



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room - 2nd Floor Norbert Hill Center
June 19, 2024
9:00 a.m.

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

- II. Minutes to be Approved**
 - 1. June 5, 2024 LOC Meeting Minutes (pg. 2)

- III. Current Business**
 - 1. Back Pay Law Amendments (pg. 4)
 - 2. Computer Resources Ordinance Amendments (pg. 30)

- IV. New Submissions**
 - 1. Vendor Licensing Law Amendments (pg. 35)
 - 2. Independent Contractor Policy Amendments (pg. 36)
 - 3. Oneida Travel and Expense Policy Repeal (pg. 37)

- V. Additions**

- VI. Administrative Updates**

- VII. Executive Session**

- VIII. Recess/Adjourn**



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
June 5, 2024
9:00 a.m.

Present: Jameson Wilson, Jonas Hill, Kirby Metoxen

Excused: Jennifer Webster, Marlon Skenandore

Others Present: Clorissa N. Leeman, Grace Elliott, Carolyn Salutz

Others Present on Microsoft Teams: David P. Jordan, Eric Boulanger, Evan Doxtator, Fawn Cottrell, Matthew Denny, Nicole Rommel, Connor Kestell, Justin Nishimoto, Carolyn Salutz, Maureen Perkins, Peggy Helm-Quest, Sidney White, Katsitsiyo Danforth, Donna Smith, Lisa Moore, Kristal Hill, Peggy Van Gheem, Shane Hill, Mark Powless, Rae Skenandore, Derrick King, Todd Vanden Heuvel Ralinda Ninham-Lamberies, Janice Decorah

I. Call to Order and Approval of the Agenda

Jameson Wilson called the June 5, 2024, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jonas Hill to approve the agenda; seconded by Kirby Metoxen. Motion carried unanimously.

II. Minutes to be Approved

1. May 15, 2024 LOC Meeting Minutes

Motion by Kirby Metoxen to approve the May 15, 2024, LOC meeting minutes and forward to the Oneida Business Committee; seconded by Jonas Hill. Motion carried unanimously.

III. Current Business

1. Back Pay Law Amendments

Motion by Kirby Metoxen to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Jonas Hill. Motion carried unanimously.

2. Vehicle Driver Certification and Fleet Management Law Amendments

Motion by Kirby Metoxen to approve the Vehicle Driver Certification and Fleet Management law amendments draft, legislative analysis, and public meeting notice, and



forward the Vehicle Driver Certification and Fleet Management law amendments to a public meeting to be held on July 15, 2024; seconded by Jonas Hill. Motion carried unanimously.

3. Computer Resources Ordinance Amendments

Motion by Jonas Hill to approve the draft of the proposed amendments to the Computer Resources Ordinance and direct that a legislative analysis be completed; seconded by Kirby Metoxen. Motion carried unanimously.

IV. New Submissions

1. Oneida Life Insurance Plan Law Emergency Amendments

Motion by Jonas Hill to add the Oneida Life Insurance Plan Law Amendments to the Active Files List with Jameson Wilson as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

2. Uniform Commercial Code

Motion by Jonas Hill to add the Uniform Commercial Code to the Active Files List with Jameson Wilson as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

V. Additions

VI. Administrative Items

VII. Executive Session

VIII. Adjourn

Motion by Kirby Metoxen to adjourn at 9:22 a.m.; seconded by Jonas Hill. Motion carried unanimously.



Legislative Operating Committee
June 19, 2024

Back Pay Law Amendments

Submission Date: 9/21/22	Public Meeting: 12/13/22 04/12/24
LOC Sponsor: Jonas Hill	Emergency Enacted: N/A

Summary: *This item was carried over from last term. On August 14, 2022, during executive session, the Oneida Business Committee requested that the Legislative Operating Committee add the Back Pay law to the Active Files List, and to release the confidential memo to the Legislative Reference Office as a confidential document.*

9/14/22 OBC: Motion by Jennifer Webster to request the Legislative Operating Committee to add the Backpay Policy to the active files agenda and to release the confidential memo to the Legislative Reference Office as a confidential document, seconded by David P. Jordan. Motion carried.

9/21/22 LOC: Motion by Jennifer Webster to add the Back Pay Law Amendments to the Active Files List with Marie Cornelius as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

9/29/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Cornelius, Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the proposed draft of amendments to the Back Pay law.

10/5/22 LOC: Motion by Jennifer Webster to approve the draft of the proposed amendments to the Back Pay law and direct that a legislative analysis be completed; seconded by Daniel Guzman King. Motion carried unanimously.

10/13/22: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Marie Cornelius, Clorissa N. Leeman, Carolyn Salutz, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss an additional proposed amendments to the law.

10/19/22 LOC: Motion by Jennifer Webster to approve the updated draft and legislative analysis; seconded by Marie Cornelius. Motion carried unanimously.

11/2/22 LOC: Motion by Kirby Metoxen to approve the public meeting packet and forward the Back Pay law amendments to a public meeting to be held on December 13, 2022; seconded by Marie Cornelius. Motion carried unanimously.

- 12/13/22:** *Public Meeting Held.* Present: Kirby Metoxen, Clorissa N. Santiago, Carolyn Salutz, Brooke Doxtator, David P. Jordan (Microsoft Teams), Carrie Lindsey (Microsoft Teams), Joy Salzwedel (Microsoft Teams), Justin Nishimoto (Microsoft Teams), Rachel Fitzpatrick (Microsoft Teams), Tina Jorgensen (Microsoft Teams), Melanie Burkhart (Microsoft Teams), Grace Elliot (Microsoft Teams), Brenda Haen (Microsoft Teams), Debra Santiago (Microsoft Teams), Kristal Hill (Microsoft Teams), Matt Denny (Microsoft Teams), Ronald Vanschyndel (Microsoft Teams), Wendy Alvarez (Microsoft Teams), Stefanie Reinke (Microsoft Teams), Jay Kennard (Microsoft Teams), Sidney White (Microsoft Teams). The public meeting for the Back Pay law amendments was held in person in the Norbert Hill Center and on Microsoft Teams. No individuals provided public comment during the public meeting.
- 12/20/22:** *Public Comment Period Closed.* One (1) submission of written comments were received during the public comment period.
- 2/1/23 LOC:** Motion by Maire Cornelius to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Daniel Guzman King. Motion carried unanimously.
- 2/1/23:** *Work Meeting.* Present: David P. Jordan, Marie Cornelius, Danie Guzman King, Clorissa N. Leeman, Carolyn Salutz, Grace Elliott. The purpose of this work meeting was to review and consider the public comments received.
- 2/15/23 LOC:** Motion by Jennifer Webster to accept the updated public comment review memorandum; seconded by Marie Cornelius. Motion carried unanimously.
- 3/14/23:** *Work Meeting.* Present: David P. Jordan, Marie Cornelius, Jennifer Webster, Clorissa N. Leeman, Grace Elliott, Kristal Hill, Todd Vandenheuvel, Matt Denny, Josh Cottrell. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and consider the concerns brought up by HRD in their public comments.
- 10/4/23 LOC:** Motion by Jennifer Webster to add the Back Pay Law Amendments to the Active Files List with Jonas Hill as the sponsor; seconded by Marlon Skenandore. Motion carried unanimously.
- 1/3/24:** *Work Meeting.* Present: Jameson Wilson, Marlon Skenandore, Jennifer Webster, Jonas Hill, Kirby Metoxen Clorissa Leeman, Carolyn Salutz, Kristal Hill, Maureen Perkins, Fawn Cottrell. The purpose of this work meeting was for the LOC to review the draft of proposed amendments that went to public meeting and the corresponding comments that were received, and discuss and determine any revisions needed to the draft and the next steps for moving this legislative item forward.
- 1/17/24:** *Work Meeting.* Present: Marlon Skenandore, Jennifer Webster, Jonas Hill, Kirby Metoxen Clorissa Leeman, Carolyn Salutz (Microsoft Teams), Maureen Perkins (Microsoft Teams). The purpose of this work meeting was for the LOC to review the updated draft of proposed amendments; and determine next steps for moving this legislative item forward. LOC decided that a work meeting should be scheduled with HRD, Oneida Law Office, and General Managers to review the updated language, and that an additional public meeting should be held.
- 2/1/24:** *Work Meeting.* Present: Jameson Wilson, Jennifer Webster, Jonas Hill, Kirby Metoxen Clorissa Leeman, Carolyn Salutz, Kristal Hill, Maureen Perkins, Fawn Cottrell. The purpose of this work meeting was for the LOC to review the memorandum received the Oneida Law Office regarding their question on statistics on the use of back pay in the Nation, and the question of whether to exclude wages earned from a back pay award is typical.

- 2/20/24:** *Work Meeting.* Present: Jameson Wilson, Jonas Hill, Kirby Metoxen Clorissa Leeman, Kristal Hill, Maureen Perkins, Fawn Cottrell, Todd Vanden Heuvel, Wendy Alvarez, Whitney Wheelock, Marie Cornelius, Dana Thyssen, Matt Denny, Mark Powless, Peggy Van Gheem, Jeri Bauman. The purpose of this work meeting was for the LOC to review the updated proposed amendments to the Bay Pay law with HRD, the Oneida Law Office, and the general managers.
- 3/6/24 LOC:** Motion by Jennifer Webster to approve the updated materials contained in the public meeting packet for the Back Pay Law Amendments, and forward the Back Pay Law Amendments to a public meeting to be held on April 12, 2024; seconded by Jonas Hill. Motion carried unanimously.
- 4/12/24:** *Public Meeting Held.* Present: Jonas Hill, Marlon Skenandore, Jameson Wilson, Clorissa Leeman, Brooke Doxtator, Maureen Perkins, Cathy Metoxen, Peggy Helm-Quest, Justin Nishimoto, Racquel Hill, Kristin Jorgenson-Dann, Michelle Tipple, Brenda Haen. One (1) person provided public comment during this public meeting.
- 4/19/24:** *Public Comment Period Closed.* No individuals provided written comments during the public comment period.
- 6/5/24 LOC:** Motion by Kirby Metoxen to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Jonas Hill. Motion carried unanimously.
- 6/11/24:** *Work Meeting.* Present: Jameson Wilson, Jonas Hill, Kirby Metoxen, Jennifer Webster, Clorissa Leeman, Kristal Hill, Maureen Perkins, Fawn Cottrell. The purpose of this work meeting was to review and consider the public comments received.

Next Steps:

- Approve the updated public comment review memorandum, draft, and legislative analysis.
- Approve the fiscal impact statement request memorandum and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by July 3, 2024.



TO: Legislative Operating Committee (LOC)
 FROM: Clorissa N. Leeman, Legislative Reference Office, Senior Staff Attorney
 DATE: June 19, 2024
 RE: Back Pay Law Amendments: Public Comment Review with LOC Consideration

On April 12, 2024, a public meeting was held regarding the proposed amendments to the Back Pay law (“the Law”). The public comment period was then held open until April 19, 2024. The Legislative Operating Committee reviewed and considered the public comments received on June 11, 2024. This memorandum is submitted as a review of the comments received during the public comment period.

Comment 1 – Eliminating a Position:

206.4. Holding a Position Pending Appeals and Reinstatement

206.4-1. Requirement to Hold the Position Pending Litigation. When an employee is involuntarily separated and thereafter appeals said involuntary separation, the disciplining supervisor may only fill the employee's former position with an interim or temporary employee until the appeal has fully run its course, which includes any appeal timelines to the area manager, the Trial Court, or the Appellate Court.

206.4-2. Amending the Position Description or Eliminating the Position Pending an Employee Appeal. Notwithstanding the requirement to hold an employee's position pending an employee's appeal as provided in section 206.4-1, a supervisor or business unit may amend the affected position description or eliminate the affected position while an employment appeal is pending to respond to extreme financial distress that could negatively impact the Nation.

(a) The determination to amend an affected position description or eliminate an affected position shall be approved by the Human Resources Executive Director and either the:

- (1) General Manager;
- (2) Gaming General Manager;
- (3) Retail General Manager; or
- (4) the highest position in the employee's chain of command for non-divisional employees.

206.4-3. Reinstatement to the Position the Employee was Involuntarily Separated From. Should an employee's appeal of an involuntary separation result in the involuntary separation being overturned, the reviewing party shall order the employee be reinstated to the position from which the employee was involuntarily separated.

(a) In the event the position the employee was involuntarily separated from has been eliminated, or the employee is no longer eligible for the position based on amendments to the position description, the order to reinstate shall be deemed satisfied and the back pay end date shall be the date of the reviewing party's decision.

Cathy Metoxen (oral): Cathy Metoxen. Anything else? Is this for looks or for real? That's my first question. My second question is if it hasn't been followed in the past, what's gonna be umm enforced for the future? Umm. Depending on who the person may be, you know you can eliminate their position. That looks like you know, and it kind of looks like to me. If somebody doesn't like somebody, you know, we'll just we can't hire her back. So we will eliminate the position and create something so they can come back. They got nothing to come back to, so that's the way the little bit that I've seen in the last five minutes. That's what I jump. So is. That's what I'm seeing.

So I gotta say, what's real and what's not. You know what's gonna be taken seriously? Because nothing seems to be taken seriously, there's no teeth and I've been looking for teeth in a in stuff for a long time so. If somebody wins their case, they're entitled to their back pay. Now I know people who won their cases and never got, and maybe they just didn't like them, you know? And and that's what's frustrating and tiring. And that's what I look for and that's what I'm kind of seeing in this little bit that I looked at. I'd have to read it more closely, but that's the first thing I think of is what stands out is to see positions can be eliminated and then, umm.

Well, I'd like to see people get treated fairly across the board and forget about nepotism and favoritism. And you know who gets drunk or sober or whatever with each other. You know, instead of owing favors and such, you know, and taking care of your own and all of this kind of stuff, because whether you like it or not, it's there. Whether anybody likes to hear it or not, it's there and it happens and you hear about it all the time and the ordinary person sitting on a bar stool can understand what's being said. The ordinary person, but not the, sometimes not the highly educated, you know, and preferred people. I call them, usually the elite. But that's my, my concern and I have a reason for that, but we don't have time for that and because it's not fair and a lot of times when you hear people talk, they talk about the fairness of things and that's why I come up here and I say is this real or is this just, you know, for looks because that's what I wonder about. You know it's just an example.

That those are my concerns is now you got something in writing here where you can eliminate the position it looks like. And like I said, I read it in five (5) minutes, I gotta read it all over again and get better understanding of it, but I think what I'm seeing is, uh, you're creating a lot to benefit who. To benefit specifically for a reason, and if you don't like so, Joe at over at HRD, then eliminate the position and then we'll create a different position and we'll put somebody we want in there because that kind of seems like the way it goes sometimes it just appears that way and that's that's all I'm saying is that's where you got to get teeth. And and if you're going to say you're going to do something, if somebody's been sexually harassed, you know for so many years and then they got to go through a process that carries out for four (4) years and then they win their case, but then they say, oh, we don't have to pay you back pay, we're just going to eliminate your position.

Fairness across the board, and let's be real.

You might not like what I say, or what somebody else might say, but everything can't be positive. I heard that this morning everything can't be positive. Never.

There's always something someplace, and this is just an example.

Response

Overall, the commenter expresses the concern that the law be implemented in a manner that is fair for all persons, particularly regarding how positions are eliminated. The commenter also expressed concerns regarding the enforcement of this law.

In regard to concerns on a fair application of eliminating positions, the Back Pay law provides protections to ensure when an employee position may be eliminated pending an appeal. When an employee is involuntarily separated and then appeals their involuntary separation, the disciplining supervisor may only fill the employee's former position with an interim or temporary employee until the appeal has fully run its course, which includes any appeal timelines to the area manager, the Trial Court, or the Appellate Court. [2 O.C. 206.4-1]. A supervisor or business unit is only allowed to amend the affected position description or eliminate the affected position while an employment appeal is pending to respond to extreme financial distress that could negatively impact the Nation. [2 O.C. 206.4-2]. Extreme financial distress is defined as a situation in which an entity cannot generate sufficient revenues or income, making it unable to meet or pay its financial obligations, due to situations including, but is not limited to natural or human-made disasters; United States Government shutdown; emergency proclamations; and economic downturn. [2 O.C. 206.3-1(g)]. When conditions of extreme financial distress that may negatively impact the Nation exist, the determination to amend an affected position description or eliminate an affected position is still required to be approved by the Human Resources Executive Director and either the General Manager, Gaming General Manager, Retail General Manager; or the highest position in the employee's chain of command for non-divisional employees. [2 O.C. 206.4-2(a)]. If an employee's appeal of an involuntary separation result in the involuntary separation being overturned, the reviewing party shall order the employee be reinstated to the position from which the employee was involuntarily separated. [2 O.C. 206.4-3]. If the position the employee was involuntarily separated from has been eliminated, or the employee is no longer eligible for the position based on amendments to the position description, the order to reinstate is deemed satisfied and the back pay end date is calculated as the date of the reviewing party's decision. [2 O.C. 206.4-3(a)].

In regard to concerns of enforcement of the Back Pay law, the Law provides that an employee who does not receive back pay in accordance with the back pay agreement may seek enforcement by the Judiciary. [2 O.C. 206.6-4].

The proposed amendments to the Back Pay law adequately address the concerns shared by the commenter. There are no recommended revisions based on this comment.

LOC Consideration

The Legislative Operating Committee agreed that the proposed amendments to the Back Pay law address the concerns shared by the commenter, and therefore no revisions to the proposed amendments to the Back Pay law is needed based on the comments.

Title 2. Employment – Chapter 206

~~BACK PAY~~

Tashakotikályahke? kayanl/hsla?

back pay law

BACK PAY AND REINSTATEMENT

~~206.1. Purpose and Policy~~

~~206.2. Adoption, Amendment, Appeal~~

~~206.3. Definitions~~

~~206.4. Back Pay Calculation~~

~~206.5. Back Pay Process~~

~~206.1. Purpose and Policy~~

~~206.2. Adoption, Amendment, Appeal~~

~~206.3. Definitions~~

~~206.4. Holding a Position Pending Appeals and Reinstatement~~

~~206.5. Back Pay Calculation~~

~~206.6. Back Pay Process~~

206.1. Purpose and Policy

206.1-1. *Purpose.* The purpose of this law is to set forth standards used in the reinstatement of a employee, and the calculation of back pay for all employees of the Nation in accordance with the Nation’s law.

206.1-2. *Policy.* It is the policy of the Nation to have consistent and standard procedures for the management of employee reinstatement and back pay.

206.2. Adoption, Amendment, ~~Appeal~~ Repeal

206.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-24-06-PP and amended by resolutions BC-06-23-10-F, BC-08-13-14-C ~~and~~, BC-10-26-16-A, and BC- - - -.

206.2-2. This law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

206.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

206.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

206.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

206.3. Definitions

206.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Appellate Court” means the branch of the Nation’s Judiciary delegated the authority of final appeals within the Nation’s Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A in accordance with Article V of the Constitution and Bylaws of the Oneida Nation.

~~(a)~~(b) “Advocate” means a non-attorney person as provided by law and other person who is admitted to practice law and is presented to the court as the representative or advisor to a party.

~~(b)~~(c) “Back pay” means money damages owed to the employee for a salary or wage to compensate the employee as determined by the formulas set forth within this law.

~~(c)~~(d) “Consequential damages” means damages that are not a direct and immediately

Draft 3 (Redline to Current)

2024 06 19

35 result of an act, but a consequence of the initial act, including but not limited to penalties
36 on early withdrawal of retirement account.

37 ~~(d) “Consultant” means a professional who is contracted externally whose expertise is
38 provided on a temporary basis for a fee.~~

39 (e) “Earnings” includes vacation/ or personal time, shift differential, holiday pay, merit
40 increases, bonuses and incentives, employment benefits and income received during the
41 back pay period.

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

51 (g) “Extreme financial distress” means a situation in which an entity cannot generate
52 sufficient revenues or income, making it unable to meet or pay its financial obligations,
53 due to situations including, but is not limited to:

54 (1) natural or human-made disasters;

55 (2) United States Government shutdown;

56 (3) emergency proclamations; and

57 (4) economic downturn.

58 ~~(g)~~(h) “Involuntarily separated” means an employee removed from employment through
59 whatever means, other than a layoff, by the employer. This shall include, but is not limited
60 to, investigative leave, suspension or termination.

61 ~~(h)~~(i) “Judiciary” means Oneida Nation Judiciary, which is the judicial system that was
62 established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later
63 authorized to administer the judicial authorities and responsibilities of the Nation by
64 Oneida General Tribal Council resolution GTC-03-19-17-A in accordance with Article V
65 of the Constitution and Bylaws of the Oneida Nation.

66 ~~(i)~~(j) “Nation” means the Oneida Nation.

67 ~~(j)~~(k) “Punitive damages” means monetary compensation awarded to an injured party that
68 goes beyond that which is necessary to compensate the individual for losses and that is
69 intended to punish the other party.

70 (l) “Reviewing party” means the area manager or the Trial Court.

71 (m) “Trial Court” means the Trial Court of the Oneida Nation Judiciary authorized to
72 administer the judicial authorities and responsibilities of the Nation by Oneida General
73 Tribal Council resolution GTC-03-19-17-A in accordance with Article V of the
74 Constitution and Bylaws of the Oneida Nation.

75 76 **206.4. Holding a Position Pending Appeals and Reinstatement**

77 206.4-1. Requirement to Hold the Position Pending Litigation. When an employee is involuntarily
78 separated and thereafter appeals said involuntarily separation, the disciplining supervisor may only
79 fill the employee's former position with an interim or temporary employee until the appeal has
80 fully run its course, which includes any appeal timelines to the area manager, the Trial Court, or
81 the Appellate Court.

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2024 06 19

82 206.4-2. Amending the Position Description or Eliminating the Position Pending an Employee
 83 Appeal. Notwithstanding the requirement to hold an employee's position pending an employee's
 84 appeal as provided in section 206.4-1, a supervisor or business unit may amend the affected
 85 position description or eliminate the affected position while an employment appeal is pending to
 86 respond to extreme financial distress that could negatively impact the Nation.

87 (a) The determination to amend an affected position description or eliminate an affected
 88 position shall be approved by the Human Resources Executive Director and either the:

89 (1) General Manager;

90 (2) Gaming General Manager;

91 (3) Retail General Manager; or

92 (4) the highest position in the employee's chain of command for non-divisional
 93 employees.

94 206.4-3. Reinstatement to the Position the Employee was Involuntarily Separated From. Should
 95 an employee's appeal of an involuntary separation result in the involuntary separation being
 96 overturned, the reviewing party shall order the employee be reinstated to the position from which
 97 the employee was involuntarily separated.

98 (a) In the event the position the employee was involuntarily separated from has been
 99 eliminated, or the employee is no longer eligible for the position based on amendments to
 100 the position description, the order to reinstate shall be deemed satisfied and the back pay
 101 end date shall be the date of the reviewing party's decision.

103 **206.5. Back Pay Calculation**

104 206.4-1. Back Pay Limitations. Back pay shall only include the items identified
 105 calculations shall be made using the employee's last wage in the position which they were involuntarily separated
 106 from. Back pay, in all circumstances, shall be limited to the calculation set forth in this Section as
 107 they relate to the employee. section. Back pay shall include and be subject to the following as it is
 108 related to the employee:

109 (a) Vacation/ and Personal Time Accrual. Employees shall receive prorated credit for
 110 vacation/ and personal time which would have accrued during the back pay period.

111 (1) Reinstated employees shall be credited for vacation/ and personal time. -If the
 112 crediting of vacation/ and personal time would result in the employee exceeding
 113 the accrual cap pursuant to the Nation's laws, rules and policies, then any amount
 114 over that cap shall be provided as a cash payout. Non-reinstated employees shall
 115 be paid out vacation/ and personal time in lieu of crediting personal/ and vacation
 116 time.

117 (b) Shift Differential. Shift differential shall be included in the back pay amount to the
 118 extent it is a part of the employee's regularly scheduled hours.

119 (c) Tips. If the employee received pooled tips at the time of involuntary separation, tips
 120 shall be included in the total back pay amount at the same tip rate that other employees in
 121 the same position and on the same shift received on the same dates.

122 (1) If the employee received individual tips at the time of involuntary separation,
 123 the employee shall be ineligible for tips during the back pay period.

124 (d) Holiday Pay. Holiday pay shall be included in the back pay amount to the extent the
 125 employee would have received such pay if the employee had not been involuntarily
 126 separated.

127 (e) Merit Increases. The hourly rate used to calculate back pay shall be increased
 128 according to the merit increase system/ or standard used by the employee's supervisor

129 during the back pay period and ~~will~~shall include any increases from Oneida Business
130 Committee or General Tribal Council directives.

131 (1) The effective date of the employee's merit increase shall be the same as the
132 effective date for other employees in the same department. ~~Retroactive~~ increases
133 shall be calculated back to the retroactive date used for other employees in the same
134 department.

135 (2) The most recent performance review issued to the employee prior to being
136 involuntarily separated shall be used to determine the level of merit increase.
137 However, if the employee appealed the performance review to the Human Resource
138 Department Manager prior to involuntary separation, a method under the Nation's
139 laws, rules and policies shall be used to determine the merit increase.

140 (f) *Bonuses and Incentives.* All bonus and incentive payments for which the employee
141 would have been eligible during the back pay period shall be included in the total back pay
142 amount, except for non-monetary gifts distributed by the Nation to all employees (e.g.
143 winter gift) or other non-monetary benefits, such as clothing allowance.

144 (g) *Employment Benefits.* Employee benefits shall be subject to the provisions in this
145 section.

146 (1) *Insurance Benefits.* Coverage by the Nation for health insurance, dental
147 insurance, vision insurance, life insurance, long-term disability and short-term
148 disability coverage shall continue during an involuntary separation, except in the
149 event of a termination where the coverage ~~will~~shall discontinue. ~~The Nation shall~~
150 deduct the employee's share of premiums paid from any back pay award.

151 (A) If the employee's circumstances have changed during the back pay period
152 and such circumstances affect the employee's insurance needs, the employee
153 shall notify the Nation of such changes at the time of reinstatement.

154 (B) An employee who is reinstated shall sign a waiver from Purchased
155 Referred Care authorizing a review of the back pay period to determine if
156 Purchased Referred Care services were rendered. ~~If Purchased Referred Care~~
157 determines services were rendered during the back pay period, an employee
158 shall timely submit insurance information to Purchased Referred Care in
159 order for Purchased Referred Care to retroactively bill the insurance provider
160 to recoup funds for those services rendered during the back pay period.

161 (C) If the employee refuses to sign an authorization waiver from Purchased
162 Referred Care, the employee ~~will~~shall not be eligible to receive any back pay
163 award.

164 (2) *Flexible Benefit Plan Contributions.* If a terminated employee was contributing
165 to the Nation's flexible benefit plan at the time of termination, the status of the
166 employee's flex benefit plan shall be subject to the provisions of the Internal
167 Revenue Code.

168 (3) *Retirement Benefit Contributions.* In the event the employee was participating
169 in the Nation's retirement plan at the time of involuntary separation, the employee
170 shall be responsible for contacting the retirement plan administrator and
171 reactivating contributions.

172 (A) The employee may choose whether to have the employee's contribution
173 to the retirement plan that would have been made during the back pay period
174 deducted from the total back pay amount and deposited into the employee's
175 retirement account.

Draft 3 (Redline to Current)

2024 06 19

176 (B) If the employee was eligible for employer matching contributions at the
 177 time of involuntary separation and the employee chooses to make a
 178 contribution through back pay, the Nation shall contribute the employer
 179 match into the employee's retirement account.

180 (C) If the employee was not participating in the Nation's retirement plan or
 181 chooses not to make contributions through the back pay process, then the
 182 Nation shall not make employer match contributions into the employee's
 183 retirement account.

184 (h) *Income Received During the Back Pay Period.*

185 (1) *Unemployment Benefits.* Depending upon the unemployment compensation
 186 financing option elected by the Nation, either:

187 (A) Any unemployment compensation paid by the Nation to the State of
 188 Wisconsin for an involuntarily separated employee shall be deducted from
 189 the employee's back pay award; or

190 (B) The employee is directly responsible for the reimbursement to the State
 191 of Wisconsin. ~~The Nation shall send a copy of the completed and signed~~
 192 settlement agreement to the appropriate state department. The state then may
 193 determine the amount, if any, of unemployment compensation benefits
 194 received during the back pay period should be repaid.

195 (2) *Income Received Through Employment.* Except as provided in section 4206.5-
 196 1(h)(2)(B), income earned by an employee during the back pay period shall be
 197 deducted from the total back pay amount.

198 (A) The employee shall provide information to verify the amount of or lack
 199 of earned income and sign an affidavit attesting to the amount of or lack of
 200 earned income.

201 (B) If the employee worked an additional job prior to being involuntarily
 202 separated and continued working in the same capacity, the income earned
 203 from that employment shall not be deducted from the total back pay amount
 204 to the extent that the income is consistent with pre-involuntary separation
 205 earnings. Where the employee worked the additional job, the employee shall
 206 provide information from the employer to verify the income earned before
 207 and during the back pay period.

208 206.45-2. Payments Not Allowed. The Nation shall not include the following in any back pay
 209 amount:

210 (a) Punitive damages;

211 (b) Consequential damages;

212 (c) Attorney's or advocate's fees;

213 (d) Time when the employee would not have been eligible to work; An employee is not
 214 eligible to work in circumstances including, but not limited to, the following:

215 (1) When an employee is on layoff or furlough status at the time of involuntary
 216 separation;

217 (2) When a position is eliminated or inactive as part of the Nation's response to
 218 extreme financial distress;

219 (3) When an employee would have been on medical leave at the time of involuntary
 220 separation; and

221 (4) When an employee would otherwise not be eligible to work in the position from
 222 which they were separated from in accordance with the position description based

on:

- (A) applicable grant requirements when the position is grant funded;
- (B) applicable laws of the Nation including, but not limited to, the Vehicle Driver Certification and Fleet Management law; and
- (C) a criminal conviction;

(e) Monies normally paid for additional duties while working where an alternate employee assumed that function while the employee was involuntarily separated, unless the additional duties are a part of such involuntarily separated employee’s regular schedule.

206.45-3. *Back Pay Period.* Calculation of back pay begins on the day the employee is involuntarily separated and ends on the day the employee is reinstated.

(a) If the employee is reinstated but refuses to return to work, the back pay period ends on the date reinstatement would have taken effect, but was refused by the employee.

(b) Back pay shall be calculated by taking the employee’s average hours worked during the fifty-two (52) week period immediately preceding the date of the involuntary separation and divide that amount by the number of weeks worked.

(1) If the employment prior to the involuntary separation was less than fifty-two (52) weeks, the back pay shall be calculated by taking the employee’s average hours worked and divide that amount by the number of weeks worked.

(2) If the involuntary separation period involves a fractional week, the indemnity shall be paid for each day of a fractional week at the rate of the average number of hours worked per day immediately prior to the involuntary separation. For the purposes of this section, immediately prior means the twelve (12) full work weeks immediately preceding the involuntary separation. Provided that, under extenuating circumstances related to business needs of the Nation wherein the Oneida Law Office determines that considering hours worked per day immediately prior would be unfair, an alternative reasonable timeframe may be used.

206.56. Back Pay Process

206.56-1. The Oneida Law Office shall develop necessary forms and procedures for the purpose of implementing this law.

206.56-2. Internal departments shall cooperate as necessary with the Oneida Law Office in providing information needed to assemble and prepare the back pay agreement.

206.56-3. A reasonable effort shall be made to complete the back pay agreement within thirty (30) calendar days, starting the day after the party to the grievance action provides to the Oneida Law Office a judgment ordering back pay or the results of an investigation or test showing the employee is cleared of any wrongdoing.

206.56-4. An employee not receiving back pay in accordance with the back pay agreement may seek enforcement by the Judiciary.

End.

Adopted - BC-505-24-06-PP
 Amended - BC-06-23-10-F
 Amended - BC-08-13-14-C
 Amended - BC-10-26-16-A
 Amended - BC- - - -

Title 2. Employment – Chapter 206
Tashakotikáyahke? kayanl/hsia?
back pay law
BACK PAY AND REINSTATEMENT

206.1. Purpose and Policy	206.5. Back Pay Calculation
206.2. Adoption, Amendment, Appeal	206.6. Back Pay Process
206.3. Definitions	
206.4. Holding a Position Pending Appeals and Reinstatement	

1
2 **206.1. Purpose and Policy**
3 206.1-1. *Purpose.* The purpose of this law is to set forth standards used in the reinstatement of a
4 employee, and the calculation of back pay for all employees of the Nation in accordance with the
5 Nation’s law.
6 206.1-2. *Policy.* It is the policy of the Nation to have consistent and standard procedures for the
7 management of employee reinstatement and back pay.
8
9 **206.2. Adoption, Amendment, Repeal**
10 206.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-24-06-PP
11 and amended by resolutions BC-06-23-10-F, BC-08-13-14-C, BC-10-26-16-A, and BC-__-__-__-
12 __.
13 206.2-2. This law may be amended or repealed by the Oneida Business Committee or the Oneida
14 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
15 206.2-3. Should a provision of this law or the application thereof to any person or circumstances
16 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
17 to have legal force without the invalid portions.
18 206.2-4. In the event of a conflict between a provision of this law and a provision of another law,
19 the provisions of this law shall control.
20 206.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
21
22 **206.3. Definitions**
23 206.3-1. This section shall govern the definitions of words and phrases used within this law. All
24 words not defined herein shall be used in their ordinary and everyday sense.
25 (a) “Appellate Court” means the branch of the Nation’s Judiciary delegated the authority
26 of final appeals within the Nation’s Judiciary, as authorized by Oneida General Tribal
27 Council resolution GTC-03-19-17-A in accordance with Article V of the Constitution and
28 Bylaws of the Oneida Nation.
29 (b) “Advocate” means a non-attorney person as provided by law and other person who is
30 admitted to practice law and is presented to the court as the representative or advisor to a
31 party.
32 (c) “Back pay” means money damages owed to the employee for a salary or wage to
33 compensate the employee as determined by the formulas set forth within this law.
34 (d) “Consequential damages” means damages that are not a direct and immediately result
35 of an act, but a consequence of the initial act, including but not limited to penalties on early
36 withdrawal of retirement account.
37 (e) “Earnings” includes vacation or personal time, shift differential, holiday pay, merit

38 increases, bonuses and incentives, employment benefits and income received during the
39 back pay period.

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

49 (g) "Extreme financial distress" means a situation in which an entity cannot generate
50 sufficient revenues or income, making it unable to meet or pay its financial obligations,
51 due to situations including, but is not limited to:

- 52 (1) natural or human-made disasters;
- 53 (2) United States Government shutdown;
- 54 (3) emergency proclamations; and
- 55 (4) economic downturn.

56 (h) "Involuntarily separated" means an employee removed from employment through
57 whatever means, other than a layoff, by the employer. This shall include, but is not limited
58 to investigative leave, suspension or termination.

59 (i) "Judiciary" means Oneida Nation Judiciary, which is the judicial system that was
60 established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later
61 authorized to administer the judicial authorities and responsibilities of the Nation by
62 Oneida General Tribal Council resolution GTC-03-19-17-A in accordance with Article V
63 of the Constitution and Bylaws of the Oneida Nation.

64 (j) "Nation" means the Oneida Nation.

65 (k) "Punitive damages" means monetary compensation awarded to an injured party that
66 goes beyond that which is necessary to compensate the individual for losses and that is
67 intended to punish the other party.

68 (l) "Reviewing party" means the area manager or the Trial Court.

69 (m) "Trial Court" means the Trial Court of the Oneida Nation Judiciary authorized to
70 administer the judicial authorities and responsibilities of the Nation by Oneida General
71 Tribal Council resolution GTC-03-19-17-A in accordance with Article V of the
72 Constitution and Bylaws of the Oneida Nation.

73

74 **206.4. Holding a Position Pending Appeals and Reinstatement**

75 206.4-1. *Requirement to Hold the Position Pending Litigation.* When an employee is involuntarily
76 separated and thereafter appeals said involuntarily separation, the disciplining supervisor may only
77 fill the employee's former position with an interim or temporary employee until the appeal has
78 fully run its course, which includes any appeal timelines to the area manager, the Trial Court, or
79 the Appellate Court.

80 206.4-2. *Amending the Position Description or Eliminating the Position Pending an Employee*
81 *Appeal.* Notwithstanding the requirement to hold an employee's position pending an employee's
82 appeal as provided in section 206.4-1, a supervisor or business unit may amend the affected
83 position description or eliminate the affected position while an employment appeal is pending to
84 respond to extreme financial distress that could negatively impact the Nation.

85 (a) The determination to amend an affected position description or eliminate an affected
86 position shall be approved by the Human Resources Executive Director and either the:

87 (1) General Manager;

88 (2) Gaming General Manager;

89 (3) Retail General Manager; or

90 (4) the highest position in the employee's chain of command for non-divisional
91 employees.

92 206.4-3. *Reinstatement to the Position the Employee was Involuntarily Separated From.* Should
93 an employee's appeal of an involuntarily separation result in the involuntarily separation being
94 overturned, the reviewing party shall order the employee be reinstated to the position from which
95 the employee was involuntarily separated.

96 (a) In the event the position the employee was involuntarily separated from has been
97 eliminated, or the employee is no longer eligible for the position based on amendments to
98 the position description, the order to reinstate shall be deemed satisfied and the back pay
99 end date shall be the date of the reviewing party's decision.

100 101 **206.5. Back Pay Calculation**

102 206.5-1. *Back Pay Limitations.* Back pay calculations shall be made using the employee's last
103 wage in the position which they were involuntarily separated from. Back pay, in all circumstances,
104 shall be limited to the calculation set forth in this section. Back pay shall include and be subject to
105 the following as it is related to the employee:

106 (a) *Vacation and Personal Time Accrual.* Employees shall receive prorated credit for
107 vacation and personal time which would have accrued during the back pay period.

108 (1) Reinstated employees shall be credited for vacation and personal time. If the
109 crediting of vacation and personal time would result in the employee exceeding the
110 accrual cap pursuant to the Nation's laws, rules and policies, then any amount over
111 that cap shall be provided as a cash payout. Non-reinstated employees shall be paid
112 out vacation and personal time in lieu of crediting personal and vacation time.

113 (b) *Shift Differential.* Shift differential shall be included in the back pay amount to the
114 extent it is a part of the employee's regularly scheduled hours.

115 (c) *Tips.* If the employee received pooled tips at the time of involuntary separation, tips
116 shall be included in the total back pay amount at the same tip rate that other employees in
117 the same position and on the same shift received on the same dates.

118 (1) If the employee received individual tips at the time of involuntary separation,
119 the employee shall be ineligible for tips during the back pay period.

120 (d) *Holiday Pay.* Holiday pay shall be included in the back pay amount to the extent the
121 employee would have received such pay if the employee had not been involuntarily
122 separated.

123 (e) *Merit Increases.* The hourly rate used to calculate back pay shall be increased
124 according to the merit increase system or standard used by the employee's supervisor
125 during the back pay period and shall include any increases from Oneida Business
126 Committee or General Tribal Council directives.

127 (1) The effective date of the employee's merit increase shall be the same as the
128 effective date for other employees in the same department. Retroactive increases
129 shall be calculated back to the retroactive date used for other employees in the same
130 department.

131 (2) The most recent performance review issued to the employee prior to being

132 involuntarily separated shall be used to determine the level of merit increase.
133 However, if the employee appealed the performance review to the Human Resource
134 Department Manager prior to involuntary separation, a method under the Nation's
135 laws, rules and policies shall be used to determine the merit increase.

136 (f) *Bonuses and Incentives.* All bonus and incentive payments for which the employee
137 would have been eligible during the back pay period shall be included in the total back pay
138 amount, except for non-monetary gifts distributed by the Nation to all employees (e.g.
139 winter gift) or other non-monetary benefits, such as clothing allowance.

140 (g) *Employment Benefits.* Employee benefits shall be subject to the provisions in this
141 section.

142 (1) *Insurance Benefits.* Coverage by the Nation for health insurance, dental
143 insurance, vision insurance, life insurance, long-term disability and short-term
144 disability coverage shall continue during an involuntary separation, except in the
145 event of a termination where the coverage shall discontinue. The Nation shall
146 deduct the employee's share of premiums paid from any back pay award.

147 (A) If the employee's circumstances have changed during the back pay period
148 and such circumstances affect the employee's insurance needs, the employee
149 shall notify the Nation of such changes at the time of reinstatement.

150 (B) An employee who is reinstated shall sign a waiver from Purchased
151 Referred Care authorizing a review of the back pay period to determine if
152 Purchased Referred Care services were rendered. If Purchased Referred Care
153 determines services were rendered during the back pay period, an employee
154 shall timely submit insurance information to Purchased Referred Care in
155 order for Purchased Referred Care to retroactively bill the insurance provider
156 to recoup funds for those services rendered during the back pay period.

157 (C) If the employee refuses to sign an authorization waiver from Purchased
158 Referred Care, the employee shall not be eligible to receive any back pay
159 award.

160 (2) *Flexible Benefit Plan Contributions.* If a terminated employee was contributing
161 to the Nation's flexible benefit plan at the time of termination, the status of the
162 employee's flex benefit plan shall be subject to the provisions of the Internal
163 Revenue Code.

164 (3) *Retirement Benefit Contributions.* In the event the employee was participating
165 in the Nation's retirement plan at the time of involuntary separation, the employee
166 shall be responsible for contacting the retirement plan administrator and
167 reactivating contributions.

168 (A) The employee may choose whether to have the employee's contribution
169 to the retirement plan that would have been made during the back pay period
170 deducted from the total back pay amount and deposited into the employee's
171 retirement account.

172 (B) If the employee was eligible for employer matching contributions at the
173 time of involuntary separation and the employee chooses to make a
174 contribution through back pay, the Nation shall contribute the employer
175 match into the employee's retirement account.

176 (C) If the employee was not participating in the Nation's retirement plan or
177 chooses not to make contributions through the back pay process, then the
178 Nation shall not make employer match contributions into the employee's

179 retirement account.

180 (h) *Income Received During the Back Pay Period.*

181 (1) *Unemployment Benefits.* Depending upon the unemployment compensation
182 financing option elected by the Nation, either:

183 (A) Any unemployment compensation paid by the Nation to the State of
184 Wisconsin for an involuntarily separated employee shall be deducted from
185 the employee's back pay award; or

186 (B) The employee is directly responsible for the reimbursement to the State
187 of Wisconsin. The Nation shall send a copy of the completed and signed
188 settlement agreement to the appropriate state department. The state then may
189 determine the amount, if any, of unemployment compensation benefits
190 received during the back pay period should be repaid.

191 (2) *Income Received Through Employment.* Except as provided in section 206.5-
192 1(h)(2)(B), income earned by an employee during the back pay period shall be
193 deducted from the total back pay amount.

194 (A) The employee shall provide information to verify the amount of or lack
195 of earned income and sign an affidavit attesting to the amount of or lack of
196 earned income.

197 (B) If the employee worked an additional job prior to being involuntarily
198 separated and continued working in the same capacity, the income earned
199 from that employment shall not be deducted from the total back pay amount
200 to the extent that the income is consistent with pre-involuntary separation
201 earnings. Where the employee worked the additional job, the employee shall
202 provide information from the employer to verify the income earned before
203 and during the back pay period.

204 206.5-2. *Payments Not Allowed.* The Nation shall not include the following in any back pay
205 amount:

206 (a) Punitive damages;

207 (b) Consequential damages;

208 (c) Attorney's or advocate's fees;

209 (d) Time when the employee would not have been eligible to work. An employee is not
210 eligible to work in circumstances including, but not limited to, the following:

211 (1) When an employee is on layoff or furlough status at the time of involuntary
212 separation;

213 (2) When a position is eliminated or inactive as part of the Nation's response to
214 extreme financial distress;

215 (3) When an employee would have been on medical leave at the time of involuntary
216 separation; and

217 (4) When an employee would otherwise not be eligible to work in the position from
218 which they were separated from in accordance with the position description based
219 on:

220 (A) applicable grant requirements when the position is grant funded;

221 (B) applicable laws of the Nation including, but not limited to, the Vehicle
222 Driver Certification and Fleet Management law; and

223 (C) a criminal conviction;

224 (e) Monies normally paid for additional duties while working where an alternate employee
225 assumed that function while the employee was involuntarily separated, unless the

226 additional duties are a part of such involuntarily separated employee’s regular schedule.
227 206.5-3. *Back Pay Period.* Calculation of back pay begins on the day the employee is
228 involuntarily separated and ends on the day the employee is reinstated.
229 (a) If the employee is reinstated but refuses to return to work, the back pay period ends on
230 the date reinstatement would have taken effect, but was refused by the employee.
231 (b) Back pay shall be calculated by taking the employee’s average hours worked during
232 the fifty-two (52) week period immediately preceding the date of the involuntary separation
233 and divide that amount by the number of weeks worked.
234 (1) If the employment prior to the involuntary separation was less than fifty-two
235 (52) weeks, the back pay shall be calculated by taking the employee’s average hours
236 worked and divide that amount by the number of weeks worked.
237 (2) If the involuntary separation period involves a fractional week, the indemnity
238 shall be paid for each day of a fractional week at the rate of the average number
239 of hours worked per day immediately prior to the involuntary separation. For the
240 purposes of this section, immediately prior means the twelve (12) full work weeks
241 immediately preceding the involuntary separation. Provided that, under extenuating
242 circumstances related to business needs of the Nation wherein the Oneida Law
243 Office determines that considering hours worked per day immediately prior would
244 be unfair, an alternative reasonable timeframe may be used.
245

246 **206.6. Back Pay Process**

247 206.6-1. The Oneida Law Office shall develop necessary forms and procedures for the purpose of
248 implementing this law.
249 206.6-2. Internal departments shall cooperate as necessary with the Oneida Law Office in
250 providing information needed to assemble and prepare the back pay agreement.
251 206.6-3. A reasonable effort shall be made to complete the back pay agreement within thirty (30)
252 calendar days, starting the day after the party to the grievance action provides to the Oneida Law
253 Office a judgment ordering back pay or the results of an investigation or test showing the employee
254 is cleared of any wrongdoing.
255 206.6-4. An employee not receiving back pay in accordance with the back pay agreement may
256 seek enforcement by the Judiciary.
257

258 *End.*
259

260 Adopted - BC-05-24-06-PP
261 Amended - BC-06-23-10-F
262 Amended - BC-08-13-14-C
263 Amended - BC-10-26-16-A
264 Amended - BC-__-__-__-__



BACK PAY LAW AMENDMENTS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Amendments	<ul style="list-style-type: none"> ▪ Include a new section in the law which provides for the reinstatement of employee who had involuntary separation overturned and addresses such issues as: <ul style="list-style-type: none"> ▪ Requirement to hold a position pending litigation [2 O.C. 206.4-1]; ▪ amending the position description or eliminating the position pending an employee appeal [2 O.C. 206.4-2]; ▪ Reinstatement to the position the employee was involuntarily separated from [2 O.C. 206.4-3]; ▪ Clarify that back pay calculations shall be made using the employee’s last wage in the position which they were terminated from [2 O.C. 206.5-1]; ▪ Clarify the circumstances in which an employee is not eligible to work, and therefore is not eligible for back pay [2 O.C. 206.5-2(d)].
Purpose	The purpose of this law is to set forth standards used in the reinstatement of an employee and the calculation of back pay for all employees of the Nation in accordance with the Nation’s law. [2 O.C. 206.1-1].
Affected Entities	Oneida Law Office, General Manager, Gaming General Manager, Retail General Manager, Human Resources Department Executive Director, Oneida Nation Judiciary, Employees of the Nation
Public Meeting	A public meeting was held on December 13, 2022, with a public comment period held open until December 20, 2022. An additional public meeting was held on April 12, 2024, with a public comment period held open until April 19, 2024.
Fiscal Impact	The LOC is requesting a fiscal impact statement be developed by Finance on June 19, 2024.

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Background.** The Back Pay law was originally adopted by the Oneida Business Committee in 2006 through resolution BC-05-24-06-PP, and then amended through resolutions BC-06-23-10-F, BC-08-13-14-C, and BC-10-26-16-A. The purpose of the Back Pay law is to set forth standards used in the reinstatement of an employee and the calculation of back pay for all employees of the Nation in accordance with the Nation’s law. [2 O.C. 206.1-1]. It is the policy of the Nation to have consistent and standard procedures for the management of employee reinstatement and back pay. [2 O.C. 206.1-2].
- B. Request for Amendments.** On the September 14, 2022, the Oneida Business Committee adopted a motion to request the Legislative Operating Committee consider amendments to the Back Pay law. The Legislative Operating Committee added this legislative item to its Active Files List on September 21, 2022.

15 **SECTION 3. CONSULTATION AND OUTREACH**

16 A. Representatives from the following departments or entities participated in the development of the
17 amendments to the Back Pay law and this legislative analysis:

- 18 ▪ Oneida Law Office;
- 19 ▪ Human Resources Department;
- 20 ▪ General Manager; and
- 21 ▪ Gaming Employee Services.

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

- 23 ▪ Back Pay law;
- 24 ▪ Oneida Personnel Policies and Procedures;
- 25 ▪ Drug and Alcohol Free Workplace law;
- 26 ▪ Furlough law; and
- 27 ▪ Investigative Leave Policy.

28

29 **SECTION 4. PROCESS**

30 A. The development of the proposed amendments to the Back Pay law complies with the process set forth
31 in the Legislative Procedures Act (LPA).

- 32 ▪ On September 14, 2022, the Oneida Business Committee adopted a motion to request the
33 Legislative Operating Committee to add the Back Pay Policy to the active files agenda and to
34 release the confidential memo to the Legislative Reference Office as a confidential document.
- 35 ▪ On September 21, 2022, the Legislative Operating Committee added the Law to its Active Files
36 List.
- 37 ▪ On October 5, 2022, the Legislative Operating Committee approved the draft of the proposed
38 amendments to the Back Pay law and directed that a legislative analysis be developed.
- 39 ▪ On October 19, 2022, the Legislative Operating Committee approved the updated draft and
40 legislative analysis.
- 41 ▪ On November 2, 2022, the Legislative Operating Committee approved the public meeting
42 packet and forwarded the Back Pay law amendments to a public meeting to be held on
43 December 13, 2022.
- 44 ▪ The public meeting was held on December 13, 2022, in person in the Norbert Hill Center and
45 on Microsoft Teams. No individuals provided public comment during the public meeting.
- 46 ▪ The public comment period was held open until December 20, 2022. One (1) submission of
47 written comments was received during the public comment period.
- 48 ▪ On February 1, 2023, the Legislative Operating Committee to accepted the public comments
49 and the public comment review memorandum and deferred these items to a work meeting for
50 further consideration. The Legislative Operating Committee reviewed and considered these
51 comments later that same day.
- 52 ▪ On February 15, 2023, the Legislative Operating Committee accepted the updated public
53 comment review memorandum.
- 54 ▪ On October 4, 2023, the Legislative Operating Committee read the Back Pay law
55 amendments to its Active Files List for the 2023-2026 legislative term.
- 56 ▪ On March 6, 2024, the Legislative Operating Committee approved the updated materials
57 contained in the public meeting packet for the Back Pay law amendments, and forwarded the
58 Back Pay law amendments to a public meeting to be held on April 12, 2024.

- 59 ▪ On April 12, 2024, a public meeting was held regarding the proposed amendments to the Back
- 60 Pay law. One (1) person provided public comment during this public meeting.
- 61 ▪ On April 19, 2024, the public comment period for the proposed amendments to the Back Pay
- 62 law closed. No individuals provided written comments during the public comment period.
- 63 ▪ On June 5, 2024, the Legislative Operating Committee accept the public comments and the
- 64 public comment review memorandum and defer to a work meeting for further consideration.
- 65 ▪ On June 11, 2024, the Legislative Operating Committee reviewed and considered the public
- 66 comments received.
- 67 **B.** At the time this legislative analysis was developed the following work meetings had been held
- 68 regarding the development of the amendments to this Law:
- 69 ▪ September 29, 2022: LOC work session;
- 70 ▪ October 13, 2022: LOC work session;
- 71 ▪ February 1, 2023: LOC work session;
- 72 ▪ March 14, 2023: LOC work session with HRD.
- 73 ▪ January 3, 2024: LOC work session.
- 74 ▪ January 17, 2024: LOC work session.
- 75 ▪ February 1, 2024: LOC work session.
- 76 ▪ February 20, 2024: LOC work session with HRD, Oneida Law Office, General Manager, and
- 77 Gaming Employee Services.
- 78 ▪ June 11, 2024: LOC work session.
- 79

Back Pay Statistics

81 Employees of the Nation may receive back pay for a couple different reasons such as (1) overturned
82 suspensions, separations, and employment terminations; (2) an investigative leave that ends with the
83 employee returning to their position with no discipline; and (3) missed work time for reasonable suspicion
84 drug test that produces a negative result.

85
86 Below please find some statistics provided by the Oneida Law Office regarding employment appeals and
87 back pay awards related to each reason listed above.

Employment Appeals since January 1, 2022	
Appealed Terminations/Separations	21
Appealed Suspension	18
Back Pay Payments Since January 1, 2022	
Overtured Termination/Separation	9
Overtured Suspension	6
Return from Investigative Leave – No Discipline	1
Return from Drug Test with Negative Result	1

SECTION 5. CONTENTS OF THE LEGISLATION

93 **A. *Holding a Position Pending Appeals and Reinstatement.*** A new section added to the Law through
94 these amendments addresses reinstatement of an employee who was involuntarily separated. [2 O.C.

95 206.4]. This new section requires that when an employee is involuntarily separated and thereafter
96 appeals said involuntary separation, the disciplining supervisor may only fill the employee's former
97 position with an interim or temporary employee until the appeal has fully run its course, which includes
98 any appeal timelines to the area manager, the Trial Court, or the Appellate Court. [2 O.C. 206.4-1].
99 Additionally, this section of the Law provides that notwithstanding the requirement to hold an
100 employee's position pending the employee's appeal as provided in section 206.4-1, a supervisor or
101 business unit may amend the affected position description or eliminate the affected position while an
102 employment appeal is pending to respond to extreme financial distress that could negatively impact the
103 Nation. [2 O.C. 206.4-2]. Extreme financial distress is defined to mean a situation in which an entity
104 cannot generate sufficient revenues or income, making it unable to meet or pay its financial obligations,
105 due to situations including, but is not limited to, natural or human-made disasters; United States
106 Government shutdown; emergency proclamations; and economic downturn. [2 O.C. 206.3-1(g)]. The
107 determination to amend an affected position description or eliminate an affected position is then
108 required to be approved by the Human Resources Department Executive Director and either the General
109 Manager, Gaming General Manager, Retail General Manager, or the highest position in the employee's
110 chain of command for non-divisional employees. [2 O.C. 206.4-2(a)]. This new section then goes on
111 to provide that should an employee's appeal of an involuntary separation result in the separation being
112 overturned, the reviewing party shall order the employee be reinstated to the position from which the
113 employee was involuntarily separated. [2 O.C. 206.4-3]. In the event the position the employee was
114 involuntarily separated from has been eliminated, or the employee is no longer eligible for the position
115 based on amendments to the position description, the order to reinstate shall be deemed satisfied and
116 the back pay end date shall be the date of the reviewing party's decision. [2 O.C. 206.4-3(a)].

117 ■ *Effect.* The overall purpose of this new section to the Law is to provide direction and clarification
118 on how the reinstatement of an employee who had an involuntary separation overturned is handled,
119 so that it can be handled in a consistent manner throughout the Nation.

120 **B. *Back Pay Calculations.*** The proposed amendments to the Law clarify that back pay calculations shall
121 be made using the employee's last wage in the position which they were involuntarily separated from.
122 [2 O.C. 206.5-1].

123 ■ *Effect.* This provision of the Law clarifies what wage of an employee should be used when
124 calculating back pay.

125 **C. *Explanation of When an Employee is Not Eligible to Work.*** The Law provides that the Nation shall
126 not include time when an employee would not have been eligible to work in the calculation of any back
127 pay amount. [2 O.C. 206.5-2(d)]. The proposed amendments to the Law provides greater clarification
128 by providing a list of examples of when an employee is not eligible to work, which includes such
129 circumstances such as when an employee is on layoff or furlough status at the time of termination;
130 when a position is eliminated or inactive as part of the Nation's response extreme financial distress;
131 when an employee would have been on medical leave at the time of the involuntary separation; and
132 when an employee would otherwise not be eligible to work in the position from which they were
133 separated from in accordance with the position description based on applicable grant requirements
134 when a position is grant funded, applicable laws of the Nation, including, but not limited to, the Vehicle
135 Driver Certification and Fleet Management law, and a criminal conviction. [2 O.C. 206.5-2(d)(1)-(4)].

136 ■ *Effect.* This provision of the Law clarifies when it should be considered that an employee is not
137 eligible to work, and therefore is not eligible for back pay.

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SECTION 6. EXISTING LEGISLATION

A. *Related Legislation.* The following laws of the Nation are related to the Back Pay law:

- *Oneida Personnel Policies and Procedures.* The purpose of the Oneida Personnel Policies and Procedures is to provide for the Nation’s employee related policies and procedures including recruitment, selection, compensation and benefits, employee relations, safety and health, program and enterprise rules and regulations, and record keeping.
 - Section V.D of the Oneida Personnel Policies and Procedures specifically addresses complaints, disciplinary actions and grievances. Section V.D.6 provides that any employee who receives a disciplinary action which he/she believes is unfair may grieve the action. Section V.D.6.f.5 then provides that the Oneida Personnel Commission may: uphold the disciplinary action; or overturn the disciplinary action and either reinstate the employee with full back pay for any lost time or reinstate the employee without back pay.
 - The Back Pay law will now address the reinstatement of an employee who has an involuntary separation overturned in section 206.4, as well as provide greater clarification on how back pay is calculated in section 206.5.
- *Drug and Alcohol Free Workplace Law.* It is the policy of the Nation to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. [2 O.C. 202.1-1].
 - The Drug and Alcohol Free Workplace law provides that it is the employee’s responsibility to cooperate with the requests made by Employee Health Nursing and the Medical Review Officer. [2 O.C. 202.5-2(e)]. An employee who fails to cooperate and does not contact the Medical Review Officer within twenty-four (24) hours of receiving contact shall not receive back pay for any time between the date the Medical Review Officer placed the call until the time the employee does return the call of the Medical Review Officer. *Id.*
 - The Drug and Alcohol Free Workplace law provides that during drug and alcohol testing for reasonable suspicion, an employee shall be immediately removed from duty without pay at the time of initiation of the reasonable suspicion drug and alcohol testing and specimen collection until the employer is notified by Employee Health Nursing of negative results on both the drug and alcohol tests, or Medical Review Officer verified negative test results. [2 O.C. 202.10-2]. If the employee is reinstated after confirmation of drug and alcohol testing results, back pay shall be provided in accordance with the Back Pay law. [2 O.C. 202.10-3].
- *Furlough Law.* The purpose of the Furlough law is to enable the Nation to implement a furlough program in response to an interruption of governmental revenues or operations, insufficient treasury funds or other emergencies/ unplanned events as determined by the Oneida Business Committee in accordance with this law; establish a consistent and equitable process for implementation of a furlough program; and incorporate Indian preference into the furlough program and require that it be applied in accordance with this law. [2 O.C. 205.1-1].
 - The Furlough law provides that except when an employee successfully appeals being placed on furlough status in violation of this law, employees placed in furlough status shall not be eligible for back pay upon their return to work. [2 O.C. 205.8-6].
- *Investigative Leave Policy.* The purpose of the Investigative Leave Policy is to address investigative leave for employees undergoing work-related investigations. [2 O.C. 208.1-1].

- 181 ▪ The Investigative Leave Policy provides that an employee placed on investigative leave shall
182 not receive any wages or benefits unless placed in an alternative work assignment, and that if
183 the employee refuses the alternative work assignment and is returned to work, the employee
184 shall not receive any back pay or benefits. [2 O.C. 208.10-2].
- 185 ▪ The Investigative Leave Policy provides that an employee shall receive back pay and benefits
186 for the time the employee was on investigative leave pursuant to the Back Pay law if all of the
187 following occur: the employee was not offered an alternative work assignment when placed on
188 investigative leave; the employee is returned to his or her position; and the employee is not
189 disciplined based on the investigation. [2 O.C. 208.10-4].

190

191 **SECTION 7. OTHER CONSIDERATIONS**

192 **A. Fiscal Impact.** Under the Legislative Procedures Act, a fiscal impact statement is required for all
193 legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-
194 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*
195 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete
196 a fiscal impact statement at various stages of the legislative process, as well as timeframes for
197 completing the fiscal impact statement.

- 198 ▪ *Conclusion.* On June 19, 2024, the Legislative Operating Committee will be directing that a fiscal
199 impact statement be completed by Finance by July 3, 2024.

200



TO: Ralinda Ninham-Lamberies, Chief Financial Officer
FROM: Jameson Wilson, Legislative Operating Committee Chairman
DATE: June 19, 2024
RE: Back Pay Law Amendments Fiscal Impact Statement

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

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

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

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [1 O.C. 109.6-1].

Oneida Business Committee resolution BC-10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures Act*” provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that upon final approval of draft legislation by the LOC, the LOC may direct the Finance Department to provide a neutral and unbiased fiscal impact statement to the LOC within ten (10) business days for inclusion in adoption materials.

On June 19, 2024, the Legislative Operating Committee approved the final draft of the proposed amendments to the Back Pay law. Therefore, the LOC is directing the Finance Department to provide a fiscal impact statement on the proposed amendments to the Back Pay law by July 3, 2024.

A copy of the proposed amendments to the Back Pay law, as well as the legislative analysis, have been attached to this memorandum for your convenience.

Requested Action

Provide the LOC a fiscal impact statement of the proposed amendments to the Back Pay law by July 3, 2024.



Legislative Operating Committee
June 19, 2024

Computer Resources Ordinance Amendments

Submission Date: 5/15/24	Public Meeting: N/A
LOC Sponsor: Jameson Wilson	Emergency Enacted: N/A

Summary: *This item was added to the Active Files List on May 15, 2024, at the request of Shane Hill on behalf of DTS. DTS wants to amend the Computer Resources Ordinance to delegate DTS administrative rulemaking authority so DTS can develop rules that support and enforce the Computer Resource Ordinance.*

5/15/24 LOC: Motion by Jonas Hill to add the Computer Resource Ordinances amendments to the Active Files List with Jameson Wilson as the sponsor; seconded by Marlon Skenandore. Motion carried unanimously.

5/31/24: *Work Meeting.* Present: Jameson Wilson, Jennifer Webster, Jonas Hill, Clorissa Leeman, Jason Doxtator, Shane Hill, Jesse Kujawa, Maureen Perkins. The purpose of this work meeting was to review the Computer Resources Ordinance and discuss potential amendments to be made.

6/5/24 LOC: Motion by Jonas Hill to approve the draft of the proposed amendments to the Computer Resources Ordinance and direct that a legislative analysis be completed; seconded by Kirby Metoxen. Motion carried unanimously.

Next Steps:

- Approve the legislative analysis of the proposed amendments to the Computer Resources Ordinance.



COMPUTER RESOURCES ORDINANCE AMENDMENTS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Amendments	<ul style="list-style-type: none"> ▪ Revise the title and references throughout the Law from “computer resources” to “technology resources.” ▪ Clarify that users are expected to conduct themselves professionally and to refrain from using technology resources of the Nation for activities that are inappropriate no matter in what location the user utilizes the technology resources of the Nation. [2 O.C. 215.5-1]. ▪ Clarify that it shall not be deemed an inappropriate use for a user to share information or evidence regarding the inappropriate use of another user if reporting the inappropriate use in accordance with the proper reporting structure. [2 O.C. 215.5-2]. ▪ Clarify that any standard operating procedure defining excessive use of technology resources for any user that is an employee of the Nation is required to be developed in accordance with all other laws and rules of the Nation. [2 O.C. 215.7-1(a)]. ▪ Include a new provision in which DTS is delegated rulemaking authority in accordance with the Administrative Rulemaking law to promulgate rules to govern technology resources of the Nation. [2 O.C. 215.9-1].
Purpose	The purpose of this law is to regulate the usage of technology resources and processed data owned and operated by the Nation. [2 O.C. 215.1-1].
Affected Entities	DTS, employees, independent contractor personnel, interns, members of boards, committees or commissions, volunteers, guests, and visitors
Public Meeting	A public meeting has not yet been held.
Fiscal Impact	A fiscal impact statement has not yet been requested.

SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A. Background.** The Computer Resources Ordinance was originally adopted by the Oneida Business
- 3 Committee in 2004 through resolution BC-09-29-04-B. The purpose of the Computer Resources
- 4 Ordinance is to regulate the usage of technology resources and processed data owned and operated by
- 5 the Nation. [2 O.C. 215.1-1]. It is the policy of the Nation to provide its community and employees
- 6 access to the tools necessary to participate in a technological society. [2 O.C. 210.1-2].
- 7 **B. Request for Amendments.** On the April 30, 2024, the Legislative Operating Committee received a
- 8 request from Shane Hill, Manager of Digital Security with the Digital Technology Services (DTS), to
- 9 consider amendments to this law to include a delegation of rulemaking authority to DTS so DTS has
- 10 the ability to promulgate rules to support and enforce the Computer Resources Ordinance. The
- 11 Legislative Operating Committee added the Computer Resources Ordinance amendments to its Active
- 12 Files List on May 15, 2024.

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SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments or entities participated in the development of the amendments to the Computer Resources Ordinance and this legislative analysis:
 - DTS.
- B. The following laws were reviewed in the drafting of this analysis:
 - Administrative Rulemaking law; and
 - Oneida Personnel Policies and Procedures.

SECTION 4. PROCESS

- A. The development of the proposed amendments to the Computer Resources Ordinance complies with the process set forth in the Legislative Procedures Act (LPA).
 - On May 15, 2024, the Legislative Operating Committee added the Computer Resources Ordinance to its Active Files List.
 - On June 5, 2024, the Legislative Operating Committee approved the draft of the proposed amendments to the Computer Resources Ordinance and directed that a legislative analysis be developed.
- B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of the amendments to the Computer Resources Ordinance:
 - May 31, 2024: LOC work session with DTS.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. ***Computer to Technology Resources.*** The proposed amendments to the Law change the title and references throughout the Law from “computer resources” to “technology resources.” Technology resources is defined as any tools, systems, and applications that use technology to fulfill their purposes. [2 O.C. 215.3-1(e)]. The Law provides that technology resources may include, but are not limited to, computers, tablets, telephones, facsimile machines, photocopiers, networks, virtual applications, and software, such as internet connectivity and access to internet services and electronic mail. *Id.*
 - *Effect.* The revised title and references throughout the Law are more inclusive of the fact that the Nation uses many different forms of technology beyond just computers, and the amendments demonstrate that the Law should apply to all technology used within the Nation, not just computers.
- B. ***Location of Inappropriate Personal Use.*** Currently, the Law provides that users are expected to conduct themselves professionally and to refrain from using technology resources of the Nation for activities that are inappropriate. [2 O.C. 215.5-1]. The proposed amendments to the Law add in clarification that users are expected to conduct themselves professionally and to refrain from using technology resources of the Nation for activities that are inappropriate no matter in what location the user utilizes the technology resources of the Nation. *Id.*
 - *Effect.* The proposed amendments to the Law recognize that the same expectations apply even though some users of the Nation may be using technology resources of the Nation from a variety of locations, especially with the ability for some employees of the Nation to telecommute.
- C. ***Reporting Inappropriate Use.*** The proposed amendments to the Law add in a new section that clarifies that it shall not be deemed an inappropriate use for a user to share information or evidence regarding

55 the inappropriate use of another user if reporting the inappropriate use in accordance with the proper
56 reporting structure. [2 O.C. 215.5-2].

- 57 ▪ *Effect.* The Legislative Operating Committee intended that this new provision to the Law make it
58 very clear that a user who may forward on or share information or evidence regarding the
59 inappropriate use of another use will not be found to be engaging in an inappropriate use if using
60 the information or evidence to report the inappropriate use of another use in accordance with the
61 proper reporting structure.

62 **D. *Development of Standard Operating Procedures.*** Currently the Law provides that supervisors are
63 authorized to develop standard operating procedures defining excessive use for users subject to the
64 Nation’s personnel policies and procedures and who are under the supervisor’s authority. [2 O.C. 215.7-
65 1(a)]. The proposed amendments to the Law add further clarification into the Law by providing that
66 supervisors are authorized to develop standard operating procedures defining excessive use of
67 technology resources for any user that is an employee of the Nation and subject to the supervisor’s
68 authority, in addition to the fact that any standard operating procedure is required to be developed in
69 accordance with all other laws and rules of the Nation. *Id.*

- 70 ▪ *Effect.* The proposed amendment to the Law clarifies that any standard operating procedure
71 developed by a supervisor needs to be developed in accordance with all other laws and rules of the
72 Nation. It is important that there is consistency throughout the laws, rules, and standard operating
73 procedures of the Nation and that no conflicts exist between the various levels of regulations.

74 **E. *Delegation of Administrative Rulemaking Authority.*** The proposed amendments to the Law add in a
75 new provision in which DTS is delegated rulemaking authority in accordance with the Administrative
76 Rulemaking law to promulgate rules to govern technology resources of the Nation. [2 O.C. 215.9-1].

- 77 ▪ *Effect.* The Administrative Rulemaking law provides that only authorized agencies may
78 promulgate rules once they are granted rulemaking authority by a law of the Nation. [1 O.C. 106.4-
79 1]. This new provision of the Law delegates DTS rulemaking authority in accordance with the
80 Administrative Rulemaking law. This delegation of rulemaking authority will allow DTS to
81 develop rules to best govern the technology resources of the Nation.

82 83 **SECTION 6. EXISTING LEGISLATION**

84 **A. *References to the Other Laws of the Nation.*** The following laws of the Nation are referenced in the
85 Computer Resources Ordinance.

- 86 ▪ *Oneida Personnel Policies and Procedures.* The purpose of the Oneida Personnel Policies and
87 Procedures is to provide for the Nation’s employee related policies and procedures including
88 recruitment, selection, compensation and benefits, employee relations, safety and health, program
89 and enterprise rules and regulations, and record keeping.

- 90 ▪ This Law provides that employee violations of this law are subject to discipline in
91 accordance with the Nation’s laws governing employment. [2 O.C. 215.10-3].

- 92 ▪ Any disciplinary action against an employee for a violation of the Computer Resources
93 Ordinance is required to be conducted in accordance with the Oneida Personnel Policies
94 and Procedures.

- 95 ▪ *Administrative Rulemaking Law.* The Administrative Rulemaking law provides an efficient,
96 effective, and democratic process for enacting and revising administrative rules, to ensure that
97 authorized agencies act in a responsible and consistent manner when enacting and revising
98 administrative rules. [1 O.C. 106.1-2].

- 99 ▪ This Law delegates rulemaking authority to DTS to promulgate rules to govern technology
100 resources of the Nation. [2 O.C. 215.9-1].
101 ▪ Any rules promulgated by DTS are required to be developed in accordance with the process
102 and procedures of the Administrative Rulemaking law.
- 103 **B. *Other Laws that Reference the Computer Resources Ordinance.*** The following laws of the Nation
104 reference the Computer Resources Ordinance. The proposed amendments to the Law do not conflict
105 with any of the referenced laws.
- 106 ▪ *Social Media Policy.* The Social Media Policy regulates social media accounts, including a social
107 networking web page, blog or microblog, that is administered on behalf of the Tribe or a Tribal
108 entity. [2 O.C. 218.1-1].
- 109 ▪ The Social Media Policy is not intended to provide a right for employees to use the internet
110 or social media while at work for personal use. [2 O.C. 218.1-3]. Supervisors retain
111 discretion to permit or prohibit the personal use of computers in accordance with the
112 Computer Resources Ordinance. *Id.*
- 113 ▪ *Boards, Committees, and Commissions Law.* The Boards, Committees, and Commissions law
114 governs boards, committees, and commissions of the Nation, including the procedures regarding
115 the appointment and election of persons to boards, committees and commissions, creation of
116 bylaws, maintenance of official records, compensation, and other items related to boards,
117 committees and commissions [1 O.C. 105.1-1].
- 118 ▪ The Boards, Committees, and Commissions law provides that a member of an entity shall
119 sign an acknowledgment form provided by the Nation’s Secretary indicating notice of the
120 Nation’s applicable computer and media related laws, policies and rules. [1 O.C. 105.14-
121 3(d)].
122

123 **SECTION 7. OTHER CONSIDERATIONS**

- 124 **A. *Fiscal Impact.*** Under the Legislative Procedures Act, a fiscal impact statement is required for all
125 legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-
126 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*
127 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete
128 a fiscal impact statement at various stages of the legislative process, as well as timeframes for
129 completing the fiscal impact statement.
- 130 ▪ *Conclusion.* The Legislative Operating Committee has not yet directed that a fiscal impact
131 statement be completed.

132



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: 6/06/24
- 2) Contact Person(s): RaLinda Ninham-Lamberies
Dept: Finance
Phone Number: 4242 Email: rlamberi@oneidanation.org
- 3) Agenda Title: Oneida Vendor Licensing Law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
Vendor Licensing Law needs to be reviewed and updated. Sections 506.1-1, 506.6 in entirety and 506.8

List any supporting materials included and submitted with the Agenda Request Form

- 1) _____ 3) _____
- 2) _____ 4) _____

- 5) Please list any laws, policies or resolutions that might be affected:

- 6) Please list all other departments or person(s) you have brought your concern to:

- 7) Do you consider this request urgent? Yes No
If yes, please indicate why:
Impacts all business conducted

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

Signature of Requester:

Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
P.O. Box 365
Oneida, WI 54155
Phone 920-869-4376



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: 06/13/2024
- 2) Contact Person(s): RaLinda Ninham-Lamberies
Dept: Finance
Phone Number: 4242 Email: rlamberi@oneidanation.org
- 3) Agenda Title: Chapter 503 Independent Contractor
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
Chapters 503.5-1 and 503.5-2 needs to be updated to ensure the Nation is adequately reporting the relationships to the IRS appropriately

List any supporting materials included and submitted with the Agenda Request Form

- 1) _____ 3) _____
- 2) _____ 4) _____

- 5) Please list any laws, policies or resolutions that might be affected:
Purchasing and all entities in the Nation
- 6) Please list all other departments or person(s) you have brought your concern to:

- 7) Do you consider this request urgent? Yes No
If yes, please indicate why:

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

Signature of Requester:

RaLinda Ninham-Lamberies

Digitally signed by RaLinda Ninham-Lamberies
Date: 2024.06.13 10:27:30 -05'00'

Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
P.O. Box 365
Oneida, WI 54155
Phone 920-869-4376



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: 06/13/2024
- 2) Contact Person(s): RaLinda Ninham-Lamberies
Dept: Finance
Phone Number: 4242 Email: rlamberi@oneidanation.org
- 3) Agenda Title: Repeal Travel and Expense Policy
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
The provisions of this law should be under the Procurement Rule Handbook.

List any supporting materials included and submitted with the Agenda Request Form

- 1) _____ 3) _____
- 2) _____ 4) _____

- 5) Please list any laws, policies or resolutions that might be affected:
Purchasing All Tribal Nations
- 6) Please list all other departments or person(s) you have brought your concern to:

- 7) Do you consider this request urgent? Yes No
If yes, please indicate why:

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

Signature of Requester:

RaLinda Ninham-Lamberies

Digitally signed by RaLinda Ninham-Lamberies
Date: 2024.06.13 14:19:22 -05'00'

Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
P.O. Box 365
Oneida, WI 54155
Phone 920-869-4376

June 2024

June 2024							July 2024						
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MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
<p>Jun 3</p> <p>10:30am Tax Law (BC_Exec_Conf_Room) - Grace L. Elliott</p>	<p>4</p> <p>5:30pm LOC Community Meeting (Norbert Hill Center Cafeteria) - LOC</p>	<p>5</p> <p>8:30am LOC Prep Meeting (Microsoft Teams Meeting; BC_Conf_Room) - Clorissa N. Leeman</p> <p>9:00am Legislative Operating Committee Meeting (Microsoft Teams Meeting; BC_Conf_Room) - LOC</p>	<p>6</p>	<p>7</p> <p>9:00am LLC Draft Review (Microsoft Teams Meeting; BC_Exec_Conf_Room) - Grace L. Elliott</p> <p>10:30am Oneida Law Enforcement Ordinance Amendments Work Meeting (Microsoft Teams Meeting;</p>
<p>10</p> <p>2:00pm LOC Community Meeting Prep: Eviction and Termination Law Amendments (Microsoft Teams Meeting; BC_Exec_Conf_Room) - Clorissa N. Leeman</p>	<p>11</p> <p>2:30pm Real Property Law Review (Microsoft Teams Meeting; BC_Exec_Conf_Room) - Grace L. Elliott</p>	<p>12</p>	<p>13</p>	<p>14</p>
<p>17</p> <p>11:00am Environmental Review Law - work meeting (Microsoft Teams Meeting) - Carolyn A. Salutz</p>	<p>18</p>	<p>19</p> <p>8:30am LOC Prep Meeting (Microsoft Teams Meeting;</p> <p>9:00am Legislative Operating Committee</p> <p>10:30am Oneida Personnel Policies and</p> <p>1:30pm LOC Community Meeting Prep: Eviction</p> <p>5:30pm LOC Community Meeting: Eviction and</p>	<p>20</p>	<p>21</p>
<p>24</p>	<p>25</p>	<p>26</p>	<p>27</p>	<p>28</p>