

Back Pay Policy

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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 and amended by resolution BC-06-23-10-F.

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or commission decision, or portion thereof, which directly conflicts with the provisions of this policy is hereby repealed to the extent that it is inconsistent with or is contrary to this policy.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, minus amounts that are deducted from salary or income earned from a third-party employer.

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 or 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. Income Received During the Back Pay Period.

(a) 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.

(b) Income Received Through Employment. Except as provided in 4-2(b)(2), income earned by an employee during the back pay period shall be deducted from the total back pay amount.

(1) The employee shall provide information to verify the amount of or lack of earned income (e.g. federal income tax return, W-2 statements) and sign an affidavit attesting to the amount of or lack of earned income.

(2) If the employee worked an additional job prior to and at the time of the termination or suspension and continued working in the same capacity, the income earned from that employment shall not be deducted from the total back pay amount to the extent that the income is consistent with pre-termination or pre-suspension earnings. Where the employee worked the additional job, the employee shall provide information from the employer to verify the income earned before and during the back pay period.

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 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

Amended – BC-06-23-10-F

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.