

Title 2. Employment – Chapter 223

WORKPLACE VIOLENCE

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223.1. Purpose and Policy

223.1-1. *Purpose.* The purpose of this law is to provide all Oneida Nation employees and visitors an environment that is free of violence and the threat of violence.

223.1-2. *Policy.* It is the policy of the Nation to provide a safe and secure environment for employees to work and conduct business by establishing the procedures by which incidents of workplace violence shall be addressed.

223.2. Adoption, Amendment, Repeal

223.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-E and amended by resolution BC-01-14-26-A.

223.2-2. This law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

223.2-3. 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.

223.2-4. In the event of a conflict between a provision of this law and a provision of another law, rule, or policy the provisions of this law shall control.

223.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

223.3. Definitions

223.3-1. This section shall govern the definitions of words and phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "EEO" means the Equal Employment Opportunity Department within the Nation's Human Resources Department.
- (b) "EEO Officer" means the employee from within the EEO Department, or the employee the EEO Department assigns as designee, responsible for completing the requirements of section 223.9 of this law.
- (c) "Emotional harm" means a range of behaviors that inflict psychological pain or distress. This can include manipulation, intimidation, constant criticism, and other forms of physical abuse. Unlike physical abuse, emotional harm often leaves no visible scars.
- (d) "Employee" means any person employed by the Nation in one of the following capacities: full-time, part-time, emergency temporary, limited term, or on a contractual basis.
- (e) "Final decision" means the ultimate decision issued from the EEO Department, the Nation's Human Resources Executive Director, and the employee's supervisor regarding the allegation and investigation of the incident of workplace violence.

- (f) "Harassing" means a pattern of conduct composed of a series of acts over a period of time evidencing a continuity of purpose; the purpose being intimidation, or creating a threat, and which serves no legitimate purpose.
- (g) "Intimidation" means making others feel afraid or fearful through threatening behavior.
- (h) "Nation" means the Oneida Nation.
- (i) "Official duties" mean the duties of any employee of the Nation when that employee is actively performing their job requirements.
- (j) "Roughhousing" means wildly playful, rough, noisy, or mischievous behavior.
- (k) "Stalking" means unwanted or obsessive attention by an individual or group toward a specific person or more than one person. Stalking involves repeated visual or physical proximity, nonconsensual communication, or verbal, written, or implied threats, or a combination thereof, that would cause a reasonable person to feel unsafe.
- (l) "Supervisor" means the person or entity responsible for overseeing the employee.
- (m) "Threat" means the implication or expression of intent to inflict serious physical or emotional harm or actions that a reasonable person would interpret as a threat to their safety, the safety of a member of their family, or their property.
- (n) "Weapon" means a firearm, knife, electric weapon, club, or any other object intended to cause harm to oneself or others.
- (o) "Workplace" means any location owned and operated by the Nation, any location or event where an employee represents the Nation, including over-the-road travel in the Nation's owned or rented vehicles, circumstances where the employee is being reimbursed for expenses for attending, participating, or the time and manner the employee spends traveling to and from the event.
- (p) "Workplace violence" means any intentional act committed by an employee in a workplace or in a setting or circumstance otherwise reasonably related to employment with the Nation that:
 - (1) inflicts, attempts to inflict, or threatens to inflict emotional or physical harm on another person; or
 - (2) inflicts, attempts to inflict, or threatens to inflict damage to property of the Nation or property of another.

223.4. Application

223.4-1. This law applies to all employees in any of the Nation's workplaces and covers workplace violence whether the employee commits workplace violence during or outside the employee's normal work hours as long as the incident of workplace violence is reasonably connected to the workplace.

223.5. Prohibited Behavior

223.5-1. *Prohibited Behaviors.* Examples of workplace violence include, but are not limited to, the following prohibited behaviors:

- (a) intentionally causing physical injury to another person; which can include;
 - (1) hitting or shoving or
 - (2) throwing an object at an individual;
- (b) fighting or roughhousing that may be dangerous to others;

- (c) direct threats or intimidation;
- (d) implications or suggestions of violence;
- (e) stalking;
- (f) possessing, carrying, or using a weapon of any kind, whether in the open or concealed, on property of the Nation, including parking lots, in fleet vehicles, on other exterior premises, or while engaged in activities for the Nation;
- (g) physical restraint or confinement;
- (h) an established pattern of loud, disruptive, angry, or abusive language or behavior;
- (i) sending a threatening, harassing, or abusive message by e-mail, letter, fax, phone call, text message or any other form of electronic media;
- (j) sending a threatening, harassing, or abusive message using any social media platform;
- (k) using the workplace to violate restraining orders;
- (l) intentionally damaging property of the Nation or property of another; and
- (m) any other act that a reasonable person would perceive as constituting a threat of violence or actual violence.

223.5-2. *Exceptions to Prohibited Behavior.* An employee shall not be considered to have committed the prohibited behavior of possessing, carrying, or using a weapon under section 223.5-1(f) if the employee is actively:

- (a) performing official duties which require a weapon to be possessed, carried, or used and the weapon is possessed, carried, or used within the normal scope of those official duties;
- (b) participating in cultural activities or ceremonies on property of the Nation which require a weapon to be possessed, carried, or used and the weapon is possessed, carried, or used within the normal scope of the cultural activities or ceremonies;
- (c) hunting, fishing, or trapping on property of the Nation in accordance with the Nation's laws and rules governing hunting, fishing, and trapping and the weapon is possessed, carried, or used within the normal scope of hunting, fishing, or trapping; or
- (d) Any other action that is consistent with laws of the Nation.

223.6. Reporting Workplace Violence

223.6-1. EEO is responsible for investigating complaints, issuing the final decision, and all other duties and responsibilities detailed in section 223.9.

223.6-2. *Reporting by a non-employee.* Any non-employee is encouraged to report threats or observed workplace violence that occurs in the Nation's facilities and workplaces. A report of workplace violence given to an employee from a non-employee shall be promptly reported by the employee to EEO.

223.6-3. *Permissive Reporting by an Employee.* Any employee may report workplace violence to EEO where the employee:

- (a) is the victim of workplace violence; or
- (b) has been threatened with workplace violence.

223.6-4. *Mandatory Reporting by an Employee.* Any employee shall promptly report workplace violence to EEO where the employee witnesses a threat or an incident of workplace violence or is informed by a non-employee of a threat or an incident of workplace violence.

- (a) *Emergency Situation.* If an emergency exists or the situation is one of immediate danger to the life and safety of a person, the employee shall, if possible, without causing

themselves to be in danger, contact the Oneida Police Department or local law enforcement, and facility security, if appropriate, and take whatever emergency steps are available and appropriate to protect themselves from immediate harm. The employee shall report the incident to EEO as soon as possible.

(b) *Non-Emergency Situation.* If a non-emergency exists or the situation is not one of immediate danger to the life and safety of a person, the employee shall report the incident to EEO as soon as possible.

223.6-5. EEO and the Nation's Human Resources Department are responsible for communicating and sharing information with each other to ensure that all complaints and investigations are properly and timely handled.

223.6-6. Any employee can be in compliance with this law if the employee contacts or communicates, either verbally or in writing, with either EEO or the Nation's Human Resources Department to report an incident of workplace violence.

(a) If an employee verbally reports an incident of workplace violence to either EEO or the Nation's Human Resources Department, whichever department receives the report should instruct that employee to submit a written report to EEO.

223.7. Reporting Restraining Orders and Injunctions.

223.7-1. *Voluntary reporting.* Any employee who obtains a restraining order or injunction against another employee may provide EEO a copy of the signed order.

223.7-2. *Mandatory reporting.* Any employee who is issued a restraining order or injunction regarding another employee, shall immediately, upon receipt of the signed order against them, give a copy of the signed order to EEO.

(a) Any employee who does not immediately, upon receipt of a restraining order or injunction against them, provide a copy of the restraining order or injunction to EEO may be subject to disciplinary action under the Nation's laws, policies, and rules governing employment, up to and including termination.

223.7-3. EEO shall immediately provide copies of the restraining order or injunction to the employee's supervisor and the Nation's Human Resources Executive Director.

223.8. Future Workplace Violence

223.8-1. Where an employee has reason to believe that another employee may be victimized sometime in the future, either at the workplace or as a direct result of their employment with the Nation, the employee is encouraged to provide this information to EEO and their immediate supervisor as soon as possible for an initial assessment pursuant to section 223.9. EEO or the immediate supervisor shall inform the Oneida Police Department, local law enforcement, or facility security if appropriate.

223.8-2. *Anonymous threats.* If an employee learns of an anonymous threat, the employee shall immediately forward the information in a confidential manner to the Chief of the Oneida Police Department in accordance with the Nation's laws, policies, and rules governing anonymous letters. The employee shall also immediately notify EEO.

223.9. EEO ("Equal Employment Opportunity Department") Responsibilities

223.9-1. EEO is responsible for investigating complaints of workplace violence and will delegate such responsibilities to one employee from within EEO, who shall be known as the EEO Officer.

223.9-2. When EEO receives a complaint of workplace violence, whether verbal or in writing, the EEO Officer shall promptly notify in writing the supervisor of the employee being complained about so the supervisor:

- (a) is aware that the EEO Officer will be investigating the employee;
- (b) knows they may assist the EEO Officer in any portion of the investigation;
- (c) knows the EEO Officer may place the employee on investigative leave if they determine investigative leave to be necessary; and
- (d) knows they will be responsible, along with the EEO Officer and the Nation's Human Resources Executive Director, for implementing the final decision.

223.9-3. The EEO Officer shall promptly conduct a thorough investigation which may include the following duties:

- (a) coordinate with all involved agencies or departments;
- (b) meet with the employee filing the complaint;
- (c) visit the scene of the incident as soon as possible;
- (d) interview employees and other witnesses;
- (e) contact the Oneida Police Department or any other appropriate law enforcement agency when necessary;
- (f) send weekly updates to the employee's supervisor;
- (g) review relevant video surveillance footage if available, in accordance with standard operating procedures on the subject; and
- (h) conduct any other investigative methods necessary for a thorough investigation.

223.9-4. In performing these investigative duties, the EEO Officer shall not interfere in the investigation of any law enforcement agencies. If, at any time, criminal charges are brought against an employee as a result of an incident of workplace violence, the employee shall be placed on investigative leave in accordance with the Nation's laws, policies, and rules governing investigative leave.

223.9-5. The EEO Officer shall conclude the investigation when the EEO Officer obtains enough verifiable facts and information regarding the incident under investigation in order to make a safe and equitable final decision.

223.9-6. *Mitigation.* During the investigation, the EEO Officer and the Nation's Human Resources Executive Director are encouraged to examine the workplace for security risk factors and record any mitigating actions that could be implemented to prevent a similar occurrence of workplace violence.

223.9-7. *Investigative Leave.* The EEO Officer may place an employee alleged to be involved in an incident of workplace violence on investigative leave in accordance with the Nation's laws, policies, and rules governing investigative leave.

223.9-8. *Final decision.* The EEO Officer shall meet with the Nation's Human Resources Executive Director and the employee's supervisor to mutually determine an appropriate final decision.

- (a) *Format.* The final decision shall be in writing, contain justification, and be signed by the EEO Officer, the Nation's Human Resources Executive Director, and the employee's supervisor.

- (b) *Application*. If appropriate, the employee's supervisor will be responsible for initiating the final decision.
- (c) *Record keeping*. The final decision and all supporting documentation, included in the Investigative file, shall be filed with EEO for reporting purposes.
- (d) *Investigative file*. Three business days before the EEO Officer, the Nation's Human Resources Executive Director, and the employee's supervisor meet to determine the final decision, the EEO Officer should share the investigative file with the employee's supervisor.

223.10. Employment Eligibility

223.10-1. *Employee Resignation*. An employee who resigns from their position when there is an ongoing workplace violence investigation or in lieu of termination shall not be eligible for hiring consideration in any position with the Nation. The employee may be eligible for employment in a different position with the Nation three (3) years from the date of resignation if the employee receives a pardon from the Nation's Pardon and Forgiveness Committee. The EEO Officer shall remain responsible for completing the investigation in the event an employee resigns during an investigation.

223.10-2. *Employee Termination*. If, as a result of the completed workplace violence investigation, the employee is terminated, the employee shall not be eligible for hiring consideration in any position with the Nation. The employee may be eligible for employment in a different position with the Nation five (5) years from the date of termination if the employee receives a pardon from the Nation's Pardon and Forgiveness Committee.

223.10-3. *Immediate eligibility*. If, as the result of a completed investigation, the EEO Officer, the Nation's Human Resources Executive Director, and the employee's supervisor mutually determine in the final decision that no incident of workplace violence occurred, a copy of the final decision shall be included in the employee's file and, if the employee resigned as a direct result of the workplace violence investigation, the employee shall be immediately eligible for re-hiring consideration with the Nation.

223.11. Fraudulent Report

223.11-1. If at any time EEO is made aware that an employee made a report of workplace violence other than in good faith, the employee may be disciplined according to the Nation's laws, policies, and rules governing employment, up to and including termination.

223.12. Confidentiality

223.12-1. To the greatest extent possible, the Nation shall maintain the confidentiality of employees and the investigation. However, the Nation may need to disclose results in appropriate circumstances; for example, in order to protect individual safety.

223.12-2. Information related to the application of this law is strictly confidential. Information shall not be disclosed to third parties unless:

- (a) the prior written consent of the alleged victim is obtained;
- (b) the release of information complies with a court order; or
- (c) the release of information is pursuant to applicable laws or policies.

223.13. Enforcement

223.13-1. Any employee who violates this law may be subject to disciplinary action under the Nation's laws, policies, and rules governing employment, up to and including termination.

End

Adopted – BC-06-28-17-E

Amended – BC-01-14-26-A