

Title 2. Employment – Chapter 208

INVESTIGATIVE LEAVE LAW

208.1 Purpose and Policy
208.2 Adoption, Amendment, Repeal
208.3 Definitions
208.4 Scope
208.5 Authorization
208.6 Employee Notice
208.7 Investigator(s) and Reports

208.8 Duration
208.9 Employee Responsibilities
208.10 Enforcement
208.11 Appeal
208.12 Confidentiality

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-11-13-24-I.

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 This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.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 policy, the provisions of this policy 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; including but not limited to:

- (1) Workplace violence;
- (2) Sexual harassment;
- (3) Theft;
- (4) Arson, bribery, or perjury;
- (5) Obstruction or interference with an investigation authorized by the Nation.

(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.

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

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.

208.5 Authorization

208.5-1. Investigative leave, or an extension of this leave, shall only be used:

(a) When initiated by the Executive Director of the Human Resource Department with concurrent written notice to the employee's supervisor; or

(b) When initiated by an employee's supervisor after receiving written approval from the Executive Director of the Human Resource Department or their designee, and:

- (1) Their division director; or
- (2) If there is no division director, the person at the highest level of the chain of command under the Oneida Business Committee.

208.5-2. Approval requested in 208.5-1(b) shall be granted or denied by the Executive Director of the Human Resource Department within forty-eight (48) hours of receiving the request.

208.5-3. An investigative leave shall initially be authorized for a period of forty-five (45) days.

(a) If the investigative leave is not projected to conclude within forty-five (45) days, the initial authorizer(s) may review and authorize the extension of the investigative leave until such time that a safe and equitable determination may reasonably be reached.

208.6 Employee Notice

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

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

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

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

208.7 Investigator(s) and Reports

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

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

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

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

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

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

208.8 Duration

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

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

208.9 Employee Responsibilities

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

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

208.10 Enforcement

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

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

208.11 Appeal

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

208.12 Confidentiality

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

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

End.

OBC Approved 4-07-99-A
Amended- 08-13-14-D
Amended – BC-06-24-15-A
Amended – BC-11-13-24-I