


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



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

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

202.4. Application

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

202.8. Drug and Alcohol Testing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Page 1 – Lines 17-18

Line 24

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

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

Lines 89-92

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

920-869-2294

Response

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

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

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

To clarify, the exemption for positive THC test results applies only to external applicants during pre-employment drug testing. Once an individual is hired by the Nation, the employee is prohibited from the use of prohibited drugs and alcohol during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation. [2 O.C. 202.4-2]. All employees of the Nation are required to participate in reasonable suspicion and follow-up testing upon the request of an appropriate authority. [2 O.C. 202.8-5]. A negative test result is required for unimpeded employment eligibility. *Id.*

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

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

LOC Consideration

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

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

applies only to external applicants during pre-employment drug testing. Once an individual is hired by the Nation, the Nation’s policy on drug use for employees remains exactly the same as it is now, and the employee is prohibited from the use of prohibited drugs and alcohol during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation. [2 O.C. 202.4-2]. All employees of the Nation are required to participate in reasonable suspicion and follow-up testing upon the request of an appropriate authority, and a negative test result is required to unimpeded employment eligibility. [2 O.C. 202.8-5].

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

202.8. Drug and Alcohol Testing

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

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

Comments 14 through 15 – Application to Elected Officials:

202.3. Definitions

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

(e) “Employee” means any individual who is employed by the Nation and is subject to the direction and control of the Nation with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. “Employee” includes, but is not limited to; an individual employed by any program or enterprise of the Nation, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this law, individuals employed under an employment contract as a limited term employee are employees of the Nation, not consultants.

202.4. Application

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

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

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

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

Response

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

The Drug and Alcohol Free Workplace law prohibits an employee of the Nation from the use of prohibited drugs and alcohol during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation. [2 O.C. 202.4-2]. An employee of the Nation is defined as any individual who is employed by the Nation and is subject to the direction and control of the Nation with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. [2 O.C. 202.3-1(e)]. The Drug and Alcohol Free Workplace law further clarifies that an employee does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. *Id.* Therefore, the Drug and Alcohol Free Workplace law does not apply to elected officials, including members of the Oneida Business Committee.

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

LOC Consideration

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

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

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

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

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

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

Response

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

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

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

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

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

LOC Consideration

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

Comments 20 through 22 – Expression of Support for Amendments:

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

...

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

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

Gaming Management surrounding pre-employment drug screening.

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

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

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

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

Sincerely,
Sidney J. White

Response

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

LOC Consideration

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

Comment 23 – Clarification of Internal Applicant:

202.3. Definitions

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

(h) “Internal applicant” means a person who is applying for a position who is currently employed by the Nation, this includes those employed under a temporary status.

202.11. Consequences for Prohibited Behavior

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

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

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

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

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

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

Response

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

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

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

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

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

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

- (A) the position mandates a background check in accordance with 5 O.C. 501.10;
- (B) the position mandates licensing in accordance with 5 O.C. 501.11; and
- (C) the position does not require a commercial driver’s license or job-related driving.

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

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

LOC Consideration

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



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

Comment 24 – General Tribal Council Involvement in Legislative Process:

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

Response

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

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

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

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

entities, and community engagement efforts. The Legislative Procedures Act provides guidance on how a law should be organized, such as different sections that need to be included in a law and what information needs to be addressed in each section, to ensure there is a consistent format amongst all laws of the Nation. [1 O.C. 109.11]. Once a draft of the proposed legislation is approved by the Legislative Operating Committee, a legislative analysis of the draft legislation is completed. [1 O.C. 109.7-1]. The purpose of the legislative analysis is to describe the important features of the legislation being considered and factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. [1 O.C. 109.3-1(g)]. A legislative analysis includes a statement of the legislation's terms and substance; intent of the legislation; a description of the subject(s) involved, including any conflicts with Oneida or other law, key issues, potential impacts of the legislation and policy considerations. *Id.*

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

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

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

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

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

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

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

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

LOC Consideration

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