



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room - 2nd Floor Norbert Hill Center
July 17, 2024
9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be Approved

1. June 19, 2024 LOC Meeting Minutes (pg. 2)

III. Current Business

1. Back Pay Law Amendments (pg. 4)
2. Investigative Leave Policy Amendments (pg. 33)
3. Environmental Review Law Amendments (pg. 47)

IV. New Submissions

1. Workplace Violence Law Amendments (pg. 50)
2. Petition: L. Blackowl – New Recreation/Community Center Build (pg. 51)

V. Additions

VI. Administrative Updates

1. E-Poll Results: Computer Resources Ordinance Amendments (pg. 53)
2. Legislative Operating Committee Fiscal Year 2024 Third Quarter Report (pg. 69)

VII. Executive Session

VIII. Recess/Adjourn



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

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

Excused: Marlon Skenandore

Others Present: Clorissa N. Leeman, Grace Elliott, Carolyn Salutz, Ralinda Ninham-Lamberies

Others Present on Microsoft Teams: Chad Fuss, Cindy Lecker, Evan Doxtator, Fawne Rasmussen, Rae Skenandore, Barbara Webster, David P. Jordan, Fawn Billie, Jeremy King, Maureen Perkins, Michelle Braaten, Todd Vanden Heuvel, Justin Nishimoto, Kristal Hill, Lisa Moore, Peggy Van Gheem, Tavia James-Charles, Donna Smith, Corrine Herlache, Eric Boulanger, Fawn Cottrell, Jason Martinez, Olivia Danforth, Peggy Helm-Quest, Sarah White, Shane Hill, Tonya Webster, Derrick King, Matthew Denny

I. Call to Order and Approval of the Agenda

Jameson Wilson called the June 19, 2024, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to approve the agenda; seconded by Kirby Metoxen. Motion carried unanimously.

II. Minutes to be Approved

1. June 5, 2024 LOC Meeting Minutes

Motion by Kirby Metoxen to approve the June 5, 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 Jennifer Webster to approve the updated public comment review memorandum, draft, and legislative analysis; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Kirby Metoxen to 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; seconded by Jennifer Webster. Motion carried unanimously.



2. Computer Resources Ordinance Amendments

Motion by Jennifer Webster to approve the legislative analysis of the proposed amendments to the Computer Resources Ordinance; seconded by Jonas Hill. Motion carried unanimously.

IV. New Submissions**1. Vendor Licensing Law Amendments**

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

2. Independent Contractor Policy Amendments

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

3. Oneida Travel and Expense Policy Repeal

Motion by Jonas Hill to add the Oneida Travel and Expense Policy Repeal to the Active Files List with Jennifer Webster 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 9:15 a.m.; seconded by Jennifer Webster. Motion carried unanimously.



Legislative Operating Committee
July 17, 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.

6/19/24 LOC: Motion by Jennifer Webster to approve the updated public comment review memorandum, draft, and legislative analysis; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Kirby Metoxen to 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; seconded by Jennifer Webster. Motion carried unanimously.

7/11/24: *Work Meeting.* Present: Jameson Wilson, Jonas Hill, Kirby Metoxen, Clorissa Leeman, Carolyn Salutz, Grace Elliott, Kristal Hill, Fawn Cottrell, Fawn Billie, Maureen Perkins. The purpose of this work meeting was to review the adoption materials for the Back Pay law amendments.

Next Steps:

- Approve the adoption packet for the proposed amendments to the Back Pay law and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: Jameson Wilson, LOC Chairperson
DATE: July 24, 2024
RE: Adoption of Amendments to the Back Pay Law

Please find the following attached backup documentation for your consideration of the adoption of amendments to the Back Pay law:

1. Resolution: Amendments to the Back Pay Law
2. Statement of Effect: Amendments to the Back Pay Law
3. Back Pay Law Amendments Legislative Analysis
4. Back Pay Law Amendments Draft (Redline)
5. Back Pay Law Amendments Draft (Clean)
6. Back Pay Law Amendments Fiscal Impact Statement

Overview

Amendments to the Back Pay law are being sought to clarify how the reinstatement of an employee who had involuntary separation is handled, and how back pay is calculated and applied. 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 laws. [2 O.C. 206.1-1]. The amendments to the Back Pay law:

- Include a new section in the law which provides for the reinstatement of employee who had involuntary separation overturned and addresses such issues as:
 - 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]; and
- 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)].

The Legislative Operating Committee developed the proposed amendments to the Back Pay law through collaboration with representatives from the Oneida Law Office, Gaming Employee Services, Human Resources Department, and the General Manager. The Legislative Operating Committee held nine (9) work meetings on the development of the amendments to the Back Pay law.

The development of the amendments to the Back Pay law complies with all processes and procedures required by the Legislative Procedures Act, including the development of a legislative

analysis, a fiscal analysis, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

The Legislative Operating Committee held two (2) public meetings on the proposed amendments to the Back Pay law. The first public meeting was held on December 13, 2022. No individuals provided public comments during this public meeting. The public comment period was then held open until December 20, 2022. One (1) submission of written comments was received during this public comment period. The Legislative Operating Committee reviewed and considered the public comments received on February 1, 2023. A second public meeting was held on April 12, 2024. One (1) person provided public comment during this public meeting. The public comment period was then held open until April 19, 2024. No individuals provided written comments during this public comment period. The Legislative Operating Committee reviewed and considered the public comments received on June 11, 2024.

The amendments to the Back Pay law will become effective on August 7, 2024.

Requested Action

Adopt the Resolution: Amendments to the Back Pay Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # Amendments to the Back Pay Law

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3
- 4 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
5 recognized by the laws of the United States of America; and
6
- 7 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
8
- 9 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
10 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
11
- 12 **WHEREAS,** the Back Pay law (“the Law”) was adopted by the Oneida Business Committee through
13 resolution BC-05-24-06-PP, and then amended through resolutions BC-06-23-10-F, BC-
14 08-13-14-C, and BC-10-26-16-A; and
15
- 16 **WHEREAS,** the purpose of this Law is to set forth standards used in the reinstatement of an employee
17 and the calculation of back pay for all employees of the Nation in accordance with the
18 Nation’s law; and
19
- 20 **WHEREAS,** the amendments to the Law include a new section which provides for the reinstatement of
21 employee who had involuntary separation overturned and addresses such issues as: the
22 requirement to hold a position pending litigation, amending the position description or
23 eliminating the position pending an employee appeal, and reinstatement to the position the
24 employee was involuntarily separated from; and
25
- 26 **WHEREAS,** the amendments to the Law clarify that back pay calculations shall be made using the
27 employee’s last wage in the position which they were terminated from; and
28
- 29 **WHEREAS,** the amendments to the Law clarify the circumstances in which an employee is not eligible
30 to work, and therefore is not eligible for back pay; and
31
- 32 **WHEREAS,** the Legislative Operating Committee developed the proposed amendments to the Law
33 through collaboration with representatives from the Oneida Law Office, Gaming Employee
34 Services, Human Resources Department, and the General Manager; and
35
- 36 **WHEREAS,** in accordance with the Legislative Procedures Act a legislative analysis and fiscal impact
37 statement were completed for the proposed amendments to the Law; and
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- 39 **WHEREAS,** the Legislative Operating Committee held two (2) public meetings on the proposed
40 amendments to the Law; and
41
- 42 **WHEREAS,** a public meeting for the proposed amendments to this Law was held on December 13,
43 2022, with no individuals providing oral comments, and the public comment period for the
44 amendments to this Law was held open until December 20, 2022, with one (1) submission
45 of written comments received; and
46

47 **WHEREAS,** the Legislative Operating Committee reviewed and considered the public comments
48 received on February 1, 2023, and any changes have been incorporated into this draft; and
49

50 **WHEREAS,** an additional public meeting for the proposed amendments to this Law was held on April
51 12, 2024, with one (1) individual providing oral comments, and the public comment period
52 for the amendments to this Law was held open until April 19, 2024, with no written
53 comments received; and
54

55 **WHEREAS,** the Legislative Operating Committee reviewed and considered the public comments
56 received on June 11, 2024, and any changes have been incorporated into this draft; and
57

58 **NOW THEREFORE BE IT RESOLVED,** the Oneida Business Committee hereby adopts the amendments
59 to the Back Pay law which shall become effective on August 7, 2024.



Statement of Effect

Amendments to the Back Pay Law

Summary

This resolution adopts amendments to the Back Pay law to clarify how the reinstatement of an employee who had involuntary separation is handled, and how back pay is calculated and applied.

Submitted by: Clorissa N. Leeman, Senior Staff Attorney, Legislative Reference Office

Date: July 10, 2024

Analysis by the Legislative Reference Office

This resolution adopts amendments to the Back Pay law. 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 laws. [2 O.C. 206.1-1]. The amendments to the Back Pay law:

- Include a new section in the law which provides for the reinstatement of employee who had involuntary separation overturned and addresses such issues as:
 - 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]; and
- 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)].

Adoption of any legislation is required to comply with the Legislative Procedures Act ("the LPA"), which was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of providing a standardized process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. The Back Pay law amendments complied with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

The Legislative Operating Committee held two (2) public meetings on the proposed amendments to the Back Pay law. The first public meeting was held on December 13, 2022. No individuals provided public comments during this public meeting. The public comment period was then held open until December 20, 2022. One (1) submission of written comments was received during this public comment period. The Legislative Operating Committee reviewed and considered the public comments received on February 1, 2023. A second public meeting was held on April 12, 2024. One (1) person provided public comment during this public meeting. The public comment period was then held open until April 19, 2024. No individuals provided written comments during this

public comment period. The Legislative Operating Committee reviewed and considered the public comments received on June 11, 2024.

The amendments to the Back Pay law will become effective on August 7, 2024.

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws.



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 Finance Administration provided a fiscal impact statement on July 2, 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.

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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.

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

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SECTION 5. CONTENTS OF THE LEGISLATION

A. *Holding a Position Pending Appeals and Reinstatement.* A new section added to the Law through these amendments addresses reinstatement of an employee who was involuntarily separated. [2 O.C. 206.4]. This new section requires that 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. [2 O.C. 206.4-1]. Additionally, this section of the Law provides that notwithstanding the requirement to hold an employee's position pending the 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. [2 O.C. 206.4-2]. Extreme financial distress is defined to mean 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)]. The determination to amend an affected position description or eliminate an affected position is then required to be approved by the Human Resources Department 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)]. This new section then goes on to provide that should an employee's appeal of an involuntary separation result in the separation being overturned, the reviewing party shall order the employee be reinstated to the position from which the employee was involuntary separated. [2 O.C. 206.4-3]. 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. [2 O.C. 206.4-3(a)].

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

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

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

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133 C. ***Explanation of When an Employee is Not Eligible to Work.*** The Law provides that the Nation shall
134 not include time when an employee would not have been eligible to work in the calculation of any back
135 pay amount. [2 O.C. 206.5-2(d)]. The proposed amendments to the Law provides greater clarification
136 by providing a list of examples of when an employee is not eligible to work, which includes such
137 circumstances such as when an employee is on layoff or furlough status at the time of termination;
138 when a position is eliminated or inactive as part of the Nation’s response extreme financial distress;
139 when an employee would have been on medical leave at the time of the involuntary separation; and
140 when an employee would otherwise not be eligible to work in the position from which they were
141 separated from in accordance with the position description based on applicable grant requirements
142 when a position is grant funded, applicable laws of the Nation, including, but not limited to, the Vehicle
143 Driver Certification and Fleet Management law, and a criminal conviction. [2 O.C. 206.5-2(d)(1)-(4)].
144 ■ *Effect.* This provision of the Law clarifies when it should be considered that an employee is not
145 eligible to work, and therefore is not eligible for back pay.

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147 SECTION 6. EXISTING LEGISLATION

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

- 149 ■ *Oneida Personnel Policies and Procedures.* The purpose of the Oneida Personnel Policies and
150 Procedures is to provide for the Nation’s employee related policies and procedures including
151 recruitment, selection, compensation and benefits, employee relations, safety and health, program
152 and enterprise rules and regulations, and record keeping.
- 153 ■ Section V.D of the Oneida Personnel Policies and Procedures specifically addresses
154 complaints, disciplinary actions and grievances. Section V.D.6 provides that any employee
155 who receives a disciplinary action which he/she believes is unfair may grieve the action.
156 Section V.D.6.f.5 then provides that the Oneida Personnel Commission may: uphold the
157 disciplinary action; or overturn the disciplinary action and either reinstate the employee with
158 full back pay for any lost time or reinstate the employee without back pay.
 - 159 ■ The Back Pay law will now address the reinstatement of an employee who has an involuntary
160 separation overturned in section 206.4, as well as provide greater clarification on how back pay
161 is calculated in section 206.5.
 - 162 ■ *Drug and Alcohol Free Workplace Law.* It is the policy of the Nation to establish a drug and
163 alcohol-free workplace program that balances respect for individuals with the need to maintain an
164 alcohol and drug-free environment. [2 O.C. 202.1-1].
 - 165 ■ The Drug and Alcohol Free Workplace law provides that it is the employee’s responsibility to
166 cooperate with the requests made by Employee Health Nursing and the Medical Review
167 Officer. [2 O.C. 202.5-2(e)]. An employee who fails to cooperate and does not contact the
168 Medical Review Officer within twenty-four (24) hours of receiving contact shall not receive
169 back pay for any time between the date the Medical Review Officer placed the call until the
170 time the employee does return the call of the Medical Review Officer. *Id.*
 - 171 ■ The Drug and Alcohol Free Workplace law provides that during drug and alcohol testing for
172 reasonable suspicion, an employee shall be immediately removed from duty without pay at the
173 time of initiation of the reasonable suspicion drug and alcohol testing and specimen collection
174 until the employer is notified by Employee Health Nursing of negative results on both the drug
175 and alcohol tests, or Medical Review Officer verified negative test results. [2 O.C. 202.10-2].

176 If the employee is reinstated after confirmation of drug and alcohol testing results, back pay
177 shall be provided in accordance with the Back Pay law. [2 O.C. 202.10-3].

178 ■ *Furlough Law.* The purpose of the Furlough law is to enable the Nation to implement a furlough
179 program in response to an interruption of governmental revenues or operations, insufficient treasury
180 funds or other emergencies/ unplanned events as determined by the Oneida Business Committee in
181 accordance with this law; establish a consistent and equitable process for implementation of a
182 furlough program; and incorporate Indian preference into the furlough program and require that it
183 be applied in accordance with this law. [2 O.C. 205.1-1].

184 ■ The Furlough law provides that except when an employee successfully appeals being placed
185 on furlough status in violation of this law, employees placed in furlough status shall not be
186 eligible for back pay upon their return to work. [2 O.C. 205.8-6].

187 ■ *Investigative Leave Policy.* The purpose of the Investigative Leave Policy is to address
188 investigative leave for employees undergoing work-related investigations. [2 O.C. 208.1-1].

189 ■ The Investigative Leave Policy provides that an employee placed on investigative leave shall
190 not receive any wages or benefits unless placed in an alternative work assignment, and that if
191 the employee refuses the alternative work assignment and is returned to work, the employee
192 shall not receive any back pay or benefits. [2 O.C. 208.10-2].

193 ■ The Investigative Leave Policy provides that an employee shall receive back pay and benefits
194 for the time the employee was on investigative leave pursuant to the Back Pay law if all of the
195 following occur: the employee was not offered an alternative work assignment when placed on
196 investigative leave; the employee is returned to his or her position; and the employee is not
197 disciplined based on the investigation. [2 O.C. 208.10-4].

198

199 **SECTION 7. OTHER CONSIDERATIONS**

200 A. *Fiscal Impact.* Under the Legislative Procedures Act, a fiscal impact statement is required for all
201 legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-
202 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*
203 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete
204 a fiscal impact statement at various stages of the legislative process, as well as timeframes for
205 completing the fiscal impact statement.

206 ■ *Conclusion.* On July 2, 2024, the Finance Administration provided the Legislative Operating
207 Committee with a fiscal impact statement for the proposed amendments to the Law. Please see the
208 fiscal impact statement for further information.

209

Title 2. Employment – Chapter 206

~~BACK PAY~~

Tashakotikáyahke? kayanl'khsia?

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

- 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, ~~Appeal~~ 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 ~~and~~, 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 ~~(a)~~(b) “Advocate” means a non-attorney person as provided by law and other person who
- 30 is admitted to practice law and is presented to the court as the representative or advisor to
- 31 a party.
- 32 ~~(b)~~(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 ~~(c)~~(d) “Consequential damages” means damages that are not a direct and immediately

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.

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 calculations shall
 105 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

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2024 07 17

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.

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2024 07 17

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- - - -

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Tashakotikáyahke? kayanl/hsia?
back pay law
BACK PAY AND REINSTATEMENT

206.1. Purpose and Policy	206.5. Back Pay Calculation
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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-__-__-__-__

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

TO: RaLinda Ninham-Lamberies, Chief Financial Officer
 FROM: Rae Skenandore, Senior Analyst/Budget Coordinator
 DATE: June 24, 2024
 RE: **Fiscal Impact of the Amendments to the Back Pay Law**

I. Estimated Fiscal Impact Summary

Law: Amendments to the Back Pay Law		Draft 3
Implementing Agency	Human Resource Department Oneida Law Office Sr. Management or the highest position in the employee's chain of command. Oneida Nation Judiciary	
Estimated time to comply	10 days, in compliance with the Legislative Procedures Act	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Total Estimated Fiscal Impact	No Fiscal Impact	No Fiscal Impact

II. Background

This Law was adopted by the Oneida Business Committee by resolution BC-05-24-06-PP in 2006 and amended through resolutions BC-06-23-10-F, BC-08-3 13-14-C, and BC-10-26-16-A.

The purpose of the Back Pay law is to set standards for reinstating an employee and calculating back pay. The amendments to the legislation include the following:

- A new section was added to the law to clarify how an employee reinstatement is handled when an involuntary separation is overturned.
- Clarify the wage to be used in calculating back pay.
- Language was added to clarify when an employee is not eligible to work and therefore not eligible for backpay.

III. Methodology and Assumptions

A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The analysis was completed based on the information provided as of the date of this memo.

III. Executive Summary of Findings

As stated, this Law has been in place since 2016. There are no start-up costs, no increases in personnel are needed, and no increases in office or documentation costs. The implementing agencies are prepared to implement all changes when approved.

III. Financial Impact

There is no fiscal impact of implementing this legislation.

IV. Recommendation

Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of this legislation, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee
July 17, 2024

Investigative Leave Policy Amendments

Submission Date: 2/6/19	Public Meeting: n/a
LOC Sponsor: Marlon Skenandore	Emergency Enacted: n/a Expires: n/a

Summary: *This item was carried over from the last three (3) terms. In February 2019, the Nation’s Human Resources Department requested amendments to this law to address investigative enforcement. Amendments to the law are being sought to delegate authority to investigators to put employees on investigative leave, instead of just the supervisor of the employee, and discipline employees. An amendment was also sought so that if terminated, an employee would be ineligible for employment with the Nation but may request forgiveness after five (5) years. This item was added to the Active Files List in conjunction with a request for amendments to the Oneida Personnel Policies and Procedures and the Workplace Violence law.*

10/7/20 LOC: Motion by Jennifer Webster to add the Investigative Leave Policy Amendments to the Active Files List with David Jordan as the sponsor; seconded by Marie Summers. Motion carried unanimously.

10/10/22: *Work Meeting.* Present Todd Vanden Heuvel, Matthew Denny, Nicolas Reynolds, Joshua Cottrell, Wendy Alvarez, Whitney Wheelock, Clorissa Santiago, Carolyn Salutz, Grace Elliott. This was an introductory meeting to open discussions around the Investigative Leave Policy and any potential additional amendments including but not limited to amending the leave to a paid status rather than unpaid.

11/29/22: *Work Meeting.* Present Todd Vanden Heuvel, Matthew Denny, Nicolas Reynolds, Joshua Cottrell, Wendy Alvarez, Whitney Wheelock, Clorissa Santiago, Carolyn Salutz, Grace Elliott. This meeting continued discussions around delegating authority to investigators so that they are empowered act quickly to ensure a safe work environment; and, to amend the policy in a comprehensive manner that more accurately reflects its investigative purpose. The comprehensive amendment discussion included but was not limited to paid leave, continuation of benefits and credit for service time.

12/19/22: *Work Meeting.* Present Todd Vanden Heuvel, Matthew Denny, Nicolas Reynolds, Joshua Cottrell, Wendy Alvarez, Whitney Wheelock, Clorissa Santiago, Carolyn Salutz, Grace Elliott. This purpose of this meeting was to review draft language

implementing proposed amendments, and to discuss the use of investigative leaves in other Laws.

- 12/21/22:** *Work Meeting.* Present: David Jordan, Jennifer Webster, Daniel Guzman, Marie Cornelius, Kirby Metoxen, Carolyn Salutz, Clorissa Leeman, Grace Elliott. The purpose of this meeting was to gather feedback from the LOC on amending the Investigative Leave Policy from unpaid leave to paid leave. The consensus was to move forward with drafting paid leave options for consideration.
- 01/12/23:** *Work Meeting.* Present: David Jordan, Jennifer Webster, Daniel Guzman, Kristal Hill, Carolyn Salutz, Clorissa Leeman, Grace Elliott. The purpose of the meeting was to gather direction from the LOC on whether an objective of the Investigative Leave Policy should be to consolidate all investigative leave policies in one Law. Consensus from the members present supported moving in a consolidated direction, to be considered further in conjunction with HRD at another meeting scheduled January 20th, 2023.
- 01/20/23:** *Work Meeting.* Present: David Jordan, Jennifer Webster, Marie Cornelius, Daniel Guzman, Carolyn Salutz, Clorissa Leeman, Grace Elliott, Todd Vanden Heuvel, Matthew Denny, Joshua Cottrell, Peggy Van Gheem, Whitney Wheelock, Wendy Alvarez. This was a work meeting held through Microsoft Teams. The purpose of this meeting was to begin review of the draft paid investigative leave language.
- 1/26/23 LOC:** Present: David Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman, Clorissa Leeman, Carolyn Salutz, Grace Elliott. The purpose of this meeting was to update with a review of edits drafted based on suggestions from the prior meeting.
- 2/13/23:** *Work meeting.* Present: Brenda Mendolla-Buckley, Carolyn Salutz, Chad Fuss, Clorissa Leeman, Debra Powless, Derrick King, Grace Elliott, Kathleen King, Lorna Skenandore, Lucy Neville, Mark Powless, Peggy Van Gheem, Sarah White. The purpose of this meeting was to solicit feedback and share information regarding amendments under consideration, and the Investigative Leave Policy in general, with the General Managers and their delegates.
- 2/17/23:** *Work Meeting.* Present: David Jordan, Kirby Metoxen, Marie Cornelius, Daniel Guzman, Debra Powless, Mark Powless, Peggy Van Gheem, Wendy Alvarez, Matthew Denny, Whitney Wheelock, Rita Reiter, Todd Vanden Heuvel, Grace Elliott. The purpose of this meeting was to consider feedback and review an amended and proposed final draft Investigative Leave Policy.
- 3/7/23:** *Work Meeting.* Present: Kirby Metoxen, Marie Cornelius, Daniel Guzman, Jennifer Webster, Clorissa Leeman, Carolyn Salutz, Matthew Denny, Rhiannon Metoxen, Derrick King, Lorna Skenandore, Donna Smith, Joshua Cottrell, Rita Reiter, Wendy Alvarez, Louise Cornelius, Kristal Hill, Mark Powless, Debra Powless, Todd Vanden Heuvel, Grace Elliott. The purpose of this meeting was to continue development of potential paid and unpaid aspects of an investigative leave.

- 3/24/23:** *Work Meeting.* Present: David Jordan, Jennifer Webster, Marie Cornelius, Daniel Guzman, Todd Vanden Heuvel, Lorna Skenandore, Derrick King, Mark Powless, Wendy Alvarez, Debra Powless, Matthew Denny, Kristal Hill, Donna Smith, Grace Elliott. The purpose of this meeting was to discuss the extent to which benefits will be made available on investigative leave, and to continue to develop notice criteria, lines of authority and responsibilities.
- 4/28/23:** *Work Meeting.* Present: David Jordan, Marie Cornelius, Daniel Guzman, Debra Powless, Peggy Van Gheem, Todd Vanden Heuvel, Whitney Wheelock, Wendy Alvarez, Laura Laitinen-Warren, Derrick King, Rita Reiter, Rhiannon Metoxen, Lorna Skenandore, Daniel Habeck. The purpose of this meeting was to evaluate various options for specific sections of the law.
- 5/3/23:** *Work Meeting.* David Jordan, Marie Cornelius, Daniel Guzman, Kirby Metoxen, Clorissa Leeman, Kristal Hill, Matthew Denny. The purpose of this meeting is to evaluate options for specific sections of the Law that had evolved through discussion at the previous meeting.
- 10/4/23 LOC:** Motion by Jennifer Webster to add the Investigative Leave Policy Amendments to the Active Files List with Marlon Skenandore as the sponsor; seconded by Jonas Hill. Motion carried unanimously.
- 1/8/24:** *Work Meeting.* Present: Jameson Wilson, Kirby Metoxen, Jonas Hill, Marlon Skenandore, Jennifer Webster, Clorissa Leeman, Grace Elliott, Fawn Cottrell, Fawn Billie, Kristal Hill, Maureen Perkins, Todd Vanden Heuvel, Matthew Denny, Peggy Van Gheem, Mark Powless, Lucy Neville, Dana Thyssen, Wendy Alvarez, Whitney Wheelock, Carolyn Salutz. The purpose of this meeting was to provide an introduction to the Investigative Leave law and begin review of the law.
- 3/4/24:** *Work Meeting.* Present: Jameson Wilson, Kirby Metoxen, Jonas Hill, Marlon Skenandore, Jennifer Webster, Clorissa Leeman, Grace Elliott, Fawn Cottrell, Fawn Billie, Kristal Hill, Maureen Perkins, Todd Vanden Heuvel, Matthew Denny, Peggy Van Gheem, Mark Powless, Lucy Neville, Dana Thyssen, Wendy Alvarez, Whitney Wheelock. The purpose of this meeting was to review the law with a particular focus on amendments that were made pursuant to the January 8, 2024, meeting.
- 4/30/24:** *Work Meeting.* Present: Kirby Metoxen, Jameson Wilson, Marlon Skenandore, Grace Elliott, Fawn Cottrell, Kristal Hill, Peggy Van Gheem, Todd Vanden Heuvel, Matthew Denny, Mark Powless, Lucy Neville, Maureen Perkins, Carolyn Salutz, Fawn Billie. The purpose of this meeting was to review the final draft of the Investigative Leave law for any additional amendments.
- 5/15/24 LOC:** Motion by Jonas Hill to approve the draft of the Investigative Leave Policy amendments and direct that a legislative analysis be developed; seconded by Marlon Skenandore. Motion carried unanimously.

Next Steps:

- Accept the Investigative Leave Policy Amendments Legislative Analysis.



INVESTIGATIVE LEAVE LAW AMENDMENTS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Legislation or Amendments	<ul style="list-style-type: none"> ▪ Clarify the severity of an alleged violation that may warrant an investigative leave and provide examples. [2 O.C. 208.4-1(a)]. ▪ Clarify the type of risks that an investigative leave is intended to protect against. [2 O.C. 208.4-1(b)]. ▪ Prevent undue financial harm to an employee placed on investigative leave. [2 O.C. 208.4-2(a)]. ▪ Eliminate unpaid status for the employee placed on investigative leave for up to forty-five (45) days. [2 O.C. 208.4-2(a)]. ▪ Balance the intention to prevent undue financial harm to an employee placed on investigative leave with the Nation’s fiscal responsibilities by shifting the employee to unpaid status when an investigation cannot be safely concluded within forty-five (45) days. [2 O.C. 208.4-2(c)]. ▪ Clarify that an employee may use their personal and vacation time if the investigative leave extends past forty-five (45) days. [2 O.C. 208.4-2(b)]. ▪ Provide that when an employee has used their personal and vacation time up all pay and benefits stop. [2 O.C. 208.4-2(c)]. ▪ Extend the authority to initiate an investigative leave to include the Executive Director of the Human Resource Department. [2 O.C. 208.5-1(a)]. ▪ Clarify that when there is no division director a supervisor must secure authorization from the person at the highest level in the chain of command under the Oneida Business Committee prior to placing an employee on investigative leave. [2 O.C. 208.5-1(b)(2)]. ▪ Delegate the authority for designating the individual or agency responsible for completing the investigation to the Executive Director of the Human Resource Department and the supervisor, instead of the employee’s supervisor and/or area manager. [2 O.C. 208.7-1]. ▪ Delete the requirement that the Equal Employment Officer always conducts the investigation if the employee being investigated reports directly to the Oneida Business Committee and instead provide that they may also serve as a liaison to an investigating agency when that is more appropriate. [2 O.C. 208.7-1]. ▪ Eliminate the option for a supervisor to place an employee in an alternate work assignment while on investigative leave. [2 O.C. 208.9-1(a)]. ▪ Expand the requirements that notice to the employee placed on investigative leave must contain. The additional requirements are as follows: [2 O.C. 208.6-1].

- The employee must surrender all property of the Nation. [2 O.C. 208.6-1(i)].
- Clear documentation regarding the status of pay and benefits. [2 O.C. 208.6-1(c)].
- The definition of business hours. The employee is required to respond to inquiries within twenty-four (24) business hours to remain on paid investigative leave within the first forty-five (45) days. [2 O.C. 208.6-1(d)].
- Whether the investigation has been referred to an outside agency. [2 O.C. 208.6-1(g)].
- List of the employee's responsibilities. [2 O.C. 208.6-1(k)].
- Email address of the person the employee may contact if they have questions related to the investigative leave. [2 O.C. 208.6-1(h)].
- Extend the issuance of the second notice to the employee placed on investigative leave from fifteen (15) days to thirty-five (35) days. [2 O.C. 208.6-2].
- Clarify that the second notice must provide the employee placed on investigative leave with the following information: [2 O.C. 208.6-2].
 - That the employee remains an employee of the Nation. [2 O.C. 208.6-2(a)].
 - Clear documentation regarding the cessation of pay and benefits. [2 O.C. 208.6-2(b)].
 - The definition of business hours as it pertains to the employee's particular area of employment. [2 O.C. 208.6-2(c)].
 - The expected length of the investigation. [2 O.C. 208.6-2(d)].
 - The telephone number, email address, and name of the person to contact with questions. [2 O.C. 208.6-2(e)].
 - The employee's responsibilities. [2 O.C. 208.6-2(f)].
- Eliminate the requirement that a supervisor must conclude an investigation without waiting for the conclusion of a criminal or licensing matter. [2 O.C. 208.9-1(a)].
- Eliminate the requirement that an investigative leave must close upon the passing of fifteen (15) days, plus a possible extension of fifteen (15) days, unless an outside agency is conducting the investigation and instead allow the decision makers to close an investigative leave when a reasonable determination based on verifiable facts can be made. [2 O.C. 208.8-1].
- Expedite investigations by adding a requirement that the supervisor, or the EEO Officer (whichever is overseeing the investigation), provide the Executive Director of the Human Resource Department with weekly updates on the investigation. [2 O.C. 208.8-2].
- Eliminate the provision that requires the supervisor to conclude an investigation within forty-eight (48) hours of receiving the investigative report when someone else is conducting the investigation. [2 O.C. 208.8-1].
- Provide the employee who was placed on investigative leave with a redacted copy of the investigative report when requested, instead of only providing the redacted report to an employee who files an appeal. [2 O.C. 208.7-4(c)].
- Require the supervisor to provide written notice and justification to the Executive Director of the Human Resource Department if they choose not to follow the corrective action recommended by the investigator(s). [2 O.C. 208.7-4(a)(1)].

	<ul style="list-style-type: none"> ▪ Expand an employee’s responsibilities when on an investigative leave to include the surrender of all property of the Nation, respond to any inquires within twenty-four (24) business hours, and not share anything related to the investigation on social media. [2 O.C. 208.10-2. 2 O.C. 208.12-1]. ▪ Create the option for an exception to be made to the complete prohibition of the employee who is placed on investigative leave entering any public worksite; if, and only if, it is determined that access is necessary, safe, appropriate, and the specific conditions under which access may be allowed are provided for in the notice to the employee. [2 O.C. 208.9-1(a)(1)]. ▪ Require that the employee placed on investigative leave respond to all inquiries within twenty-four (24) business hours. [2 O.C. 208.9-1(e)].
Purpose	The purpose of this law is to set forth a process to address investigative leave for employees undergoing work-related investigations. [2 O.C. 208.1-1].
Affected Entities	Oneida Nation employees.
Related Legislation	Workplace Violence law, Back Pay law, Oneida Personnel Policies and Procedures, Computer Resources Ordinance, Judiciary law, and Oneida Judiciary Rules of Civil Procedure.
Enforcement	Any employee who violates this law is subject to discipline in accordance with the Nation’s laws and policies governing employment. The employee who is the subject of the investigation shall be moved to unpaid status if during the forty-five (45) day paid leave period the employee fails to respond to an inquiry within twenty-four (24) business hours. [2 O.C. 208.10-2].
Due Process	An employee may appeal any disciplinary action arising out of an investigation in accordance with the Nation’s laws and policies governing employment. [2 O.C. 208.11-1].
Public Meeting	A public meeting has not yet been held.
Fiscal Impact	A fiscal impact statement prepared in accordance with the Legislative Procedures Act has not yet been requested.

1 **SECTION 2. LEGISLATIVE DEVELOPMENT**

- 2 A. **Background.** The Investigative Leave Policy was originally adopted by the Oneida Business
 3 Committee by motion on April 7, 1999, and then through resolutions BC-08-13-14-D, and BC-06-24-
 4 15-A. The Investigative Leave Policy provides the Nation and its employees with a consistent
 5 framework for investigating serious allegations against an employee that protects the Nation and its
 6 employees while also preventing undue harm to the employee who is the subject of the investigation
 7 and has not yet been determined to have committed any wrongdoing. [2 O.C. 208.1-1].
- 8 B. **Request for Amendments.** This item was carried over from the last three (3) terms. In February 2019,
 9 the Nation’s Human Resources Department requested amendments to this law to address investigative
 10 enforcement. Amendments to the law are being sought to delegate authority to investigators to put
 11 employees on investigative leave, instead of just the supervisor of the employee, and discipline
 12 employees. An amendment was also sought so that if terminated, an employee would be ineligible for
 13 employment with the Nation but may request forgiveness after five (5) years. This item was added to
 14 the Active Files List in conjunction with a request for amendments to the Oneida Personnel Policies
 15 and Procedures and the Workplace Violence law. The current sponsor of the Investigative Leave
 16 Policy amendments is Councilman Marlon Skenandore.

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SECTION 3. CONSULTATION AND OUTREACH

- Representatives from the following departments or entities participated in the development of the amendments to this Law and legislative analysis:
 - Human Resources Department (HRD);
 - Oneida Law Office;
 - Gaming; and
 - General Manager.
- The following laws of the Nation were reviewed in the drafting of this analysis:
 - Back Pay law;
 - Workplace Violence law;
 - Pardon and Forgiveness law;
 - Computer Resources Ordinance;
 - Oneida Personnel Policies and Procedures;
 - Judiciary law; and
 - Oneida Judiciary Rules of Civil Procedure.

SECTION 4. PROCESS

- A. The amendments to this Law comply with the process set forth in the Legislative Procedures Act.
 - On October 7, 2020, the Legislative Operating Committee added this Law to its Active Files List for amendments.
 - On October 3, 2023, the Legislative Operating Committee added this Law to its Active Files List for amendments.
 - On May 15, 2024, the Legislative Operating Committee approved the draft of the Investigative Leave Policy amendments 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 this law:
 - October 10, 2022: LOC work meeting with HRD.
 - November 11, 2022: LOC work meeting with HRD.
 - December 19, 2022: LOC work meeting with HRD.
 - December 21, 2022: LOC work session.
 - January 20, 2023: LOC work meeting with HRD.
 - On January 26, 2023: LOC work session.
 - February 13, 2023: LOC work meeting with HRD, Oneida Law Office, and Gaming.
 - February 17, 2023: LOC work meeting with HRD and Oneida Law Office.
 - March 7, 2023: LOC work meeting with HRD and Gaming.
 - March 24, 2023: LOC work meeting with HRD and Gaming.
 - April 28, 2023: LOC work meeting with HRD, Gaming, and Oneida Law Office.
 - May 3, 2023: LOC work meeting with HRD.
 - January 8, 2024: LOC work meeting with HRD, Gaming, and Oneida Law Office.
 - March 3, 2024: LOC work meeting with HRD, Gaming, and Oneida Law Office.
 - April 30, 2024: LOC work meeting with HRD, Gaming, and Oneida Law Office.

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SECTION 5. CONTENTS OF THE LEGISLATION (OR AMENDMENTS)

A. *Types of Alleged Violations and the Risks an Investigative Leave is Designed to Protect Against.*

The proposed amendments to the Law clarify the nature and severity of the type of an alleged violation that may rise to a level to warrant an investigative leave and examples are listed. [2 O.C. 208.4-1(a)]. The Law currently only identifies that an investigative leave shall be used when the employee allegedly commits an act which would preclude the employee from meeting employment eligibility requirements. [2 O.C. 208.4-1(d)]. The proposed amendments to the Law also clarify some of the risks that an investigative leave is intended to protect against by providing several examples of the Nation’s resources and interests that may be put at risk if the employee were to remain in the workplace. [2 O.C. 208.4-1(b). 2 O.C. 208.4-1(c)].

- *Effect.* Identifying the types of allegations and risks that an investigative leave is intended to protect against will make it easier to identify when an investigative leave should be utilized and that in turn will provide greater protections by facilitating a swift response.

B. *Paid and Unpaid Investigative Leave.* The proposed amendments to the Law eliminate unpaid status for the employee placed on investigative leave for up to forty-five (45) days and provides for them to use their personal and vacation time if the investigative leave extends past forty-five (45) days. [2 O.C. 208.4-2(a). 208.4-2(b)]. Currently, an investigative leave is unpaid unless the employee is placed in an alternate work assignment. [2 O.C. 208.5-5]. The proposed amendments to the Law provide that upon the expiration of forty-five (45) days and the employee’s personal and vacation time, all pay, and benefits will stop. [2 O.C. 208.4-1(c)]. The proposed amendments to the law also require the employee to respond to inquiries within twenty-four (24) business hours and if they fail to respond within the twenty-four (24) hour time frame they will immediately be shifted to unpaid status. [2 O.C. 208.9-1(e)]. The proposed amendments to the Law add protections for the employee placed on investigative leave while also balancing the Nation’s fiscal responsibilities.

- *Effect.* The proposed amendments to the Law prevent undue financial harm to an employee placed on investigative by allowing them to be paid for up to forty-five (45) days and then to use their personal and vacation time after that. Employees placed on investigative will not be paid or retain benefits after the expiration of forty-five (45) days on investigative leave and the exhaustion of the employee’s vacation and personal time, or, if the employee does not respond to an inquiry within twenty-four (24) business hours.

C. *Authority to Initiate an Investigative Leave.* The proposed amendments to the Law extend the authority to initiate an investigative leave to include the Executive Director of the Human Resource Department. [2 O.C. 208.5-1(a)]. The Law currently only authorizes the supervisor to initiate an investigative leave. [Currently 2 O.C. 208.5-1]. However, the seriousness of an allegation that might justify an investigative leave requires a swift response and the Executive Director of the Human Resource Department or their designee may be in the best position to initiate an investigative leave when the supervisor and their division director are not both readily available. When the Executive Director of the Human Resource Department initiates an investigative leave, they shall provide notice to the employee’s supervisor at the same time. The proposed amendments to the Law also clarify that prior to placing an employee on investigative leave a supervisor must secure authorization from both the Executive Director of the Human Resource Department and the

104 supervisor's division director, if there is no division director, the person at the highest level of the
105 chain of command under the Oneida Business Committee. [2 O.C. 208.5-1(b)].

- 106 ▪ *Effect.* The Executive Director of the Human Resource Department is authorized to initiate an
107 investigative leave and the authorizations that a supervisor must secure prior to initiating an
108 investigative leave are clarified.

109 D. ***Authority to Designate the Individual or Agency to Conduct the Investigation.*** The proposed
110 amendments to the Law delegate authority to designate the individual or agency to conduct the
111 investigation to the Executive Director of the Human Resource Department and the supervisor,
112 instead of the employee's supervisor and/or area manager. [2 O.C. 208.7-1)]. The proposed
113 amendments to the Law also provide that when the employee being investigated reports directly to
114 the Oneida Business Committee the Equal Employment Officer does not automatically serve as the
115 investigator but may alternatively serve as a liaison to an investigating agency. [2 O.C. 208.7-1)].

- 116 ▪ *Effect.* The Executive Director of the Human Resource Department and the supervisor
117 designate the individual or agency to conduct the investigation. The Equal Employment Officer
118 may conduct an investigation or serve as the liaison to the agency conducting the investigation.
119 These amendments provide greater flexibility and efficiency in designating the individual or
120 agency that is responsible for conducting the investigation.

121 E. ***Alternate Work Assignments.*** The proposed amendments to the Law eliminate the provision
122 allowing a supervisor to place an employee who is on investigative leave in another position within
123 the Nation. [2 O.C. 208.5-4]. The types of harms that an investigative leave is intended to protect
124 against are serious enough that placing the employee in an alternate work assignment during an
125 investigation may not be prudent.

- 126 ▪ *Effect.* The proposed amendments to the Law completely remove the employee from the
127 workplace which eliminates the potential opportunity to cause harm to the Nation and its
128 resources.

129 F. ***Initial Employee Notice.*** The proposed amendments to the Law expand the requirements that
130 notice to the employee placed on investigative leave must contain. [2 O.C. 208.6-1(a-k)]. The Law
131 currently requires notice to the employee to include: the specific allegations being investigated; the
132 employee is on unpaid status unless placed in an alternative work assignment; the expected length
133 of the investigation; whether the investigation is being forwarded to an outside agency; the
134 telephone number and name of person to contact with questions; the procedure to return to work at
135 the close of the investigation, if applicable; and the employee remains an employee of the Nation.
136 [Currently 2 O.C. 208.6-1(a-f)]. The proposed amendments include the following additional
137 requirements:

- 138 i. The employee must surrender all property of the Nation pursuant to section 208.9-
139 1(c). [2 O.C. 208.6-1(i)].
- 140 ii. Clear documentation regarding the status of pay and benefits. [2 O.C. 208.6-1(a-
141 c)].
- 142 iii. The definition of business hours. The employee is required to respond to inquiries
143 within twenty-four (24) business hours to remain on paid investigative leave within
144 the first forty-five (45) days. Business hours may be different depending on the
145 department and so it is helpful to include that definition in the notice to the
146 employee. [2 O.C. 208.6-1(d)].
- 147 iv. The employee's responsibilities pursuant to section 208.9. [2 O.C. 208.6-1(k)].

- 148 v. The email address of the person the employee may contact if they have questions
149 related to the investigative leave is added to the current disclosure of the name and
150 telephone number. [2 O.C. 208.6-1(h)].
- 151 ■ *Effect.* The employee placed on investigative leave will have full and clear knowledge of what
152 to expect and what is expected of them during the investigative leave because the requirements
153 for the notice have been expanded to include additional details.
- 154 G. **Second Employee Notice.** The proposed amendments to the Law move the timing of the second
155 employee notice from fifteen (15) days to thirty-five (35) days. This ensures that the employee
156 receives a timely reminder that their pay status will change from paid to unpaid at forty-five (45)
157 days. [2 O.C. 208.6-2]. Providing a second notice at fifteen days is no longer beneficial as there is
158 no automatic shift in status at fifteen (15) days and the employee has already been notified that the
159 investigative leave may extend forty-five (45) days or more. The Law currently only requires the
160 second notice to inform the employee that the investigation is being extended and the reason for
161 that extension. [Currently 2 O.C. 208.6-2]. The proposed amendments to the Law now require the
162 second notice to the employee contain the following:
- 163 i. That the employee remains an employee of the Nation. [2 O.C.208.6-2(a)].
164 ii. Clear documentation regarding the cessation of pay and benefits. [2 O.C.208.6-
165 2(b)].
166 iii. The definition of business hours as it pertains to the employee’s particular area of
167 employment. [2 O.C.208.6-2(c)].
168 iv. The expected length of the investigation. [2 O.C.208.6-2(d)].
169 v. The telephone number, email address, and name of the person to contact with
170 questions. [2 O.C.208.6-2(e)].
171 vi. The employee’s responsibilities pursuant to section 208.9. [2 O.C.208.6-2(f)].
- 172 ■ *Effect.* The employee placed on investigative leave will have full and timely knowledge of any
173 change in status, what to expect, and what is expected of them while placed on investigative
174 leave because the expanded requirements for notice provide those additional details.
- 175 H. **Reports.** The proposed amendments to the Law provide the employee with a redacted copy of the
176 investigative report, if requested, rather than only if the employee files an appeal. [2 O.C. 208.7-
177 4(c)]. This eliminates any incentive for the employee to file an appeal simply to gain access to the
178 redacted copy of the investigative report.
- 179 ■ *Effect.* The proposed amendments to the Law provide a redacted copy of the investigative
180 report to the employee who was the subject of the investigation if they request it.
- 181 I. **Corrective Action.** The proposed amendments to the Law include a provision requiring the
182 supervisor to provide written notice to the Executive Director of the Human Resource Department
183 if they choose to take any corrective action which deviates from the recommendation of the
184 investigator(s), and the written notice must provide the justification for the deviation. [2 O.C.
185 208.7-4(a)(1)]. Currently, the supervisor alone determines the course of disciplinary action and is
186 not required to communicate their chosen course of disciplinary action to the Executive Director
187 of the Human Resource Department or any other employee in their chain of command.
- 188 ■ *Effect.* Communication and collaboration are enhanced between the supervisor and the
189 Executive Director of the Human Resource Department by requiring any deviation from the
190 corrective action recommended by the investigator to be justified and shared in writing.

- 191 J. **Concluding an Investigation.** The proposed amendments to the Law clarify the safety standard
192 that must be met in determining when to conclude the investigation. The investigation concludes
193 when it has produced enough verifiable facts and information for the employee’s supervisor and
194 the Executive Director of the Human Resource Department to make a reasonable determination on
195 workplace safety and employee status, the determination is recorded in the employee’s permanent
196 files, and the employee has either returned from work or separated from their employment with the
197 Nation. [2 O.C. 208.8-1)]. The proposed amendments to the Law remove the requirement that an
198 investigative leave closes upon the passing of a certain amount of time. Currently, the law provides
199 that an investigation may last for fifteen (15) days with a possible extension of fifteen (15) days,
200 unless an outside agency is conducting the investigation. [Currently 2 O.C. 208.8-1]. That time
201 based standard is replaced with the requirement that the investigative leave closes when the
202 decision makers have gathered enough information to make a fully informed decision. [2 O.C.
203 208.8-1].
- 204 ▪ *Effect.* The proposed amendments to the Law prioritize safety over the passing of time as the
205 primary factor to be considered when determining when to conclude an investigation and/or
206 investigative leave.
- 207 K. **Weekly Updates.** The proposed amendments to the Law require either the supervisor or the Equal
208 Employment Opportunity Officer to provide weekly updates on the investigation to the Executive
209 Director of the Human Resource Department. [2 O.C. 208.8-2].
- 210 ▪ *Effect.* The proposed amendment to the Law ensures that investigations are conducted in the
211 most efficient manner possible by keeping attention on the investigation and documenting
212 progress via weekly updates.
- 213 L. **Surrender of Property of the Nation.** The proposed amendments to the Law expand on and clarify
214 an employee’s responsibilities when placed on investigative leave to include the surrender of all
215 property of the Nation. [2 O.C. 208.9-1(b). 208.9-1(c)]. The Law currently does not require an
216 employee placed on investigative leave to surrender all work related property of the Nation during
217 an investigation.
- 218 ▪ *Effect.* The proposed amendments to the Law safeguard the Nation’s resources during the
219 investigative leave by removing any property of the Nation from the employee’s control.
- 220 M. **Worksite Access.** An employee placed on investigative leave is prohibited from entering their place
221 of work or worksite. [2 O.C. 208.9-1(a)]. However, the proposed amendments to the Law allow
222 for an exception to be created when appropriate so that the employee may access areas of
223 importance under specific conditions and that information will be included in the notice provided
224 to the employee, if applicable. [2 O.C. 208.9-1(a)(1)].
- 225 ▪ *Effect.* The employee placed on investigative leave is provided with clear documentation of the
226 conditions to be met if they are to be allowed to enter their worksite for the sole purpose of
227 accessing necessary resources. For example, an employee placed on investigative leave who
228 works at the Oneida Health Center might be allowed to enter their worksite for a doctor’s
229 appointment if they meet the conditions provided for in the notice.
- 230 N. **Employee Responsibility to Respond to Inquiries.** The proposed amendments to the Law add a
231 requirement that the employee respond to any inquires within twenty-four (24) business hours. [2
232 O.C. 208.10-2]. This ensures that an investigation can be concluded as efficiently as possible and
233 differentiates an investigative leave from other types of leaves that an employee may take or be
234 placed on. This Law provides that an employee placed on paid investigative leave who fails to

- 235 respond to an inquiry within twenty-four (24) business hours will lose their paid status. [2 O.C.
236 208.10-1].
- 237 ▪ *Effect.* An employee placed on paid investigative leave who fails to respond to an inquiry within
238 twenty-four (24) business hours will immediately be shifted to unpaid status.
- 239 O. **Confidentiality.** The proposed amendments to the Law update confidentiality requirements to
240 prohibit any employee from posting information related to the investigation on social media. [2
241 O.C. 208.12-1].
- 242 ▪ *Effect.* Any employee who posts information about the investigation on social media is in
243 violation this Law and is subject to discipline pursuant to the Nation’s policies and laws
244 governing employment.
245

246 SECTION 6. EFFECT ON EXISTING LEGISLATION

- 247 A. **Related legislation.** The following laws of the Nation are related to the proposed amendments to this
248 Law:
- 249 ▪ *Workplace Violence Law.* The purpose of the Workplace Violence law is to provide all Oneida
250 Nation employees and visitors an environment that is free of violence and the threat of violence
251 by establishing the procedures by which incidents of workplace violence shall be addressed. [2
252 O.C. 223.1-1. 223.1-2].
- 253 ▪ Workplace violence means any intentional act committed by an employee in a workplace
254 that: inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on
255 another person's; or inflicts, attempts to inflict, or threatens to inflict, damage to property.
256 [2 O.C. 223.3-1(k)].
- 257 ▪ The Workplace Violence law provides that a supervisor may place an employee alleged
258 to be involved in a workplace violence incident on investigative leave, if the supervisor
259 deems the investigative leave necessary and appropriate, in accordance with the Nation’s
260 laws, policies and rules governing investigative leave except for the EEO Officer or
261 designee, not the employee’s supervisor, shall conduct the investigation of the alleged
262 workplace violence incident. [2 O.C. 223.8-4].
- 263 ▪ The Workplace Violence law provides that allegations of workplace violence may be
264 investigated in accordance with the Investigative Leave Policy. [2 O.C. 223.8-4].
- 265 ▪ The amendments to the Law provide that complaints of alleged workplace violence shall
266 be investigated in accordance with the Nation’s Investigative Leave Policy. [2 O.C.
267 208.4-1(a)].
- 268 ▪ The amendments to the Law explicitly list workplace violence as one of the types of
269 allegations of wrongdoing that warrant an employee being placed on an investigative
270 leave. [2 O.C. 208.4-1(a)(1)].
- 271 ▪ *Oneida Personnel Policies and Procedures.* The purpose of the Oneida Personnel Policies and
272 Procedures is to provide the Nation’s employee related policies and procedures including
273 recruitment, selection, compensation and benefits, employee relations, safety and health, program
274 and enterprise rules and regulations, and record keeping.
- 275 ▪ This Law provides that an employee may appeal any disciplinary action arising out of an
276 investigation in accordance with the Nation’s laws and policies governing employment
277 which is the Oneida Personnel, Policies, and Procedures. [2 O.C. 208.11-1].

- 278 ▪ *Judiciary Law.* The purpose of the Judiciary law is to establish a Judiciary, and to provide for the
279 administration of law, justice, judicial procedures and practices by the Oneida Nation as a sovereign
280 nation by exercising the inherent power to make, execute, apply and enforce its own law, and to
281 apply its own customs and traditions in matters affecting the Oneida people. [8 O.C. 801.1-1].
 - 282 ▪ The Judiciary law provides that employment grievances shall be heard in accordance with
283 the Nation’s Personnel Policies and Procedures. [8 O.C. 801.4-6(c)].
 - 284 ▪ This Law provides that an employee placed on an investigative leave may appeal any
285 disciplinary action arising out of that investigation in accordance with the Nation’s laws
286 and policies governing employment, which includes the right to file an appeal with the
287 Judiciary when supported by the Nation’s Personnel, Policies, and Procedures. [2 O.C.
288 208.11-1].
- 289 ▪ *Back Pay law.* The purpose of the Back Pay law is to set forth standards used in the calculation of
290 back pay for all employees in accordance with the Nation’s laws. [2 O.C. 206.1-1].
 - 291 ▪ This Law provides that an employee will receive back pay and benefits for anytime the
292 employee was on unpaid investigative leave pursuant to the laws governing back pay if
293 they return to their position at the conclusion of the investigation. [2 O.C. 208.4-2(d)].
- 294 ▪ *Pardon and Forgiveness law.* The purpose of the Pardon and Forgiveness law includes providing
295 a fair, efficient and formal process by which an employee may receive forgiveness for acts that
296 render them ineligible for employment with the Nation; an occupational license, certification or
297 permit issued by the Nation. [1 O.C. 126-1(a)(3)].
 - 298 ▪ This Law provides that an employee may appeal any disciplinary action arising out of an
299 investigation in accordance with the Nation’s laws and policies governing employment.
300 [2 O.C. 208.11-1].
- 301 ▪ *Computer Resources Ordinance.* The purpose of the Computer Resources Ordinance is to
302 regulate the usage of Nation owned and operated computer resources. [2 O.C. 215.1-1]. The
303 Computer Resources Ordinance includes guidelines for the limited circumstances that an
304 employee may use those resources for personal matters. [2 O.C. 215.7-1].
 - 305 ▪ This Law prohibits any employee from posting any information related to the
306 investigation on social media. [2 O.C. 208.12-1].
- 307 ▪ *Social Media Policy.* The purpose of the Social Media Policy is to regulate social media accounts
308 administered on behalf of the Nation or an entity of the Nation. [2 O.C. 218.1-1]. The Social Media
309 Policy does not provide a right for employees to use the internet or social media while at work for
310 personal use. [2 O.C. 218.1-3]. Supervisors retain discretion to permit or prohibit the personal use
311 of the Nation’s computers in accordance with the Computer Resources Ordinance. [2 O.C. 218.1-
312 3].
 - 313 ▪ This Law prohibits any employee from posting any information related to the
314 investigation on social media. [2 O.C. 208.12-1].

316 SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

- 317 A. This Law provides that an employee placed on paid investigative leave who fails to respond to an
318 inquiry within twenty-four (24) business hours will lose their paid status, and any employee who
319 violates this Law shall be subject to discipline pursuant to the Nation’s law and policies governing
320 employment. [2 O.C. 208.10-1. 208.10-2].

321 B. The Oneida Judiciary will provide enforcement and accountability in the grievance process. Employees
322 placed on an investigative leave who receive a disciplinary action they believe to be unfair may
323 challenge the action first to the Area Manager and HRD Manager, and then to the Judiciary Trial Court.
324 *[Section V.D(6)].*
325

326 SECTION 8. OTHER CONSIDERATIONS

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

333 a. **Conclusion.** A fiscal impact statement has not yet been requested.

334 B. **Workplace vs. Worksite.** The LOC may want to consider whether an employee placed on
335 investigative leave should be prohibited from entering any workplace, as defined in the Law, or just
336 their worksite. Workplace is defined broadly to include “any location owned and operated by the
337 Nation, any location where employees are staffing an event sponsored by the Nation, and any location
338 where an employee represents the Nation...” while worksite, not being defined, is understood as it is
339 used in everyday language which would mean only the employee’s place of work. *[2 O.C. 208.3-*
340 *1(e)]*. In earlier discussions a prohibition on entering any workplace was supported, but in processing
341 this legislative analysis I realized that the language only restricts access to the worksite. This may
342 have been an oversight on the drafter’s part and guidance from the LOC is sought.

343 a. **Conclusion.** The LOC will need to review the use of the term “worksite” and determine if it
344 should be revised to “workplace.”
345

346



Legislative Operating Committee
July 17, 2024

Environmental Review Law

Submission Date: 3/20/19	Public Meeting: N/A
LOC Sponsor: Kirby Metoxen, Jonas Hill	Emergency Enacted: N/A

Summary: *This item was carried over from the last two terms. The proposal to develop an Environmental Review law was originally added to the Active Files List in March 2019. Victoria Flowers from Environmental, Health, Safety & Land Division requested that an Environmental Review law be developed to establish a consistent process for conducting an environmental review of certain activities' impact to the environment. This law was proposed to be similar to the requirements of the federal government to conduct a National Environmental Policy Act (NEPA) review.*

10/4/23 LOC: Motion by Jennifer Webster to add the Environmental Review Law to the Active Files List with Kirby Metoxen and Jonas Hill as the sponsors; seconded by Jonas Hill. Motion carried unanimously.

04/17/24: *Work Meeting.* Present: Jameson Wilson, Marlon Skenandore, Jonas Hill, Kirby Metoxen, Clorissa Leeman, Grace Elliott, Carolyn Salutz, Kristal Hill, Maureen Perkins. The purpose of this work meeting was for Carolyn to update the LOC on the work that has been done. Carolyn updated the LOC on the email exchanges she has had with Victoria Flowers. The next step will be scheduling a work meeting to review a draft.

06/17/24: *Work Meeting.* Present: Kirby Metoxen, Clorissa Leeman, Grace Elliott, Carolyn Salutz, Kristal Hill, Maureen Perkins, Krystal John, Victoria Flowers, Eric McLester, Fawn Billie, James Snitgen, Mickenna Beach, Anthony Kuchma. The purpose of this work meeting was to review a submitted draft (basically an exact copy of NEPA) and talk about EHSLA's processes and goals for this law. We did not review a draft. The work meeting focused on what the Nation is already doing and already has in place for environmental reviews, the consensus seemed to be that an additional law is not needed, and there are already processes in place. Krystal John will be submitting a memo regarding why this item is no longer needed and then the LOC can review that memo and decide to remove it. '

06/19/2024: *Work Meeting.* Present: Kirby Metoxen, Jonas Hill, Jameson Wilson, Jennifer Webster, Clorissa Leeman, Grace Elliott, Carolyn Salutz, Kristal Hill (Microsoft Teams), Maureen Perkins (Microsoft Teams). The purpose of this work meeting was to review the memorandum submitted by James Snitgen on behalf of the Environmental, Health, Safety, Land & Agriculture Division regarding the Division's belief that an Environmental Review Law is no longer needed because the Division follows federal guidelines and will soon be clarifying their procedures for land acquisition and management in the Real Property Law. The Legislative Operating Committee accepted the memo and agreed to remove Environmental Review from its Active Files List.

Next Steps:

- Accept the memorandum and remove the Environmental Review law from the Active Files List.

Environmental, Health, Safety, Land & Agriculture Division



TO: Jameson Wilson, LOC Chairperson

FROM: James Snitgen

Date: June 18, 2024

RE: Environmental Law

In the past, the Environmental Department has requested the development of an Environmental law by the Legislative Operating Committee. The request was rooted in a need to gain better consensus within the Nation as to when an environmental review is required aside from the instances where environmental review is required by federal law.

Since the Department requested development of the law, the organization has taken on development of land use processes that clarify the Nation's procedures around the acquisition, use and management of its lands. As part of these procedures, to be codified into rulemaking pursuant to the Real Property law, the timing for environmental reviews is clearly defined. As such, a separate law is no longer needed as the standards for environmental review content are set by federal law (NEPA) which the Nation conforms to for federal and non-federal environmental reviews alike.

Accordingly, the Environmental Department hereby requests the Environmental Law be removed from the LOC's active files list.



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



AGENDA REQUEST FORM

- 1) Request Date: _____
- 2) Contact Person(s): _____
Dept: _____
Phone Number: _____ Email: _____
- 3) Agenda Title: _____
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:

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:

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@oneidation.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: June 26, 2024
- 2) Contact Person(s): Clorissa N. Leeman
 Dept: Legislative Reference Office
 Phone Number: (920) 869-4417 Email: cleeman@oneidation.org
- 3) Agenda Title: Petition: L. Blackowl - New Recreation/Community Center Build
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
On 6/26/24 the OBC acknowledged the receipt of this petition and
directed that the LRO complete a SOE with status updates to be
submitted for the 7/24/24 OBC meeting and the first OBC meeting of the
month thereafter or until final documents are submitted.

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

- 1) Excerpt from the draft 6/26/24 OBC Meeting Minutes
- 2) For petition materials please see the Members Only portion of the website.
- 3) _____
- 4) _____
- 5) Please list any laws, policies or resolutions that might be affected:
Budget and Finances Law
- 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:
Resolution GTC-01-19-21-A requires all petitions to be presented to GTC within 180 days of receipt.

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

DRAFT**XI. GENERAL TRIBAL COUNCIL****A. PETITIONER LINDSEY BLACKOWL - New Recreation/Community Center build # 2024-02****1. Approve three (3) requested actions regarding petition # 2024-02 (00:41:54)**
Sponsor: Lisa Liggins, Secretary

Motion by Lisa Liggins to acknowledge receipt of the petition # 2024-02 from Lindsey Blackowl regarding New Recreation/Community Center build; to direct the BC Direct Report Offices to complete and submit their administrative impact statements of the petition to the Tribal Secretary mailbox by July 17, 2024; to direct the Law, Finance, and Legislative Reference Offices to complete respectively, the legal review, fiscal impact statement, and statement of effect with status updates to be submitted for the July 24, 2024, regular Business Committee meeting agenda and the first BC meeting of the month thereafter or until the final documents are submitted, seconded by Lawrence Barton. Motion carried:

Ayes: Lawrence Barton, Lisa Liggins, Kirby Metoxen, Brandon Yellowbird-Stevens

Not Present: Jonas Hill, Marlon Skenandore, Jennifer Webster, Jameson Wilson

Motion by Lisa Liggins to extend the public comment period for Lindsey Blackowl for an additional two (2) minutes, seconded by Lawrence Barton. Motion carried:

Ayes: Lawrence Barton, Lisa Liggins, Kirby Metoxen, Brandon Yellowbird-Stevens

Not Present: Jonas Hill, Marlon Skenandore, Jennifer Webster, Jameson Wilson

XII. EXECUTIVE SESSION**A. REPORTS****1. Accept the Chief Counsel report (01:03:14)**

Sponsor: Jo Anne House, Chief Counsel

Motion by Brandon Yellowbird-Stevens to accept the Chief Counsel report, seconded by Lawrence Barton. Motion carried:

Ayes: Lawrence Barton, Lisa Liggins, Kirby Metoxen, Brandon Yellowbird-Stevens

Not Present: Jonas Hill, Marlon Skenandore, Jennifer Webster, Jameson Wilson

Motion by Brandon Yellowbird-Stevens to approve attorney contract - Hobbs, Strauss, Dean and Walker - file # 2024-0732, seconded by Lisa Liggins. Motion carried:

Ayes: Lawrence Barton, Lisa Liggins, Kirby Metoxen, Brandon Yellowbird-Stevens

Not Present: Jonas Hill, Marlon Skenandore, Jennifer Webster, Jameson Wilson

July 1, 2024, Legislative Operating Committee E-Poll

Approval of the Computer Resources Ordinance Amendments Public Meeting Packet

E-POLL REQUEST: Approval of the Computer Resources Ordinance Amendments Public Meeting Packet



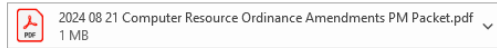
LOC

To: ● Jameson J. Wilson; ○ Jennifer A. Webster; ● Jonas G. Hill; ○ Kirby W. Metoxen; ○ Marlon G. Skenandore
Cc: ● Clorissa N. Leeman; ● Fawn J. Billie; ○ Fawn L. Cottrell; ○ Kristal E. Hill; ● Maureen S. Perkins



Mon 7/1/2024 10:16 AM

Vote by clicking Vote in the Respond group above.
This message was sent with High importance.



Good Morning Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Computer Resources Ordinance amendments public meeting packet.

EXECUTIVE SUMMARY

The Legislative Operating Committee is currently developing amendments to the Computer Resources Ordinance to:

- 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.
- 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.
- 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.
- 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.

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. On June 19, 2024, the Legislative Operating Committee approved the legislative analysis of the proposed amendments to the Computer Resources Ordinance.

The Legislative Operating Committee is now ready to schedule a public meeting for the Computer Resources Ordinance amendments. The public meeting will take place on Wednesday, August 21, 2024, at 12:15 p.m. in the Norbert Hill Center’s Business Committee Conference Room and on Microsoft Teams. A public comment period will be held open until Wednesday, August 28, 2024, for the submission of written comments.

An e-poll is necessary for this matter because the July 3, 2024, Legislative Operating Committee meeting has been canceled, and immediate action is required by Legislative Operating Committee to approve the

public meeting materials so the public meeting notice may be submitted to the Kalihwisaks for the July 3, 2024 submission deadline.

REQUESTED ACTION

Approve the Computer Resources Ordinance amendments public meeting packet and forward the Computer Resources Ordinance amendments to a public meeting to be held on August 21, 2024.

DEADLINE FOR RESPONSE

July 2, 2024 at 10:00 a.m.

All supporting documentation has been attached to this email for your convenience.



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

E-POLL RESULTS:

The e-poll was approved by Jennifer Webster, Jonas Hill, Jameson Wilson, and Kirby Metoxen. Marlon Skenandore is on a personal leave and therefore did not provide a response.

RE: E-POLL REQUEST: Approval of the Computer Resources Ordinance Amendments Public Meeting Packet



Jennifer A. Webster

To: LOC; Jameson J. Wilson; Jonas G. Hill; Kirby W. Metoxen; Marlon G. Skenandore
Cc: Clorissa N. Leeman; Fawn J. Billie; Fawn L. Cottrell; Kristal E. Hill; Maureen S. Perkins

☺ Reply Reply All Forward 📧 ⋮

Mon 7/1/2024 10:40 AM

Support,
Jenny

Re: E-POLL REQUEST: Approval of the Computer Resources Ordinance Amendments Public Meeting Packet



Jonas G. Hill

To: Jennifer A. Webster; LOC; Jameson J. Wilson; Kirby W. Metoxen; Marlon G. Skenandore
Cc: Clorissa N. Leeman; Fawn J. Billie; Fawn L. Cottrell; Kristal E. Hill; Maureen S. Perkins

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Mon 7/1/2024 2:25 PM

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SUPPORT

Sincerely,



Jonas G Hill
Councilman
Oneida Nation Business Committee
Phone: 920-606-3966
Email: JHILL1@oneidanation.org
PO Box 365
Oneida, WI 54155
www.oneida-nsn.gov

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

Confidential Disclaimer: The information contained within this e-mail is confidential and privileged. If you are not the intended recipient, please be advised that any

Re: E-POLL REQUEST: Approval of the Computer Resources Ordinance Amendments Public Meeting Packet



Jameson J. Wilson

To: Jonas G. Hill; Jennifer A. Webster; LOC; Kirby W. Metoxen; Marlon G. Skenandore
Cc: Clorissa N. Leeman; Fawn J. Billie; Fawn L. Cottrell; Kristal E. Hill; Maureen S. Perkins

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Mon 7/1/2024 2:49 PM

Support



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

Jameson Wilson
Councilman
Oneida Business Committee

Phone: 920-869-4385
Cell: 920-764-2651
Email: jwilson@oneidanation.org

P.O. Box 365
Oneida, WI 54155
www.oneida-nsn.gov

Re: E-POLL REQUEST: Approval of the Computer Resources Ordinance Amendments Public Meeting Packet



Kirby W. Metoxen

To: Jameson J. Wilson; Jonas G. Hill; Jennifer A. Webster; LOC; Marlon G. Skenandore
Cc: Clorissa N. Leeman; Fawn J. Billie; Fawn L. Cottrell; Kristal E. Hill; Maureen S. Perkins

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Support

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ONEIDA NATION PUBLIC MEETING NOTICE**WEDNESDAY, AUGUST 21 2024, 12:15 pm**Norbert Hill Center-Business Committee Conference Room
N7210 Seminary Rd., Oneida, Wisconsin**Find Public Meeting Materials at**

Oneida-nsn.gov/government/register/public meetings

Send Public Comments to

LOC@oneidanation.org

Ask Questions here

LOC@oneidanation.org

920-869-4417

**COMPUTER RESOURCES ORDINANCE AMENDMENTS**

The purpose of the Computer Resources Ordinance is to regulate the usage of technology resources and processed data owned and operated by the Nation .

The Computer Resources Ordinance amendments will:

- ◆ 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.
- ◆ 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.
- ◆ 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.
- ◆ 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.

Individuals may attend the public meeting for the proposed Computer Resources Ordinance amendments in person at the Norbert Hill Center, or virtually through Microsoft Teams. If you wish to attend the public meeting through Microsoft Teams please contact LOC@oneidanation.org.

PUBLIC COMMENT PERIOD CLOSSES WEDNESDAY, AUGUST 28, 2024

During the public comment period, anyone may submit written comments, questions or input. Comments may be submitted to the Oneida Nation Secretary’s Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, or e-mail.



For more information on the proposed Computer Resources Ordinance amendments please review the public meeting packet at oneida-nsn.gov/government/register/public meetings.



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 been scheduled for August 21, 2024.
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.
- 13

14 **SECTION 3. CONSULTATION AND OUTREACH**

- 15 A. Representatives from the following departments or entities participated in the development of the
16 amendments to the Computer Resources Ordinance and this legislative analysis:
17 ▪ DTS.
18 B. The following laws were reviewed in the drafting of this analysis:
19 ▪ Administrative Rulemaking law; and
20 ▪ Oneida Personnel Policies and Procedures.
21

22 **SECTION 4. PROCESS**

- 23 A. The development of the proposed amendments to the Computer Resources Ordinance complies with
24 the process set forth in the Legislative Procedures Act (LPA).
25 ▪ On May 15, 2024, the Legislative Operating Committee added the Computer Resources Ordinance
26 to its Active Files List.
27 ▪ On June 5, 2024, the Legislative Operating Committee approved the draft of the proposed
28 amendments to the Computer Resources Ordinance and directed that a legislative analysis be
29 developed.
30 ▪ On June 19, 2024, the Legislative Operating Committee approved the legislative analysis of the
31 proposed amendments to the Computer Resources Ordinance.
32 B. At the time this legislative analysis was developed the following work meetings had been held
33 regarding the development of the amendments to the Computer Resources Ordinance:
34 ▪ May 31, 2024: LOC work session with DTS.
35

36 **SECTION 5. CONTENTS OF THE LEGISLATION**

- 37 A. *Computer to Technology Resources.* The proposed amendments to the Law change the title and
38 references throughout the Law from “computer resources” to “technology resources.” Technology
39 resources is defined as any tools, systems, and applications that use technology to fulfill their purposes.
40 [2 O.C. 215.3-1(e)]. The Law provides that technology resources may include, but are not limited to,
41 computers, tablets, telephones, facsimile machines, photocopiers, networks, virtual applications, and
42 software, such as internet connectivity and access to internet services and electronic mail. *Id.*
43 ▪ *Effect.* The revised title and references throughout the Law are more inclusive of the fact that the
44 Nation uses many different forms of technology beyond just computers, and the amendments
45 demonstrate that the Law should apply to all technology used within the Nation, not just computers.
46 B. *Location of Inappropriate Personal Use.* Currently, the Law provides that users are expected to
47 conduct themselves professionally and to refrain from using technology resources of the Nation for
48 activities that are inappropriate. [2 O.C. 215.5-1]. The proposed amendments to the Law add in
49 clarification that users are expected to conduct themselves professionally and to refrain from using
50 technology resources of the Nation for activities that are inappropriate no matter in what location the
51 user utilizes the technology resources of the Nation. *Id.*
52 ▪ *Effect.* The proposed amendments to the Law recognize that the same expectations apply even
53 though some users of the Nation may be using technology resources of the Nation from a variety
54 of locations, especially with the ability for some employees of the Nation to telecommute.
55 C. *Reporting Inappropriate Use.* The proposed amendments to the Law add in a new section that clarifies
56 that it shall not be deemed an inappropriate use for a user to share information or evidence regarding

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

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

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

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

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

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

84 85 **SECTION 6. EXISTING LEGISLATION**

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

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

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

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

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

- 101 ▪ This Law delegates rulemaking authority to DTS to promulgate rules to govern technology
102 resources of the Nation. [2 O.C. 215.9-1].
- 103 ▪ Any rules promulgated by DTS are required to be developed in accordance with the process
104 and procedures of the Administrative Rulemaking law.

105 **B. *Other Laws that Reference the Computer Resources Ordinance.*** The following laws of the Nation
106 reference the Computer Resources Ordinance. The proposed amendments to the Law do not conflict
107 with any of the referenced laws.

- 108 ▪ *Social Media Policy.* The Social Media Policy regulates social media accounts, including a social
109 networking web page, blog or microblog, that is administered on behalf of the Tribe or a Tribal
110 entity. [2 O.C. 218.1-1].
 - 111 ▪ The Social Media Policy is not intended to provide a right for employees to use the internet
112 or social media while at work for personal use. [2 O.C. 218.1-3]. Supervisors retain
113 discretion to permit or prohibit the personal use of computers in accordance with the
114 Computer Resources Ordinance. *Id.*
- 115 ▪ *Boards, Committees, and Commissions Law.* The Boards, Committees, and Commissions law
116 governs boards, committees, and commissions of the Nation, including the procedures regarding
117 the appointment and election of persons to boards, committees and commissions, creation of
118 bylaws, maintenance of official records, compensation, and other items related to boards,
119 committees and commissions [1 O.C. 105.1-1].
 - 120 ▪ The Boards, Committees, and Commissions law provides that a member of an entity shall
121 sign an acknowledgment form provided by the Nation’s Secretary indicating notice of the
122 Nation’s applicable computer and media related laws, policies and rules. [1 O.C. 105.14-
123 3(d)].

125 **SECTION 7. OTHER CONSIDERATIONS**

126 **A. *Fiscal Impact.*** Under the Legislative Procedures Act, a fiscal impact statement is required for all
127 legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-
128 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*
129 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete
130 a fiscal impact statement at various stages of the legislative process, as well as timeframes for
131 completing the fiscal impact statement.

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

134

Draft 1 (Redline to Current) – PM Draft
2024 08 21

Title 2. Employment – Chapter 215

COMPUTER TECHNOLOGY RESOURCES ORDINANCE

215.1	Purpose and Policy	215.7	Limitations on Use
215.2	Adoption, Amendment, Repeal	215.8	<u>Computer Technology</u> Resources Acknowledgment Form
215.3	Definitions		
215.4	Acceptable Use		
215.5	Inappropriate Personal Use	215.9	<u>Administrative Rulemaking Authority</u>
215.6	Privacy	215.910	Violations

215.1 Purpose and Policy.

215.1-1. *Purpose.* The purpose of this policy law is to regulate the usage of Tribally technology resources and processed data owned and operated computer resources by the Nation.

215.1-2. *Policy.* It is the policy of the Tribe Nation to provide its community and employees access to the tools necessary to participate in a technological society. Allowing limited personal use of these tools helps enhance the quality of the workplace and helps the Tribe Nation to retain highly qualified and skilled workers and officials, as well as to develop the technological skills of the community. Pursuant to this law, users are permitted limited use of Tribal computer technology resources of the Nation for personal needs if the use does not interfere with the authorized duties of the user or official business of the Tribe Nation.

(a) This law does not create a right to use Tribal computer technology resources of the Nation for personal use.

(b) This law in no way limits use of computer technology resources to fulfill authorized duties.

215.2 Adoption, Amendment, Repeal.

215.2-1. This law was adopted by the Oneida Business Committee by resolution BC Resolution #0 9-29-04-B and effective immediately upon passage of that amended by resolution BC- - - -.

215.2-2. This law may be amended or repealed by the Oneida Business Committee in accordance with or the Oneida legislative and administrative General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

215.2-3. 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.

215.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this law are hereby repealed unless specifically re-enacted after adoption of this law. Specifically, the following resolution is repealed by this law: BC 3-3-99-A (Adoption of Computer Resources Acceptable Use Policy). 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.

215.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin Nation.

215.3 Definitions.

215.3-1. This section shall govern the definitions of words and phrases used within this law. -All

39 words not defined herein shall be used in their ordinary and everyday sense.

40 ~~(a) A Computer Resources~~ means Tribally owned personal computers, networks, and
41 software, including Internet connectivity and access to internet services and electronic mail
42 (e-mail). Limitations and monitoring of computer resources may also include, peripheral
43 equipment, such as personal digital assistants (PDAs), telephones, facsimile machines, and
44 photocopiers, only to the extent that the peripheral equipment is used in conjunction with
45 Tribal personal computers and software.

46 ~~(b) An Employee~~ means an individual employed by the Oneida Tribe of Indians of Wisconsin.
47 (a) “Employee” means any individual who is employed by the Nation but does not include
48 elected or appointed officials or individuals employed by a corporation chartered by the
49 Nation.

50 (b) “DTS” means the Digital Technology Services.

51 ~~(c) AMIS~~ “Nation” means the Oneida ~~Management Information Systems Department.~~
52 Nation.

53 ~~(d) A “Personal Use~~ “use” means ~~computer~~ any technology resource use that is conducted for
54 purposes other than accomplishing an authorized activity or official business of the
55 ~~Tribe~~ Nation.

56 ~~(e) A Tribe~~ means the Oneida Tribe of Indians of Wisconsin.

57 ~~(f) A User~~ means all those who use the Tribal computer resources (e) “Technology
58 Resources” means any tools, systems, and applications that use technology to fulfill their
59 purposes. Technology resources may include, but are not limited to, computers, tablets,
60 telephones, facsimile machines, photocopiers, networks, virtual applications, and software,
61 such as internet connectivity and access to internet services and electronic mail.

62 (f) “User” means any individual who uses the technology resources of the Nation, including
63 but not limited to employees, independent contractor personnel, interns, members of boards,
64 committees or commissions, volunteers, guests, and visitors.

65 215.4 Acceptable Use.

66 215.4-1. Users may utilize ~~computer~~ technology resources for authorized activities.

67 215.4-2. Users may engage in personal use of ~~computer~~ technology resources when such use does
68 not interfere with the mission or operations of the entity in control of the resources and does not
69 violate applicable ~~personnel policies and~~ laws, rules, or standard operating procedures of the
70 Nation.

71 215.4-3. Employees may engage in limited personal use of ~~computer~~ technology resources if the
72 usage does not violate section 215.5-1 of the law or standards enacted pursuant to section 215.7-1
73 of the law.

74 215.5 Inappropriate Personal Use.

75 215.5-1. Users are expected to conduct themselves professionally and to refrain from using ~~Tribal~~
76 ~~computer~~ technology resources of the Nation for activities that are inappropriate. ~~no matter in what~~
77 location the user utilizes the technology resources of the Nation. Misuse or inappropriate personal
78 use of ~~Tribal computer~~ technology resources of the Nation includes:
79

80 (a) Any personal use that could cause congestion, delay, or disruption of service to the
81

82 network. ~~For example~~ This may include, but is not limited to, downloading video, sound
83 or other large file attachments that can degrade performance of the entire network.

84 (b) The creation, copying, transmission, or retransmission of chain letters or unauthorized
85 mass mailings regardless of the subject matter. An unauthorized mass mailing is a mailing
86 sent to fifty (50) or more addresses without the permission of the ~~employee~~ employee's
87 supervisor.

88 (c) Using ~~Tribal computer~~ technology resources of the Nation for activities that are illegal.

89 (d) Using ~~Tribal computer~~ technology resources of the Nation for activities that are
90 offensive to fellow users. ~~Such activities include:~~ but are not limited to, hate speech, or
91 material that ridicules another individual on the basis of race, creed, religion, color, sex,
92 disability, national origin, or sexual orientation.

93 (e) The creation, download, viewing, storage, copying, or transmission of sexually explicit
94 or sexually oriented materials.

95 (f) Posting unauthorized information to external newsgroups, bulletin boards, or other
96 public forums.

97 (g) The unauthorized acquisition, use, reproduction, transmission, or distribution of any
98 controlled information including ~~computer~~ software and data, that includes, copyrighted,
99 trade marked or material with other intellectual property rights ~~(, beyond fair use), or~~ or
100 proprietary data.

101 (h) Unauthorized use of another ~~user~~ user's password or account.

102 (i) Excessive personal use of the internet pursuant to section 215.7-1 ~~(a)~~ of this law.

103 (j) Maintenance of a private business without proper authorization.

104 (k) Transmission of computer viruses or other malicious code.

105 215.5-2. It shall not be deemed an inappropriate use for a user to share information or evidence
106 regarding the inappropriate use of another user if reporting the inappropriate use in accordance
107 with the proper reporting structure.

109 215.6 Privacy.

110 215.6-1. All activities ~~on computer~~ using technology resources of the Nation may be monitored,
111 intercepted, recorded, read, copied, or captured by MISDTS to ensure user compliance with this
112 ~~ordinance~~ law. Use of ~~computer~~ technology resources, authorized or unauthorized, constitutes
113 consent to this monitoring, interception, recording, reading, copying, or capturing.

114 215.6-2. This ~~policy~~ law in no way creates a right to privacy in ~~computer~~ technology resource
115 usage. ~~Users should not expect privacy in their usage, including accessing personal e-mail,~~
116 ~~brokerage, credit card, and bank accounts through the internet.~~

118 215.7 Limitations on Use.

119 215.7-1. The privilege to use ~~Tribal computer~~ the technology resources of the Nation for personal
120 use may be revoked or limited. ~~If the user is subject to the Tribe's personnel policies~~ Nation's
121 laws and ~~procedures~~ rules governing employment, the supervisor may revoke or limit the privileges
122 of that user.

123 (a) Supervisors are hereby authorized to develop standard operating procedures defining
124 excessive use ~~for users~~ of technology resources for any user that is an employee of the

125 ~~Nation and~~ subject to the ~~Tribe=s personnel policies and procedures and who are under the~~
 126 ~~supervisor=s supervisor's~~ authority. ~~These~~Any standard operating procedure shall be
 127 developed in accordance with all other laws and rules of the Nation. The standard operating
 128 procedures may also establish the appropriate times to use ~~computer~~technology resources
 129 for personal use. Supervisors ~~must~~shall provide adequate notice of the terms of ~~these any~~
 130 standard operating procedures to all individuals covered by such procedures.

131 (b) Tribal entities, agencies, or departments that provide ~~computer~~technology resources to
 132 community members or to the public may adopt usage policies not inconsistent with this
 133 ordinance~~law or rules developed in accordance with this law.~~

135 **215.8 Computer Technology Resources Acknowledgment Form.**

136 215.8-1. Users shall receive a copy of the ~~Computer Technology Resources Ordinance~~law and
 137 ~~Computer Resources Acknowledgment~~technology resources acknowledgment form. All users
 138 shall sign the ~~Acknowledgment Form~~acknowledgment form in order to gain or continue access to
 139 ~~computer~~technology resources. ~~of the Nation.~~

141 **215.9 Administrative Rulemaking Authority.**

142 215.9-1. DTS shall be delegated rulemaking authority in accordance with the Administrative
 143 Rulemaking law to promulgate rules to govern technology resources of the Nation.

145 **215.10 Violations.**

146 215.910-1. Violations of the law or any rule adopted in accordance with this law may result in
 147 limitation on use of or a loss of access to the ~~computer~~technology resources. ~~of the Nation.~~

148 215.910-2. The ~~Oneida Tribe~~Nation reserves the right to advise law enforcement officials of
 149 suspected ~~crime~~illegal activity found within a ~~user=s computer~~user's technology resources and
 150 provide them such resources as evidence.

151 215.910-3. Employee violations of this law are subject to ~~the Oneida Tribe=s progressive~~
 152 ~~disciplinary policies contained in the Tribe=s personnel policies and procedures, up to and~~
 153 ~~including termination.~~discipline in accordance with the Nations laws governing employment.

154
 155 *End.*

156
 158
 159 Emergency Adopted ~~BC # 3-03~~-24-04-A (*Emergency Adoption*)

160 Adopted ~~BC # 9-09~~-29-04-B (*Permanent Adoption*)

161 Amended - BC- - - - -

Draft 1 – PM Draft
2024 08 21

Title 2. Employment – Chapter 215 TECHNOLOGY RESOURCES

215.1 Purpose and Policy	215.6 Privacy
215.2 Adoption, Amendment, Repeal	215.7 Limitations on Use
215.3 Definitions	215.8 Technology Resources Acknowledgment Form
215.4 Acceptable Use	215.9 Administrative Rulemaking Authority
215.5 Inappropriate Personal Use	215.10 Violations

215.1 Purpose and Policy.

215.1-1. *Purpose.* The purpose of this law is to regulate the usage of technology resources and processed data owned and operated by the Nation.

215.1-2. *Policy.* It is the policy of the Nation to provide its community and employees access to the tools necessary to participate in a technological society. Allowing limited personal use of these tools helps enhance the quality of the workplace and helps the Nation to retain highly qualified and skilled workers and officials, as well as to develop the technological skills of the community. Pursuant to this law, users are permitted limited use of technology resources of the Nation for personal needs if the use does not interfere with the authorized duties of the user or official business of the Nation.

(a) This law does not create a right to use technology resources of the Nation for personal use.

(b) This law in no way limits use of technology resources to fulfill authorized duties.

215.2 Adoption, Amendment, Repeal.

215.2-1. This law was adopted by the Oneida Business Committee by resolution BC-0 9-29-04-B and amended by resolution BC-__-__-__-__.

215.2-2. 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.

215.2-3. 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.

215.2-4. 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.

215.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

215.3 Definitions.

215.3-1. 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) “Employee” means any individual who is employed by the Nation but does not include elected or appointed officials or individuals employed by a corporation chartered by the Nation.

(b) “DTS” means the Digital Technology Services.

(c) “Nation” means the Oneida Nation.

(d) “Personal use” means any technology resource use that is conducted for purposes other than accomplishing an authorized activity or official business of the Nation.

(e) “Technology Resources” means any tools, systems, and applications that use technology to fulfill their purposes. Technology resources may include, but are not limited to, computers,

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39 tablets, telephones, facsimile machines, photocopiers, networks, virtual applications, and
40 software, such as internet connectivity and access to internet services and electronic mail.
41 (f) “User” means any individual who uses the technology resources of the Nation, including but
42 not limited to employees, independent contractor personnel, interns, members of boards,
43 committees or commissions, volunteers, guests, and visitors.
44

45 **215.4 Acceptable Use.**

46 215.4-1. Users may utilize technology resources for authorized activities.

47 215.4-2. Users may engage in personal use of technology resources when such use does not
48 interfere with the mission or operations of the entity in control of the resources and does not violate
49 applicable laws, rules, or standard operating procedures of the Nation.

50 215.4-3. Employees may engage in limited personal use of technology resources if the usage does
51 not violate section 215.5-1 of the law or standards enacted pursuant to section 215.7-1 of the law.
52

53 **215.5 Inappropriate Personal Use.**

54 215.5-1. Users are expected to conduct themselves professionally and to refrain from using
55 technology resources of the Nation for activities that are inappropriate no matter in what location the
56 user utilizes the technology resources of the Nation. Misuse or inappropriate personal use of
57 technology resources of the Nation includes:

58 (a) Any personal use that could cause congestion, delay, or disruption of service to the
59 network. This may include, but is not limited to, downloading video, sound or other large file
60 attachments that can degrade performance of the entire network.

61 (b) The creation, copying, transmission, or retransmission of chain letters or unauthorized
62 mass mailings regardless of the subject matter. An unauthorized mass mailing is a mailing
63 sent to fifty (50) or more addresses without the permission of the employee’s supervisor.

64 (c) Using technology resources of the Nation for activities that are illegal.

65 (d) Using technology resources of the Nation for activities that are offensive to fellow users.
66 Such activities include, but are not limited to, hate speech, or material that ridicules another
67 individual on the basis of race, creed, religion, color, sex, disability, national origin, or
68 sexual orientation.

69 (e) The creation, download, viewing, storage, copying, or transmission of sexually explicit
70 or sexually oriented materials.

71 (f) Posting unauthorized information to external newsgroups, bulletin boards, or other public
72 forums.

73 (g) The unauthorized acquisition, use, reproduction, transmission, or distribution of any
74 controlled information including software and data, that includes, copyrighted, trade marked
75 or material with other intellectual property rights, beyond fair use, or proprietary data.

76 (h) Unauthorized use of another user’s password or account.

77 (i) Excessive personal use of the internet pursuant to section 215.7-1(a) of this law.

78 (j) Maintenance of a private business without proper authorization.

79 (k) Transmission of computer viruses or other malicious code.

80 215.5-2. It shall not be deemed an inappropriate use for a user to share information or evidence
81 regarding the inappropriate use of another user if reporting the inappropriate use in accordance with
82 the proper reporting structure.

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215.6 Privacy.

215.6-1. All activities using technology resources of the Nation may be monitored, intercepted, recorded, read, copied, or captured by DTS to ensure user compliance with this law. Use of technology resources, authorized or unauthorized, constitutes consent to this monitoring, interception, recording, reading, copying, or capturing.

215.6-2. This law in no way creates a right to privacy in technology resource usage. Users should not expect privacy in their usage, including accessing personal e-mail, brokerage, credit card, and bank accounts through the internet.

215.7 Limitations on Use.

215.7-1. The privilege to use the technology resources of the Nation for personal use may be revoked or limited. If the user is subject to the Nation’s laws and rules governing employment, the supervisor may revoke or limit the privileges of that user.

(a) Supervisors are hereby authorized to develop standard operating procedures defining excessive use of technology resources for any user that is an employee of the Nation and subject to the supervisor’s authority. Any standard operating procedure shall be developed in accordance with all other laws and rules of the Nation. The standard operating procedures may also establish the appropriate times to use technology resources for personal use. Supervisors shall provide adequate notice of the terms of any standard operating procedures to all individuals covered by such procedures.

(b) Tribal entities, agencies, or departments that provide technology resources to community members or to the public may adopt usage policies not inconsistent with this law or rules developed in accordance with this law.

215.8 Technology Resources Acknowledgment Form.

215.8-1. Users shall receive a copy of the Technology Resources law and technology resources acknowledgment form. All users shall sign the acknowledgment form in order to gain or continue access to technology resources of the Nation.

215.9 Administrative Rulemaking Authority.

215.9-1. DTS shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to promulgate rules to govern technology resources of the Nation.

215.10 Violations.

215.10-1. Violations of the law or any rule adopted in accordance with this law may result in limitation on use of or a loss of access to the technology resources of the Nation.

215.10-2. The Nation reserves the right to advise law enforcement officials of suspected illegal activity found within a user’s technology resources and provide them such resources as evidence.

215.10-3. Employee violations of this law are subject to discipline in accordance with the Nations laws governing employment.

End.

128 Emergency Adopted – BC-03-24-04-A
129 Adopted – BC-09-29-04-B
130 Amended – BC- _ _ _ _
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Legislative Operating Committee Fiscal Year 2024 Third Quarter Report April 2024 – June 2024

Legislative Operating Committee Guiding Principles

The Legislative Operating Committee set forth the following guiding principles to provide clarity and direction on the Legislative Operating Committee’s legislative efforts during the 2023-2026 legislative term:

- Re-indigenize our legislative foundation with Tsi? Niyukwaliho TÁ.
- Build an effective team through collaboration with departments, communities, and affected entities.
- Enhance community involvement through outreach and communication.
- Exercise our sovereignty through the development of community focused laws that promote Tsi? Niyukwaliho TÁ.
- Create a strategy driven agenda reflecting Oneida community values that align with the Oneida Business Committee’s Strategic Plan.

Legislative Operating Committee Action on Legislative Requests

During the FY24 Third Quarter the Legislative Operating Committee added twelve (12) legislative items to its Active Files List. The Legislative Operating Committee denied no legislative items during the FY24 Third Quarter.

On April 3, 2024, the Legislative Operating Committee added the GTC Government Participation GWE law, Petition: C. Kestell- Address Housing Issues/Veterans Home Loan Program, and the Renewable Energy law to the Active Files List.

On May 1, 2024, the Legislative Operating Committee added the Culturally Significant Event Participation Program law and the Oneida Nation School Board bylaws amendments to the Active Files List.

On May 15, 2024, the Legislative Operating Committee added the Computer Resources Ordinance amendments and the Vehicle Driver Certification and Fleet Management law amendments to the Active Files List.

On June 5, 2024, the Legislative Operating Committee added the Oneida Life Insurance Plan law amendments and the Uniform Commercial Code to the Active Files List.

On June 19, 2024, the Legislative Operating Committee added the Vendor Licensing law amendments, Independent Contractor Policy amendments, and the Oneida Travel and Expense Policy repeal to the Active Files List.

FY24 Third Quarter Legislative Accomplishments

The Legislative Operating Committee brought forward no legislative items for adoption or amendment during the FY24 Third Quarter.

FY24 Third Quarter Administrative Accomplishments

During the FY24 Third Quarter the Legislative Operating Committee collaborated with the Oneida Law Office and the Government Administrative Office to address how bylaws would be processed in the future. Moving forward, the Government Administrative Office and the board, committee, or commission's assigned attorney from the Oneida Law Office will assist in developing amendments to bylaws. This change in process will allow bylaw amendments to be directly placed on an Oneida Business Committee meeting agenda for approval. This means the Legislative Operating Committee will no longer process amendments to bylaws for boards, committees, and commissions of the Nation, which should streamline the amendment process. All nine (9) bylaws amendments currently on the Active Files List were removed from the Legislative Operating Committee's Active Files List on May 15, 2024.

FY24 Third Quarter Community Outreach Efforts

Focusing on its guiding principle to enhance community involvement through outreach and communication, during the FY24 Third Quarter the Legislative Operating Committee held the following three (3) community outreach events:

- April 2, 2024: Community work session on the Eviction and Termination law amendments;
- June 4, 2024: Community meeting on the Hunting, Fishing, and Trapping law amendments and the Guardianship law; and
- June 19, 2024: Community meeting on the Eviction and Termination law amendments.

On April 2, 2024, from 12:00 p.m. through 1:30 p.m. the Legislative Operating Committee held a community work session on the Eviction and Termination law amendments in the Norbert Hill Center's cafeteria as well as on Microsoft Teams. The purpose of this community work session was to read through the Eviction and Termination law line-by-line and collect comments, questions, or suggestions for how to potentially amend the language included in the law. Approximately thirty-seven (37) people participated in this community work session.

On June 4, 2024, from 5:30 p.m. through 7:30 p.m. the Legislative Operating Committee held a community meeting in the Norbert Hill Center's cafeteria. Topics discussed during the community meeting included brief overview of the legislative process as well as a discussion of Hunting, Fishing, and Trapping law amendments and the development of a new Guardianship law. The purpose of this community meeting was to provide an opportunity for open discussion in which

people could share comments, questions, or suggestions on potential issues and amendments that should be addressed regarding the topics discussed. Approximately thirty (30) people participated in this community meeting.

On June 19, 2024, from 5:30 p.m. through 7:30 p.m. the Legislative Operating Committee held a community meeting focused on the Eviction and Termination law in the Norbert Hill Center's cafeteria in collaboration with the Comprehensive Housing Division. During this community meeting the Comprehensive Housing Division provided an informational presentation on how evictions and terminations are currently handled, and then the Legislative Operating Committee presented on potential amendments to the Eviction and Termination law that would comply with the February 25, 2024, GTC directive to remove the words alleged and allegations from the law. The community meeting also included time for open discussion on ways to improve the Eviction and Termination law as well as time for questions to be answered. Approximately twenty-one (21) people attended this community meeting.

The Legislative Operating Committee intends to hold community outreach events on a quarterly basis and encourages everyone to attend and participate in future community outreach events.

FY24 Third Quarter Legislative Highlights

The Legislative Operating Committee would like to highlight its work on the following legislative items during the FY24 Third Quarter:

Back Pay Law Amendments

This item is sponsored by Jonas Hill. The Legislative Operating Committee held one (1) work meetings during the FY24 Third Quarter regarding this legislative matter. On April 12, 2024, the Legislative Operating Committee held a public meeting on the proposed amendments to the Back Pay law. One (1) individual provided comments during the public meeting. The public comment period was then held open until April 19, 2024. No submissions of written comments were received during the public comment period. The Legislative Operating Committee reviewed and considered the public comments received on June 11, 2024.

Business Corporations Law

This item is sponsored by Jameson Wilson. The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter.

Computer Resources Ordinance Amendments

This item is sponsored by Jameson Wilson The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter.

Environmental Review Law

This item is sponsored by Kirby Metoxen and Jonas Hill. The Legislative Operating Committee held two (2) work meeting during the FY24 Third Quarter regarding this legislative matter.

Eviction and Termination Law Amendments

This item is sponsored by Jonas Hill and Marlon Skenandore. The Legislative Operating Committee held eight (8) work meetings during the FY24 Third Quarter regarding this legislative matter. On April 2, 2024, the Legislative Operating Committee held a community work session on the Eviction and Termination law amendments. On April 19, 2024, the Legislative Operating Committee held a community meeting on the Eviction and Termination law amendments in collaboration with the Comprehensive Housing Division.

Finance Committee Bylaws Amendments

This item was sponsored by Kirby Metoxen. The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter. This item was removed from the Active Files List on May 15, 2024. The Legislative Operating Committee will no longer be processing amendments to bylaws for boards, committees, and commissions of the Nation.

Gift Card Law

This item was sponsored by Kirby Metoxen. The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter. This item was removed from the Active Files List on April 17, 2024.

Guardianship Law Amendments

This item is sponsored by Marlon Skenandore. The Legislative Operating Committee held three (3) work meetings during the FY24 Third Quarter regarding this legislative matter. On June 4, 2024, the Legislative Operating Committee held a community meeting in which the topic of a new Guardianship law was included on the agenda.

Higher Education Scholarship Law

This item is sponsored by Jameson Wilson. The Legislative Operating Committee held two (2) work meetings during the FY24 Third Quarter regarding this legislative matter.

Hunting, Fishing, and Trapping Law Amendments

This item is sponsored by Jonas Hill. The Legislative Operating Committee held two (2) work meetings during the FY24 Third Quarter regarding this legislative matter. On June 4, 2024, the Legislative Operating Committee held a community meeting in which the topic of amendments to the Hunting, Fishing, and Trapping law was included on the agenda.

Investigative Leave Policy Amendments

This item is sponsored by Marlon Skenandore. The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter.

Law Enforcement Ordinance Amendments

This item is sponsored by Jonas Hill. The Legislative Operating Committee held two (2) work meetings during the FY24 Third Quarter regarding this legislative matter.

Marijuana Law

This item is sponsored by Jameson Wilson. The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter.

Oneida Election Board Bylaws Amendments

This item was sponsored by Marlon Skenandore. The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter. This item was removed from the Active Files List on May 15, 2024. The Legislative Operating Committee will no longer be processing amendments to bylaws for boards, committees, and commissions of the Nation.

Oneida Land Trust Law

This item was sponsored by Jameson Wilson. The Legislative Operating Committee held two (2) work meetings during the FY24 Third Quarter regarding this legislative matter. This item was removed from the Active Files List on May 15, 2024.

Oneida Nation Commission on Aging Bylaws Amendments

This item was sponsored by Jennifer Webster. The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter. This item was removed from the Active Files List on May 15, 2024. The Legislative Operating Committee will no longer be processing amendments to bylaws for boards, committees, and commissions of the Nation.

Oneida Nation School Board Bylaws Amendments

This item was sponsored by Marlon Skenandore. The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter. This item was removed from the Active Files List on May 15, 2024. The Legislative Operating Committee will no longer be processing amendments to bylaws for boards, committees, and commissions of the Nation.

Oneida Nation Veterans Affairs Committee Bylaws Amendments

This item was sponsored by Jennifer Webster and Jonas Hill. The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter. This item was removed from the Active Files List on May 15, 2024. The Legislative Operating Committee will no longer be processing amendments to bylaws for boards, committees, and commissions of the Nation.

Oneida Personnel Commission Bylaws Amendments

This item was sponsored by Marlon Skenandore. The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter. This item was removed from the Active Files List on May 15, 2024. The Legislative Operating Committee will no longer be processing amendments to bylaws for boards, committees, and commissions of the Nation.

Oneida Personnel Policies and Procedures

This item is sponsored by all members of the Legislative Operating Committee. The Legislative Operating Committee held five (5) work meetings during the FY24 Third Quarter regarding this legislative matter.

Oneida Trust Enrollment Committee Bylaws Amendments

This item was sponsored by Jameson Wilson. The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter. This item was removed from the Active Files List on May 15, 2024. The Legislative Operating Committee will no longer be processing amendments to bylaws for boards, committees, and commissions of the Nation.

Pardon and Forgiveness Screening Committee Bylaws Amendments

This item was sponsored by Jonas Hill. The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter. This item was removed from the Active Files List on May 15, 2024. The Legislative Operating Committee will no longer be processing amendments to bylaws for boards, committees, and commissions of the Nation.

Real Property Law Amendments

This item is sponsored by Jameson Wilson. The Legislative Operating Committee held two (2) work meetings during the FY24 Third Quarter regarding this legislative matter.

Southeastern Wisconsin Oneida Tribal Services Advisory Board Bylaws Amendments

This item was sponsored by Jonas Hill. The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter. This item was removed from the Active Files List on May 15, 2024. The Legislative Operating Committee will no longer be processing amendments to bylaws for boards, committees, and commissions of the Nation.

Taxation Law

This item is sponsored by Jameson Wilson. The Legislative Operating Committee held one (1) work meeting during the FY24 Third Quarter regarding this legislative matter.

Tribal Sovereignty in Data Research Law

This item is sponsored by Jennifer Webster. The Legislative Operating Committee held six (6) work meetings during the FY24 Third Quarter regarding this legislative matter.

Two Spirit Inclusion Law

This item is sponsored by Jennifer Webster. The Legislative Operating Committee held six (6) work meetings during the FY24 Third Quarter regarding this legislative matter.

Vehicle Driver Certification and Fleet Management Law Amendments

This item is sponsored by Jameson Wilson. The Legislative Operating Committee held one (1) work meetings during the FY24 Third Quarter regarding this legislative matter.

FY24 Third Quarter Legislative Operating Committee Meetings

All Legislative Operating Committee meetings are open to the public and held on the first and third Wednesday of each month, at 9:00 a.m. in the Norbert Hill Center's Business Committee Conference Room and on Microsoft Teams.

The Legislative Operating Committee held the following meetings during the FY24 Third Quarter:

- April 3, 2024 – Regular meeting;
- April 17, 2024 – Regular meeting;
- May 1, 2024 – Regular meeting;
- May 15, 2024 – Regular meeting;
- June 5, 2024 – Regular meeting; and
- June 19, 2024 – Regular meeting.

In addition to attending the Legislative Operating Committee meetings in person, individuals provided the opportunity to attend the Legislative Operating Committee meeting through Microsoft Teams. Anyone who would like to access the Legislative Operating Committee meeting through Microsoft Teams can provide their name, phone number or e-mail address to LOC@oneidanation.org by the close of business the day before a meeting of the Legislative Operating Committee to receive the link to the Microsoft Teams meeting.

For those who may be unable to attend the Legislative Operating Committee meeting either in person or on Microsoft Teams, an audio recording of the Legislative Operating Committee meeting is made available on the Nation's website after the meeting concludes.

Goals for FY24 Fourth Quarter

During the FY24 Fourth Quarter the Legislative Operating Committee will focus its legislative efforts on the following matters:

- Hold an additional LOC Community meeting.
- Complete the LOC's strategic planning.
- Adoption of the Back Pay law amendments.
- Develop a draft of the Eviction and Termination law amendments.
- Hold a public meeting for the Investigative Leave Policy amendments.

- Hold a public meeting for the Vehicle Driver Certification and Fleet Management law amendments.
- Hold a public meeting for the Computer Resources Ordinance amendments.

Legislative Reference Office

The Legislative Reference Office’s mission is to provide support for the Legislative Operating Committee in developing clear and consistent legislation that reflects the Nation’s values, builds upon the Nation’s strong foundation, and reaffirms our inherent sovereignty.

In addition to the assisting the Legislative Operating Committee with the development of legislation, the Legislative Reference Office also:

- Drafts statements of effect for Oneida Business Committee and General Tribal Council resolutions;
- Drafts statements of effect for General Tribal Council resolutions petitions;
- Drafts and provides other assistance to various department and entities of the Nation with administrative rulemaking;
- Drafts and provides other assistance to various department and entities of the Nation with bylaws; and
- Manages all other administrative duties and recordkeeping for the Legislative Operating Committee.

During the FY24 Third Quarter the Legislative Reference Office was staffed by the following individuals:

- Clorissa N. Leeman, Senior Legislative Staff Attorney.
 - Contact: cleeman@oneidanation.org
- Carolyn Salutz, Legislative Staff Attorney.
 - Contact: csalutz@oneidanation.org
- Grace Elliott, Legislative Staff Attorney.
 - Contact: gelliott@oneidanation.org

Legislative Operating Committee Contact Information

Feel free to contact the LOC at LOC@oneidanation.org with any questions or comments, or individual LOC members at the following:

- | | |
|--|---|
| ▪ Jameson Wilson, LOC Chairman
jwilson@oneidanation.org | ▪ Jonas Hill, LOC Member
jhill@oneidanation.org |
| ▪ Kirby Metoxen, LOC Vice-Chairman
kmetox@oneidanation.org | ▪ Marlon Skenandore, LOC Member
mshenan1@oneidanation.org |
| ▪ Jennifer Webster, LOC Member
jwebstel@oneidanation.org | |



The Legislative Operating Committee from left to right: Kirby Metoxen, Jameson Wilson, Jennifer Webster, Marlon Skenandore, Jonas Hill.

July 2024

July 2024							August 2024						
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21	22	23	24	25	26	27	18	19	20	21	22	23	24
28	29	30	31				25	26	27	28	29	30	31

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
<p>Jul 1</p>	<p>2</p> <p>2:45pm Real Property and Holding of Ownership/Inheritance (Microsoft Teams Meeting; BC_Exec_Conf_Room) - Grace L. Elliott</p>	<p>3</p> <p>11:00am Research Law (Microsoft Teams Meeting);</p> <p>1:30pm LOC Strategic Planning (Microsoft Teams Meeting);</p> <p>1:30pm LOC Work Session (Microsoft</p>	<p>4</p>	<p>5</p>
<p>8</p>	<p>9</p>	<p>10</p>	<p>11</p> <p>10:30am Landlord Tenant law review (Microsoft Teams Meeting) - Grace L. Elliott</p> <p>1:30pm LOC Work Session (Microsoft Teams Meeting; BC_Exec_Conf_Room) -</p>	<p>12</p>
<p>15</p> <p>12:15pm PUBLIC MEETING: Vehicle Driver Certification and Fleet Management Law Amendments (Microsoft Teams Meeting; BC_Conf_Room) - LOC</p>	<p>16</p> <p>1:30pm Guardianship draft law update (Microsoft Teams Meeting; BC_Exec_Conf_Room) - Grace L. Elliott</p>	<p>17</p> <p>8:30am LOC Prep Meeting (Microsoft Teams Meeting);</p> <p>9:00am Legislative Operating Committee Meeting (Microsoft</p> <p>1:30pm LOC Strategic Planning Session</p>	<p>18</p>	<p>19</p>
<p>22</p> <p>10:00am Limited Liability Company Draft Review and Real Property/Probate Discussion (Microsoft Teams Meeting; BC_Exec_Conf_Room) - Grace L. Elliott</p>	<p>23</p> <p>8:30am Guardianship law draft review (Microsoft Teams Meeting) - Grace L. Elliott</p>	<p>24</p>	<p>25</p> <p>10:00am LOC/LRO/OLO Strategy Meeting (Microsoft Teams Meeting);</p> <p>4:00pm Real Property (Microsoft Teams Meeting) - Grace L. Elliott</p>	<p>26</p> <p>9:00am Law Enforcement Ordinance Amendments Work</p> <p>10:30am Administrative Rulemaking Process: Computer Resources</p> <p>1:30pm Renewable Energy Law Work</p>
<p>29</p> <p>10:00am Oneida General Welfare Law Amendments & Development of</p> <p>2:00pm FW: Workplace Violence work meeting (Microsoft Teams Meeting;</p>	<p>30</p>	<p>31</p>	<p>Aug 1</p>	<p>2</p>