

ONEIDA NATION PUBLIC MEETING NOTICE

FRIDAY, SEPTEMBER 13, 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](https://oneida-nsn.gov/government/register/public-meetings)



Send Public Comments to

LOC@oneidation.org

Ask Questions here

LOC@oneidation.org

920-869-4417

INVESTIGATIVE LEAVE POLICY AMENDMENTS

The purpose of the Investigative Leave Policy is to set forth a process to address investigative leave for employees undergoing work related investigations.

The Investigative Leave Policy amendments will:

- ◆ Change the pay status of an investigative leave from unpaid, to paid for up to forty-five (45) days, so long as the employee responds to all inquiries within twenty-four (24) business hours.
- ◆ Add the Executive Director of the Human Resource Department as an individual authorized to initiate an investigative leave.
- ◆ Eliminate the option to place an employee placed on investigative leave in an alternate work position during the investigation.
- ◆ Clarify the types of harms an investigative leave is intended to protect against.
- ◆ Update confidentiality requirements to address social media.
- ◆ Update the name of the law from Investigative Leave Policy to Investigative Leave Law.

Individuals may attend the public meeting for the proposed Investigative Leave Policy 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@oneidation.org.

PUBLIC COMMENT PERIOD CLOSSES FRIDAY, SEPTEMBER 20, 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 Investigative Leave Policy amendments please review the public meeting packet at oneida-nsn.gov/government/register/public-meetings.



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].

	<ul style="list-style-type: none">▪ 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].<ul style="list-style-type: none">▪ 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)].
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	<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.
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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

Title 2. Employment – Chapter 208
INVESTIGATIVE LEAVE ~~LAW~~POLICY

208.1 Purpose and Policy
208.2 Adoption, Amendment, Repeal
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208.1 Purpose and Policy

208.1-1 _____The purpose of this ~~law~~POLICY is to set forth a process to address investigative leave for employees undergoing work-related investigations.

~~208.1-2.~~ It is the policy of the ~~Oneida Tribe~~ of ~~the Nation~~Indians of Wisconsin to conduct objective, confidential investigations into alleged employee misconduct.~~maintain confidentiality and avoid undue influence when conducting an investigation into an employee’s alleged wrong doings.~~

208.2 Adoption, Amendment, Repeal

208.2-1. This ~~law~~policy was adopted by the Oneida Business Committee by resolution BC-04-07-99-A, and amended by resolution BC-08-13-14-D, ~~and~~ BC-06-24-15-A, and BC- - - -.

208.2-2. This ~~law~~policy may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

208.2-3. Should a provision of this ~~law~~policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this ~~law~~policy which are considered to have legal force without the invalid portions.

208.2-4. In the event of a conflict between a provision of this ~~law~~policy and a provision of another ~~law~~policy, the provisions of this ~~law~~policy shall control.

208.2-5. This ~~law~~policy is adopted under authority of the Constitution of the Oneida Nation.~~Tribe of Indians of Wisconsin.~~

208.3 Definitions

208.3-1. This section ~~shall~~ governs the definitions of words and phrases used within this ~~law~~POLICY. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Day” means calendar day.

~~(a)(b)~~ “Employee” ~~shall~~ means any individual who is employed by the NationTribe ~~and is subject to the direction and control of the Tribe with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. “Employee” includes, but is not limited to; an individual employed by any program or enterprise of the Tribe,~~ but does not include elected or appointed officials or individuals employed by a corporation chartered by the Nation.~~political appointees.~~

~~(b)(c)~~ “Investigative leave” ~~shall~~ means a temporary absence from an employee’s regular job duties for the purpose of conducting an investigation into alleged employee misconduct.~~to determine whether conduct or alleged conduct by an employee should result in disciplinary action and/or termination of employment.~~

~~(d)~~ “Nation”~~“Tribal” or “Tribe”~~ shall means the Oneida Nation.~~Tribe of Indians of~~

Wisconsin.

~~(e)~~(e) “Workplace” means any location owned and operated by the Nation, any location where employees are staffing an event sponsored by the Nation, and any location where an employee represents the Nation, including over-the-road travel in Nation owned or rented vehicles and any circumstances where an employee is being reimbursed for expenses.

208.4 Scope

208.4-1. An employee shall be placed on investigative leave when a situation requires an investigation be conducted and one (1) of the following occurs:

~~(a)~~ The nature and severity of the alleged violation, or alleged illegal activity, is significant; including but not limited to:~~A situation requires an investigation be conducted and the employee’s presence may influence the outcome.~~

(1) Workplace violence;

(2) Sexual harassment;

(3) Theft;

(4) Arson, bribery, or perjury; or

(5) Obstruction or interference with an investigation authorized by the Nation.

~~(a)~~(b) The employee’s presence in the workplace may result in the destruction of evidence relevant to the investigation, result in loss or damage to property of the Nation, or otherwise damage legitimate interests of the Nation; including, but not limited to classified, privileged, proprietary, financial or medical records; and the privacy of individuals whose data the Nation holds in its systems.

(c) The employee’s presence in the workplace may pose an unacceptable risk to the life, safety, health, or personal property of employees, contractors, vendors or visitors to a facility of the Nation.

~~(b)~~(d) An employee allegedly commits an act which would preclude the employee from meeting employment eligibility including required licenses, ~~the Tribal~~ fidelity bond, commercial crime policy, or background investigation requirements.

~~208.4 2.—This policy shall not be used as a form of discipline.~~

208.4-2. Investigative leave shall include:

(a) Up to forty-five (45) days without loss of or reduction in:

(1) Pay;

(2) Credit for time or service;

(3) Benefits to which the employee is otherwise entitled to under the Nation’s laws governing employment, except that:

(A) Personal and vacation time shall not accrue.

(b) After forty-five (45) days on paid investigative leave an employee may use their personal and vacation time.

(c) After forty-five (45) days on paid investigative leave and the expiration of any personal and vacation time all pay and benefits shall cease.

(d) After forty-five (45) days of paid investigative leave, an employee shall receive back-pay and benefits for any time the employee was on unpaid investigative leave pursuant to the laws governing back-pay if they return to their position at the conclusion of the investigation.

85 **208.5 Authorization**

86 208.5-1. ~~Investigative~~This leave, or an extension of this leave, shall only be used: ~~when an~~
87 ~~employee's supervisor receives prior approval from the Human Resources Department Manager~~
88 ~~or his or her designee and:~~

- 89 (a) ~~their Division Director; or~~ When initiated by the Executive Director of the Human
90 Resource Department with concurrent written notice to the employee's supervisor; or
91 (b) ~~if there is no Division Director, the person at the highest level of the chain of~~
92 ~~command.~~ When initiated by an employee's supervisor after receiving written approval
93 from the Executive Director of the Human Resource Department or their designee, and:
94 (1) Their division director; or
95 (2) If there is no division director, the person at the highest level of the chain of
96 command under the Oneida Business Committee.

97 ~~208.5-2. If the Human Resources Department Manager or his or her designee and the Division~~
98 ~~Director or his or her equivalent do not agree with placing the employee on investigative leave,~~
99 ~~then the final decision shall rest with the Human Resources Department Manager or his or her~~
100 ~~designee.~~

101 208.5-~~2~~3. ~~The prior approval~~Approval requested in 208.5-1(b) shall be granted or denied by the
102 Executive Director of the Human Resource Department within forty-eight (48) hours of
103 receiving the request.

104 208.5-3. An investigative leave shall initially be authorized for a period of forty-five (45) days.
105 (a) If the investigative leave is not projected to conclude within forty-five (45) days, the
106 initial authorizer(s) may review and authorize the extension of the investigative leave
107 until such time that a safe and equitable determination may reasonably be reached.

108 ~~208.5-4. During the investigative leave, the employee's supervisor shall authorize an~~
109 ~~alternative work assignment if all the following occur:~~

- 110 (a) ~~The alleged action does not preclude the employee from working elsewhere in the~~
111 ~~organization;~~
112 (b) ~~An alternative work assignment is available; and~~
113 (c) ~~The employee meets the minimum job requirements of the alternative work assignment.~~

114 ~~208.5-5. If an employee is placed in an alternative work assignment under section 208.5-4, the~~
115 ~~alternative work assignment shall be considered a part of the investigative leave and the~~
116 ~~employee shall continue to receive their same rate of pay.~~

117
118 **208.6 Employee Notice**

119 208.6-1. When the employee is placed on investigative leave, the employee shall immediately
120 receive a written notice from the employee's supervisor, or if the employee's supervisor is
121 unavailable, their designee of equal or greater authority; the notice shall contain the following:

- 122 (a) ~~The specific allegation(s) being investigated;~~This action does not denote any
123 wrongdoing on the part of the employee.
124 (b) ~~The employee shall be on unpaid status, unless he or she is placed in an alternative~~
125 ~~work assignment;~~The employee remains an employee of the Nation.
126 (c) ~~The alternative work assignment, if appropriate;~~Clear documentation regarding the
127 status of pay and benefits while on investigative leave.
128 (d) ~~The expected length of the investigation;~~The definition of business hours as it
129 pertains to the employee's particular area of employment.
130 (e) ~~Whether or not the investigation is being forwarded to an outside agency;~~The specific

131 allegation(s) being investigated.

132 (f) ~~The telephone number and name of person to contact in case of questions;~~The
133 expected length of the investigation.

134 (g) ~~The procedures to return to work upon completion of the investigation; and~~Whether
135 or not the investigation is being forwarded to an outside agency.

136 (h) ~~That the employee still remains as an employee with the Tribe.~~The telephone number,
137 email address, and name of person to contact in case of questions.

138 (i) The employee shall surrender all property of the Nation pursuant to section 208.9-1(c).

139 (j) The procedures to return to work upon completion of the investigation.

140 (Employee responsibilities pursuant to section 208.9.

141 208.6-2. If the employee's investigative leave is projected to ~~extended~~ past the initial forty-five
142 (45)original fifteen (15) calendar days pursuant to section 208.~~5-38-1~~, the supervisor or their
143 designee of equal or greater authority shall immediately notice the employee in writing of this
144 extension and the reason for the extension at least ten (10) days prior to the expiration of the
145 initial forty-five (45) days. The notice shall contain the following:

146 (a) That the employee remains an employee of the Nation.

147 (b) Clear documentation regarding the cessation of pay and benefits.

148 (c) The definition of business hours as it pertains to the employee's particular area of
149 employment.

150 (d) The expected length of the investigation.

151 (e) The telephone number, email address, and name of the person to contact in case of
152 questions.

153 (f) Employee responsibilities pursuant to section 208.9.

154 **208.7 Investigator(s) and Reports**

156 208.7-1. The Executive Director of the Human Resource Department, in collaboration with the
157 supervisor,~~employee's supervisor and/or area manager~~ shall be responsible for designating the
158 individual or agency responsible for completing the investigation. If the employee being
159 investigated reports directly to the Oneida Business Committee, the ~~Tribal~~ Equal Employment
160 Opportunity Officer shall either conduct the investigation or serve as the point of contact and
161 coordinator for the investigative agency.

162 208.7-2. If the allegations against the employee include criminal actions, or actions that may
163 affect licensing, the supervisor ~~may~~shall conclude the employment related investigation without
164 waiting for the results of a criminal or licensing investigation.

165 (a) Documentation of criminal proceedings or licensing outcomes shall be maintained in
166 the employee's personnel file within the Human Resource Department.

167 208.7-3. The person(s) conducting an investigation shall prepare a written report that shall
168 include the findings of the investigation, and if someone other than the employee's supervisor
169 conducts the investigation, a copy of the written report shall be provided to the employee's
170 supervisor. ~~If someone other than the employee's supervisor conducts the investigation, within~~
171 ~~forty eight (48) hours of receiving the written report, the supervisor shall complete the~~
172 ~~investigation by determining and documenting any corrective actions needed.~~

173 208.7-4. The employee's supervisor shall prepare a memorandum based on the information
174 produced during the investigation~~written report~~ which shall be provided to the employee and
175 shall inform the employee of the following:

176 (a) C~~e~~corrective actions needed based on the written report, if any; and

177 (1) Should the supervisor choose not to follow the corrective action recommended
178 by the investigator(s), they shall provide written notice and justification to the
179 Executive Director of the Human Resource Department.

180 (b) When to return to work, if applicable. ~~and/or what disciplinary action will be taken~~
181 ~~against the employee based on the report; and~~

182 (c) A redacted copy of the written report will be made available to the employee upon
183 request. ~~only in the event the employee appeals any disciplinary action.~~

184 185 **208.8 Duration**

186 208.8-1. An investigative leave shall conclude when the investigation has produced sufficient
187 information and verifiable facts for the employee's supervisor and the Executive Director of the
188 Human Resource Department to make a reasonable determination on workplace safety and
189 employee status; documentation of that determination has been recorded in permanent files, and
190 the employee has either returned to work or separated from their employment. ~~be no longer than~~
191 ~~fifteen (15) calendar days, with the ability to extend one (1) time for an additional fifteen (15)~~
192 ~~calendar days with a valid explanation of the reason for the extension. The extension shall be~~
193 ~~determined by the same individuals who placed the employee on investigative leave in section~~
194 ~~208.5 1. However, if the investigation is forwarded to an outside agency, these timelines shall~~
195 ~~not apply.~~

196 208.8-2. All investigations shall be completed as expeditiously as circumstances permit. The
197 supervisor shall provide weekly updates to the Executive Director of the Human Resource
198 Department, or if an outside entity is conducting the investigation, the Equal Employment
199 Opportunity Officer shall provide the weekly updates. ~~Investigative leave shall end upon~~
200 ~~any of the following occurrences:~~

201 ~~(a) the expiration of the fifteen (15) calendar day time limit, if applicable;~~

202 ~~(b) the expiration of the fifteen (15) calendar day extension if granted;~~

203 ~~(c) termination of the employee's employment based on the investigation;~~

204 ~~(d) the employee's return to work based on the written report submitted to the employee after~~
205 ~~an investigation is completed; or~~

206 ~~(e) the employee chooses to resign or retire.~~

207 208 **208.9 Employee Responsibilities**

209 208.9-1. An employee placed on investigative leave shall:

210 (a) Not report to work or the worksite without prior supervisory approval;

211 (1) Written permission to enter a public work site and the conditions thereof may
212 be included in the employee notice.

213 ~~(b) Abide by all Tribal laws and policies; and~~ Not discuss the investigation with
214 employees or post information related to the investigation on social media pursuant to
215 section 208.12-1.

216 (c) Surrender all property of the Nation in their possession including but not limited to:

217 (1) Time keeping badge(s),

218 (2) Identification card(s),

219 (3) Laptop(s),

220 (4) Vehicles and key(s),

221 (5) Cell phone.

223 (d) Fully cooperate with the investigation as requested by those conducting the
224 investigation.

225 (e) Respond to all inquiries within twenty-four (24) business hours.

226
227 **208.10 Pay and Benefits**

228 ~~208.10 1. Paid leave shall not be authorized.~~

229 ~~208.10 2. An employee placed on investigative leave shall not receive any wages or benefits~~
230 ~~unless placed in an alternative work assignment. If the employee refuses the alternative work~~
231 ~~assignment and is returned to work, the employee shall not receive any back pay or benefits.~~

232 ~~208.10 3. If an alternative work assignment is not available, the employee may use his or her~~
233 ~~accrued vacation and/or personal time while on investigative leave.~~

234 ~~208.10 4. An employee shall receive back pay and benefits for the time the employee was on~~
235 ~~investigative leave pursuant to the Back Pay Policy if all of the following occur:~~

236 ~~(a) The employee was not offered an alternative work assignment when placed on~~
237 ~~investigative leave; and~~

238 ~~(b) The employee is returned to his or her position; and~~

239 ~~(c) The employee is not disciplined based on the investigation.~~

240
241 **208.10~~1~~ Enforcement**

242 208.10~~1~~-1. Any employee found violating this ~~law~~Policy shall be subject to discipline in
243 accordance with the Nation's/Tribe's laws and policies governing employment.~~personnel policies~~
244 ~~and procedures.~~

245 208.10-2. Failure by the employee to respond to inquiries within twenty-four (24) business hours
246 will result in the termination of paid investigative leave and immediately shift the employee to
247 unpaid status.

248
249 **208.1~~1~~2 Appeal**

250 208.1~~1~~2-1. An employee may appeal any disciplinary action arising out of an investigation in
251 accordance with the Nation's laws and policies governing employment.~~Tribe's personnel~~
252 ~~policies and procedures.~~

253
254 **208.1~~2~~3 Confidentiality**

255 208.1~~2~~3-1. Information related to an investigation is confidential and may not be released in any
256 manner, including social media, except~~only be released~~ in accordance with relevant laws. and
257 ~~personnel policies and procedures.~~

258 208.1~~2~~3-2. All investigation materials shall be maintained in the employee's personnel file with
259 the Human Resources Department.

260
261 *End.*

262
263 OBC Approved 4-07-99-A
264 Amended- 08-13-14-D
265 Amended – BC-06-24-15-A
266 Amended BC- - - -

Title 2. Employment – Chapter 208
INVESTIGATIVE LEAVE

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208.1 Purpose and Policy

208.1-1. The purpose of this law is to set forth a process to address investigative leave for employees undergoing work-related investigations.
208.1-2. It is the policy of the of the Nation to conduct objective, confidential investigations into alleged employee misconduct.

208.2 Adoption, Amendment, Repeal

208.2-1. This law was adopted by the Oneida Business Committee by resolution BC-04-07-99-A, and amended by resolution BC-08-13-14-D, BC-06-24-15-A, and BC- - - - -.
208.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
208.2-3. 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.
208.2-4. 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.
208.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

208.3 Definitions

208.3-1. This section governs 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) “Day” means calendar day.
(b) “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.
(c) “Investigative leave” means a temporary absence from an employee’s job duties for the purpose of conducting an investigation into alleged employee misconduct.
(d) “Nation” means the Oneida Nation.
(e) “Workplace” means any location owned and operated by the Nation, any location where employees are staffing an event sponsored by the Nation, and any location where an employee represents the Nation, including over-the-road travel in Nation owned or rented vehicles and any circumstances where an employee is being reimbursed for expenses.

208.4 Scope

208.4-1. An employee shall be placed on investigative leave when a situation requires an investigation be conducted and one (1) of the following occurs:
(a) The nature and severity of the alleged violation, or alleged illegal activity, is significant;

- 39 including but not limited to:
- 40 (1) Workplace violence;
 - 41 (2) Sexual harassment;
 - 42 (3) Theft;
 - 43 (4) Arson, bribery, or perjury; or
 - 44 (5) Obstruction or interference with an investigation authorized by the Nation.
- 45 (b) The employee's presence in the workplace may result in the destruction of evidence
46 relevant to the investigation, result in loss or damage to property of the Nation, or otherwise
47 damage legitimate interests of the Nation; including, but not limited to classified,
48 privileged, proprietary, financial or medical records; and the privacy of individuals whose
49 data the Nation holds in its systems.
- 50 (c) The employee's presence in the workplace may pose an unacceptable risk to the life,
51 safety, health, or personal property of employees, contractors, vendors, or visitors to a
52 facility of the Nation.
- 53 (d) An employee allegedly commits an act which would preclude the employee from
54 meeting employment eligibility including required licenses, fidelity bond, commercial
55 crime policy, or background investigation requirements.

56 208.4-2. Investigative leave shall include:

- 57 (a) Up to forty-five (45) days without loss of or reduction in:
- 58 (1) Pay;
 - 59 (2) Credit for time or service;
 - 60 (3) Benefits to which the employee is otherwise entitled to under the Nation's laws
61 governing employment, except that:
 - 62 (A) Personal and vacation time shall not accrue.
- 63 (b) After forty-five (45) days on paid investigative leave an employee may use their
64 personal and vacation time.
- 65 (c) After forty-five (45) days on paid investigative leave and the expiration of any personal
66 and vacation time all pay and benefits shall cease.
- 67 (d) After forty-five (45) days of paid investigative leave, an employee shall receive back-
68 pay and benefits for any time the employee was on unpaid investigative leave pursuant to
69 the laws governing back-pay if they return to their position at the conclusion of the
70 investigation.

71

72 **208.5 Authorization**

- 73 208.5-1. Investigative leave, or an extension of this leave, shall only be used:
- 74 (a) When initiated by the Executive Director of the Human Resource Department with
75 concurrent written notice to the employee's supervisor; or
 - 76 (b) When initiated by an employee's supervisor after receiving written approval from the
77 Executive Director of the Human Resource Department or their designee, and:
 - 78 (1) Their division director; or
 - 79 (2) If there is no division director, the person at the highest level of the chain of
80 command under the Oneida Business Committee.
- 81 208.5-2. Approval requested in 208.5-1(b) shall be granted or denied by the Executive Director
82 of the Human Resource Department within forty-eight (48) hours of receiving the request.
- 83 208.5-3. An investigative leave shall initially be authorized for a period of forty-five (45) days.
- 84 (a) If the investigative leave is not projected to conclude within forty-five (45) days, the

85 initial authorizer(s) may review and authorize the extension of the investigative leave until
86 such time that a safe and equitable determination may reasonably be reached.
87

88 **208.6 Employee Notice**

89 208.6-1. When the employee is placed on investigative leave, the employee shall immediately
90 receive a written notice from the employee's supervisor, or if the employee's supervisor is
91 unavailable, their designee of equal or greater authority; the notice shall contain the following:

- 92 (a) This action does not denote any wrongdoing on the part of the employee.
- 93 (b) The employee remains an employee of the Nation.
- 94 (c) Clear documentation regarding the status of pay and benefits while on investigative
95 leave.
- 96 (d) The definition of business hours as it pertains to the employee's particular area of
97 employment.
- 98 (e) The specific allegation(s) being investigated.
- 99 (f) The expected length of the investigation.
- 100 (g) Whether or not the investigation is being forwarded to an outside agency.
- 101 (h) The telephone number, email address, and name of person to contact in case of
102 questions.
- 103 (i) The employee shall surrender all property of the Nation pursuant to section 208.9-1(c).
- 104 (j) The procedures to return to work upon completion of the investigation.
- 105 (h) Employee responsibilities pursuant to section 208.9.

106 208.6-2. If the employee's investigative leave is projected to extend past the initial forty-five
107 (45) days pursuant to section 208.5-3, the supervisor or their designee of equal or greater authority
108 shall immediately notice the employee in writing of this extension and the reason for the extension
109 at least ten (10) days prior to the expiration of the initial forty-five (45) days. The notice shall
110 contain the following:

- 111 (a) That the employee remains an employee of the Nation.
- 112 (b) Clear documentation regarding the cessation of pay and benefits.
- 113 (c) The definition of business hours as it pertains to the employee's particular area of
114 employment.
- 115 (d) The expected length of the investigation.
- 116 (e) The telephone number, email address, and name of the person to contact in case of
117 questions.
- 118 (f) Employee responsibilities pursuant to section 208.9.

119 **208.7 Investigator(s) and Reports**

121 208.7-1. The Executive Director of the Human Resource Department, in collaboration with the
122 supervisor, shall be responsible for designating the individual or agency responsible for completing
123 the investigation. If the employee being investigated reports directly to the Oneida Business
124 Committee, the Equal Employment Opportunity Officer shall either conduct the investigation or
125 serve as the point of contact and coordinator for the investigative agency.

126 208.7-2. If the allegations against the employee include criminal actions, or actions that may
127 affect licensing, the supervisor may conclude the employment related investigation without
128 waiting for the results of a criminal or licensing investigation.

- 129 (a) Documentation of criminal proceedings or licensing outcomes shall be maintained in the
130 employee's personnel file within the Human Resource Department.

131 208.7-3. The person(s) conducting an investigation shall prepare a written report that shall
132 include the findings of the investigation, and if someone other than the employee's supervisor
133 conducts the investigation, a copy of the written report shall be provided to the employee's
134 supervisor.

135 208.7-4. The employee's supervisor shall prepare a memorandum based on the information
136 produced during the investigation which shall be provided to the employee and shall inform the
137 employee of the following:

- 138 (a) Corrective actions needed based on the written report, if any; and
139 (1) Should the supervisor choose not to follow the corrective action recommended
140 by the investigator(s), they shall provide written notice and justification to the
141 Executive Director of the Human Resource Department.
142 (b) When to return to work, if applicable.
143 (c) A redacted copy of the written report will be made available to the employee upon
144 request.
145

146 **208.8 Duration**

147 208.8-1. An investigative leave shall conclude when the investigation has produced sufficient
148 information and verifiable facts for the employee's supervisor and the Executive Director of the
149 Human Resource Department to make a reasonable determination on workplace safety and
150 employee status; documentation of that determination has been recorded in permanent files, and
151 the employee has either returned to work or separated from their employment.

152 208.8-2. All investigations shall be completed as expeditiously as circumstances permit. The
153 supervisor shall provide weekly updates to the Executive Director of the Human Resource
154 Department, or if an outside entity is conducting the investigation, the Equal Employment
155 Opportunity Officer shall provide the weekly updates.
156

157 **208.9 Employee Responsibilities**

158 208.9-1. An employee placed on investigative leave shall:

- 159 (a) Not report to work or the worksite without prior supervisory approval;
160 (1) Written permission to enter a public work site and the conditions thereof may
161 be included in the employee notice.
162 (b) Not discuss the investigation with employees or post information related to the
163 investigation on social media pursuant to section 208.12-1.
164 (c) Surrender all property of the Nation in their possession including but not limited to:
165 (1) Time keeping badge(s),
166 (2) Identification card(s),
167 (3) Laptop(s),
168 (4) Vehicles and key(s),
169 (5) Cell phone.
170 (d) Fully cooperate with the investigation as requested by those conducting the
171 investigation.
172 (e) Respond to all inquiries within twenty-four (24) business hours.
173

174 **208.10 Enforcement**

175 208.10-1. Any employee found violating this law shall be subject to discipline in accordance
176 with the Nation's laws and policies governing employment.

177 208.10-2. Failure by the employee to respond to inquiries within twenty-four (24) business hours
178 will result in the termination of paid investigative leave and immediately shift the employee to
179 unpaid status.

180
181 **208.11 Appeal**

182 208.11-1. An employee may appeal any disciplinary action arising out of an investigation in
183 accordance with the Nation's laws and policies governing employment.

184
185 **208.12 Confidentiality**

186 208.12-1. Information related to an investigation is confidential and may not be released in any
187 manner, including social media, except in accordance with relevant laws.

188 208.12-2. All investigation materials shall be maintained in the employee's personnel file with
189 the Human Resources Department.

190
191 *End.*

192
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