Commission members selected to serve as the hearing body for the complaint.**
 - ii. **The Government Administrative Office shall send notice of the hearing to the petitioner, respondent, and Oneida Personnel Commission members at least five (5) working days prior to the hearing date.**
 - iii. **The Government Administrative Office shall provide copies of all information on the subject case upon which the disciplinary action was upheld or modified by the Area Manager to the members of the Oneida Personnel Commission at least two (2) working days prior to the appeal date.**
 - iv. **The Government Administrative Office shall allow the petitioner and respondent access to this information in the**

Government Administrative Office at least two (2) days prior to the appeal date.

i) Hearing Procedure

i. The order of presentation for the hearing shall be:

- 1. Petitioner's opening statement;**
- 2. Respondent's opening statement;**
- 3. The Petitioner's case;**
- 4. The Respondent's case;**
- 5. Petitioner's closing statement; and**
- 6. Respondent's closing statement.**

ii. The petitioner shall have the right to be represented by an advocate, at their own expense. The respondent and/or Area Manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or Area Manager shall have access to the professional legal representation.

1. Should the petitioner and their representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be upheld, and the grievance dismissed.

2. Should the respondent and their representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be overturned.

iii. If new evidence which was previously unavailable is introduced at any point during the hearing process, the Oneida Personnel Commission hearing shall be suspended, and the case shall be remanded to the Area Manager for reconsideration.

1. The Area Manager shall reconsider the decision in light of the new evidence and issue a decision within three (3) working days.

2. This procedure may be invoked only once.

iv. Thereafter, the appeal process shall continue to a conclusion based on the information originally presented and the newly introduced evidence.

1. If the Area Manager overturns their decision, the case shall not come back for a hearing.

2. If the Area Manager affirms their decision, then the case shall come back to the Oneida Personnel Commission to complete the hearing.

v. The Oneida Personnel Commission's decision shall be based solely on the information presented to them before the appeal hearing, the record of the prior proceedings, and any new evidence if introduced appropriately.

vi. The Oneida Personnel Commission may:

1. Uphold the disciplinary action; or
 2. Overturn the disciplinary action and:
 - a. Reinstatement the employee (petitioner) with back pay for any lost time in accordance with the Back Pay law; or
 - b. Reinstatement the employee (petitioner) without back pay.
- vii. The Oneida Personnel Commission shall provide notification of the final decision within five (5) working days following the hearing. Notification of the final decision shall include;
1. The final decision;
 2. The reason(s) for the final decision; and
 3. The action to be taken as a result of the final decision.
- j) The Government Administrative Office shall keep records of the hearing, and provide copies of administrative advocacy rules, procedural rules, and time line rules to interested parties.
- k) If the Oneida Personnel Commission is unable to fulfill its responsibility to hear an appeal of an Area Manager's decision, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision.

Tina Jorgensen (oral): Also, I have a question. If the Personnel Commission is not, is in place and the employee still appeals to the Judiciary, or can the employee still appeal to the Judiciary if they're not satisfied with the decision through the Personnel Commission process?

Tina Jorgensen (written): QUESTION: Can an employee move onto the Judiciary if they are not satisfied with the Personnel Commission decision?

Tina Jorgensen (written): QUESTION: If the employee appealing a discipline is not satisfied with the decision of the Personnel Commission, can they appeal to the Judiciary?

Response

The commenter first questions what occurs if the Oneida Personnel Commission is not in place, and then questions if an employee can appeal the decision of the Oneida Personnel Commission to the Judiciary if they are not satisfied with the decision of the Oneida Personnel Commission.

Section V.D.3.c.2.k of the Law provides that if the Oneida Personnel Commission is unable to fulfill its responsibility to hear an appeal of an Area Manager's decision, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision. So if the Oneida Personnel Commission is inactive, then an employee will appeal the decision of the Area Manager directly to the Judiciary.

In regard to whether an employee can appeal the decision of the Oneida Personnel Commission to the Judiciary if they are not satisfied with the decision of the Oneida Personnel Commission, the Law itself is silent as to this matter. The Rules of Appellate Procedure provides that any party to a civil action, who is aggrieved by a final judgment or order of the Trial Court or original hearing body, may appeal to the Court of Appeals. [8 O.C. 805.5-1]. An original hearing body is defined as the administrative agency decision-making panel which heard a contested case under the Administrative Procedures Act (or similar law) and from which appeal is permitted by law. [8 O.C. 805.3-1(s)]. The Legislative Operating Committee may determine whether this should be clarified within the Law.

LOC Consideration

The Legislative Operating Committee determined that all hearing authority of the Oneida Personnel Commission should be eliminated and instead transferred to the Oneida Nation Judiciary.

Comments 99 through 102 – Involvement of Affected Entities:

Lisa Summers and Brooke Doxtator (written): The purpose of this correspondence is to provide the Government Administrative Office (GAO) comments and concerns regarding the Oneida Personnel Policies and Procedures Amendments.

Comments and/or Identified Concerns

1. In the legislative analysis under “affected entities” the Government Administrative Office is missing, and it is noted that the GAO was not asked to participate in the work meetings held to develop the amendments and analysis. Overall, this concern leads to a series of questions the GAO has regarding the intent of the amendments, and consideration for additional resources which may be needed to implement change. Additionally, it is identified through the analysis, there appears to be missing data which would provide guidance on the type of resources needed to fulfill the responsibilities which accompany the proposed change. This concern is detailed further in item #2.

Lisa Rauschenbach (written): Why were managers not included in drafting the amendments outside of HRD?

Mark Powless (written): The purpose of this memorandum is to provide written comments regarding the proposed Oneida Personnel Policies and Procedures Amendments. These comments are reflective of the views of myself and do not represent the views of my direct reports. Direct Reports were asked to provide verbal or written comments as they felt necessary.

General Comments

- Pertaining to policies and procedures that directly impact departments and staff of the Oneida Nation, it is good business practice to either allow those areas to participate in the development of

said policies and procedures or to gather feedback on the front end. This will help to set an agreed upon foundation to move forward from. It will avoid significant time and energy being placed into an effort only to learn that the resultant feedback potentially sends the effort back to ‘square one’.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): On December 7, 2022, the Legislative Operating Committee released to the public for the first time a draft of comprehensive amendments to the Oneida Personnel Policies and Procedures. Neither the Oneida Law Office nor any department/division management personnel besides the Human Resources Department were notified about or involved in any work meetings, discussions, drafting, or other development of the OPPP amendments.

Response

The commenters express that not all managers, directors, or supervisors of the Nation were directly involved in the development of the proposed amendments prior to the public meeting.

The Legislative Procedures Act provides a standard process for the development and adoption of legislation of the Nation which includes taking into account comments and input collected from members and agencies of the Nation. [1 O.C. 109.1-1, 109.1-2]. The Legislative Procedures Act provides that the Legislative Operating Committee is the body responsible for the development of laws of the Nation in accordance with this law, other such duties as provided by law and the development and maintenance of the Oneida Register. [1 O.C. 109.4-2]. The Legislative Procedures Act requires that the Legislative Operating Committee hold a public meeting for the purpose of soliciting oral comment and questions, and then hold open a public comment period for the submission of written comments and questions. [1 O.C. 109.8]. Under the Legislative Procedures Act, the public meeting and public comment period is the opportunity for departments or community members to provide their input on proposed legislation to the Legislative Operating Committee.

Although not required by Law, the Legislative Operating Committee does typically collaborate with affected entities on the development of legislation prior to a public meeting, and uses its discretion to determine which affected entities to invite to its work meetings on the development of the legislation. The Legislative Operating Committee typically attempts to be as inclusive as possible in its early collaborations. In the case of these proposed amendments, the Legislative Operating Committee was working under an accelerated timeline in an attempt to present these amendments to the General Tribal Council for consideration prior to May 11, 2023, when the emergency amendments expire. Additionally, due to the nature of this Law, every employee of the Nation is an affected entity, so there is a large breadth of individuals who may have input. Therefore, the Legislative Operating Committee collaborated with a much smaller work group than typical and instead relied on the public meeting and the public comment period to solicit input from all other agencies. The Legislative Operating Committee is pleased by the participation in the legislative process exhibited through the comments received for this legislation during the public meeting and the public comment period. The desire to participate further in the legislative process by many individuals has encouraged the Legislative Operating Committee to be more mindful of being as inclusive as possible in its collaboration efforts in the future.

LOC Consideration

The Legislative Operating Committee agrees that although not required by Law, the Legislative Operating Committee does typically collaborate with affected entities on the development of legislation prior to a public meeting, and uses its discretion to determine which affected entities to invite to its work meetings on the development of the legislation, and based on the desire to participate further in the legislative process by many individuals the Legislative Operating Committee will be more mindful of being as inclusive as possible in its collaboration efforts in the future.

Comment 103 through 106– Administrative Support for the Oneida Personnel Commission:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

3. Grievance

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines:

- 2) Appeal to the Oneida Personnel Commission (BC Resolution, 3-18-19)**
 - a) An employee may appeal the Area Manager’s decision to the Oneida Personnel Commission by filing a grievance with the Government Administrative Office on behalf of the Oneida Personnel Commission within ten (10) working days from the employee’s receipt of the Area Manager’s decision.**
 - b) The Government Administrative Office shall notify the Human Resources Executive Director of the appeal of the Area Manager’s decision within one (1) business day of receipt of the appeal.**
 - c) The Government Administrative Office shall collect all information the Area Manager used in making the decision to uphold or modify the disciplinary action.**
 - d) The Government Administrative Office shall provide the information obtained to the Oneida Personnel Commission members selected to serve as the hearing body for the appeal.**
 - e) The Oneida Personnel Commissioners shall review all the information submitted by the employee petitioner and the Government Administrative Office to determine if one (1) or both conditions exist;**
 - i. The decision of the Area Manager is clearly against the weight of the evidence; or**
 - ii. Procedural irregularities were exhibited during the appeal process that were harmful to one of the parties to the grievance.**
 - f) If Oneida Personnel Commission members selected to serve as the hearing body for the appeal find one (1) or both conditions exist, the Government Administrative Office shall convene the Oneida Personnel Commission to hear the grievance.**

g) If the Oneida Personnel Commission members find that neither condition exists, the Oneida Personnel Commission shall deny the appeal for a hearing and affirm the decision of the Area Manager.

h) Convening a Hearing

i. The Government Administrative Office shall schedule a time and location for the grievance hearing and shall confirm the participation of the Oneida Personnel Commission members selected to serve as the hearing body for the complaint.

ii. The Government Administrative Office shall send notice of the hearing to the petitioner, respondent, and Oneida Personnel Commission members at least five (5) working days prior to the hearing date.

iii. The Government Administrative Office shall provide copies of all information on the subject case upon which the disciplinary action was upheld or modified by the Area Manager to the members of the Oneida Personnel Commission at least two (2) working days prior to the appeal date.

iv. The Government Administrative Office shall allow the petitioner and respondent access to this information in the Government Administrative Office at least two (2) days prior to the appeal date.

i) Hearing Procedure

i. The order of presentation for the hearing shall be:

- 1. Petitioner's opening statement;**
- 2. Respondent's opening statement;**
- 3. The Petitioner's case;**
- 4. The Respondent's case;**
- 5. Petitioner's closing statement; and**
- 6. Respondent's closing statement.**

ii. The petitioner shall have the right to be represented by an advocate, at their own expense. The respondent and/or Area Manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or Area Manager shall have access to the professional legal representation.

1. Should the petitioner and their representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be upheld, and the grievance dismissed.

2. Should the respondent and their representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be overturned.

iii. If new evidence which was previously unavailable is introduced at any point during the hearing process, the Oneida

Personnel Commission hearing shall be suspended, and the case shall be remanded to the Area Manager for reconsideration.

- 1. The Area Manager shall reconsider the decision in light of the new evidence and issue a decision within three (3) working days.**
- 2. This procedure may be invoked only once.**
- iv. Thereafter, the appeal process shall continue to a conclusion based on the information originally presented and the newly introduced evidence.**
 - 1. If the Area Manager overturns their decision, the case shall not come back for a hearing.**
 - 2. If the Area Manager affirms their decision, then the case shall come back to the Oneida Personnel Commission to complete the hearing.**
- v. The Oneida Personnel Commission's decision shall be based solely on the information presented to them before the appeal hearing, the record of the prior proceedings, and any new evidence if introduced appropriately.**
- vi. The Oneida Personnel Commission may:**
 - 1. Uphold the disciplinary action; or**
 - 2. Overturn the disciplinary action and:**
 - a. Reinstatement the employee (petitioner) with back pay for any lost time in accordance with the Back Pay law; or**
 - b. Reinstatement the employee (petitioner) without back pay.**
- vii. The Oneida Personnel Commission shall provide notification of the final decision within five (5) working days following the hearing. Notification of the final decision shall include:**
 - 1. The final decision;**
 - 2. The reason(s) for the final decision; and**
 - 3. The action to be taken as a result of the final decision.**
- j) The Government Administrative Office shall keep records of the hearing, and provide copies of administrative advocacy rules, procedural rules, and time line rules to interested parties.**
- k) If the Oneida Personnel Commission is unable to fulfil its responsibility to hear an appeal of an Area Manager's decision, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision.**

Lisa Summers and Brooke Doxtator (written): 2. The Government Administrative Office is not in support of the changes outlined in lines 1487 to 1595 of the redline version that replaces the Human Resources Department with Government Administrative Office as this time.

- a. There are several things we would like addressed before proceeding with these changes:
 - i. HRD to provide an analysis of the work, resources, training, and time required to offer this support to the Oneida Personnel Commission.

We respectfully request the Government Administrative Office be removed from the amendments until an analysis on the following is completed:

1. Workload or anticipated workload based on HRD records of activities which would have included in the OPC, and
2. An analysis of the resources needed to fulfill the requirements, and
3. There is a determination made regarding how the OPC will function moving forward.

Lisa Liggins (written): I am in full support of the written comments submitted by the OBC Area Manager and the BCC Supervisor to the LOC regarding the Oneida Personnel Policies and Procedures Amendments. I would like this email of support to be accepted by my written comments regarding this piece of legislation. Thank you.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1201-1293: This entire section references the Government Administrative Office taking over the role of the HRD office who currently has all information and all the documentation regarding disciplinary action issued to employees. This section states employees who want to appeal an Area Managers decision to the Personnel Commission must file a grievance with the Government Administrative Office on behalf of the Personnel Commission. It states the Government Administrative Office shall collect all information the Area Manager used in making the decision to uphold or modify the disciplinary action.

Currently all the confidential information regarding disciplinary action remains at HRD until a hearing body requests it. It's a concern that now another entity (Government Administrative Office) will be privy to this confidential information regarding employees of the Nation. How many people are in this office, who will all see this confidential information? What is in place to ensure this confidential information does not get out in the community before a final decision is made by a hearing body?

Why don't the EEO Officers continue the role they currently doing, the administrative part, and not be involved in disciplining employees they do not supervise. Why do they want authority to discipline employees they don't even know or work with? This process being presented gets more people involved with seeing confidential information that does not need to be disclosed.

HRD/EEO Officers need to remain neutral and provide assistance/support to all employees, whether they are front line, supervisors, managers, directors or general managers. EEO/HRD should not take over a supervisor's job responsibilities. EEO must ensure that the supervisor is taking proper corrective measures and advise the decision makers on processes and points of law as well as informing them how historical cases have been treated, to ensure consistency. EEO should not discipline an employee they do not supervise. This is not within their authority, nor should we allow it to be. If EEO is concerned about holding people accountable for their actions or inaction, they need to bring that matter to the persons supervisor and allow that supervisor to decide what to do.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.3.c.2), Appeal to the Oneida Personnel Commission²⁸

Overall, the proposed amendments would not significantly change the law regarding Oneida Personnel Commission (OPC) hearings. The current draft would have the Government Administrative Office receive and distribute information and organize OPC hearings, rather than the Human Resources Department. (See OPPP Amendments, Draft 1, lines 1199-1300). This proposed change will require training for GAO personnel.

²⁸ As noted previously in this memo, the Oneida Personnel Commission is not a functioning body and, with only one member, it is not certain when they will be able to hear grievance appeals.

Response

The commenters express concern over the proposed revision to section V.D.3.c.2 of the Law which removes the Human Resources Department as the body responsible for providing administrative assistance to the Oneida Personnel Commission, particularly in regard to assistance with its hearing procedures, and instead delegates that authority to the Government Administrative Office.

The decision to replace the Human Resources Department with the Government Administrative Office as the body responsible for providing the Oneida Personnel Commission administrative assistance, specifically in regard to administrative assistance with its hearing procedures, was based on the fact that the Government Administrative Office has staff dedicated to boards, committees, and commissions of the Nation and already provides administrative assistance to boards, committees, and commissions of the Nation.

Whether it be the Human Resources Department or the Government Administrative Office that provides administrative assistance to the Oneida Personnel Commission, all employees are expected to maintain the highest confidentiality standards and are bound by the Code of Ethics to protect the privileged information to which they have access in the course of official duties and be prudent in the use of information acquired in the course of their duties. [*1 O.C. 103.4-8*].

The Legislative Operating Committee may reconsider who is the most appropriate entity to provide administrative assistance to the Oneida Personnel Commission. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.3.c.2 of the Law should remain as currently drafted, which replaces the Human Resources Department with the Government Administrative Office as the body responsible for providing administrative assistance to the Oneida Personnel Commission, particularly in regard to assistance with its hearing procedures.
2. Section V.D.3.c.2 of the Law should be revised to revert back to the language currently included in the Law, which provides that the Human Resources Department is the body responsible for providing administrative assistance to the Oneida Personnel Commission, particularly in regard to assistance with its hearing procedures.

LOC Consideration

The Legislative Operating Committee determined that section V.D.3.c.2 of the Law will no longer be needed based on the decision to transfer the Oneida Personnel Commission’s hearing authority to the Oneida Nation Judiciary.

Comment 107 – Original Probation:

SECTION III – SELECTION POLICY

D. ORIGINAL PROBATION

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

1. **Status as a Probationary Employee**
 - a. Probationary employees shall accrue vacation and personal days during the probation period and shall receive holiday pay.
 - b. Probationary employees may be terminated for cause at any time during the probation period. Cause shall consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position.
 - c. Termination of an employee for cause during their original probationary period shall not be subject to appeal.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section III.D., Original Probation

The proposed language clarifies that an employee will be on probation for 3 months “after being hired, transferred, or reassigned” into a position.⁴(OPPP Amendments, Draft 1, lines 311-313) The amendments also permanently remove probationary pay from Oneida law.⁵

In addition, the proposed amendments permanently remove appeal rights of probationary employees who are terminated “for cause,” which “consist[s] of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position.”⁶ (OPPP Amendments, Draft 1, lines 325-326)

⁴ The Business Committee enacted this amendment on an emergency basis in November 2021 (BC Resolution #11-24-21-A) and has subsequently reenacted and extended the amendment. (See BC Resolution 05-11-22-A and 11-07-22-A).

⁵ Probationary pay is 5% below the posted rate of pay for the position. The Business Committee adopted an emergency amendment to the same effect in November 2021 (BC Resolution #11-24-21-A) and has subsequently reenacted and extended the amendment. (See BC Resolution 05-11-22-A and 11-07-22-A).

⁶ The Business Committee enacted this amendment on an emergency basis in May 2022 (BC Resolution #05-11-22-A) and extended the same amendment in November 2022 (See BC Resolution 11-07-22-A).

Response

The commenters summarize the proposed revisions to the Law regarding original probation found in section III.D of the Law. Other than the summary, the commenters do not provide any comment for consideration by the Legislative Operating Committee. There is no action needed by the Legislative Operating Committee based on these comments.

LOC Consideration

The Legislative Operating Committee determined that there is no revision to the Law needed based on these comments.

Comments 108 through 109 – Complaints, Disciplinary Actions, and Grievances Introductory Language:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process correcting unacceptable and problematic behaviors in employees. Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V., Employee Relations Section V.D., Complaints, Disciplinary Actions, and Grievances - Introduction

The current OPPP include an introductory paragraph to the Complaints, Disciplinary Actions, and Grievances section. (OPPP V.D.) This introductory language is frequently cited by the Oneida Judiciary when framing employee grievance decisions. (See e.g. Thundercloud v. HRD et al., 20-EMP-002, p.4 (July 2, 2020); Kriescher v. Suquet, 12-AC-010, p. 6 (Oct. 23, 2012); Oneida Bingo & Casino v. Martin, 11-AC-002, p. 3-4, 9 (June 1, 2011); Oneida Bingo & Casino v. Jones, 14 O.N.R. 36, 41 (Sept. 23, 2008)). Therefore, the introductory language establishes the Nation’s employment philosophy regarding Complaints, Disciplinary Actions, and Grievances.

Currently, OPPP V.D. describes the purposes of the disciplinary process as “provid[ing] a systematic process for handling problem employees,” “correct[ing] unacceptable behavior,” and “protect[ing] the Nation.” (OPPP V.D.) The proposed amendments condense the express purposes for disciplinary action to “provide a systematic process correcting (sic) unacceptable and problematic behaviors in employees.” (OPPP Amendments, Draft 1, lines 702-3)

The purpose of grievance procedures in the current OPPP is to “provide a systematic process for hearing and evaluating job related disputes” and “protect employees from inconsistent and unfair treatment.” (OPPP V.D.) The proposed amendments shift the focus of grievance procedures to employee protection:

Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. (OPPP Amendments, Draft 1, lines 703-4)

As the introductory language is an important signal of the Nation’s employment values and is relied upon by Oneida Courts, the language should accurately reflect the Nation’s regard for the value of all employees within the organization, front-line through General Managers, in all divisions and non-divisional.

Shannon Stone (written): COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES
Line 908 should be changed to problematic behaviors “from” employees.

Response

The commenters express concern that the proposed revisions to the introductory provisions found in section V.D. of the Law disrupt the balance these provisions previously provided.

The Legislative Operating Committee may consider whether the proposed revisions to the introductory language found in section V.D. of the Law should be revised to address the commenter’s concerns. The Legislative Operating Committee may make one of the following decisions:

1. The introductory language found in section V.D. of the Law should remain as currently drafted.
2. The introductory language found in section V.D. of the Law should be revised so that there is better balance in the protection of the Nation as a whole and the protection of the employees. If the Legislative Operating Committee makes this determination then the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process correcting unacceptable and problematic behaviors from ~~in~~ employees, and protecting the Nation. Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. as well as providing a systematic process for hearing and evaluating job related disputes. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

LOC Consideration

The Legislative Operating Committee determined that the introductory language found in section V.D. of the Law should be revised so that there is better balance in the protection of the Nation as a whole and the protection of the employees. The Legislative Operating Committee determined that the following revision to the Law should be made:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process correcting unacceptable and problematic behaviors from in employees, and protecting the Nation. Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. as well as providing a systematic process for hearing and evaluating job related disputes. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

Comment 110 – Right to File a Complaint:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process correcting unacceptable and problematic behaviors in employees. Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

1. Complaints

a. General

- 1) **The Nation recognizes that all employees have the right to file a complaint against another employee, and that all complaint investigations shall be handled with the utmost fairness, respect, and equality.**
- 2) **The Nation recognizes there are various levels of severity of complaints, and dependent on the severity of the complaint, not all complaints shall follow the same process.**
- 3) **An employee found to have given false information or made a false claim shall face disciplinary action in accordance with the appropriate policies and procedures.**
- 4) **Access to complaint information shall be limited to those who have a legitimate need to know.**
- 5) **Retaliation of any form against an employee for filing a complaint shall be strictly prohibited.**

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.1., Complaints

The current OPPP provides a process for employees to file a complaint against another employee in Section V.D.1.

1. Complaints (current OPPP)

- a. Should an employee have a disagreement with another employee, he/she may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor.

- b. The supervisor will investigate the complaint and attempt to resolve the disagreement.
- c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she may ask the Area Manager to attempt a resolution.
- d. There is no further appeal of this process.

Currently, an employee files a complaint with the supervisor of the employee who is the subject of the complaint. (OPPP V.D.1.a.) The OPPP gives the supervisor discretion in how to investigate and the timeline for a resolution and response. (OPPP V.D.1.b.) The complaining employee may appeal the supervisor’s response to the supervisor’s supervisor (the area manager), but no further appeal is allowed. (OPPP V.D.1.c. and V.D.1.d.) (See e.g. *Mays v. Boucher*, 15-AC-005, p.5 (July 29, 2015); and *Oneida Compliance Division v. Metoxen*, 5 O.N.R. 3-103, 107 (Oct. 25, 1999)). The current complaint process is designed to be flexible, allowing supervisors to address issues before they erupt in litigation. The proposed amendments drastically expand the complaint process, potentially involving Oneida personnel up to the General Manager in complaints that begin at any level of the organization.

Section V.D.1.a., General

Amendments to the OPPP include a new introduction to the Complaint section:

1. Complaints

a. General

- 1) The Nation recognizes that all employees have the right to file a complaint against another employee, and that all complaint investigations shall be handled with the utmost fairness, respect, and equality.
- 2) The Nation recognizes there are various levels of severity of complaints, and dependent on the severity of the complaint, not all complaints shall follow the same process.
- 3) An employee found to have given false information or made a false claim shall face disciplinary action in accordance with the appropriate policies and procedures.
- 4) Access to complaint information shall be limited to those who have a legitimate need to know.
- 5) Retaliation of any form against an employee for filing a complaint shall be strictly prohibited. (OPPP Amendments, Draft 1, lines 709-23)

As written, the introduction language raises some issues. Declaring that “employees have the right to file a complaint against another employee” is unnecessary because the Complaint process would not be written into the law if employees did not have a right to it. In addition, other basic employment processes – receipt of wages, use of accrued vacation or personal time, non-discriminatory supervision – are not delineated as “rights” in the OPPP. The proposed language of OPPP V.D.1.a.1) begs the question: Why should the complaint process be elevated as a “right” above other essential employment processes?

Response

The commenters express concern over the phrase “employees have the right to file a complaint against another employee” found in section V.D.1.a.1 of the Law. The commenters feel this language is unnecessary and are weary it would cause confusion as other basic employment processes are not delineated as rights in the Law.

The Legislative Operating Committee may determine if the language “employees have the right to file a complaint against another employee” found in section V.D.1.a.1 of the Law is problematic and should be removed from the Law. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.1.a.1 of the Law should remain as currently drafted.
2. Section V.D.1.a.1 of the Law should be revised to remove the language that “employees have the right to file a complaint against another employee.” If the Legislative Operating Committee makes this determination then the following revision is recommended:

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

a. General

- 1) ~~The Nation recognizes that all employees have the right to file a complaint against another employee, and that a~~ All complaint investigations shall be handled with the utmost fairness, respect, and equality.
- 2) The Nation recognizes there are various levels of severity of complaints, and dependent on the severity of the complaint, not all complaints shall follow the same process.
- 3) An employee found to have given false information or made a false claim shall face disciplinary action in accordance with the appropriate policies and procedures.
- 4) Access to complaint information shall be limited to those who have a legitimate need to know.
- 5) Retaliation of any form against an employee for filing a complaint shall be strictly prohibited.

LOC Consideration

The Legislative Operating Committee determined that section V.D.1.a.1 of the Law should remain as currently drafted.

Comment 111 – Access to Complaint Information:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process correcting unacceptable and problematic behaviors in employees. Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

1. Complaints

a. General

1) The Nation recognizes that all employees have the right to file a complaint against another employee, and that all complaint investigations shall be handled with the utmost fairness, respect, and equality.

2) The Nation recognizes there are various levels of severity of complaints, and dependent on the severity of the complaint, not all complaints shall follow the same process.

3) An employee found to have given false information or made a false claim shall face disciplinary action in accordance with the appropriate policies and procedures.

4) Access to complaint information shall be limited to those who have a legitimate need to know.

5) Retaliation of any form against an employee for filing a complaint shall be strictly prohibited.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

The draft amendment also proposes new language regarding release of complaints, as “complaint information” would be released to “those who have a legitimate need to know.” The scope of what may be released – the “complaint information” in proposed OPPP V.D.1.a.4) – is undefined. Does that refer to only the complaint itself? Or does it mean notes, documents, recordings, and other information collected during the supervisor’s investigation? Also left undefined is who will determine whether a requester has a “legitimate need to know.” And are there any factors that will be balanced against the “legitimate need” or is the requester’s “legitimate need” sufficient to access the “complaint information?” These questions lead to uncertainty for supervisors, area managers, employees, and those responsible for releasing information.

As written, the amendments potentially allow the employee who is the subject of a complaint to receive a copy of it, since the employee who is the subject of a complaint and subsequent investigation certainly has a “legitimate need to know.” This directly contradicts established Oneida law and caselaw. Both the current OPPP and the proposed amendments address the confidentiality of personnel records in Section IX. Current Oneida Law and the proposed amendments require an employee’s written consent prior to release of employee records “to any person or agent of any organization.”⁷ (OPPP Section IX.A.) Oneida caselaw emphasizes that a complaint will not be released to the employee who is the subject of it. In *Somers v. OBC Officers*, the Oneida Appeals Court determined that an employee’s due process rights were not violated when the Business Committee, in their role as Somers’ supervisors, refused to provide her with a copy of a complaint they were investigating. (18-AC-007, p. 4 (August 23, 2017)). The Appellate Court listed several reasons why a complaint should not be released to the employee who is the complaint’s subject, specifically:

(1) Releasing a complaint to the subject employee “can create more issues between the employee, supervisor, and other employees within the organization.” *Id.* at 3-4.⁸

(2) The “supervisor is simply trying to determine if the allegations of the complaints have merit and if so, to address them administratively.” *Id.* at 4.

(3) “An effective investigator will only disclose details of the complaint that are necessary for the inquiry” for the purpose of “elicit[ing] extemporaneous responses that are not just responses to the person making the complaint or the accusations in the complaint.” Id.

The proposed amendments may contradict established Oneida Law by allowing disclosure of a complaint to the subject employee without written consent. Adopting the amendments as written would potentially overturn Oneida caselaw, which is based on long-standing HRD practice and advice. The reasons for this proposed change are not apparent from the current draft.

⁷ OPPP Section IX – Privacy and Confidentiality of Employee Records refers specifically to collection and release of employee records by the Human Resources Department. Under the proposed amendments, after a supervisor concludes their investigation and resolution of a complaint, the supervisor “shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes,” thereby creating an employee record that is subject to OPPP Section IX.

⁸ The Court relied upon testimony from Geraldine Danforth, HRD Area Manager for 16 years, for a description of reasons why a complaint should not be released to the subject employee. Ms. Danforth “testified on two different occasions that an investigator should never give the complaint to the employee.” 18-AC-007, p. 3.

Response

The commenters express concern that section V.D.1.a.4. does not provide enough clarification as to who has access to complaint information or exactly what complaint information means, which creates uncertainty for supervisors, area managers, employees, and those responsible for releasing information. The commenters also express concern that established case law does not allow the employee who is the subject of a complaint to receive a copy of the complaint, and question whether it was intended that this provision of the Law contradict established Oneida Law by allowing disclosure of a complaint to the subject employee without written consent.

It is recommended that the Legislative Operating Committee review this provision of Law and revise this provision to include additional information to clarify the questions brought up by the commenters such as: who makes the determination someone has a legitimate need to access the complaint information, what exactly does complaint information mean, and should an employee who is the subject of the complaint have access to the complaint.

LOC Consideration

The Legislative Operating Committee determined that this provision of Law should be reviewed and revised to include additional information to clarify: who makes the determination someone has a legitimate need to access the complaint information, what exactly does complaint information mean, and should an employee who is the subject of the complaint have access to the complaint.

Comments 112 through 113 – Types of Complaints:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

b. Types of Complaints

1) Employee Disagreements

a) An employee disagreement occurs when an employee alleges they are having problems, misunderstandings, or frustrations with another employee.

2) EEO Violations

a) An EEO violation occurs when an employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed.

i. Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

2. submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or

3. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

3) Illegal Activities

a) An illegal activities violation occurs when an employee alleges:

i. They witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;

ii. They witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;

iii. They witnessed or have knowledge of the use or possession of an illegal controlled substance; or

iv. They witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions.

4) Additional Complaints

- a) **Complaints of alleged workplace violence shall be reported and processed in accordance with the Nation's Workplace Violence law.**
- b) **Complaints of use of prohibited drugs and/or alcohol during working hours shall be reported and processed in accordance with the Nation's Drug and Alcohol Free Workplace law.**

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.1.b., Types of Complaints

The amendments break Complaints into three categories: (1) Employee Disagreements; (2) EEO Violations; and (3) Illegal Activities.⁹ Each type of Complaint follows a separate process.

⁹ By establishing Complaint categories and giving those categories precise definitions, it is likely the proposed language will eliminate complaints that could be filed under the more general language of the current OPPP. For example, if an employee wishes to complain about another employee's incompetency, incapacity to perform job duties, or failure to perform adequately, those complaints do not seem to fit under any proposed Complaint category. Will employees choose not to file complaints if they cannot figure out the right category? Or will such Complaints be rejected by the EEO? The proposed amendments are silent on this question.

Vanessa Miller (written): Please accept this communication as my public comment regarding the amendments to the Oneida Personnel Policies and procedures being made to address the selection process, as well as the complaint, discipline, and grievance procedures.

I. Complaints

With these changes, the complaint process will be split into three (3) different pathways: 1. Employee disagreement complaints; 2. EEO Violation Complaints; and 3. Illegal Activity Complaints. The supervisor investigates pathway one, while EEO investigates pathways 2 and 3.

While these three pathways do seem to distinguish and make separation between complaints so that they may be handled accordingly per the proposed processes, it appears that there is still room for gray area and overlapping. For instance, an employee disagreement that involves EEO policy violation would seem to be overlapping in nature. How would these complaints be vetted through to determine which pathway they are to go down, and to ensure that a standardized process is used in determining such? In addition, it is not clear what the various EEO violations are or mean as they are not defined.

Response

The commenters express concern that the delineation of complaints into three distinct categories may eliminate complaints that could have been filed under the more general language of the Law that is currently in effect.

Section V.D.1.b. of the Law provides that there are three (3) categories of complaints that can be made against an employee – Employee Disagreements, EEO Violations, and Illegal Activities. An

employee disagreement occurs when an employee alleges they are having problems, misunderstandings, or frustrations with another employee. [OPPP Section V.D.1.b.1]. An EEO violation occurs when an employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed. [OPPP Section V.D.1.b.2]. An illegal activities violation occurs when an employee alleges: they witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation; they witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace; they witnessed or have knowledge of the use or possession of an illegal controlled substance; or they witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions. [OPPP Section V.D.1.b.3].

In an effort to avoid a situation where an employee desires to file a complaint against another employee, but the topic of the employee does not clearly fit into one of the provided categories, the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

b. Types of Complaints

1) ~~Employee Disagreements~~ General Complaints

- a) ~~An employee disagreement occurs when an employee alleges they are having problems, misunderstandings, or frustrations with another employee.~~ A general complain is any complaint that is not a EEO Violation or an Illegal Activity.

The Legislative Operating Committee may determine whether the general complaints sections should include examples of types of general complaints.

LOC Consideration

The Legislative Operating Committee determined that the Law should be revised to remove the different categories of complaints, and instead all complaints should be addressed through the same process that is investigated and handled by the supervisor of the employee.

Comment 114 – Clarification on Different Complaint Processes:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

b. Types of Complaints

1) **Employee Disagreements**

- a) **An employee disagreement occurs when an employee alleges they are having problems, misunderstandings, or frustrations with another employee.**

- 2) **EEO Violations**
 - a) **An EEO violation occurs when an employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed.**
 - i. **Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:**
 - 1. **submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;**
 - 2. **submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals;**
or
 - 3. **such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.**
- 3) **Illegal Activities**
 - a) **An illegal activities violation occurs when an employee alleges:**
 - i. **They witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;**
 - ii. **They witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;**
 - iii. **They witnessed or have knowledge of the use or possession of an illegal controlled substance; or**
 - iv. **They witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions.**
- 4) **Additional Complaints**
 - a) **Complaints of alleged workplace violence shall be reported and processed in accordance with the Nation's Workplace Violence law.**
 - b) **Complaints of use of prohibited drugs and/or alcohol during working hours shall be reported and processed in accordance with the Nation's Drug and Alcohol Free Workplace law.**

Michelle Tipple (oral): Good afternoon. Michelle Tipple with Oneida Comprehensive Health Division. Just a comment and this may be in the works, but just to mention that three (3) different

types of complaints and the different types of appeal processes, it would be helpful, I think to supervisors to see that in a maybe like a process map flow process or something that kind of illustrates those processes. Because you know, hopefully we're not in those processes often that we know them by heart, but that would help if someone has to go through that process.

Response

The commenter requests that that a visual aid be created that illustrates the different complaint types and their corresponding procedures.

It is recommended that the Legislative Operating Committee request that the Human Resources Department develop visual aids for the various processes contained in the Law upon adoption of any amendments to the Law.

LOC Consideration

The Legislative Operating Committee agrees that the Human Resources Department should develop visual aids for the various processes contained in the Law upon adoption of any amendments to the Law.

Comment 115 – Oral or Written Complaint:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

a) An employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Employee Disagreements are “when an employee alleges they are having problems, misunderstandings, or frustrations with another employee.” (OPPP Amendments, Draft 1, lines 725-7) The complaint process for an Employee Disagreement is described as follows:

1) Employee Disagreements

a) An employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department.

b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the supervisor of the employee with the complaint.

It is not clear whether the proposed amendments require an employee to file a written complaint or if an oral complaint to the EEO is sufficient. This should be clarified.

Response

The commenters request the Legislative Operating Committee clarify whether it is required that a written complaint be filed or if an oral complaint is sufficient.

Section V.D.1.c.1. of the Law provides that an employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department. Under the current Law, both oral and written complaints are allowed. It was not the intent to change current practice on this issue.

To clarify the manner in which a complaint is filed, then following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

a) An employee who alleges they have a disagreement with another employee may file an oral or written complaint with the EEO Department.

LOC Consideration

The Legislative Operating Committee determined that the Law should be clarified to require that any complaints be submitted in a written format.

Comment 116 – Supervisor who Receives a Complaint:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the supervisor of the employee with the complaint.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): The proposed amendments require the EEO to “provide the supervisor of the employee with the complaint.” It is not clear which supervisor will be provided the complaint: the supervisor of the employee who made the complaint or the supervisor of the employee whose behavior led to the Employee Disagreement. If the amendments require the EEO to provide the complaint to the supervisor of the complaining employee, that could be problematic if the complainant’s supervisor is the subject of the complaint. The proposed amendments should have clearer language in Section V.D.1.c.1) b. regarding which supervisor will receive the complaint.

Response

The commenters request that the Legislative Operating Committee clarify which supervisor – the supervisor of the employee who is the subject of the complaint or the supervisor of the employee filing the complaint – is the supervisor the EEO Department provides a submitted complaint to.

Section V.D.1.c.1.b of the Law provides that within two (2) working days of the receipt of the complaint, the EEO Department shall provide the supervisor of the employee with the complaint. To clarify which supervisor the EEO Department provides the complaint to, the following revision is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the complaint to the supervisor of the employee who is the subject of the complaint. ~~with the complaint.~~

LOC Consideration

The Legislative Operating Committee supports the following recommended revision to the Law which clarifies which supervisor the EEO Department provides the complaint to:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the complaint to the supervisor of the employee who is the subject of the complaint. ~~with the complaint.~~

Comment 117 – Definition of Working Day:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

Throughout the amended OPP section regarding Complaints, timelines are counted in “working days” but no definition of “working day” is provided in the amendments¹⁰. A possible definition for “working day” is: Any day that is not a weekend or a recognized Oneida holiday.

¹⁰ The phrase “working day” is used throughout the current OPPP and not defined. The amendments are an opportunity to define an important term that is central to complaint and disciplinary process.

Response

The commenters request that the term “working day” be defined in the Law, as this is a term that is currently used throughout the Law but is undefined.

Overall, the Law is not organized like other laws of the Nation and thereby lacks a definition section that provides a space for terms utilized throughout the document to be clearly defined. The Legislative Operating Committee may want to consider bringing the formatting and drafting of this Law into compliance with the drafting standards used for all others of the Nation.

In regard to the definition for working day, it is recommended that the Legislative Operating Committee include a definition for working day in the Law. Typically, in Laws of the Nation the term “business day” is utilized, with a definition that means Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding holidays recognized by the Nation. It is the intent that the term “working day” be defined differently than business day, and instead be related to the program or enterprise in which the pertinent procedures of the Law applies. For example, for enterprises in which Saturday and/or Sunday are scheduled working days, all procedures referring to working days will include Saturday and/or Sunday as a working day. Working day could be defined as any day in which the business unit is regularly operational. The Legislative Operating Committee should determine whether they would like to proceed with utilizing the term “working day” and include a relevant definition, or revise the Law to utilize the term “business day.” Whatever term the Legislative Operating Committee determines is most appropriate in the Law should then be defined in the Law.

LOC Consideration

The Legislative Operating Committee determined that the term “business day” should be utilized in the Law instead of working day, and that the following definition for business day should be utilized in the Law: “Business day” means Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding holidays recognized by the Nation.

Comment 118 – Receipt of Complaint:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

i. The supervisor’s ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): i. The supervisor’s ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department.

Oneida Courts have further defined what it means for a supervisor or area manager to “receive” documents during the grievance appeal process and it would be helpful to include the same clarification in the proposed amendments. In *Lecker v. Powless*, an employee alleged the area manager decision was untimely. (22-AC-004, p. 2 (June 7, 2022)). After multiple recusals, Lecker’s appeal of her termination was upheld by Area Manager Powless. *Id.* The Court of Appeals determined the Area Manager decision was timely and declined the grievance appeal. *Id.* The Court emphasized it is the Area Manager’s actual receipt of an appeal that starts the timeline. *Id.* The amendments should include language to better align with the Lecker decision, such as:

The Area Manager receives an appeal when they personally receive the grievance, after all possible recusals have been resolved.

Response

The commenters express that the Court of Appeals further defined what it means for a supervisor or area manager to “receive” documents during the grievance appeal process and it would be helpful to include the same clarification in the proposed amendments to the Law. The commenters provide that the Court of Appeals emphasized it is the Area Manager’s actual receipt of an appeal that starts the timeline, so the Legislative Operating Committee should consider codifying the Court’s interpretation into Law.

Section V.D.1.c.1.c.i of the Law provides that the supervisor’s ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department. The Legislative Operating Committee may determine whether the Law needs further clarification as to what receipt of an appeal means. The Legislative Operating Committee may make one of the following decisions:

1. Section V.D.1.c.1.c.i of the Law should remain as currently drafted, and provide that the supervisor’s ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department.
2. Section V.D.1.c.1.c.i of the Law should be revised to clarify that the supervisor receives an appeal when they personally receive the complaint, after all possible recusals have been resolved. If the Legislative Operating Committee makes this determination the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints
 - c. Complaint Procedures
 - 1) Employee Disagreements
 - c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.
 - i. The supervisor’s ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department. The supervisor receives an appeal when they personally receive the grievance, after all possible recusals have been resolved.

If the Legislative Operating Committee makes this determination, then similar revisions to the Law should be made in other relevant sections of the Law when receipt of a complaint or grievance is discussed.

LOC Consideration

The Legislative Operating Committee determined section V.D.1.c.1.c.i of the Law should be revised to clarify that the supervisor receives an appeal when they personally receive the complaint, after all possible recusals have been resolved.

Comment 119 – Burden of Meeting Investigations

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints
 - c. Complaint Procedures
 - 1) Employee Disagreements
 - c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.
 - ii. **The supervisor shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.**

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): ii. The supervisor shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

Altogether, the proposed Complaint section places an incredible burden on supervisors, area managers, and, in some cases, even General Managers. A part of that burden is found in Section V.D.1.c.1)c.ii. and other similarly-worded sections. (See e.g.V.D.1.c.1)e.iv. regarding area manager investigation and V.D.1.c.1) f.iv.1.c. regarding General Manager investigation of complaints). Under the proposed amendments, supervisors (and area managers and General Managers) will be required to meet with the employee who filed the complaint and “all other parties mentioned in the complaint.”¹¹ The amendments do not grant the supervisor, area manager, or General Manager any discretion in determining which individuals have information relevant to the Employee Disagreement. A complaining employee could name numerous individuals in the



complaint, which would necessitate a supervisor meeting with each and every one of them. In addition, use of the term “parties” rather than “employees” means the supervisor would be required to meet with individuals outside the organization. The proposed amendments do not provide any discretion for supervisors, area managers, or General Managers to conduct an investigation tailored to the complaint.

¹¹ It is interesting that the amendments would not require the supervisor to meet with the employee who is the subject of the complaint if such employee is not, in fact, named in the complaint. This may be an oversight, but it seems essential to creating an effective resolution to an Employee Disagreement.

Response

The commenters provide that the Law’s requirement to meet with the employee who filed the complaint and all other parties mentioned in the complaint may be burdensome, and does not grant the supervisor, area manager, or General Manager any discretion in determining which individuals have information relevant to the Employee Disagreement. The commenter also questions why the proposed amendments would not require the supervisor to meet with the employee who is the subject of the complaint if such employee is not, in fact, named in the complaint.

Section V.D.1.c.1.c.ii. of the Law provides that during an investigation of a complaint the supervisor is required to meet with the employee filing the complaint as well as all other parties mentioned in the complaint. The supervisor is required to meet with all individuals named in the complaint in order to obtain the most information to base their investigation on. The commenter’s interpretation that the proposed amendments to the Law do not require the supervisor to meet with the employee that is the subject of the complaint is unclear, since in order to file a complaint against an individual you would inherently need to name that employee in the complaint.

The Legislative Operating Committee may determine whether the requirement for a supervisor to meet with the employee filing the complaint as well as all other parties mentioned in the complaint during a complaint investigation is too burdensome, and if supervisors should be granted discretion in determining who to meet with. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.1.c.1.c.ii. of the Law should remain as currently drafted, and provide that during an investigation of a complaint the supervisor is required to meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
2. Section V.D.1.c.1.c.ii. of the Law should be revised to provide the supervisor with more flexibility in determining which individuals to meet with during a complaint investigation. If the Legislative Operating Committee makes this determination then the following revision to the Law is recommended:

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints
 - c. Complaint Procedures
 - 1) Employee Disagreements

- c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.
 - ii. The supervisor shall meet with the employee filing the complaint and the employee who is the subject of the complaint. The supervisor may also meet with as well as all any other parties mentioned in the complaint as determined to be relevant to the complaint investigation.

LOC Consideration

The Legislative Operating Committee determined that section V.D.1.c.1.c.ii. of the Law should remain as currently drafted, and provide that during an investigation of a complaint the supervisor is required to meet with the employee filing the complaint as well as all other parties mentioned in the complaint in an effort to ensure consistency in how complaints are investigated amongst various supervisors of the Nation.

Comment 120 – Defining what it means to be Unavailable to Meet:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

ii. The supervisor shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

1. Meetings between the supervisor and employees may occur in person, through video conferencing, or over the telephone.

2. The supervisor shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the supervisor shall move forward with the investigation based on the information they have.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): 1. Meetings between the supervisor and employees may occur in person, through video conferencing, or over the telephone. 2. The supervisor shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the supervisor shall move forward with the investigation based on the information they have.

The proposed amendment language does not define when or how an employee is “unavailable” to meet. The Oneida Judiciary provided guidance on when an employee may be considered

unavailable to meet. The Oneida Court of Appeals, in *Skenandore v. Smith et al.*, found that a supervisor must provide an employee at least 24-hours’ notice prior to a requested meeting for the employee’s no-show to count as a refusal to meet. (21-AC-008, p. 4 (April 11, 2022)) (“[P]roviding less than 24-hour notice to attend a meeting on a voicemail, especially when the meeting has not been confirmed, is not judicious good sense.”). In addition, a supervisor may be required to follow-up with an employee who does not respond to a meeting request, rather than allowing the meeting time to pass and proceeding with discipline. *Id.* at 5. The proposed amendments do not explain why the principles –and the rule of law – of *Skenandore* have been left out of the OPPP amendments.

Also, while the supervisor is permitted to move forward with an investigation if the complaining employee or subject employee are unavailable, the amendments do not have similar instructions when any “other party” is unavailable. It is unclear whether the supervisor’s attempts to meet with “all other parties” must be documented and whether unavailability affects the investigation in any way. This topic should be addressed to provide clear guidance to supervisors, area managers, and General Managers.

Response

The commenter requests that the Legislative Operating Committee consider providing further clarification in the Law as to what “unavailable to meet” means, and consider codifying the guidance and interpretations the Courts has provided through case law.

Section V.D.1.c.1.c.ii. of the Law provides that the supervisor shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint, and that the supervisor shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the supervisor shall move forward with the investigation based on the information they have.

It is recommended that the Legislative Operating Committee review this provision of the Law to provide greater clarification as what it means for an employee to be unavailable to meet. The Legislative Operating Committee should discuss and determine how much notice is required for a meeting, are follow-ups with an employee who does not respond to a meeting request required, is the supervisor required to document its efforts to meet with any parties other than the employee making the complaint and the employee that is the subject of the complaint.

LOC Consideration

The Legislative Operating Committee determined that this provision of the Law needs greater clarification as to what it means for an employee to be unavailable to meet, and further discussion with the Human Resources Department will be needed to flush out this section of the Law.

Comment 121 – Filing and Reporting of Complaint Resolutions:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. **Complaints**
 - c. **Complaint Procedures**
 - 1) **Employee Disagreements**
 - c) **The supervisor shall have ten (10) working days to investigate and resolve the complaint.**
 - vi. **The supervisor shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.**

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Under the proposed amendments, Section V.D.1.c.1)c)vi. requires the supervisor to send the final resolution to the EEO Department “for filing and reporting purposes.” It is not clear what reporting is required or permitted for resolutions to Employee Disagreement Complaints. As outlined above, OPPP Section IX protects personnel records from disclosure absent written permission from the subject employee. The amendments should more clearly define – and perhaps limit – reporting of Complaint resolutions.

Response

The commenters request that the Legislative Operating Committee more clearly define the reporting of complaint resolutions.

Section V.D.1.c.1.c.iv. of the Law provides that the supervisor shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.

It is recommended that the Legislative Operating Committee review this section and determine what reporting would be necessary for the resolutions of complaints, and who has access to the complaint resolutions, and then revise the Law accordingly.

LOC Consideration

The Legislative Operating Committee determined this section of the Law needs further review so it can be determined what reporting would be necessary for the resolutions of complaints, and who has access to the complaint resolutions.

Comment 122 – Accountability of the Ten (10) Day Complaint Investigation Timeframe:

- SECTION V – EMPLOYEE RELATIONS**
- D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES**
 - 1. Complaints**
 - c. Complaint Procedures**
 - 1) Employee Disagreements**



d) If the supervisor fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the Area Manager.

i. The notice shall notify the Area Manager that the complaint was not addressed within the allotted ten (10) working days.

ii. The notice shall inform the Area Manager that the supervisor violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.

iii. The notice shall address the appropriate accountability of the supervisor.

1. If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

iv. The notice shall direct the Area Manager to complete the complaint investigation within ten (10) working days of receiving the notice from EEO.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

d) If the supervisor fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the Area Manager.

i. The notice shall notify the Area Manager that the complaint was not addressed within the allotted ten (10) working days.

ii. The notice shall inform the Area Manager that the supervisor violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.

iii. The notice shall address the appropriate accountability of the supervisor.

1. If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

iv. The notice shall direct the Area Manager to complete the complaint investigation within ten (10) working days of receiving the notice from EEO.

The proposed amendments add a significant “accountability” process to the Complaint section. If a supervisor “fails” to investigate and resolve a complaint within 10 days¹³, the EEO Department is compelled to send notice to the area manager. It is not clear what constitutes a supervisor’s failure to investigate and resolve a complaint. Historically, these questions have been examined

and resolved by an Oneida hearing body, which provides an opportunity for both sides to be heard and supplies written decisions that guide future actions of supervisors throughout the organization. Such important due process and notice functions will be missed if these determinations are made by the EEO Department.

¹³ Although a supervisor may request an additional five days to resolve a complaint under proposed Section V.D.1.c.1)c)iii., the “accountability” process does not recognize any extensions. A supervisor failure to investigate and resolve in 10 working days, rather than 15, compels the EEO to send notice to the area manager.

In addition, the EEO determination occurs without giving the supervisor an opportunity to explain why the deadline was missed. While the proposed amendments provide ample process for employees to complain and appeal, supervisors (and area managers and General Managers who respond to complaints) are not afforded the same right to be heard. Instead, the EEO unilaterally determines both that the supervisor, area manager, or General Manager was “negligent in the performance of assigned duties” and assigns “appropriate accountability.” It is unclear from the proposed language what might be used to hold the supervisor accountable. Is it discipline? An entry in the personnel file of the offending supervisor? As the EEO’s notice will describe the supervisor’s actions as “negligence in the performance of assigned duties,” which is an action subject to discipline under both the current OPPP and the proposed amendments, it would appear that accountability will be in the form of discipline. And the area manager would be required to issue the discipline without hearing the supervisor’s perspective. A unilateral finding that an employee (here, a supervisor) was negligent in the performance of their duties without granting any opportunity for the employee (supervisor) to explain their actions is counter to the remainder of the proposed OPPP amendments.

In addition, the proposed amendments remove the area manager’s or General Manager’s discretion to address the supervisor’s actions, since the next step is to notify the General Manager of the area manager’s failure to address the situation (or at least to address it to the EEO’s satisfaction). It is not clear what philosophy supports the removal of discretion from most levels of management.

Response

The commenter expresses concern regarding the process provided in section V.D.1.c.1.d. of the Law which addresses what occurs when the supervisor fails to complete the investigation and resolve the complaint within the ten (10) working days. The commenter feels that this provision does not provide the supervisor a right to be heard, or address why the deadline was missed.

It is recommended that the Legislative Operating Committee review the concerns addressed by this comment, and determine what, if any, clarifications can be added to section V.D.1.c.1.d. of the Law

LOC Consideration

The Legislative Operating Committee determined that section V.D.1.c.1.d. of the Law needs further review and discussion to address the concerns brought forth through this comment.

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

b. Types of Complaints

2) EEO Violations

a) An EEO violation occurs when an employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed.

i. Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;

2. submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or

3. such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.1.c.2), EEO Violations

The second category of Complaints is EEO Violations, which “occurs when an employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed.” (OPPP amendments, Draft 1, lines 728-42). The proposed amendments define “Sexual Harassment” using language from current OPPP Section V.D.2.c)5), specifically:

i. Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;

2. submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or

3. such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment.

Over time, the definition of sexual harassment has expanded beyond what is in the current OPPP and proposed for the amendments. Comprehensive amendments to the OPPP provide an opportunity to update the scope of prohibited sexually harassing behavior under Oneida law. The United States Equal Employment Opportunity Commission¹⁴ includes in its definition all harassment “because of a person’s sex” and “offensive remarks about a person’s sex.” (U.S. Equal Employment Opportunity Commission, Sexual Harassment, last visited 12/22/2022, www.eeoc.gov/sexual-harassment). Most importantly, harassment “does not have to be of a sexual nature” to be prohibited as sexual harassment. *Id.* Also, sexual harassment can be perpetrated by a man or a woman and the harasser and victim may be of the same sex or opposite sex. *Id.* The amendments should include an updated scope of sexually harassing behaviors.

¹⁴ As a federally-recognized Indian tribe, the Oneida Nation is exempt from Title VII of the Civil Rights Act of 1964 and not subject to EEOC jurisdiction. EEOC definitions may guide the Nation in forming a sexual harassment policy.

Jessica Vandekamp (written): 5. Hostile Work Environment • Add: define hostile work environment as a form of sexual harassment. I’ve heard often that employees use the term incorrectly when describing an unfriendly work environment.

Tina Jorgensen (written): It is very easy for an employee to claim they are working in a hostile work environment. It was mentioned in a few of my employee disagreements and investigations and was due to the employee being held accountable for their actions. I agree with EEO being involved but I disagree that the EEO department being responsible.

Response

The commenter suggests that the Legislative Operating Committee consider updating the definition for sexual harassment.

Section V.D.1.b.2.a.i of the Law provides that sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;
2. submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or
3. such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment.

It is recommended that the Legislative Operating Committee work with the EEO Department to revise and update the definition for sexual harassment to clarify the scope of sexually harassing behaviors.

LOC Consideration

The Legislative Operating Committee determined that collaboration with the EEO Department should occur to work on updating and revising the definition of sexual harassment to clarify the scope of sexually harassing behaviors.

Comments 126 through 130 – : Oversight and Accountability for EEO Violations Complaint Investigations:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

2) EEO Violations

- a) An employee may file a EEO Violation complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer’s ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an EEO Violation complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
- i) The EEO Officer’s resolution shall be final.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): The proposed Complaint process for EEO violations is as follows:

2) EEO Violations

- a) An employee may file a EEO Violation complaint with the EEO Department.

- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an EEO Violation complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.¹⁵
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
 - i) The EEO Officer's resolution shall be final. (OPPP amendments, Draft 1, lines 896-917)

The most notable aspect of the EEO Violations Complaint process is the lack of oversight, especially when this section is compared to the Employee Disagreements Complaint process. While supervisors, area managers, and General Managers throughout the organization will be found "negligent in the performance of their assigned duties" and be subject to "appropriate accountability" if they "fail to complete [an] investigation and resolve the complaint," the EEO Officers have no oversight and no threatened discipline. The proposed amendments are very focused on EEO oversight of supervisor, area manager, and General Manager investigations, decision-making, and follow-through. But there is a complete lack of oversight for the EEO Officers themselves when they are investigating and resolving EEO Violation Complaints.

¹⁵ The proposed Amendments do not state what happens if the EEO and HR Executive Director cannot mutually agree. A possible solution is for the Executive Director decision to control in those instances.

Lisa Duff on behalf of Gaming Senior Management (written): Line 900-901: The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department received the complaint from the employee.

After this step, nothing in the EEO Officers process for investigating and resolution of the complaint addresses what happens if the EEO fails to adhere to the timeline during the process. There are steps up the chain of command, up to the Business Committee if supervisors, managers, and the General Manager fail to adhere to the timeline. If EEO wants supervisor authority to discipline, they too need to be held accountable if they miss the timeline. The process needs to be fair and consistent to all who are taking action. In the supervisor, area manager and general

manager sections under complaints it states that if they fail to complete the investigation and resolve the complaint within ten (10) working days, the EEO Department shall send notice up the chain of command, informing them they violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint. This same process has to be followed when EEO is negligent.

Lisa Duff on behalf of Gaming Senior Management (written): Line 913-914: The EEO Office shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.

Where's the step after this that says, if the EEO cannot come to a mutual determination with the Human Resources Executive Director as to an appropriate resolution for the complaint then the EEO shall provide written justification for non-agreement on the resolution to the General Manager or Business Committee. In all the complaint processes for the supervisor, Area Manager and the General Manager, it states they must provide written justification for non-agreement with EEO. If EEO is allowed disciplinary authority, in the event of a disagreement with the Executive Director's decision, the Executive Directors decision shall be final in regard to internal review prior to actual litigation before the Judiciary.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1136-1140: For any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department shall send a letter to the Area Manager. The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee.

If EEO Officers are going to be allowed the authority to discipline employees that they don't work with or supervise, what happens when the EEO Officer fails to follow the Nations disciplinary procedures? Where is the accountability process for them? They too should have a letter sent to their Area Manager informing them the EEO Officer violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee. The process has to be fair and consistent for all.

Shannon Stone (written): There does not seem to be the same level of accountability for EEO as there is for a supervisor in the Complaint and Grievance processes.

Response

The commenters provide that the complaint procedures for EEO Violations found in section V.D.1.c.2 of the Law lacks the level of accountability for the EEO officers that is provided for the supervisors in the complaint procedures for Employee Disagreements.

Some examples of the commenters concerns include section V.D.1.c.2.g of the Law which provides that the EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution, but does not provide what occurs if the EEO Officer and the Human Resources Executive Director cannot come to a mutual determination.

Additionally, section V.D.1.c.2 of the Law does not address what occurs if the EEO Officer fails to complete the investigation within the timelines provided in the Law.

It is recommended that the Legislative Operating Committee review the complaint procedures for EEO Violations found in section V.D.1.c.2. of the Law to address the accountability of the EEO Officers. Specifically, the Legislative Operating Committee should discuss and determine what occurs if the EEO Officer and the Human Resources Executive Director cannot come to a mutual determination, as provided for in V.D.1.c.2.g of the Law, as well as accountability measures for an EEO Officer who does not follow the complaint procedures.

LOC Consideration

The Legislative Operating Committee already determined that the EEO Department’s authority to investigate complaints and issue disciplines should be removed from the Law, and therefore the concerns brought forth through these comments are moot.

Comment 131 – Clarification on Final Resolution for EEO Violation Investigation:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

2) EEO Violations

- a) An employee may file a EEO Violation complaint with the EEO Department.**
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.**
- c) The EEO Officer’s ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.**
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;**
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and**
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.****
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.**
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an EEO Violation complaint.**

- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.**
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.**
- i) The EEO Officer's resolution shall be final.**

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): The proposed amendments require the EEO Officer to notify the supervisor of the employee who is the subject of the complaint to state, among other things, “the final resolution shall be sent to their supervisor to ensure accountability.” (OPPP amendments, Draft 1, lines 907-908). It is unclear which supervisor will receive the “final resolution.” The language may refer to the supervisor of the employee being complained about or it may refer to the supervisor’s supervisor (in other words, two levels of supervision above the employee being complained about). The language should more clearly specify who will receive the final resolution.

In addition, the language declaring the EEO’s resolution of a Complaint as “final” should be more clear. If the meaning of “final” is that the EEO’s resolution cannot be appealed to any hearing body, such limitation should be explicit.

Response

The commenters request that the Legislative Operating Committee clarify which supervisor the final resolution shall be sent to as provided for in section V.D.1.c.2.d.iii. of the Law. The commenters also request that the Legislative Operating Committee clarify what section V.D.1.c.2.i of the Law means when it states that the EEO Officer’s resolution shall be final.

Section V.D.1.c.2.d.iii of the Law provides that the EEO Officer shall notify the immediate supervisor of the employee being complained about so they: Are aware that the EEO Officer will be investigating their employee; Know the EEO Officer shall be responsible for implementing the final resolution; and Know the final resolution shall be sent to their supervisor to ensure accountability. Because the communication is from the EEO Officer to the supervisor of the employee who is the subject of the complaint, the provision that “the final resolution shall be sent to *their* supervisor to ensure accountability” is referencing the supervisor of the supervisor, more commonly known as the Area Manager. It is not currently addressed in the proposed amendments, but the Legislative Operating Committee may want to ensure that the final resolution is also provided to the supervisor of the employee being complained about so that they are aware of the final resolution.

Additionally, section V.D.1.c.2.i of the Law provides that the EEO Officer’s resolution shall be final. The intent of this provision is that the EEO Officer’s resolution of the complaint be non-appealable.

It is recommended that the Legislative Operating Committee make the following revisions to the Law to clarify the above mentioned issues:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

2) EEO Violations

a) An employee may file a EEO Violation complaint with the EEO Department.

b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.

c) The EEO Officer’s ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.

d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:

i. Are aware that the EEO Officer will be investigating their employee;

ii. Know the EEO Officer shall be responsible for implementing the final resolution; and

iii. Know the final resolution shall be sent to the supervisor and area manager of the employee who is the subject of the complaint ~~their supervisor~~ to ensure accountability.

i) The EEO Officer’s resolution shall be final and non-appealable.

LOC Consideration

The Legislative Operating Committee already determined that the EEO Department’s authority to investigate complaints and issue disciplines should be removed from the Law, and therefore the concerns brought forth through these comments are moot.

Comment 132 – Definition for Illegal Activities:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

b. Types of Complaints

3) Illegal Activities

a) An illegal activities violation occurs when an employee alleges:

i. They witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;

- ii. They witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;
- iii. They witnessed or have knowledge of the use or possession of an illegal controlled substance; or
- iv. They witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.1.c.3), Illegal Activities

The proposed amendments add a new Complaint process centered on employee allegations of illegal activities. Illegal activities are defined within the amendments at Section V.D.1.b.3):

3) Illegal Activities

- a) An illegal activities violation occurs when an employee alleges:
 - i. They witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;
 - ii. They witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;
 - iii. They witnessed or have knowledge of the use or possession of an illegal controlled substance; or
 - iv. They witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions. (OPPP amendments, Draft 1, lines 743-754)

The OPPP are Oneida law and must be confined to matters over which the Oneida Nation can exercise its jurisdiction. For the purpose of employment regulation, this is generally considered to include activities that occur within the workplace, activities that are part of an employee’s work duties, or activities that substantially affect an employee’s ability to perform their work duties. The proposed amendments do not confine the definition of “Illegal Activities” to activities that are under the Nation’s jurisdiction, which can pose a problem for enforcement of the Law. Only amended Section V.D.1.c.3)a)ii refers to an employee “witness[ing] or hav[ing] knowledge of a possession of a dangerous or unauthorized material . . . in the workplace.” (OPPP amendments, Draft 1, lines 747-8) (emphasis added). Similar language should be added to Sections i, iii, and iv.

Response

The commenters request the Legislative Operating Committee consider revising section V.D.1.3.b.a. of the Law to activities that occur within the workplace, activities that are part of an employee’s work duties, or activities that substantially affect an employee’s ability to perform their work duties.

Section V.D.1.3.b.a. of the Law provides that an illegal activities violation occurs when an employee alleges:

- They witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;
- They witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;
- They witnessed or have knowledge of the use or possession of an illegal controlled substance; or
- They witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions.

It is recommended that the Legislative Operating Committee make the following revision to section V.D.1.3.b.a. of the Law to provide a greater connection between the illegal activity and the workplace:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

b. Types of Complaints

3) Illegal Activities

- a) An illegal activities violation occurs when an employee alleges they witnessed or have knowledge of an illegal act that:
- i. occurred within the workplace;
 - ii. occurred as a result of an employee’s work duties; or
 - iii. substantially affects an employee’s ability to perform their work duties.

(b) An illegal activity may include, but is not limited to, the following:

- i. ~~They witnessed or have knowledge of~~ arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;
- ii. ~~They witnessed or have knowledge of a~~ possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;
- iii. ~~They witnessed or have knowledge of the~~ use or possession of an illegal controlled substance; or
- iv. ~~They witnessed or have knowledge of a~~ theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions.

LOC Consideration

The Legislative Operating Committee already determined that the distinction between various types of complaints will be removed from the law, so clarifying the definition of illegal activities is no longer necessary.

Comments 133 through 135 – Illegal Activities Complaint Process Concerns:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer’s ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
- i) The EEO Officer’s resolution shall be final.
- j) If the EEO Officer’s Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.

- i. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.**

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): The proposed amendments also describe a process for Illegal Activities Complaints.

3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
 - i) The EEO Officer's resolution shall be final.
- j) If the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.
 - i. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint. (OPPP amendments, Draft 1, lines 918-946)

The Illegal Activities complaint process mirrors the EEO Violations complaint process for the most part, so the comments are similar. (See EEO Violations, above). In summary, when compared to the Employee Disagreement Complaint process, there is a lack of oversight for EEO Officer investigation and resolution of Illegal Activities. Also, it is unclear which supervisor will receive "the final resolution" identified in Section V.D.1.c.3)d)iii. Finally, it is not clear what is meant by, "The EEO Officer's resolution shall be final."

Lisa Duff on behalf of Gaming Senior Management (written): Illegal Activities Lines 923-924: The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.

Same as mentioned above in EEO violations, nothing in the EEO process addresses if the EEO Officer fails to complete the investigation and resolve the complaint within ten (10) working days. Nothing states who will send this notice, and who is it sent to, to inform them the EEO violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint. If this process exists for supervisors, area managers and the General Manager in needs to be in the EEO's process also. All need to be held accountable in the same manner.

Lisa Duff on behalf of Gaming Senior Management (written): Line 936-937: The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.

Nothing is stated in this process who the EEO sends their justification to if the EEO Officer and Human Resources Executive Director do not come to a mutually determination of an appropriate resolution as listed in the supervisor, area manager and General Managers process. Both should have to follow the same process to be consistent.

Response

The commenters provide that the complaint procedures for Illegal Activities found in section V.D.1.c.3. of the Law lacks the level of accountability for the EEO officers that is provided for the supervisors in the complaint procedures for Employee Disagreements.

Some examples of the commenters concerns include section V.D.1.c.3.g of the Law which provides that the EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution, but does not provide what occurs if the EEO Officer and the Human Resources Executive Director cannot come to a mutual determination. Additionally, section V.D.1.c.3. of the Law does not address what occurs if the EEO Officer fails to complete the investigation within the timelines provided in the Law.

It is recommended that the Legislative Operating Committee review the complaint procedures for Illegal Activities found in section V.D.1.c.3. of the Law to address the accountability of the EEO Officers. Specifically, the Legislative Operating Committee should discuss and determine what occurs if the EEO Officer and the Human Resources Executive Director cannot come to a mutual determination, as provided for in V.D.1.c.2.g of the Law, as well as accountability measures for an EEO Officer who does not follow the complaint procedures.

Additionally, the commenters request that the Legislative Operating Committee clarify which supervisor the final resolution shall be sent to as provided for in section V.D.1.c.3.d.iii. of the Law. The commenters also request that the Legislative Operating Committee clarify what section V.D.1.c.3.i of the Law means when it states that the EEO Officer's resolution shall be final.

Section V.D.1.c.3.d.iii of the Law provides that the EEO Officer shall notify the immediate supervisor of the employee being complained about so they: Are aware that the EEO Officer will be investigating their employee; Know the EEO Officer shall be responsible for implementing the

final resolution; and Know the final resolution shall be sent to their supervisor to ensure accountability. Because the communication is from the EEO Officer to the supervisor of the employee who is the subject of the complaint, the provision that “the final resolution shall be sent to *their* supervisor to ensure accountability” is referencing the supervisor of the supervisor, more commonly known as the Area Manager. It is not currently addressed in the proposed amendments, but the Legislative Operating Committee may want to ensure that the final resolution is also provided to the supervisor of the employee being complained about so that they are aware of the final resolution.

Additionally, section V.D.1.c.3.i of the Law provides that the EEO Officer’s resolution shall be final. The intent of this provision is that the EEO Officer’s resolution of the complaint be non-appealable.

It is recommended that the Legislative Operating Committee make the following revisions to the Law to clarify the above mentioned issues:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer’s ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to the supervisor and area manager of the employee who is the subject of the complaint ~~their supervisor~~ to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.

- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
- i) The EEO Officer's resolution shall be final and non-appealable.
- j) If the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.
 - i. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.

LOC Consideration

The Legislative Operating Committee already determined that the distinction between various types of complaints will be removed from the law, so addressing the concerns brought forth by these comments is no longer necessary.

Comment 136 – Involvement of the Oneida Law Office in Illegal Activities Complaints:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

- f) **The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.**
- g) **The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.**
- h) **The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.**
- i) **The EEO Officer’s resolution shall be final.**
- j) **If the EEO Officer’s Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.**
 - i. **The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.**

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Proposed Section V.D.1.c.3.g. would require the EEO Office to meet with the HR Executive Director to “mutually determine an appropriate resolution.” When there is the possibility of illegal activity within an Oneida workplace or a crime against the Nation, such discussion should involve an attorney(s) from the Oneida Law Office. The Nation’s attorneys both represent the interest of the Nation and directly advise the Oneida Business Committee about legal implications of potential illegal activity within the organization.

In addition, while the Illegal Activities complaint process requires an EEO Officer to forward information to a local law enforcement agency if the Officer reaches a “conclusion that an illegal activity did occur,” this requirement falls far short of what is actually needed in these circumstances. If grant funds are implicated in any way, grant requirements must be considered and a report(s) made to relevant granting agency(ies). In addition, illegal activity typically impacts compacts, contracts, memoranda of understanding or agreement, and other intergovernmental agreements. The Oneida Law Office is involved in cases of illegal activity to ensure that the requirements of all applicable agreements are fulfilled. In almost every case, the matter is reported to the Business Committee with the appropriate confidentiality and context. Simply saying that the EEO will refer the matter to a local law enforcement agency does not address all the implications of an Illegal Activities investigation. This language should be expanded to ensure that the Oneida Law Office is involved and all reports are made.

Response

The commenters request that the Legislative Operating Committee include the Oneida Law Office in section V.D.1.c.3. of the Law, since that the Oneida Law Office should be involved in all reports of Illegal Activities.



It is recommended that the Legislative Operating Committee collaborate with the Oneida Law Office to determine how best to incorporate the Oneida Law Office into the Illegal Activities complaint procedures provided for in section V.D.1.c.3. of the Law, and revise the Law accordingly.

LOC Consideration

The Legislative Operating Committee determined that in future work meetings regarding amendments to this Law collaboration with the Oneida Law Office will occur to determine how best to incorporate the Oneida Law Office into complaint procedures when an illegal action occurs.

Comment 137 – Local Law Enforcement Agencies:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer’s ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
- i) The EEO Officer’s resolution shall be final.

j) If the EEO Officer’s Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.

i. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): The Illegal Activities Complaint process raises an additional concern. Section V.D.1.c.3)j)i. seems to direct “local law enforcement agenc[ies]” to “utilize their investigation and accountability processes for the complaint.” Every local law enforcement agency, including the Oneida Police Department, uses its discretion to determine an approach to every complaint they receive. It is not necessary to direct law enforcement agencies as proposed in the OPPP amendments.

Response

The commenters provide that it is unnecessary for the section V.D.1.c.3.j.i. of the Law to provide direction to local law enforcement agencies.

Section V.D.1.c.3.j. of the Law provides that if the EEO Officer’s Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency. The Law then provides that the local law enforcement agency shall utilize their investigation and accountability processes for the complaint.

The following revision to the Law is recommended based on this comment:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

3) Illegal Activities

j) If the EEO Officer’s Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.

~~**i. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.**~~

LOC Consideration

The Legislative Operating Committee already determined that the distinction between various types of complaints will be removed from the law, so addressing the concerns brought forth by these comments is no longer necessary.

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

b. Determination of Disciplinary Action.

- 1) All disciplinary actions shall commensurate with the seriousness of the unsatisfactory performance or violation.
- 2) Disciplinary actions shall be considered in progressive order.
 - a) The progressive order for discipline is as follows, unless otherwise noted:
 - i. Written warning (W);
 - ii. Suspension (S);
 - iii. Termination (T).
 - b) Deviation from Progressive Order
 - i. Any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.
 - ii. Any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and approved by the Human Resources Executive Director, or designee.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

b. Determination of Disciplinary Action.

- 1) All disciplinary actions shall commensurate¹⁸ with the seriousness of the unsatisfactory performance or violation.
- 2) Disciplinary actions shall be considered in progressive order.
 - a) The progressive order for discipline is as follows, unless otherwise noted:
 - i. Written warning (W);
 - ii. Suspension (S);
 - iii. Termination (T).
 - b) Deviation from Progressive Order
 - i. Any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.
 - ii. Any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and approved by the Human Resources Executive Director, or designee.

The proposed amendments would require a supervisor to obtain EEO approval of any deviation from progressive discipline, within the timeline for issuing discipline. The amendments do not provide an opportunity to appeal the EEO decision regarding deviation

¹⁸ It's possible Section V.D.2.b.1) is intended to read, "All disciplinary actions shall be commensurate with the seriousness of the unsatisfactory performance or violation."

Lisa Duff on behalf of Gaming Senior Management (written): Line 963-965: Any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.

EEO should not have to approve a supervisor's deviation from the recommended progression. They never had in the current process so why change it? I agree the process should remain that any deviation from the recommended progression shall be justified in writing, but it should not have to have EEO approval, as again, it is the discretion of the supervisor on what level of discipline they are going to issue.

Lisa Duff on behalf of Gaming Senior Management (written): Line 982: unless a deviation is sought and approved.

Don't agree that a supervisor's decision to deviate from the recommended progression needs EEO approval. It never has in the past, why add it now? Again, too much authority to EEO. Supervisors are currently required to justify the deviation in writing so why change the process?

Mark Powless (written):

991 When the supervisor's investigation is complete, the supervisor shall
992 contact the EEO Officer to mutually determine an appropriate resolution.
993 c.1. If the supervisor cannot come to a mutual determination with the EEO
994 Officer as to an appropriate resolution for the complaint, then the
995 supervisor shall provide written justification for non-agreement on the
996 resolution to both the Area Manager to attempt a resolution and the
997 Human Resources Executive Director.

1179 i. Any deviation from the recommended progressive order made by the
1180 supervisor shall be justified in writing and approved by the EEO
1181 Department.

- In both sections the time for the EEO office to respond is not defined. A supervisor has a defined timeframe to respond. If the EEO office is not timely it will delay completion of the investigation/resolution.

Response

The commenters provide that overall the discipline timelines do not provide adequate time for the supervisor to obtain approval by the EEO Department for any deviation from the progressive order as required by section V.D.2.b.2.b. of the Law. Additionally, the commenters state the section V.D.2.b.2.b. of the Law does not allow a supervisor to appeal the decision of the EEO Department. The commenters also provide general non-support of this provision of the Law.

Section V.D.2.b.2. of the Law provides that disciplinary actions shall be considered in progressive order, which is as follows, unless otherwise noted: Written warning (W); Suspension (S); Termination (T). Section V.D.2.b.2.b.i. of the Law then provides that any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.

The Legislative Operating Committee may consider whether the disciplinary procedures found in section V.D.2. of the Law allow enough time for the requirements of section V.D.2.b.2.b.i. to be accomplished. The Legislative Operating Committee may also consider whether a supervisor should be able to appeal the decision of the EEO Department regarding the deviation from the normal progressive order of discipline. The Legislative Operating Committee may make one of the following determinations.

1. Section V.D.2.b.2.b.i. of the Law should remain as currently redrafted and require that any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.
2. Section V.D.2.b.2.b.i. of the Law should be redrafted and the Legislative Operating Committee should consider whether the approval of the EEO Department is necessary for a deviation from the progressive order. If the Legislative Operating Committee decides to keep the requirement for the approval of the EEO Department, then the Legislative Operating Committee should consider the timeline for the EEO Department to approve the deviation, and whether a supervisor be allowed to appeal the decision of the EEO Department.

LOC Consideration

The Legislative Operating Committee determined that section V.D.2.b.2.b.i. of the Law needs further discussion and clarification. The Legislative Operating Committee discussed the fact that more information is needed on whether deviations from the progressive order results in increased grievances and issues. The Legislative Operating Committee also discussed that the Law needs to be clear on when a deviation is allowed so that supervisors are not confused, and that the Law should address a timeline for the EEO Department to approve the deviation, and how a supervisor can appeal the decision of the EEO Department.

Comment 142 – Accumulated Disciplinary Actions Warranting Termination:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

b. Determination of Disciplinary Action.

3) Accumulated Disciplinary Actions Warranting Termination

a) The following accumulations of disciplinary actions shall warrant the termination of an employee:

- i. Three (3) upheld warning notices within any twelve (12) month period;**

- ii. Two (2) upheld suspensions within any twelve (12) month period; or
- iii. Any combination of three (3) upheld warning notices and/or upheld suspensions within any twelve (12) month period.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

- 3) Accumulated Disciplinary Actions Warranting Termination
 - a) The following accumulations of disciplinary actions shall warrant the termination of an employee:
 - i. Three (3) upheld warning notices within any twelve (12) month period;
 - ii. Two (2) upheld suspensions within any twelve (12) month period; or
 - iii. Any combination of three (3) upheld warning notices and/or upheld suspensions within any twelve (12) month period.

Proposed language regarding accumulated disciplines is substantially similar to language in the current OPPP and presents no legal issues.

Response

The commenters provide a summary of section V.D.2.b.3. of the Law and provide that it is substantially similar to current language in the Law and presents no legal issue. There is no action needed by the Legislative Operating Committee based on this comment.

LOC Consideration

The Legislative Operating Committee determined that there is no action needed based on this comment.

Comment 143 – Definition of Prohibited Drug:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

c. Disciplinary Action for Unsatisfactory Work Performance.

1) A supervisor may initiate disciplinary action for unsatisfactory work performance of an employee.

2) The actions listed below are examples of unsatisfactory work performance and do not constitute a comprehensive or exhaustive list. The actions in parentheses are the progressive order standards to be used in administering disciplinary actions, unless a deviation is sought and approved.

d) Personal Actions and Appearance

xiii. The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or prohibited drugs on or about Oneida Nation premises while on duty. (S/T)

1. Prohibited drug means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens,



methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): The amendments include lists of actions that may constitute unsatisfactory¹⁹ work performance, which are substantially similar to the lists of actions in the current law. (See OPPP amendments, Draft 1, lines 983-1066). A significant change in the proposed amendments is found in Section V.D.2.c.2)d)xiii., which proposes to define “prohibited drug” as follows:

- xiii. The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or prohibited drugs on or about Oneida Nation premises while on duty. (S/T)
 - 1. Prohibited drug means marijuana,²⁰ cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

As the laws regarding the legality of marijuana continue to change, it may be advisable to not include a list of specific drugs as “prohibited.” To stay current with any potential changes to drug laws, proposed Section V.D.2.c.2)d)xiii.1. could state:

1. Prohibited drug means any substances included in Schedules I through V, as established by 21 United States Code §812. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

¹⁹ In the current OPPP, the list of actions is referred to as “unacceptable” work performance. See OPPP V.D.2.c.

²⁰ Many states have decriminalized marijuana for medical or recreational use, or both. In Wisconsin, where state law maintains criminal penalties, several municipalities have decriminalized marijuana possession, including Appleton and Green Bay, though such municipalities may permit civil monetary penalties. As a federal grant recipient, the Oneida Nation is required to comply with the Drug Free Workplace Act of 1988, which requires “publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person’s workplace and specifying the actions that will be taken against employees for violations of such prohibition.” 41 USC §701(a)(1)(A). Marijuana is currently included on the federal list of controlled substances.

Response

The commenter requests that the Legislative Operating Committee consider revising the definition for prohibited drug contained in the Law.

Section V.D.2.c.2.d)xiii.1. of the Law provides that prohibited drug means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812

of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

In an effort to stay current with any potential changes to drug laws, the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

c. Disciplinary Action for Unsatisfactory Work Performance.

1) A supervisor may initiate disciplinary action for unsatisfactory work performance of an employee.

2) The actions listed below are examples of unsatisfactory work performance and do not constitute a comprehensive or exhaustive list. The actions in parentheses are the progressive order standards to be used in administering disciplinary actions, unless a deviation is sought and approved.

d) Personal Actions and Appearance

xiii. The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or prohibited drugs on or about Oneida Nation premises while on duty. (S/T)

1. Prohibited drug means ~~marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and~~ any other substances included in Schedules I through V, as defined by ~~Section 812 of Title 21 of the United States Code~~21 United States Code §812. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

LOC Consideration

The Legislative Operating Committee determined that the definition for prohibited drug in section V.D.2.c.2.d.xiii.1. of the Law should be revised to state: Prohibited drug means any substances included in Schedules I through V, as defined by 21 United States Code §812. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

Comment 144 – Clarify Promptly Meeting with an Employee:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. **Disciplinary Procedure.** The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

1) The supervisor or EEO Officer shall fill out a disciplinary action form within five (5) working days of either:

a) the resolution of a complaint from which it has been determined that disciplinary action is warranted, or

- b) the determination that disciplinary action is warranted based on the unsatisfactory work performance of an employee.
- 2) The supervisor or EEO Officer shall fill out the disciplinary action form in its entirety and ensure the information contained on the form is complete and accurate. The disciplinary action form shall include at a minimum the following information:
 - a) Statement of the behavior for which the disciplinary action is being taken;
 - b) The time and date of its occurrence; and
 - c) The specific policy section under which action is being taken.
- 3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.
 - a) The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.
 - b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:
 - i. Understands the reason for the disciplinary action;
 - ii. Understands the expected work performance in light of the disciplinary action; and
 - iii. Understands the consequences of continued unacceptable behavior.
- 4) The employee being disciplined shall sign the disciplinary action form.
 - a) Should an employee being disciplined refuse to discuss the action with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.
- 5) Within one (1) working day of the conclusion of the meeting with the employee, the supervisor or EEO Officer shall provide copies of the signed disciplinary action form, or disciplinary action form noting the date of refusal, to the:
 - a) Employee being disciplined;
 - b) Human Resources Executive Director;
 - c) Supervisor;
 - d) Area Manager; and
 - e) Appropriate General Manager level position.
- 6) Should a disciplinary action result in the suspension of an employee, the following guidelines shall apply:
 - a) Consultation on Suspensions

- i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine the length of the suspension.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension.
 - b) Suspensions shall be limited to a maximum period of three (3) weeks.
 - i. Suspensions that are overturned in the grievance process shall result in the employee receiving back pay for the time they were suspended.
- 7) Should a disciplinary action result in the termination of an employee, the following guidelines shall apply:
 - a) Consultation on Termination
 - i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine that the termination is the appropriate disciplinary action.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action.
 - b) Terminations that are overturned in the grievance process shall result in the employee receiving back pay for the time they were terminated.
- 8) The Human Resources Department may void a disciplinary action for clear procedural errors.
 - a) The EEO Officer may void a disciplinary action taken by a supervisor for clear procedural errors.
 - b) The Human Resources Executive Director, or designee, may void a disciplinary action taken by an EEO Officer for clear procedural errors.
 - c) Notification of a voided disciplinary action shall be sent to the supervisor or EEO Officer and the employee which identifies the procedural error.
- 9) For any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department shall send a letter to the Area Manager.
 - a) The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee.
 - b) The letter shall address the appropriate accountability of the supervisor.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.2.d., Disciplinary Procedure

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

- 1) The supervisor or EEO Officer shall fill out a disciplinary action form within five (5) working days of either:
 - a) the resolution of a complaint from which it has been determined that disciplinary action is warranted, or
 - b) the determination that disciplinary action is warranted based on the unsatisfactory work performance of an employee.
- 2) The supervisor or EEO Officer shall fill out the disciplinary action form in its entirety and ensure the information contained on the form is complete and accurate. The disciplinary action form shall include at a minimum the following information:
 - a) Statement of the behavior for which the disciplinary action is being taken;
 - b) The time and date of its occurrence; and
 - c) The specific policy section under which action is being taken.
- 3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action. (OPPP Amendments, Draft 1, lines 1067-84)

It is not clear what qualifies as “promptly” meeting with a disciplined employee. Under the proposed amendments, the EEO Department can refer a supervisor who “fails to follow the Nation’s disciplinary procedures” for discipline. See OPPP Amendments, Draft 1, lines 1136-41. If an employee (here, a supervisor) is subject to discipline for certain actions or inaction, the employer should inform the employee of exactly what behaviors are required to avoid discipline. The proposed amendments do not adequately inform supervisors how to avoid discipline by promptly meeting with an employee.

Additionally, supervisors have an interest in not having a discipline overturned for procedural errors. (See *Oneida Bingo and Casino v. Oneida Human Resources Dept.*, 02-AC-007, 8 O.N.R. 3-138, 139 (Aug. 12, 2002) (“[T]he supervisor is not presenting this grievance to the Personnel Commission in her personal capacity. She is bringing this action as a representative of the Oneida Bingo and Casino, which is Mr. Haven’s employer. And the Oneida Bingo and Casino does have an interest in upholding Mr. Haven’s suspension from employment. . . . [T]he Bingo and Casino as an entity has an interest in maintaining itself and its processes.”) For supervisors to avoid having their disciplines overturned, they need to be told the details of the disciplinary process. Requiring a “prompt” meeting is not detailed enough. For these reasons, proposed OPPP V.D.2.d.3) should include a specific timeline for supervisors and EEO Officers to meet with an employee who is being disciplined.

Response

The commenters provide that the requirement of section V.D.2.d.3 of the Law for a supervisor or EEO Officer to promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action does not provide enough clarification as to what promptly means.

Section V.D.2.d.3 of the Law provides that the supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action. A definitive timeline for this action is not provided.

It is recommended that section V.D.2.d.3. of the Law be redrafted to provide a definitive timeline for when the supervisor or EEO Officer has to hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action. The Legislative Operating Committee should determine an appropriate timeframe and revise the Law accordingly as illustrated below:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action within __ (add timeframe) __.

a) The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.

b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:

- i. Understands the reason for the disciplinary action;
- ii. Understands the expected work performance in light of the disciplinary action; and
- iii. Understands the consequences of continued unacceptable behavior.

LOC Consideration

The Legislative Operating Committee determined that section V.D.2.d.3. of the Law be redrafted to provide a definitive timeline for when the supervisor or EEO Officer has to hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action. The Legislative Operating Committee determined the Law should be revised to provide that the supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action within five (5) business days.

Comment 145 – Clarification on What Constitutes Corrective Action:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. **Disciplinary Procedure.** The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.

a) The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.

b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:

i. Understands the reason for the disciplinary action;

ii. Understands the expected work performance in light of the disciplinary action; and

iii. Understands the consequences of continued unacceptable behavior.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Furthermore, it is not clear what is included as a “corrective action” that must be identified during the disciplinary meeting. Is the discipline – written warning, suspension, termination – the corrective action? Or would something else – a restriction on employee’s authority, a corrective plan, a mitigation agreement – qualify as a corrective action? In order to provide notice to the supervisor and to help the supervisor implement discipline that will be upheld, the types of “corrective action” need to be identified in the Amendments.

Response

The commenters provide that section V.D.2.d.3. of the Law should be revised to provide greater clarification as to what constitutes corrective action.

Section V.D.2.d.3 of the Law provides that the supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.

It is recommended that the Legislative Operating Committee review section V.D.2.d.3. of the Law and determine what constitutes corrective action in these circumstances, and then revise the Law accordingly.

LOC Consideration

The Legislative Operating Committee determined that additional collaboration with the Human Resources Department is needed to clarify and define “Corrective Action” in the Law.

Comment 146 – Refusal to Meet:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.

a) The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.

b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:

i. Understands the reason for the disciplinary action;

ii. Understands the expected work performance in light of the disciplinary action; and

iii. Understands the consequences of continued unacceptable behavior.

4) The employee being disciplined shall sign the disciplinary action form.

a) Should an employee being disciplined refuse to discuss the action with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

a) The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.

b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:

i. Understands the reason for the disciplinary action;

ii. Understands the expected work performance in light of the disciplinary action; and

iii. Understands the consequences of continued unacceptable behavior.

4) The employee being disciplined shall sign the disciplinary action form.

a) Should an employee being disciplined refuse to discuss²¹ the action with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.

5) Within one (1) working day of the conclusion of the meeting with the employee, the supervisor or EEO Officer shall provide copies of the signed disciplinary action form, or disciplinary action form noting the date of refusal, to the:

a) Employee being disciplined;

b) Human Resources Executive Director;

c) Supervisor;

- d) Area Manager; and
 - e) Appropriate General Manager level position.
- 6) Should a disciplinary action result in the suspension of an employee, the following guidelines shall apply:
- a) Consultation on Suspensions
 - i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine the length of the suspension.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension.
 - b) Suspensions shall be limited to a maximum period of three (3) weeks.
 - i. Suspensions that are overturned in the grievance process shall result in the employee receiving back pay for the time they were suspended.
- 7) Should a disciplinary action result in the termination of an employee, the following guidelines shall apply:
- a) Consultation on Termination
 - i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine that the termination is the appropriate disciplinary action.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action. (OPPP Amendments, Draft 1, lines 1085-1125).

The proposed OPPP Amendments regarding mutual determination of suspension length and of termination are substantially similar to the current OPPP and do not present any new legal issues.

²¹ It is not clear if there is a difference between an employee’s refusal to meet and a “refusal to discuss.” Oneida hearing bodies and Courts have created significant precedent regarding an employee’s refusal to meet for an investigation or discipline. See e.g. Thundercloud et al. v. Skenandore, 21-AC-008 (April 11, 2022). The Amendments should make clear whether such precedent holds its value by using the phrase “refuse to meet.”

Response

The commenters provide that it is not clear if there is a difference between an employee’s refusal to meet and a “refusal to discuss” as provided for in section V.d.2.d.4. of the Law, and that Oneida hearing bodies and Courts have created significant precedent regarding an employee’s refusal to meet for an investigation or discipline.

Section V.d.2.d.4. of the Law provides that the employee being disciplined shall sign the disciplinary action form, and that should an employee being disciplined refuse to discuss the action with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.

The following revision to the Law is recommended based on this comment:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

4) The employee being disciplined shall sign the disciplinary action form.

a) Should an employee being disciplined refuse to ~~discuss the action~~ **meet** with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.

LOC Consideration

The Legislative Operating Committee agrees that the following revision should be made to the Law:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

4) The employee being disciplined shall sign the disciplinary action form.

a) Should an employee being disciplined refuse to ~~discuss the action~~ **meet** with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.

Comments 147 through 148 – Conformance with the Back Pay Law:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

6) Should a disciplinary action result in the suspension of an employee, the following guidelines shall apply:

a) Consultation on Suspensions

i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine the length of the suspension.

ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension.

- b) Suspensions shall be limited to a maximum period of three (3) weeks.
 - i. Suspensions that are overturned in the grievance process shall result in the employee receiving back pay for the time they were suspended.
 - 7) Should a disciplinary action result in the termination of an employee, the following guidelines shall apply:
 - a) Consultation on Termination
 - i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine that the termination is the appropriate disciplinary action.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action.
 - b) Terminations that are overturned in the grievance process shall result in the employee receiving back pay for the time they were terminated.
- 3. **Grievance (Grievance Flowchart)**
 - c. **Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance.** The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)
 - 1) **Appeal to the Area Manager**
 - c) **The Area Manager shall take one of the following actions:**
 - i. **Uphold the disciplinary action;**
 - ii. **Modify the disciplinary action; or**
 - iii. **Overturn the disciplinary action.**
 - 1. **If a suspension or termination is overturned, the employee (petitioner) shall be reinstated to the position the employee was suspended or terminated from with full back pay.**

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

- b) Terminations that are overturned in the grievance process shall result in the employee receiving back pay for the time they were terminated. (OPPP Amendments, Draft 1, lines 1126-7).

Both the suspension and termination sections of the proposed amendments require back pay in the event a discipline is overturned. (OPPP Amendments, Draft 1, lines 1115-6 and lines 1126-7). The recently-amended Back Pay Law clearly defines eligibility for and calculation of Back Pay. See 2 O.C. 206, Back Pay. Proposed language in the amendments that requires back pay “for the time they were suspended” or “for the time they were terminated” is not very specific. However, the

Back Pay Law is quite specific about these calculations. The proposed amendments should require back pay “in conformance with Oneida Law,” as this is simpler and less confusing.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

- c) The Area Manager shall take one of the following actions:
 - i. Uphold the disciplinary action;
 - ii. Modify the disciplinary action; or
 - iii. Overturn the disciplinary action.
 - 1. If a suspension or termination is overturned, the employee (petitioner) shall be reinstated to the position the employee was suspended or terminated from with full back pay. (OPPP Amendments, Draft 1, lines 1184-90).

The recently-amended Back Pay Law addresses all requirements for reinstatement and back pay. Therefore, it is sufficient in these amendments to state, “If a suspension or termination is overturned, reinstatement and back pay will be in conformance with Oneida Law.”

Response

The commenters express that language discussing reinstatement and back pay provided in sections V.D.2.d.6.b.i., V.D.2.d.7.b., V.D.3.c.1.c.iii.1. should be simplified and provide that all reinstatement and back pay will be in conformance with the Nation’s Back Pay law.

Section V.D.2.d.6.b.i. of the Law provides that suspensions that are overturned in the grievance process shall result in the employee receiving back pay for the time they were suspended. Section V.D.2.d.7.b. of the Law provides that terminations that are overturned in the grievance process shall result in the employee receiving back pay for the time they were terminated. Section V.D.3.c.1.c.iii.1. of the Law provides that if a suspension or termination is overturned, the employee (petitioner) shall be reinstated to the position the employee was suspended or terminated from with full back pay.

In an effort to ensure compliance with the Nation’s Back Pay law the following revisions to the Law are recommended based on these comments:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. **Disciplinary Procedure.** The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

6) Should a disciplinary action result in the suspension of an employee, the following guidelines shall apply:

a) **Consultation on Suspensions**

i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine the length of the suspension.

ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources

Executive Director to mutually determine the length of the suspension.

b) Suspensions shall be limited to a maximum period of three (3) weeks.

i. If a suspensions ~~that are~~ is overturned in the grievance process any back pay shall comply with the Nation's laws governing back pay result in the employee receiving back pay for the time they were suspended.

7) Should a disciplinary action result in the termination of an employee, the following guidelines shall apply:

a) Consultation on Termination

i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine that the termination is the appropriate disciplinary action.

ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action.

b) If a terminations ~~that are~~ is overturned in the grievance process any reinstatement or back pay shall comply with the Nation's laws governing back pay result in the employee receiving back pay for the time they were terminated.

3. Grievance (Grievance Flowchart)

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

1) Appeal to the Area Manager

c) The Area Manager shall take one of the following actions:

i. Uphold the disciplinary action;

ii. Modify the disciplinary action; or

iii. Overturn the disciplinary action.

1. If a suspension or termination is overturned, any reinstatement or back pay shall comply with the Nation's laws governing back pay the employee (petitioner) shall be reinstated to the position the employee was suspended or terminated from with full back pay.

2) Appeal to the Oneida Personnel Commission

i) Hearing Procedure

vi. The Oneida Personnel Commission may:

1. Uphold the disciplinary action; or

2. Overturn the disciplinary action and:

- a. Reinstatement of the employee (petitioner) with back pay ~~for any lost time~~ in accordance with the Nation's laws governing back pay Back Pay law; or
- b. Reinstatement of the employee (petitioner) without back pay.

It is also important to note that although the Legislative Operating Committee is currently developing amendments to the Nation's Back Pay law, no amendments have yet been adopted.

LOC Consideration

The Legislative Operating Committee agrees with making the recommended revisions based on this comment.

Comments 149 through 151 – Voiding a Disciplinary Action:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

8) The Human Resources Department may void a disciplinary action for clear procedural errors.

a) The EEO Officer may void a disciplinary action taken by a supervisor for clear procedural errors.

b) The Human Resources Executive Director, or designee, may void a disciplinary action taken by an EEO Officer for clear procedural errors.

c) Notification of a voided disciplinary action shall be sent to the supervisor or EEO Officer and the employee which identifies the procedural error.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

- 8) The Human Resources Department may void a disciplinary action for clear procedural errors.
 - a) The EEO Officer may void a disciplinary action taken by a supervisor for clear procedural errors.
 - b) The Human Resources Executive Director, or designee, may void a disciplinary action taken by an EEO Officer for clear procedural errors.
 - c) Notification of a voided disciplinary action shall be sent to the supervisor or EEO Officer and the employee which identifies the procedural error. (OPPP Amendments, Draft 1, lines 1128-35).

The proposed amendments explicitly permit the EEO Officers to void a disciplinary action imposed by a supervisor if there are “clear procedural errors.” However, without a description of what constitutes clear procedural error, the amendments do not give supervisors sufficient notice



of when their disciplines may be overturned. As described above, supervisors have an interest in issuing disciplines that will not be overturned. Therefore, the proposed amendments need a clearer definition of “clear procedural error.” In addition, the determination of whether a procedural error occurred has always been made by either the Personnel Commission or the Oneida Judiciary Trial Court. This allows for presentation of evidence by both sides and it provides written opinions that other supervisors can use to guide their disciplines in the future. Allowing EEO Officers to simply void disciplines eliminates these important due process and notice functions.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): In addition, the Oneida Judiciary Trial Court and Appellate have subject matter and personal jurisdiction over the Nation’s employment matters. It is both clumsy and redundant to add an additional layer of what essentially amounts to judicial review by inserting EEO ability to void disciplines issued by supervisor and potentially upheld by area managers for “clear procedural errors.” Moreover, a “clear procedural error” is not the standard the Judiciary is required to use when evaluating whether a discipline should be overturned for a procedural irregularity. The Judiciary must consider whether, “[p]rocedural irregularities were exhibited during the appeal process that were harmful to one of the parties to the grievance.” OPPP, Section V, 3.C(2)(e)ii. It is the Trial Court who should evaluate if there was a deviation of process and, if there was, whether the deviation was significant enough to merit overturning the discipline.⁴⁰ A procedural error alone is not enough for the Judiciary to overturn, but is enough for the EEO to void a discipline. To avoid confusion, the proposed amendments should maintain the Oneida Judiciary’s jurisdiction over employment matters and avoid a costly duplication of services. The Oneida Judiciary should be the only party outside of the chain of command that is able to overturn a disciplinary action, whether that be for lack of support of the discipline or a failure of process.

⁴⁰ A statistical review of Oneida Judiciary Trial Court decisions from 2018-2022 shows that 83% of the published employee grievance decisions are based, in whole or in part, on issues of procedural error. The proposed amendments are not filling a gap in the employee grievance process, as the Oneida Trial Court addresses questions of procedural error in almost every one of its grievance decisions. The reasons to keep procedural error issues with the Trial Court are discussed elsewhere in this memo.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1128-1131: The Human Resources Department may void a disciplinary action for clear procedural errors.

Shouldn’t voiding a disciplinary action issued by a supervisor be left up to the Area Manager or the Judiciary in the grievance process? At the Judiciary only procedural errors that harmed one of the parties are overturned. This states that EEO can void for any clear procedural error.

Response

The commenters express concern regarding the proposed amendments to section V.D.2.d.8. of the Law which allows the Human Resources Department to void a disciplinary action for clear procedural errors due to the fact that the determination that a clear procedural error is undefined in the proposed amendments to the Law, and previously an original hearing body of the Nation –

such as the Oneida Personnel Commission or Judiciary – has been the entity making the decisions as to what constitutes a clear procedural error.

Section V.D.2.d.8. of the Law provides that the Human Resources Department may void a disciplinary action for clear procedural errors. An EEO Officer is delegated authority to void a disciplinary action taken by a supervisor for clear procedural errors, while the Human Resources Executive Director, or designee, is delegated authority to void a disciplinary action taken by an EEO Officer for clear procedural errors. Notification of a voided disciplinary action is required to be sent to the supervisor or EEO Officer and the employee which identifies the procedural error.

The Legislative Operating Committee may reconsider whether the Human Resources Department may void a disciplinary action for clear procedural errors. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.2.d.8. of the Law should remain as currently drafted, and provide that the Human Resources Department may void a disciplinary action for clear procedural errors. If the Legislative Operating Committee makes this determination then the Legislative Operating Committee should consider adding in greater clarification as to what constitutes a clear procedural error.
2. Section V.D.2.d.8. of the Law should be eliminated, and the Human Resources Department should not be able to void a disciplinary action for clear procedural errors.

LOC Consideration

The Legislative Operating Committee determined that section V.D.2.d.8. of the Law should remain as currently drafted, and provide that the Human Resources Department may void a disciplinary action for clear procedural errors, but that this section needs revision to provide greater clarification as to what constitutes a clear procedural error. The Legislative Operating Committee also discussed the potential that when the Human Resources Department voids a procedural error, notification of what error was made is sent to the supervisor, and the supervisor be allowed an opportunity to correct the error.

Comment 152 – Notice and Accountability:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

9) For any supervisor who fails to follow the Nation’s disciplinary procedures, the EEO Department shall send a letter to the Area Manager.

a) The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee.

b) The letter shall address the appropriate accountability of the supervisor.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

9) For any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department shall send a letter to the Area Manager.

a) The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee.

b) The letter shall address the appropriate accountability of the supervisor. (OPPP Amendments, Draft 1, lines 1136-41).

In Section V.D.2.d.9), the draft amendments appear to replace current accountability measures – namely, allowing an area manager or an Oneida Court to overturn a faulty discipline – with accountability in the form of more discipline as recommended by the EEO Department. The proposed amendments do not identify what “appropriate accountability” will be addressed in the letter to the area manager and, further, do not identify consequences if the area manager does not follow up as recommended. It is not clear what philosophy prompts the imposition of more discipline as an answer to improper discipline. This form of accountability should be reconsidered.

Response

The commenters express concern that section V.D.2.d.9. of the Law addresses a supervisor's failure to follow the Nation's disciplinary procedures with additional discipline and ask the Legislative Operating Committee to reconsider the imposition of discipline as an answer to improper discipline.

Section V.D.2.d.9 of the Law provides that for any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department shall send a letter to the Area Manager. The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee and address the appropriate accountability of the supervisor.

The Legislative Operating Committee may reconsider if a supervisor's failure to follow the Nation's disciplinary procedures should result in the discipline of that supervisor. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.2.d.9 of the Law should remain as currently drafted and require that for any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department shall send a letter to the Area Manager notifying that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee and address the appropriate accountability of the supervisor.
2. Section V.D.2.d.9 of the Law should be eliminated from the Law and the Legislative Operating Committee should consider other means of addressing a supervisor who fails to follow the Nation's disciplinary procedures.

LOC Consideration

The Legislative Operating Committee determined that in an effort to ensure accountability and consistency section V.D.2.d.9 of the Law should remain as currently drafted and require that for any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department shall send a letter to the Area Manager notifying that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee and address the appropriate accountability of the supervisor.

Comment 153 – Clarifying Notice:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

a. General

1) An employee who receives a disciplinary action which they believe is improper may grieve the action.

2) The grievance process shall be conducted with utmost consideration for due process within the time limits set forth herein but will allow and account for recognized holidays of the Nation and unforeseen circumstances, such as illnesses, deaths in the immediate family of principals.

b. Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline.

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

1) Appeal to the Area Manager

a) The employee (petitioner) shall file an appeal in writing with the Area Manager and the Human Resources Executive Director, or designee, within ten (10) working days from the day the employee receives the disciplinary action.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section V.D.3., Grievance

The proposed amendments divide employee grievance appeals according to the basis for the grieved discipline. Disciplines that arise from EEO Violations and Illegal Activities Complaints would be appealed directly to the Oneida Judiciary – Trial Court. (OPPP Amendments, Draft 1, lines 1150-53). Disciplines based on Employee Disagreement Complaints and Unsatisfactory Work Performance would be appealed to the area manager and then to the Oneida Personnel Commission.²²

3. Grievance (Grievance Flowchart)

a. General

- 1) An employee who receives a disciplinary action which they believe is improper may grieve the action.
- 2) The grievance process shall be conducted with utmost consideration for due process within the time limits set forth herein but will allow and account for recognized holidays of the Nation and unforeseen circumstances, such as illnesses, deaths in the immediate family of principals.

b. Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline.

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines²³: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

1) Appeal to the Area Manager

- a) The employee (petitioner) shall file an appeal in writing with the Area Manager and the Human Resources Executive Director, or designee, within ten (10) working days from the day the employee receives the disciplinary action. (OPPP Amendments, Draft 1, lines 1142-62).

Both employees and management have an interest in clarifying when notice is received, especially when the date of receipt determines the timeline for appeal. Opening the OPPP to comprehensive amendment provides an opportunity to emphasize that an employee cannot avoid service of a disciplinary action (or other notice) by refusing to retrieve or sign for their mail. (See e.g. Oneida Bingo & Casino v. Metoxen, 97-EP-0018, 4 O.N.R. 3-1, 2 (January 8, 1998) (“A party cannot avoid the time lines set forth in the Blue Book by intentionally refusing to sign for the certified letter that serves as notice.”) For example, Section V.D.3.c.1)a) could state that an employee who does not retrieve or sign for their mail will be deemed in receipt of the discipline on the date that delivery was first attempted.²⁴

²² The Oneida Personnel Commission is not taking grievance appeals at this time. The Oneida Nation website shows only 1 active Commissioner. Until the Personnel Commission is prepared to exercise hearing authority, all grievance appeals under current OPPP V.D.6 are brought to the Oneida Trial Court. See BC Resolution #03-13-19-C.

²³ Although “guidelines” is in the current OPPP, the LOC may want to replace it with “requirements” for a stronger statement.

²⁴ Similar language regarding a timeline that begins upon actual receipt is found at proposed OPPP V.D.3.b)2), regarding filing a grievance appeal with the Oneida Personnel Commission. (OPPP Amendments, Draft 1, lines 1488-92). Both sections would benefit from clarification regarding when notice is deemed received.

Response

The commenters ask the Legislative Operating Committee to provide greater clarification as to when notice is received during the grievance procedures. The commenters express that amending the Law will allow the Legislative Operating Committee to address problematic behavior that occurs, such as an employee avoiding service of a disciplinary action (or other notice) by refusing to retrieve or sign for their mail. The commenters request the Legislative Operating Committee consider including language in section V.D.3.c.1.a that provides that an employee who does not retrieve or sign for their mail will be deemed in receipt of the discipline on the date that delivery was first attempted.

It is recommended that the Legislative Operating Committee consider revising the Law to include greater clarification as to what constitutes receipt of the disciplinary action. The following revisions to the Law are recommended based on these comments:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

b. Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee’s receipt of the discipline.

1) An employee who does not retrieve or sign for their mail will be deemed in receipt of the discipline on the date that delivery was first attempted.

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

1) Appeal to the Area Manager

a) The employee (petitioner) shall file an appeal in writing with the Area Manager and the Human Resources Executive Director, or designee, within ten (10) working days from the day the employee receives the disciplinary action.

i) An employee who does not retrieve or sign for their mail will be deemed in receipt of the discipline on the date that delivery was first attempted.

LOC Consideration

The Legislative Operating Committee agreed with the recommended revision and determined that the Law should be revised to include greater clarification as to what constitutes receipt of the disciplinary action, and determined the following revisions is necessary:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

b. Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal

Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline.

1) An employee who does not retrieve or sign for their mail shall be deemed in receipt of the discipline on the date that delivery was first attempted.

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

1) Appeal to the Area Manager

a) The employee (petitioner) shall file an appeal in writing with the Area Manager and the Human Resources Executive Director, or designee, within ten (10) working days from the day the employee receives the disciplinary action.

i) An employee who does not retrieve or sign for their mail shall be deemed in receipt of the discipline on the date that delivery was first attempted.

Comments 154 through 155 – Area Manager Response to a Grievance Appeal:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

1) Appeal to the Area Manager

b) The Area Manager, for all disciplinary action investigations, shall have ten (10) working days from the receipt of the employee's appeal to complete the investigation.

i. The supervisor shall meet with the following individuals during the disciplinary action investigation:

1. Employee filing the appeal of the discipline;

2. Supervisor who issued the discipline; and

3. Any other witnesses mentioned in the appeal that were not mentioned in the disciplinary action.

ii. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.

iii. The Area Manager shall document all attempts made to meet with an employee. If an employee is unavailable to meet within the grievance timelines, the

Area Manager shall move forward with the investigation based on the information they have.

iv. One (1) extension of no more than five (5) working days may be requested of and granted by the Human Resources Executive Director, or designee, at their discretion.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

- i. The employee may seek the assistance of an advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.²⁵
- b) The Area Manager, for all disciplinary action investigations, shall have ten (10) working days from the receipt of the employee's appeal to complete the investigation.
 - i. The supervisor²⁶ shall meet with the following individuals during the disciplinary action investigation:
 1. Employee filing the appeal of the discipline;
 2. Supervisor who issued the discipline; and
 3. Any other witnesses mentioned in the appeal that were not mentioned in the disciplinary action.
 - ii. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.
 - iii. The Area Manager shall document all attempts made to meet with an employee. If an employee is unavailable to meet within the grievance timelines, the Area Manager shall move forward with the investigation based on the information they have.
 - iv. One (1) extension of no more than five (5) working days may be requested of and granted by the Human Resources Executive Director, or designee, at their discretion. (OPPP Amendments, Draft 1, lines 1163-83).

Under the proposed amendments, the area manager who responds to a grievance appeal must follow a process similar to that placed on the supervisor in proposed OPPP V.D.1.c., regarding supervisor investigation and resolution of Employee Disagreements. The legal issues presented by proposed OPPP V.D.3.c.1)b) are similar to those identified Pages 9-15 this memo.

²⁵ This section is duplicative when compared to proposed OPPP V.D.3.c.2)i)ii. As described in a subsequent section of the memo, I proposed deleting V.D.3.c.2)i)ii (which should be renumbered in any case, since it uses "i" as both the lowercase letter i and as small Roman Numeral i).

²⁶ This should probably be "area manager" rather than supervisor.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1169-1170: The supervisor shall meet with the following individuals during the disciplinary investigation.

Since this section is about appealing to the Area Manager, as above this sentence is states, "The Area Manager for all disciplinary action investigations, shall have ten (10) working days form the receipt of the employee's appeal to complete the investigation. Then in line 1169-1170 it states the

supervisor shall meet with the employee, the supervisor and any witnesses. I believe Line 1169 should state, The area manager shall meet with the following individuals...

Response

The commenters ask the Legislative Operating Committee to consider the concerns shared regarding section V.D.1.c of the Law again in reference to section V.D.3.c.1. of the Law. It is recommended that the Legislative Operating Committee review these concerns in reference to section V.D.3.c.1.b. of the Law.

The commenters also provide that the use of the term “supervisor” in section V.D.3.c.1.b.i of the Law should be revised to Area Manager. The following revision to the Law is recommended based on this comment:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following ~~guidelines~~requirements: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

1) Appeal to the Area Manager

b) The Area Manager, for all disciplinary action investigations, shall have ten (10) working days from the receipt of the employee’s appeal to complete the investigation.

i. The Area Manager ~~supervisor~~ shall meet with the following individuals during the disciplinary action investigation:

1. Employee filing the appeal of the discipline;
2. Supervisor who issued the discipline; and
3. Any other witnesses mentioned in the appeal that were not mentioned in the disciplinary action.

ii. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.

iii. The Area Manager shall document all attempts made to meet with an employee. If an employee is unavailable to meet within the grievance timelines, the Area Manager shall move forward with the investigation based on the information they have.

iv. One (1) extension of no more than five (5) working days may be requested of and granted by the Human Resources Executive Director, or designee, at their discretion.

LOC Consideration

The Legislative Operating Committee determined that the use of the term “supervisor” in section V.D.3.c.1.b.i of the Law should be revised to Area Manager.

Comment 156 – Accountability of Area Manager in Grievance Process:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

1) Appeal to the Area Manager

d) The Area Manager shall file their decision with the employee and the Human Resources Executive Director, or designee. The decision of the Area Manager shall include:

- i. a reason for the decision;**
- ii. an explanation of the decision; and**
- iii. the action to be taken as a result of it.**

e) An Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written):

d) The Area Manager shall file²⁷ their decision with the employee and the Human Resources Executive Director, or designee. The decision of the Area Manager shall include:

- i. a reason for the decision;
- ii. an explanation of the decision; and
- iii. the action to be taken as a result of it.

e) An Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline. (OPPP Amendments, Draft 1, lines 1191-98).

The proposed amendments again suggest disciplinary action for area managers who do not follow the grievance process. This raises several concerns, which are addressed on Page 12 of this memo. In addition, area managers are entrusted with greater levels of responsibility in the organization. A threat of discipline for not following the grievance process seems counter to the level of trust otherwise granted to employees at this level of management. It is not clear what philosophy underlies this proposed change.

²⁷ Filing documents implies that such documents are deposited with a court or other hearing body. Where the area manager is providing copies of their decision to certain individuals, they should be required to “send” or “provide” their decision to the employee and HRD Executive Director.

Response

The commenters express concern with the proposed amendments again suggesting disciplinary action for Area Managers who do not follow the grievance process.

Section V.D.3.c.1.e. of the Law provides that an Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline.

The Legislative Operating Committee may reconsider whether an Area Manager's failure to follow the Nation's grievance procedures should result in the discipline of that Area Manager. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.3.c.1.e. of the Law should remain as currently drafted and provide that an Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline
2. Section V.D.3.c.1.e. of the Law should be eliminated from the Law and the Legislative Operating Committee should consider other means of addressing an Area Manager who fails to follow the Nation's grievance procedures.

Additionally, the commenter expresses that the use of the term "filing" in section V.D.3.c.1.d. erroneously conveys that such documents are deposited with a court or other hearing body, and another word should be used instead. In reference to this comment, the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)
 - c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)
 - 1) Appeal to the Area Manager
 - d) The Area Manager shall ~~file~~^{provide} their decision with the employee and the Human Resources Executive Director, or designee. The decision of the Area Manager shall include:
 - i. a reason for the decision;
 - ii. an explanation of the decision; and
 - iii. the action to be taken as a result of it.
 - e) An Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline.

LOC Consideration

The Legislative Operating Committee determined that section V.D.3.c.1.e. of the Law should remain as currently drafted and provide that an Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline. The Legislative Operating Committee also determined that the term "file" in section V.D.3.c.1.d. should be revised to "provide."

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

2) Appeal to the Oneida Personnel

i) Hearing Procedure

ii. The petitioner shall have the right to be represented by an advocate, at their own expense. The respondent and/or Area Manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or Area Manager shall have access to the professional legal representation.

1. Should the petitioner and their representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be upheld, and the grievance dismissed.

2. Should the respondent and their representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be overturned.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): At proposed Section V.D.3.c.2.i)ii., the amendments retain current OPPP language regarding an employee’s right to an advocate. However, this section has caused confusion throughout the grievance process. Since this right would be described in proposed OPPP V.D.3.c.1)a)i., the language at V.D.3.c.2.i)ii can be deleted.

Response

The commenter provides that section V.D.3.c.2.i.ii. of the Law is duplicative of section V.D.3.c.1.a.i. of the Law.

Section V.D.3.c.2.i.ii. of the Law provides that the petitioner shall have the right to be represented by an advocate, at their own expense. The respondent and/or Area Manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or Area

Manager shall have access to the professional legal representation. Earlier in the Law, section V.D.3.c.1.a.i. of the Law provides that the employee may seek the assistance of an advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.

Due to the fact that section V.D.3.c.2.i.ii. of the Law is duplicative of section V.D.3.c.1.a.i. of the Law, the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

2) Appeal to the Oneida Personnel

i) Hearing Procedure

ii. ~~The petitioner shall have the right to be represented by an advocate, at their own expense. The respondent and/or Area Manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or Area Manager shall have access to the professional legal representation.~~

LOC Consideration

The Legislative Operating Committee determined that the following language found in section V.D.3.c.2.i.ii. of the Law should remain as drafted in the Law: “The petitioner shall have the right to be represented by an advocate, at their own expense. The respondent and/or Area Manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or Area Manager shall have access to the professional legal representation.”

Comment 158 – Oneida Personnel Commission Unable to Perform Duties:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

2) Appeal to the Oneida Personnel

k) If the Oneida Personnel Commission is unable to fulfil its responsibility to hear an appeal of an Area Manager’s decision, then the employee may appeal the Area Manager’s decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee’s receipt of the Area Manager’s decision.

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): The amendments would add language regarding where grievance appeals shall be filed if the Oneida Personnel Commission is not active, specifically:

k) If the Oneida Personnel Commission is unable to fulfill its responsibility to hear an appeal of an Area Manager’s decision, then the employee may appeal the Area Manager’s decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee’s receipt of the Area Manager’s decision. (OPPP Amendments, Draft 1, lines 1296-1300).

The language of proposed OPPP V.D.3.c.2)k) should reflect the language of BC Resolution #03-13-19-C regarding the Personnel Commission’s capacity and readiness to hearing grievance appeals. Use of the phrase “unable to fulfill its responsibility to hear an appeal” permits filing grievance appeals at the Oneida Judiciary-Trial Court outside of the circumstances identified in BC Resolution #03-13-19-C.

Response

The commenters request that section V.D.3.c.2.k. of the Law be amended to reflect the language of resolution BC-03-13-19-C regarding the Oneida Personnel Commission’s capacity to hear grievance appeals.

Section V.D.3.c.2.k. of the Law provides that if the Oneida Personnel Commission is unable to fulfill its responsibility to hear an appeal of an Area Manager’s decision, then the employee may appeal the Area Manager’s decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee’s receipt of the Area Manager’s decision.

Resolution BC-03-13-19-C, *Amending Resolution BC-09-26-18-F Rescission of the Dissolution of the Oneida Personnel Commission and Related Emergency Amendments in Accordance with General Tribal Council’s August 27, 2018 Directive*, provides:

“NOW THEREFORE BE IT FURTHER RESOLVED, in recognition of the time necessary to appoint members to the Oneida Personnel Commission and allow members to obtain the necessary required training, the Judiciary – Trial Court shall continue to hear employee grievance matters until the Oneida Personnel Commission is prepared to begin exercising hearing authority.

NOW THEREFORE BE IT FURTHER RESOLVED, the Judiciary – Trial Court shall develop and provide training and/or ensure training is provided to members of the Oneida Personnel Commission on hearing processes and procedures.

NOW THEREFORE BE IT FURTHER RESOLVED, the Oneida Personnel Commission shall be prepared to exercise hearing authority over employee grievance matters when the Oneida Personnel Commission informs the Oneida Business Committee that the minimum number of Oneida Personnel Commission members have been appointed and have obtained all required trainings.

NOW THEREFORE BE IT FURTHER RESOLVED, the Nation's Human Resources Department shall draft an interpretation of Section V.D. of the Oneida Personnel Policies and Procedures which clarifies that in regard to employee grievance matters the term "Oneida Personnel Commission" shall be interpreted to mean the "Judiciary – Trial Court" until such time that the Oneida Personnel Commission informs the Oneida Business Committee that they are prepared to begin exercising hearing authority."

The Legislative Operating Committee may consider whether section V.D.3.c.2.k. of the Law should reflect the language used in resolution BC-03-13-19-C. The Legislative Operating Committee may make one of the following considerations:

1. Section V.D.3.c.2.k. of the Law should remain as currently drafted and provide that if the Oneida Personnel Commission is unable to fulfill its responsibility to hear an appeal of an Area Manager's decision, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision.
2. Section V.D.3.c.2.k. of the Law should be revised to reflect the language that is provided for in resolution BC-03-13-19-C. If the Legislative Operating Committee makes this determination then the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCE

3. Grievance (Grievance Flowchart)

c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: (HR Interpretation, 8-19-2011) (HR Interpretation, 1-29-2014)

2) Appeal to the Oneida Personnel

k) If the Oneida Personnel Commission cannot exercise hearing authority due to a lacks of the minimum number of appointed Oneida Personnel Commission members who have obtained all required trainings, ~~is unable to fulfil its responsibility to hear an appeal of an Area Manager's decision,~~ then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision.

LOC Consideration

The Legislative Operating Committee already determined that the hearing authority of the Oneida Personnel Commission should be transferred to the Oneida Nation Judiciary, and therefore any action needed based on this comment is moot.

Comment 159 – Sections VI through Section IX:

Peggy Van Gheem, Krystal John, Kelly McAndrews (written): Section VI, Safety and Health
Section VII, Program/Enterprise Rules & Regulations
Section VIII, Recordkeeping
Section IX, Privacy and Confidentiality of Employee Records

The proposed amendments to the OPPP do not make any changes to Sections VI through IX. There are no outstanding legal issues presented by these sections that require amendment.

Response

The commenters provide that the proposed amendments to the Law do not make any changes to sections VI through IX. There is no action needed for consideration by the Legislative Operating Committee based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no action needed based on this comment.

Comments 160 through 161 – Unsatisfactory Work Performance:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process correcting unacceptable and problematic behaviors in employees. Grievance procedures provide a systematic process for protecting employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances

2. Discipline

a. Initiation of Disciplinary Action.

1) Disciplinary actions shall be initiated by an immediate supervisor for the purpose of correcting unsatisfactory work performance or as the resolution of an Employee Disagreement complaint investigation.

Tina Jorgensen (oral): With the complaint process, what if a supervisor becomes aware of an issue - and it's not really considered a complaint, does it still have to go through EEO?

Tina Jorgensen (written): QUESTION: What if a Supervisor becomes aware of an issue and it is not really a complaint but could result in discipline? Does EEO need to be informed? What is the role of EEO in these cases? I don't agree EEO should take on the responsibility of the Supervisor. I do agree EEO should be involved as FYI and offer assistance with the investigation.

Response

The commenter questions if a supervisor has to go through the EEO Department if they become aware of an issue, that has not been made through a formal complaint.

Section V.D.2.a.1. of the Law provides that disciplinary actions shall be initiated by an immediate supervisor for the purpose of correcting unsatisfactory work performance or as the resolution of an Employee Disagreement complaint investigation. Section V.D.2.c.2. of the Law provides a list of examples of behaviors that may constitute unsatisfactory work performance, including issues with work performance, attendance and punctuality, use of property, and personal actions and appearances. Therefore, a supervisor has the authority to address unsatisfactory work performance even in the absence of a formal complaint made about the unsatisfactory work performance.

If the supervisor becomes aware of a situation that would fall under the provisions of the Law regarding an EEO Violation or an Illegal Activities complaint if a complaint was filed, then the responsibility to investigate the complaint would lie with the EEO Department.

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

LOC Consideration

The Legislative Operating Committee determined that there is no action needed based on this comment.

Comment 162 – Adoption by the General Tribal Council:

Racquel Hill (oral): Racquel Hill. My question is in regards to the reason why this needs to go to the General Tribal Council for the approval. I know that it's understood that it's always been done this way, but does it need to be? Now, this is basically day-to-day business and it's in regards to the organization. So, that is the question, and I'm wondering if criteria will be set and the things that GTC needs to approve going forward. Thank you.

Response

The commenter questions why the proposed amendments to the Law need to be adopted by the General Tribal Council.

Amendments to the Law have historically been adopted by the General Tribal Council. The Nation's Ten Day Notice Policy requires that any action to over rule previous passed motions or resolutions made by the General Tribal Council shall require a two-thirds (2/3) majority vote of the Oneida General Tribal Council. [1 O.C. 110.3-1(a)(3)].

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

LOC Consideration

The Legislative Operating Committee determined that there is no action needed based on this comment.

Comment 163 – Oneida Nation School Board’s Authority to Process Grievances:

Sharon Mousseau (written): Good afternoon, Having reviewed the Oneida Personnel Policies and procedures amendments, I wanted to comment regarding the Oneida Nation School System and how our MOA and SOP for Grievance Process may interact with the newly updated process.

While the MOA is old, being signed in March of 1988, although it can not be amended except by the Oneida General Tribal Council or at the express direction of the Oneida General Tribal Council and shall be effect upon ratification by the Oneida General Tribal Council. This is the first attachment.

The second attachment is an updated signed ONSS MOA Grievance Process, which was approved by the School Board on Jan. 4, 2021.

On page 13 of the OPPP, section Grievance, should there be a note of the School Board’s authority or process with grievances? Or would this process be included with the language included on the top of page 14 when there is a reference to the boards, committees and commissions? So when the process is replaced by the Government Administrative Office, would the school then have the process replaced by the Oneida Nation School Board?

We have worked with the BIE on processes and procedures for the School Board to follow and I just don’t want their authority to be taken away until we do change the MOA. Which is long overdue to be updated.

Thanks for your time and efforts with the public comment period for the OPPP.

Response

The commenter questions whether section V.D.3. of the Law should reference the fact that the Oneida Nation School Board has a MOA and various standard operating procedures which replace section V.D. of the Law.

It is recommended that the Legislative Operating Committee conduct a thorough review of the attached materials and determine if the Law needs to address the fact that the Oneida Nation School Board does not currently utilize section V.D. of the Law.

LOC Consideration



The Legislative Operating Committee determined that additional review of the attached materials is needed to determine if the Law needs to address the fact that the Oneida Nation School Board does not currently utilize section V.D. of the Law.

Comment 164 – Simplification of Language

Lisa Rauschenbach (written): I do agree with their cut back of wordiness in the policy too.

Response

The commenter provides support for cutting back on the wordiness of the Law. There is no action by the Legislative Operating Committee needed based on this comment.

LOC Consideration

The Legislative Operating Committee determined that there is no action needed based on this comment.

Comment 165 – Involvement of the Oneida Business Committee in the Complaint Process:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

f) If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

i. The notice shall notify the General Manager level position that the complaint was not addressed within the additional ten (10) working days.

ii. The notice shall inform the General Manager level position that the Area Manager violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.

iii. The notice shall address the appropriate accountability of the Area Manager.

iv. The notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.

1. Investigation Procedure for all General Manager Level Positions, not the Oneida Business Committee

a. The General Manager level position shall complete the investigation and reach a resolution within ten (10) working days of receiving the notice from EEO.

b. The General Manager level position's ten (10) working day timeframe begins the day after the General Manager level position receives the complaint from the EEO Department.

c. The General Manager level position shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

i. Meetings between the General Manager level position and the employees may occur in person, through video conferencing, or by telephone.

ii. The General Manager level position shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the General Manager level position shall move forward with the investigation based on the information they have.

d. When the General Manager level position's investigation is complete, the General Manager level position shall contact the EEO Officer to mutually determine an appropriate resolution.

i. If the General Manager level position cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the General Manager level position shall provide written justification for non-agreement on the

resolution to the Human Resources Executive Director.

e. The final resolution shall be sent to the EEO Department for filing and reporting purposes.

f. The General Manager level position's resolution of the complaint shall be final.

2. Investigation Procedure for the Oneida Business Committee

a. When the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.

Lisa Rauschenbach (written): Per the 1932 resolution the Oneida Business Committee shall not be involved in day to day business, you are proposing the OBC in the complaint process, this is ridiculous.

Response

The commenter provides that the Oneida Business Committee should not be involved in the complaint process, as that constitutes involvement in day-to-day business.

Section V.D.1.c.1.f. of the Law provides that the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee. Section V.D.1.c.1.f.iv. of the Law provides that the notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution. Section V.D.1.c.1.f.iv.2.a. of the Law then provides that when the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.

The Oneida Business is only included in the complaint procedures found in section V.D.1.c.1 of the Law if the Oneida Business Committee when acting in the capacity of serving as the General Manager level position in that chain of command. This is a role that the Oneida Business Committee already provides as the supervisor of various direct reports.

It is common practice that the Oneida Business Committee oversee and supervise various direct reports. Resolution BC-02-08-23-C, *Setting Supervision and Management of Direct Reports to the Oneida Business Committee and Professional Support Staff*, is the most recent resolution to

identify the various direct reports of the Nation and identify that the Oneida Business Committee supervises the various direct reports due to the position, the duties, or the services provided by the direct reports.

There is no action by the Legislative Operating Committee required based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no action needed based on this comment.

Comment 166 – Use of the Term Area Manager:

Jackie Smith (written): My feedback/comments regarding the proposed amendments to OPPP are Below:

1. Eliminate the use of the term “area manager” in the proposed changes as it created confusion between what position/employee is the actual area manager and what position/employee is the area manager in the disciplinary process

a. There was confusion by the court when this term was used in a disciplinary hearing. My title and role are area manager; however, the disciplinary process area manager was the general manager.

i. I was requested by the court to attend an appeal hearing as the area manager, but mistakenly was named the area manager in the disciplinary process terminology.

ii. This mistake cost the tribe money as there were duplicate managers required to attend an appeal hearing by the Oneida court.

Response

The commenter requests the Legislative Operating Committee consider eliminating the use of the term “Area Manager” within in the Law, as it creates confusion with employee positions that have the title “Area Manager.”

The term “Area Manager” is used within the Law to mean the supervisor of a supervisor, or an individual who is two (2) levels of supervision in the chain of command above the employee. An actual definition for the term “Area Manager” is not included in the Law itself.

The Legislative Operating Committee may consider whether the use of the term “Area Manager” creates confusion with employee positions that have the term “Area Manager” in their title, and therefore should be replaced with another term. If the Legislative Operating Committee decides to continue the use of the term Area Manager, it is recommended that the Legislative Operating Committee include a definition for the term.

LOC Consideration

The Legislative Operating Committee determined that the use of the term “Area Manager needs greater clarification and the Law should be revised to include a definition for this term.

Comment 167 – Organization of HRD:

Jackie Smith (written): 2. Ensure there is an appropriate and balanced allocation of power to the Oneida Human Resource Department (HRD)

- a. HRD in an internal service provider whose purpose is usually to support programs or business entities in the delivery of services
- b. HRD executives typically report to a General Manager or CEO
- c. Currently, HRD is treated as a standalone entity in the Oneida with a direct report the government. This reduces the overall effectiveness and connection to the function of being an internal service provider.
 - i. This creates issues as HRD is not directly connected to the needs of the organization

Response

The commenter requests the Legislative Operating Committee consider the overall organization of the Human Resources Department. The commenter expresses concern that the organization of the Human Resources Department as a non-divisional entity, with the Human Resources Executive Director as a direct report to the Oneida Business Committee creates separation of the Human Resources Department from the rest of the organization.

The Legislative Operating Committee may determine if the overall organization of the Human Resources Department needs to be addressed.

LOC Consideration

The Legislative Operating Committee disagreed that the Human Resources Department is disconnected from the organization. The Legislative Operating Committee determined that a conversation regarding the role and authority of the Human Resources Department with the Human Resources Department and the General Managers of the Nation may be beneficial.

Comment 168 – Appeal Rights of Temporary Employees:

SECTION II - RECRUITING

C. EMERGENCY/TEMPORARY POSITIONS

3. Recruitment/Selection

- g. Temporary employees that are terminated due to documented cause will have the right to the appeal process as outlined in the Personnel Policies and Procedures.**

Lisa Duff on behalf of Gaming Senior Management (written): 2) To be consistent in practice with probation employees, it is recommended: To remove appeals rights for Temporary employees.

172 Temporary employees can be ~~that are~~ terminated due to documented cause ~~will have~~ the

~~173 right to the appeal process as outlined in the Personnel Policies and Procedures.~~

Response

The commenter requests that the Legislative Operating Committee consider removing the right of a temporary employee to appeal a termination.

Section II.C.3.g. of the Law provides that temporary employees that are terminated due to documented cause will have the right to the appeal process as outlined in the Personnel Policies and Procedures. The commenter requests that temporary employees be handled in the same manner as employees on their original probation. Section III.D.1. of the Law provides that probationary employees may be terminated for cause at any time during the probation period, and that termination of an employee for cause during their original probationary period shall not be subject to appeal.

The Legislative Operating Committee may determine whether a temporary employee should be allowed to appeal a termination. The Legislative Operating Committee may make one of the following determinations:

1. Section II.C.3.g. of the Law should remain as currently drafted and provide that temporary employees that are terminated due to documented cause will have the right to the appeal process as outlined in the Personnel Policies and Procedures.
2. Section II.C.3.g. of the Law should be revised to remove the right of a temporary employee to appeal a termination. If the Legislative Operating Committee makes this determination then the following revision is recommended:

SECTION II - RECRUITING

C. EMERGENCY/TEMPORARY POSITIONS

3. Recruitment/Selection

- g. Temporary employees that are terminated due to documented cause ~~will~~ **shall not** have the right to the appeal ~~the termination. process as outlined in the Personnel Policies and Procedures.~~

LOC Consideration

The Legislative Operating Committee determined that section II.C.3.g. of the Law should be revised to remove the right of a temporary employee to appeal a termination.

Comment 169 – General Manager Level Position Resolving a Complaint:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

- f) **If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level**

position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.

i. The notice shall notify the General Manager level position that the complaint was not addressed within the additional ten (10) working days.

ii. The notice shall inform the General Manager level position that the Area Manager violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.

iii. The notice shall address the appropriate accountability of the Area Manager.

iv. The notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.

1. Investigation Procedure for all General Manager Level Positions, not the Oneida Business Committee

a. The General Manager level position shall complete the investigation and reach a resolution within ten (10) working days of receiving the notice from EEO.

b. The General Manager level position's ten (10) working day timeframe begins the day after the General Manager level position receives the complaint from the EEO Department.

c. The General Manager level position shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

i. Meetings between the General Manager level position and the employees may occur in person, through video conferencing, or by telephone.

ii. The General Manager level position shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the General Manager level position shall move forward with the

investigation based on the information they have.

d. When the General Manager level position's investigation is complete, the General Manager level position shall contact the EEO Officer to mutually determine an appropriate resolution.

i. If the General Manager level position cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the General Manager level position shall provide written justification for non-agreement on the resolution to the Human Resources Executive Director.

e. The final resolution shall be sent to the EEO Department for filing and reporting purposes.

f. The General Manager level position's resolution of the complaint shall be final.

2. Investigation Procedure for the Oneida Business Committee

a. When the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.

Lisa Duff on behalf of Gaming Senior Management (written): Line 859-895: Should just remove the 3rd level for the GM to investigate an employee complaint that EEO was not satisfied with how the supervisor or the Area Manager handled. This is too much. Should stick with current blue book complaint process of two levels of handling a complaint. A timeline is good to add but it shouldn't keep going up the chain of command and jumping to the General Manager to address the complaint. Why is this necessary?

If the purpose is to hold a supervisor or Area Manager or General Manager accountable for failing to address a complaint, or not addressing it properly according to EEO, then just state they may be held accountable for job negligence. All these steps are unnecessary.

Response

The commenter provides that a General Manager level position should not be responsible to complete the complaint investigation and reach a resolution if the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days.

Section V.D.1.c.1.f. of the Law provides that if the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee. Section V.D.1.c.1.f.iv. of the Law provides that the notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.

The Legislative Operating Committee may reconsider whether a General Manager level position should not be responsible to complete the complaint investigation and reach a resolution if the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.1.c.1.f. of the Law should remain as currently drafted, and provide that if the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command.
2. Section V.D.1.c.1.f. of the Law should be revised to remove the provision which requires the EEO Department shall send notice to the General Manager level position in that chain of command if the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days.

LOC Consideration

The Legislative Operating Committee determined that section V.D.1.c.1.f. of the Law should be revised to remove the provision which requires the EEO Department to send notice to the General Manager level position in that chain of command if the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days; and instead this provision in the Law should be revised to address a more appropriate level to which notification of a failure to complete an investigation is sent to.

Comments 170 through 171 – Meetings Held through Video Conferencing or By Telephone:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

1) The supervisor or EEO Officer shall fill out a disciplinary action form within five (5) working days of either:

a) the resolution of a complaint from which it has been determined that disciplinary action is warranted, or

- b) the determination that disciplinary action is warranted based on the unsatisfactory work performance of an employee.
- 2) The supervisor or EEO Officer shall fill out the disciplinary action form in its entirety and ensure the information contained on the form is complete and accurate. The disciplinary action form shall include at a minimum the following information:
 - a) Statement of the behavior for which the disciplinary action is being taken;
 - b) The time and date of its occurrence; and
 - c) The specific policy section under which action is being taken.
- 3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.
 - a) The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.
 - b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:
 - i. Understands the reason for the disciplinary action;
 - ii. Understands the expected work performance in light of the disciplinary action; and
 - iii. Understands the consequences of continued unacceptable behavior.
- 4) The employee being disciplined shall sign the disciplinary action form.
 - a) Should an employee being disciplined refuse to discuss the action with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1085-1086: The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.

Remove “through video conferencing, or over the telephone” This meeting cannot occur over video conferencing or over the phone. How can you go over a discipline form with an employee if they can’t see the form and they can’t physically sign the form as required as stated in line 1093. The meeting would need to occur in person during a termination notice so the supervisor can collect employee badge, keys or any other tribal property the employee has at the time of signatures.

Lisa Duff on behalf of Gaming Senior Management (written): Line 1093: the employee being disciplined shall sign the disciplinary action form.

It's required employee sign the discipline form, or they can refuse to sign the form and that's documented on the discipline form. This important step cannot occur if the so-called meeting takes place as mentioned in line 1086, "through video conferencing or over the phone." The meeting to issue a discipline to an employee needs to occur in person so the employee can physically sign the form or refuse to sign it.

Response

The commenter provides that a meeting between a supervisor or EEO Officer and an employee regarding a discussion of the disciplinary action form should not be allowed to occur through video conferencing or by telephone as currently allowed in section V.D.2.d.3.a of the Law. The commenter expresses concern that an employee can not sign the disciplinary action form if the meeting does not occur in person.

Section V.D.2.d.3.a of the Law provides that once a disciplinary action form has been filled out, the supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form and identify a corrective action. The Law provides that the meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone. Section V.D.2.d.4. of the Law requires that the employee being disciplined shall sign the disciplinary action form.

The Legislative Operating Committee may determine whether a meeting with the employee to discuss the disciplinary action form may occur in person, through video conferencing, or over the telephone. The Legislative Operating Committee may make one of the following determinations:

1. Section V.D.2.d.3.a of the Law should remain as currently drafted, and provide that once a disciplinary action form has been filled out, the supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form that occurs in person, through video conferencing, or over the telephone.
2. Section V.D.2.d.3.a of the Law should be revised so that the meeting between the supervisor or EEO Officer and the employee to discuss the disciplinary action form is required to occur in person. If the Legislative Operating Committee makes this determination the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

d. **Disciplinary Procedure.** The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.

- 1) The supervisor or EEO Officer shall fill out a disciplinary action form within five (5) working days of either:
 - a) the resolution of a complaint from which it has been determined that disciplinary action is warranted, or
 - b) the determination that disciplinary action is warranted based on the unsatisfactory work performance of an employee.
- 2) The supervisor or EEO Officer shall fill out the disciplinary action form in its entirety and ensure the information contained on the form is

complete and accurate. The disciplinary action form shall include at a minimum the following information:

- a) Statement of the behavior for which the disciplinary action is being taken;
 - b) The time and date of its occurrence; and
 - c) The specific policy section under which action is being taken.
- 3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.
- a) The meeting between the supervisor or EEO Officer and the employee ~~shall~~ ~~may~~ occur in person, ~~through video conferencing, or over the telephone.~~
 - b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:
 - i. Understands the reason for the disciplinary action;
 - ii. Understands the expected work performance in light of the disciplinary action; and
 - iii. Understands the consequences of continued unacceptable behavior.
- 4) The employee being disciplined shall sign the disciplinary action form.
- a) Should an employee being disciplined refuse to discuss the action with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.

LOC Consideration

The Legislative Operating Committee determined that section V.D.2.d.3.a of the Law should be revised so that the meeting between the supervisor or EEO Officer and the employee to discuss the disciplinary action form is required to occur in person, unless it is impossible to meet in person, then video conferencing should be allowed as long as the video conferencing is recorded.

Comment 172 – Grievance Process for EEO Violations and Illegal Activities Complaints:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

3. Grievance (Grievance Flowchart)

a. General

- 1) An employee who receives a disciplinary action which they believe is improper may grieve the action.
- 2) The grievance process shall be conducted with utmost consideration for due process within the time limits set forth herein but will allow and account for recognized holidays of the Nation and

unforeseen circumstances, such as illnesses, deaths in the immediate family of principals.

b. Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline.

Lisa Duff on behalf of Gaming Senior Management (written): Grievance Line 1150-1153: Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employees' receipt of the discipline.

First off, these lines should be removed as EEO Officers should not have authority to discipline employees they do not immediately supervise. This is not within EEO's authority nor is it in their job description. HR is not the entity that should be disciplining employees as they are to remain neutral. Secondly, why is there no Area Manager to hear this appeal first? If you're going to allow the EEO Officer to take disciplinary action, why does this just jump to the judiciary? Why is the Judiciary acting as the area manager?

Response

The commenter questions why an employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline.

Section V.D.3.b. of the Law provides that an employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline. The determination that appeals of a discipline that resulted from a EEO Violation or Illegal Activities complaint be made directly to the Oneida Nation Judiciary, instead of to an Area Manager, was made based on the increased severity of the offenses.

The Legislative Operating Committee may reconsider whether section V.D.3.b. of the Law should provide that an employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline, of if a process similar to that provided in section V.D.3.c.1. of the Law for the grievance process to an Area Manager for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance.

LOC Consideration

The Legislative Operating Committee determined that the consideration of this comment is moot based on prior decisions, and therefore no action is needed.

Comments 173 through 174 – Need for Comprehensive Amendments:

Mark Powless (written): Major changes have been proposed. If the organization is opening the document for major changes take a comprehensive approach and revise the entire document.

- o This is a great opportunity to change the approach to corrective action. Adopting an approach of investing in employee training, mentoring, and coaching will yield better results than focusing on how complaints are handled and any subsequent disciplinary actions. Generally, preventive efforts produce better long-term results than reactionary efforts. Our workforce is our community and our community is our workforce. Increasing training and education efforts will create a net benefit for our community.
- o Many sections of the document remained untouched even though they are not followed or have become obsolete. These sections should be removed or revised.

Mark Powless (written): Major changes have been proposed. Perhaps a better stepped approach (before committing to major changes) is an initial internal procedure change to gather appropriate data for sound decision making. Require all employee complaints to be submitted to the Human Resources Department (HRD). HRD will route the complaints to the appropriate Supervisor. The Supervisor will investigate and follow through with appropriate actions. These results will be submitted in a summary report to HRD. After a period of one year the data can be assessed for areas of improvement and subsequent policy/procedure changes.

Response

The commenter provides that opening the Law for amendments is a good opportunity to conduct a comprehensive review and develop comprehensive amendments to the entire law, instead of only addressing certain provisions of the Law.

It is recommended that the Legislative Operating Committee reconsider its strategy in narrowing the focus of the proposed amendments to only a couple sections of the Law, and instead consider taking the time to conduct an in depth review of the Law so that comprehensive amendments can be developed.

LOC Consideration

The Legislative Operating Committee agrees that comprehensive amendments to the Law are needed and should be explored further.

Comment 175 – General Comments Regarding the Employee Disagreements Complaints:

SECTION V – EMPLOYEE RELATIONS

1. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

- 1. Complaints**
 - a. General**
 - b. Types of Complaints**
 - c. Complaint Procedures**



1) Employee Disagreements

- a) An employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department.
- b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the supervisor of the employee with the complaint.
- c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.
 - i. The supervisor's ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department.
 - ii. The supervisor shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 1. Meetings between the supervisor and employees may occur in person, through video conferencing, or over the telephone.
 2. The supervisor shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the supervisor shall move forward with the investigation based on the information they have.
 - iii. If the supervisor cannot complete the investigation within the ten (10) working day timeframe, the supervisor may request a one (1) time five (5) working day extension from the EEO Department.
 - iv. When the supervisor's investigation is complete, the supervisor shall contact the EEO Officer to mutually determine an appropriate resolution.
 1. If the supervisor cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the supervisor shall provide written justification for non-agreement on the resolution to both the Area Manager and the Human Resources Executive Director.
 - v. The supervisor shall send the final resolution to their Area Manager to ensure accountability.
 - vi. The supervisor shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.
- d) If the supervisor fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the Area Manager.
 - i. The notice shall notify the Area Manager that the complaint was not addressed within the allotted ten (10) working days.
 - ii. The notice shall inform the Area Manager that the supervisor violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.
 - iii. The notice shall address the appropriate accountability of the supervisor.
 1. If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO Department shall

- send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.**
- iv. **The notice shall direct the Area Manager to complete the complaint investigation within ten (10) working days of receiving the notice from EEO.**
 - e) **If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.**
 - i. **Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.**
 - ii. **The Area Manager shall have ten (10) working days to complete their investigation.**
 - iii. **The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.**
 - iv. **The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.**
 - 1. **Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.**
 - 2. **The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.**
 - v. **When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.**
 - 1. **If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.**
 - vi. **The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.**
 - vii. **The Area Manager's resolution shall be final.**
 - f) **If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.**

- i. **The notice shall notify the General Manager level position that the complaint was not addressed within the additional ten (10) working days.**
 - ii. **The notice shall inform the General Manager level position that the Area Manager violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.**
 - iii. **The notice shall address the appropriate accountability of the Area Manager.**
 - iv. **The notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.**
1. **Investigation Procedure for all General Manager Level Positions, not the Oneida Business Committee**
 - a. **The General Manager level position shall complete the investigation and reach a resolution within ten (10) working days of receiving the notice from EEO.**
 - b. **The General Manager level position's ten (10) working day timeframe begins the day after the General Manager level position receives the complaint from the EEO Department.**
 - c. **The General Manager level position shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.**
 - i. **Meetings between the General Manager level position and the employees may occur in person, through video conferencing, or by telephone.**
 - ii. **The General Manager level position shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the General Manager level position shall move forward with the investigation based on the information they have.**
 - d. **When the General Manager level position's investigation is complete, the General Manager level position shall contact the EEO Officer to mutually determine an appropriate resolution.**
 - i. **If the General Manager level position cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the General Manager level position shall provide written justification for non-agreement on the resolution to the Human Resources Executive Director.**
 - e. **The final resolution shall be sent to the EEO Department for filing and reporting purposes.**
 - f. **The General Manager level position's resolution of the complaint shall be final.**
 2. **Investigation Procedure for the Oneida Business Committee**

- a. **When the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.**

Mark Powless (written):

1) Employee Disagreements

970 a) An employee who alleges they have a disagreement with another employee

971 may file a complaint with the employee's EEO Department.

972 a.b) Within two (2) working days of the receipt of the complaint, the EEO

973 Department shall provide the supervisor of the employee with the complaint.

974 b.c) The supervisor will shall have ten (10) working days to investigate the

975 complaint and attempt to resolve the disagreement complaint.

• This section does not allow for an assessment of merit of complaints. Will a complaint dating back 1 year be investigated? Will frivolous complaints be investigated? Additionally, how will complaints between employees in different Divisions or different Departments be handled. Will the investigating employee address both employees?

Response

The commenter provides a myriad of questions regarding the application of section V.D.1.c.1. of the Law regarding the complaint process for Employee Disagreement complaints.

Section V.D.1.c.1. of the Law provides the process to be used for the investigation of Employee Disagreement complaints by a supervisor. Section V.D.1.c.1.c. of the Law provides that the supervisor shall have ten (10) working days to investigate and resolve the complaint. When the supervisor's investigation is complete, the supervisor shall contact the EEO Officer to mutually determine an appropriate resolution for the complaint. During the investigation it may be determined by a supervisor that a complaint lacks merit or is frivolous, and the resolution of the complaint may reflect such determination. The commenter questions if there is a statute of limitations as to when an employee may file a complaint, and currently, the Law is silent in regard to this matter.

The commenter also questions how complaints between different employees will be handled under the Law. Section V.D.1.c.1.b. of the Law provides that the EEO Department shall provide the supervisor of the employee with the complaint. It is the intention of the Law that it is the supervisor of the employee that is the subject of the complaint that is responsible for conducting the investigation. It is recommended that the Legislative Operating Committee makes the following revision to the Law to clarify Section V.D.1.c.1.b. of the Law:

SECTION V – EMPLOYEE RELATIONS

2. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

a. General

b. Types of Complaints

- c. Complaint Procedures
 - 1) Employee Disagreements
 - a) An employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department.
 - b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the complaint to the supervisor of the employee who is the subject of ~~with~~ the complaint.

LOC Consideration

The Legislative Operating Committee agreed that the following revision should be made to the Law to clarify section V.D.1.c.1.b. of the Law:

SECTION V – EMPLOYEE RELATIONS

3. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

a. General

b. Types of Complaints

c. Complaint Procedures

1) Employee Disagreements

- a) An employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department.
- b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the complaint to the supervisor of the employee who is the subject of ~~with~~ the complaint.

Comment 176 – Appeal of the Supervisors Resolution for Employee Disagreement Complaints:

SECTION V – EMPLOYEE RELATIONS

4. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

a. General

b. Types of Complaints

c. Complaint Procedures

1) Employee Disagreements

- e) **If the employee is not satisfied with the supervisor’s final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.**
 - i. **Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.**
 - ii. **The Area Manager shall have ten (10) working days to complete their investigation.**
 - iii. **The Area Manager’s ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.**

- iv. **The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.**
 - 1. **Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.**
 - 2. **The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.**
- v. **When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.**
 - 1. **If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.**
- vi. **The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.**
- vii. **The Area Manager's resolution shall be final.**

Mark Powless (written):

1022 e) If the employee is not satisfied with the supervisor's final resolution, they may
 1023 refile their complaint with the EEO Department for resolution by the Area
 1024 Manager.

• Allowing appeals of employee disagreements may be difficult in practice. One reason is because frivolous complaints are currently allowed in the proposed amendment. To investigate a frivolous complaint twice will be a huge use of time and energy, and reduction in efficiency for management. Additionally, it is not uncommon for a supervisor to investigate an employee disagreement and not be able to provide full details of the outcome to the complainant. It is a violation of confidentiality for a supervisor to share the disciplinary action of one employee with any other employee. Therefore, a complainant may simply be told, "The matter was investigated and the employee was addressed appropriately." If it is appealed and the Area Manager provides the same response, the complainant may not accept the response leaving everyone feeling as though the process was an unnecessary use of time and energy. Recommendations include 1) allow for a process to remove frivolous complaints and 2) include the EEO Officer in the process for appeals. The EEO Officer can review the corrective measures taken to address an employee(s) and determine if an appeal has merit.

Response

The commenter expresses concern with allowing the resolution of a complaint investigation for Employee Disagreements by a supervisor to be appealed to the Area Manager.

Section V.D.1.c.1e. of the Law allows an employee who is not satisfied with the supervisor's final resolution, to refile their complaint with the EEO Department for resolution by the Area Manager. The law then provides that the Area Manager shall have ten (10) working days to complete their investigation. The commenter questions whether this is an efficient use of time.

The Legislative Operating Committee may reconsider whether an employee who is not satisfied with the supervisor's final resolution should be able to refile their complaint with the EEO Department for resolution by the Area Manager. The Legislative Operating Committee may make one of the following determinations.

1. Section V.D.1.c.1e. of the Law should remain as currently drafted and allows an employee who is not satisfied with the supervisor's final resolution, to refile their complaint with the EEO Department for resolution by the Area Manager. If the Legislative Operating Committee makes this determination, the Legislative Operating Committee may consider whether additional clarifying provisions are needed to create a more efficient system.
2. Section V.D.1.c.1e. of the Law should be revised so that a supervisor's resolution of an Employee Disagreement complaint is final and non-appealable. If the Legislative Operating Committee makes this determination the following revision to the Law is recommended:

SECTION V – EMPLOYEE RELATIONS

5. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

a. General

b. Types of Complaints

c. Complaint Procedures

1) Employee Disagreements

- c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

vii. The resolution of the supervisor shall be final and non-appealable.

~~f) If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.~~

- ~~i. Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.~~
- ~~ii. The Area Manager shall have ten (10) working days to complete their investigation.~~
- ~~iii. The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.~~
- ~~iv. The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - ~~1. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.~~
 - ~~2. The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.~~~~

- v. ~~When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.~~
- 1. ~~If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.~~
- vi. ~~The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.~~
- vii. ~~The Area Manager's resolution shall be final.~~

LOC Consideration

The Legislative Operating Committee determined that section V.D.1.c.1e. of the Law should remain as currently drafted to allow an employee who is not satisfied with the supervisor's final resolution, to refile their complaint with the EEO Department for resolution by the Area Manager.

Comment 177 – Recusal of EEO Officers:

Mark Powless (written): There is no verbiage around matters where EEO Officers should not be involved and required to recuse themselves. For example, an EEO Officer should not be investigating or disciplining in a matter involving one of their family members.

Response

The commenter provides that section V.D. of the Law does not address a when an EEO Officer should not be involved in the investigation or discipline of an employee and thereby should recuse themselves.

The Legislative Operating Committee may determine whether the Law should address when an EEO Officer should recuse themselves from handling the investigation and discipline of an employee and revise the Law accordingly.

LOC Consideration

The Legislative Operating Committee previously determined that the EEO Department should not be delegated the authority to investigate a complaint or issue a discipline, so therefore the concerns brought forth through this comment are moot, and there is no action needed based on this comment.

Comment 178 – Supervisor's Appeal of an EEO Officer's Decision:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints



- c. **Complaint Procedures**
 - 2) **EEO Violations**
 - i) **The EEO Officer’s resolution shall be final.**
 - 3) **Illegal Activities**
 - i) **The EEO Officer’s resolution shall be final.**

Mark Powless (written): Will a Supervisor be able to appeal an EEO decision? EEO Officers may be involved in favoritism, overlooking key information, missing deadlines, etc. Supervisors should have the ability to appeal an EEO decision prior to issuing a disciplinary decision to an employee.

Response

The commenter questions whether a supervisor would be able to appeal a decision of the EEO Department. The commenter is not clear as to what decision of the EEO Department he is referencing.

In regard to the resolution of a EEO Violation or Illegal Activities complaint, sections V.D.1.c.2.i. and V.D.1.c.3.i of the Law provides that the EEO Officer’s resolution shall be final. The intent of this provision is that the EEO Officer’s resolution of the complaint be non-appealable. Additionally, the Law does not provide a process to allow a supervisor to appeal a discipline provided by an EEO Officer to an employee. Only an employee who receives a disciplinary action which they believe is improper may grieve the action. *[OPPP Section V.D.3.a.1.]*

There is no action required by the Legislative Operating Committee needed to address this comment.

LOC Consideration

The Legislative Operating Committee previously determined that the EEO Department should not be delegated the authority to investigate a complaint or issue a discipline, so therefore the concerns brought forth through this comment are moot, and there is no action needed based on this comment.

Comment 179 – Succession Plans for Internal Postings:

SECTION III – SELECTION POLICY

C. INTERNAL POSITION POSTING - The Oneida Nation encourages movement within and among units in order to make the best possible use of human resources to meet the Oneida Nation’s goals and objectives. Supervisors and employees are encouraged to work together to create an environment in which employees constantly strive to improve their skills and abilities and managers constantly seek to provide challenging and rewarding work experiences.

- 1. **Internal Position Posting and Reassignment Rules.**
 - a. **The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding**



procedures for internal position posting and reassignment of employees of the Nation.

Tina Jorgensen (written): Regarding internal posting: If a department has a succession plan with employees that have been working on obtaining the qualifications of a position, the Supervisor should NOT have to post externally. If the position has been offered to all in the department and no Oneida enrolled are interested, the Supervisor should be able to hire the other employees based on the succession plan.

Response

The commenter provides that if a department has a succession plan with employees that have been working on obtaining the qualifications of a position, the Supervisor should NOT have to post externally, and that if the position has been offered to all in the department and no Oneida enrolled are interested, the Supervisor should be able to hire the other employees based on the succession plan.

The proposed amendments to the Law eliminate much of the process and procedures currently contained in the law regarding the transfers and promotions, internal postings, applicant pool, and reassignments and instead provides that the HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the internal position posting and reassignment of employees of the Nation. *[Section III.C.1]*. Utilizing the Administrative Rulemaking law for the promulgation of rules regarding internal position posting and reassignments instead of including this information in the law itself provides greater flexibility to the Human Resources Department to develop rules that best meet the needs of the Nation in its current circumstances. Under the proposed amendments to the Law, the comments concerns would be best addressed in the administrative rulemaking process.

There is no action needed from the Legislative Operating Committee based on this comment.

LOC Consideration

The Legislative Operating Committee determined that this there should be more discussion and consideration regarding the topic of internal position posting and reassignment of employees of the Nation to ensure that Indian preference is always protected and enforced.

Comment 180 – Timeline for Employee Disagreement Complaint:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.

Tina Jorgensen (written): When investigating a complaint for an employee disagreement, I have noticed that it can take much longer than 10 working days to complete the investigation. I think 30 days for the investigation is reasonable. Some examples of needing longer:

- o Employees who are involved in the investigation may not be available.
- o Sometimes the employee disagreements between two can require the Supervisor to meet with all employees.
- o When the disagreement revolves under lack of understanding a process, a policy may be identified as necessary, vetted, created and routed for signature.

Response

The commenters questions whether the ten (10) working day timeframe for a supervisor to investigate and resolve an Employee Disagreement complaint is a sufficient amount of time, and requests that the Legislative Operating Committee consider expanding this timeframe to thirty (30) days.

Section V.D.1.c.1.c. of the Law provides that the supervisor shall have ten (10) working days to investigate and resolve the complaint.

The Legislative Operating Committee may reconsider whether the ten (10) working day timeframe for a supervisor to investigate and resolve an Employee Disagreement complaint is a sufficient amount of time. The Legislative Operating Committee may make one of the following determinations.

1. Section V.D.1.c.1.c. of the Law should remain as currently drafted, and provide that the supervisor shall have ten (10) working days to investigate and resolve the complaint.
2. Section V.D.1.c.1.c. of the Law should to revised to expand the amount of time provided to a supervisor to investigate and resolve a complaint. If the Legislative Operating Committee makes this determination then the following revision is recommended:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

- c) The supervisor shall have **thirty (30)** ~~ten (10)~~ working days to investigate and resolve the complaint.

LOC Consideration

The Legislative Operating Committee determined that based on the proposed amendment and revisions to the Law, this issue will be addressed through a rule and not as part of the Law. The Legislative Operating Committee discussed the fact that the rule should consider allowing a supervisor to seek an extension of the timeline for investigating complaints.

Comment 181 – Appeal of a Complaint Resolution:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

1. Complaints

c. Complaint Procedures

1) Employee Disagreements

e) If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.

i. Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.

ii. The Area Manager shall have ten (10) working days to complete their investigation.

iii. The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.

iv. The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.

1. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.

2. The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.

v. When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.

1. If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.

vi. The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.

vii. The Area Manager's resolution shall be final.

2) EEO Violations

i) The EEO Officer's resolution shall be final.

3) Illegal Activities

i) The EEO Officer's resolution shall be final.

Tina Jorgensen (written): QUESTION: Can an employee move to the Judiciary when not satisfied with the outcome of their complaint?

Response

The commenter questions whether an employee can appeal to the Judiciary if not satisfied with the outcome of their complaint.

For Employee Disagreement complaints, section V.D.1.c.1.e. of the Law provides that if the employee is not satisfied with the supervisor’s final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager. Section V.D.1.c.1.e.vii. of the Law provides that the Area Manager’s resolution of the complaint will be final. For EEO Violation complaints and Illegal Activities Complaints, sections V.D.1.c.2.i. and V.D.1.c.3.i. of the Law provides that the EEO Officers resolution of the complaint shall be final. Therefore, the Law does not allow an employee to appeal the resolution of their complaint to the Judiciary if they are not satisfied with the result of the complaint.

There is no action by the Legislative Operating Committee required based on this comment.

LOC Consideration

The Legislative Operating Committee determined that there is no action needed based on this comment.

Comment 182 – Cumulation of Progressive Discipline:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

b. Determination of Disciplinary Action.

1) All disciplinary actions shall commensurate with the seriousness of the unsatisfactory performance or violation.

2) Disciplinary actions shall be considered in progressive order.

a) The progressive order for discipline is as follows, unless otherwise noted:

i. Written warning (W);

ii. Suspension (S);

iii. Termination (T).

b) Deviation from Progressive Order

i. Any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.

ii. Any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and

approved by the Human Resources Executive Director, or designee.

Vanessa Miller (written): J. Discipline

The legal analysis states that “Previously, the Law provided that the supervisor must consider each disciplinary action in progressive order and justify a deviance from that recommended progression. The proposed amendments now provide greater clarification on this issue, and provide that disciplinary action shall be considered in progressive order (written warning □ suspension □ termination), and that any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department, while any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and approved by the Human Resources Executive 284 Director, or designee. [Section V(D)(2)(b)(2)]”

My concern with this proposition is there appears to be room for misinterpretation regarding “progression discipline.” As written, this analysis states that “the Law provided that the supervisor must consider each disciplinary action in progressive order...” In the decision of Appellant Case No. 17-AC-008, Dated November 20, 2017 (Falck V. Thumer), the following was ordered:

Thurner also argues that progressive discipline is applicable only for “repeated violations of the same type” and Flack erred in progressively disciplining her for unrelated violations. This would mean that because Thurner was disciplined for three different type of unacceptable work performance...she would be able to have three separate progressive disciplinary tracks ongoing for each type of violation. This is a clearly erroneous position and not what V.D.2.a.3) directs supervisors to do. The progressive disciplinary process can be cumulative if disciplinary actions occur within a certain time frame.

My comment would be to clarify in this amendment the definition of progressive discipline in its application so that it is clear that it may be cumulative in nature regarding different types of behavior or policy violations.

Response

The commenter expresses concern that section V.D.2.b.2. of the Law still allows for misinterpretation regarding the progression of discipline. The commenter references caselaw from a decision of the Appellate Court that provides that progressive disciplinary process can be cumulative if disciplinary actions occur within a certain time frame. The commenter requests that the Legislative Operating Committee consider clarifying this provision of the Law so that it is clear that progressive disciplines may be cumulative in nature regarding different types of policy violations.

It is recommended that the Legislative Operating Committee revise the Law to address to concerns of the commenter. The following revision to the Law is recommended based on this comment:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

- b. Determination of Disciplinary Action.
 - 1) All disciplinary actions shall commensurate with the seriousness of the unsatisfactory performance or violation.
 - 2) Disciplinary actions shall be considered in progressive order.
 - a) The progressive order for discipline is as follows, unless otherwise noted:
 - i. Written warning (W);
 - ii. Suspension (S);
 - iii. Termination (T).
 - b) Progressive disciplinary action may be cumulative in nature amongst varying violations.
 - c) Deviation from Progressive Order
 - i. Any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.
 - ii. Any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and approved by the Human Resources Executive Director, or designee.

LOC Consideration

The Legislative Operating Committee determined that the following revision to the Law be made to address to concerns of the commenter:

SECTION V – EMPLOYEE RELATIONS

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

2. Discipline

- b. Determination of Disciplinary Action.
 - 1) All disciplinary actions shall commensurate with the seriousness of the unsatisfactory performance or violation.
 - 2) Disciplinary actions shall be considered in progressive order.
 - a) The progressive order for discipline is as follows, unless otherwise noted:
 - i. Written warning (W);
 - ii. Suspension (S);
 - iii. Termination (T).
 - b) Progressive disciplinary action may be cumulative in nature amongst varying violations.
 - c) Deviation from Progressive Order
 - i. Any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.
 - ii. Any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and approved by the Human Resources Executive Director, or designee.