

Oneida Tribe of Indians of Wisconsin

BUSINESS COMMITTEE



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

P.O. Box 365 • Oneida, WI 54155
Telephone: 920-869-4364 • Fax: 920-869-4040

BC RESOLUTION #5-24-06-PP *Adoption of Back Pay Policy*

- WHEREAS,** the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV of the Oneida Tribal Constitution by the General Tribal Council; and
- WHEREAS,** on July 20, 2005, the Oneida Appeals Commission determined that if an employee wins his or her appeal, is reinstated and owed back pay, any income earned by the employee during the back pay period through other employment should not be deducted from the total back pay amount (See Anton Williams v. Oneida Bingo & Casino, Docket #04-AC-016); and
- WHEREAS,** the Oneida Business Committee adopted a back pay policy through emergency passage of BC Resolution # 8-10-05-A which contained a duty for the employee to mitigate damages while his or her case is pending by earning income; and
- WHEREAS,** under the emergency adopted Back Pay Policy, third party earnings are deducted from back pay awards; and
- WHEREAS,** on February 1, 2006, the Oneida Business Committee extended the emergency adoption for an additional six months; and
- WHEREAS,** the Legislative Operating Committee (LOC) has recommended removing the duty to mitigate responsibility so that reinstated employees are not required to have third party earnings deducted from back pay awards; and

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WHEREAS, the LOC has submitted an amended Back Pay Policy which allows employees to keep the money earned during the suspension or termination period which is consistent with the July 20, 2005 Oneida Appeals Commission decision; and

WHEREAS, a public hearing was held on March 21, 2006 for permanent adoption of a Back Pay Policy which did not include the duty to mitigate damages.

NOW THEREFORE BE IT RESOLVED, that the attached Back Pay Policy is hereby adopted.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of nine (9) members of whom five (5) members constituting a quorum, 5 were present at the meeting duly called, noticed, and held on the 24th day of May, 2006; that the foregoing resolution was duly adopted at such meeting by a vote of 4 members for; 0 members against; 0 members not voting; and that said resolution has not been rescinded or amended in any way.



Patricia Hoeft, Secretary
Oneida Business Committee

BACK PAY POLICY

1-1. Purpose and Policy
2-1. Adoption, Amendment, Appeal
3-1. Definitions

4-1. Back Pay Calculation
5-1. Back Pay Process

1-1. Purpose and Policy. The purpose of this law is to set forth standards used in the calculation of back pay for all employees of the Oneida Tribe in accordance with Oneida law.

2-1. Adoption, Amendment, Appeal.

- 2-1. This policy was adopted by the Oneida Business Committee by resolution BC-5-24-06-PP.
2-2. This policy may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.
2-3. Should a provision of this policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policy which are considered to have legal force without the invalid portions.
2-4. Any policy, regulation, rule, resolution, motion or commission decision, or portion thereof, which directly conflicts with the provisions of this policy is hereby repealed to the extent that it is inconsistent with or is contrary to this policy.
2-5. This policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

3-1. Definitions.

3-1. Back pay is money damages owed to the employee for a salary that would have been earned in the time taken to litigate the employment dispute.

4-1. Back Pay Calculation.

4-1. Back Pay Period. Calculation of back pay begins on the day the employee is suspended or terminated and ends on the day the employee returns to work, due to either the end of the suspension period or reinstatement.

- (a) If the employee is offered reinstatement but refuses to return to work, the back pay period ends on the date the offer of reinstatement was made.
(b) The employee shall be paid according to the schedule or the average number of hours worked immediately prior to suspension/termination. For instance, if the employee observed a reduced-hour schedule at the time of termination, back pay shall be calculated according to the same schedule.
(c) The back pay period does not include time when the employee would not have been eligible to work, such as during a medical leave of absence that was scheduled prior to suspension/termination.

4-2. Unemployment Benefits. The employee is responsible for reimbursement to the State of Wisconsin with respect to unemployment compensation received, if any, during the back pay period. The Oneida Tribe shall send a copy of the completed and signed settlement agreement to the Unemployment Insurance Division of the Wisconsin Department of Workforce Development. The Unemployment Insurance Division shall then determine whether the employee should repay any unemployment compensation benefits received during the back pay period and will pursue employee

for such repayment, if necessary.

4-3. Vacation/Personal Time Accrual. Employees shall receive prorated credit for vacation/personal time which would have accrued during the back pay period. However, such credit shall not be given in the event the suspension or termination results in less than 80 hours away from work, as the accrual of vacation/personal time during such a short time period is de minimis.

(a) Reinstated employees shall be given a choice of cash payout or crediting vacation/personal time. Non-reinstated employees shall be paid out vacation/personal time in lieu of crediting personal/vacation time.

4-4. Shift Differential. Shift differential shall be included in the back pay amount to the extent the employee would have received such pay if the employee had actually worked hours eligible for shift differential.

4-5. Tips. If the employee received pooled tips at the time of suspension/termination, tips shall be included in the total back pay amount at the same tip rate that other employees in the same position and on the same shift received on the same dates.

(a) If the employee received individual tips at the time of suspension/termination, the employee is ineligible for tips during the back pay period.

4-6. Holiday Pay. Holiday pay shall be included in the back pay amount to the extent the employee would have received such pay if the employee had not been suspended/terminated.

4-7. Holiday Worked Pay. Holiday worked pay shall be included in the back pay amount to the extent the employee would have received such pay if the employee had actually worked hours eligible for holiday worked pay.

4-8. Merits increases. The hourly rate used to calculate back pay shall be increased according to the merit increase system/standard used by the employee's supervisor during the back pay period.

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

(b) The most recent performance review issued to the employee prior to suspension/termination shall be used to determine the level of merit increase. However, if the employee appealed the performance review to the HRD Manager prior to suspension/termination under Oneida Personnel Policies and Procedures Section V.B.4.b., another method of determining the merit increase shall be used.

4-9. Bonuses and Incentives. All bonus and incentive payments for which the employee would have been eligible during the back pay period shall be included in the total back pay amount, except for non-monetary gifts distributed by the Tribe to all employees (e.g. Winter Gift gift certificates) or other non-monetary benefits, such as clothing allowance.

4-10. Employment Benefits.

(a) Health Insurance Premiums. In the case of termination, the employee may choose whether medical, dental, vision or other health insurance related premiums shall be deducted from the back pay award.

(1) In the event the employee chooses not to have such premiums deducted, the Oneida Tribe shall not be responsible for payment or reimbursement of any medical, dental, or other health related bills during the period of termination.

(2) If the employee's circumstances have changed during the back pay period and such circumstances affect the employee's health insurance needs (e.g. birth or

adoption of a child, marriage, divorce), the employee must notify the Tribe of such changes at the time of reinstatement.

(3) In the case of suspension, the Tribe shall deduct health insurance premiums. Accordingly, health insurance coverage by the Tribe shall continue during the period of suspension.

(b) Flexible Benefit Plan Contributions. If a terminated employee was contributing to the Tribe's flexible benefit plan at the time of termination, the employee must make retroactive contributions to cover the back pay period in order to qualify for reimbursement for any qualifying claims incurred during the back pay period.

(c) Supplemental Insurance. The Tribe does not currently offer a supplemental insurance plan as an employee benefit. If a terminated employee was participating in a supplemental insurance program at the time of termination, the employee is solely responsible for reinstatement of coverage and premium payments during the back pay period.

(d) Retirement Benefit Contributions. In the event the employee was participating in the Oneida Tribe's 401(k) plan at the time of suspension/termination, the employee is responsible for contacting the 401(k) plan administrator and reactivating contributions.

(1) The employee may choose whether to have the employee's contribution to the 401(k) plan that would have been made during the back pay period deducted from the total back pay amount and deposited into the employee's 401(k) account.

(2) If the employee was eligible for employer matching contributions at the time of suspension/termination and the employee chooses to make a contribution through back pay, the Oneida Tribe shall contribute the employer match into the employee's 401(k) account.

(3) If the employee was not participating in the Oneida Tribe's 401(k) plan or chooses not to make contributions through the back pay process, then the Oneida Tribe shall not make employer match contributions into the employee's 401(k) account or otherwise make payments to the employee in lieu of employer match contributions.

4-11. Payments Not Allowed. The Oneida Tribe shall not include the following in any back pay amount:

- (a) Punitive damages;
- (b) Consequential damages (e.g. Penalties on early withdrawal of 401(k) account);
- (c) Attorney's fees.¹

5-1. Back Pay Process.

5-1. All personnel settlement agreements are subject to review by the Oneida Law Office prior to execution or implementation.

5-2. The Oneida Law Office shall work with the employee's supervisor, the Human Resource Department and the employee/advocate to assemble information and prepare the back pay settlement

¹Oneida Personal Policies and Procedures, Article V. D 5. The petitioner shall have the right to be represented by an advocate if he/she so chooses. The expenses of the advocate shall be the total responsibility of the petitioner. The respondent and/or area manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or area manager shall have access to professional legal representation.

document.

5-3. The Oneida Law Office may develop necessary forms and procedures necessary for the purpose of implementing this Policy.

End.

Adopted - BC-5-24-06-PP