

Drug and Alcohol Free Work Place Policy
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Drug and Alcohol Free Work Place Policy

Article I. Purpose and Policy

1-1. The Oneida Tribe is concerned with the well-being of its employees, their families, and the community. The abuse of alcohol and drugs is inconsistent with and contrary to the traditions of the Oneida culture, including the dimensions of physical, mental, emotional and spiritual health. The Oneida Tribe recognizes that the abuse of alcohol and drugs breaks down the individual, family and community and places future generations in jeopardy. The abuse of alcohol and drugs by the Oneida Tribe’s employees can also pose an immediate health and safety threat to customers and other employees.

1-2. The Oneida Tribe’s goal is to establish and maintain a work environment that is free from the effects of alcohol and drugs. The Oneida Tribe recognizes that a proactive approach to the problems attendant to alcohol or drug abuse requires an interaction of education, assistance, deterrents and discipline. Problem free employees are prone to be more productive and reliable; be more balanced in body, mind, and spirit; and have better work attendance.

1-3. The Oneida Tribe will respect the employee’s personal dignity, privacy, and Native American religious freedom in reaching its drug free work place goal, consistent with the legal, safety, and security considerations. While the Oneida Tribe has no intention of intruding into the private lives of its employees, it does expect employees to report for work in a condition fully able to perform their duties and to refrain from the use of alcohol and illegal drugs while on duty.

Article II. Adoption, Amendment, Repeal

2-1. This policy was adopted by the Oneida Business Committee by BC-10-25-95-A and amended by BC-10-20-99-A and BC-12-05-07-B.

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rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this policy is hereby repealed to the extent that it is inconsistent with or is contrary to this policy.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.

Article III. Definitions

3-1. This section shall govern the definitions of words and phrases used within this policy. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Department” means the employee and the office of the Employee Health Nursing Department supervised by the Employee Health Nursing Supervisor.
- (b) “Director” as used in this policy means the person to whom the supervisor reports.
- (c) “EAP” means the Employee Assistance Program.
- (d) “Medical examination” is a urine drug screen or a preliminary breath test or alco-sensor intoxometer test.

(e) "Positive results" means that level identified by the Federal government for persons holding a Commercial Driver's License as a positive drug and/or alcohol test result, regardless of employment position within the Tribe.

(f) "Return to work agreement" means an agreement, developed by an EAP counselor and signed by the employee and the EAP counselor, which sets out the actions the employee needs to complete in order to return to work and remain employed.

(g) "Supervisor" as used in this policy means a person with direct responsibility over the duties of an employee.

(h) "Tribal property" is all land or buildings owned or leased by the Tribe and all equipment owned or operated by the Tribe.

(i) "Tribe" means the Oneida Tribe of Indians of Wisconsin.

(j) "Work environment" is considered to be all of the Tribe's facilities, and all customer facilities and job sites, and any locations where an employee represents the Tribe during normal business hours, including over-the-road travel in the Tribe's owned or rented vehicles and circumstances where the employee is being reimbursed for expenses.

Article IV. General

4-1. The Tribe requires employees to:

(a) arrive at work as scheduled in a sober and reliable state free of the influence of alcohol and/or drugs; and

(b) remain free from the influence of alcohol and/or drugs while they are on the job.

4-2. The Tribe prohibits the unauthorized use, possession or sale of alcohol or drugs on Tribal property or during Tribe sponsored or approved events.

4-3. No one returning to duty or starting a shift should be under the influence of any amount of alcohol or drugs.

4-4. Failure to comply with any section of this policy may result in disciplinary action, from a written warning to immediate termination.

4-5. A Tribe employee may be asked to undergo a medical examination which may include a drug and alcohol test when the employee's on the job behavior suggests that he or she may be under the influence of alcohol or drugs.

4-6. All persons who are employed, currently employed, or new employees prior to beginning work, shall sign acknowledgment of receipt of this policy as a supplement to an Employee Handbook for current employees, or as part of an Employee Handbook for new employees. All employees shall have this acknowledgment in their files within five (5) days of attending the New Employee Orientation Program. Furthermore, all employees hired or transferred into supervisory positions shall receive training and retraining regarding this policy as determined by HRD.

4-7. "On-call" employees are subject to the provisions of this policy.

Article V. Employee Assistance Program

5-1. The Tribe provides an Employee Assistance Program (EAP) for employees with alcohol or drug related problems.

5-2. The EAP offers confidential professional assistance to employees and their family members. This service provides a constructive way for employees and their family members to

deal with alcohol or drug related problems before they interfere with job performance and continued employment.

5-3. Any employee whose abuse of prescription drugs results in poor work performance shall be referred to the EAP for assessment and treatment. If the employee's poor work performance continues, appropriate disciplinary action may be taken.

5-4. An employee's involvement with this or any other assistance program does not excuse or limit his or her obligation to meet Tribe policy or standards regarding job performance, and safe and sober behavior on the job.

5-5. The Tribe accepts referrals only to the Oneida EAP. Employees wishing to take advantage of other programs at their own expense must do so through a referral from the EAP.

Article VI. Prescription Drugs

6-1. The use of controlled substances as part of a prescribed treatment program is naturally not grounds for disciplinary action, provided that sufficient steps were taken as described in section 6-3.

6-2. Employees undergoing prescribed medical treatment with a controlled substance which may alter their physical or mental ability shall report this fact in writing to their immediate supervisor a reasonable amount of time prior to their reporting to work. "Reasonable" in this section means a sufficient amount of time after a medication is prescribed with known side effects and the beginning of an assigned shift in order to allow the supervisor to obtain a replacement if necessary.

6-3. The Tribe shall make an evaluation whether the employee's job assignments are affected.

(a) The Tribe reserves the right to temporarily reassign employees during the evaluation process if it is found that the drugs will temporarily affect their job assignments.

(b) The evaluation process is limited to the shortest possible time, as determined by the circumstances, in the judgement of the supervisors and directors involved.

(c) Temporary reassignment shall not result in a loss or reduction of pay.

6-4. Final determination of an employee's job assignment in the case of permanent impairment, shall depend on the special circumstances involved in the employee's condition, the requirements of the job assignment, and the availability of other jobs. Permanent reassignment may result in a change in grade/step status.

Article VII. Supervisor Responsibility

7-1. The personal safety and health of each employee, customer, and client of the Tribe is of primary importance. It is the responsibility of the Tribe to ensure that employees do not endanger themselves or others for any reason. It is important that supervisors do not ignore potentially dangerous or unacceptable on the job behavior. It is the expectation of the Tribe that supervisors will faithfully and fairly take appropriate action as prescribed by this policy.

7-2. Supervisors that fail to reasonably monitor employees in the manner described in section 7-1 shall be subject to disciplinary actions. "Reasonably" as used in this section means proper monitoring of supervised employees, and other employees in the area not under their supervision, in regards to the behavior examples given in section 7-3, with prompt action taken in regards to any action noted.

7-3. Examples of behavior that could give a supervisor reason to question whether the employee is under the influence of drugs or alcohol include, but are not limited to:

- (a) the smell of alcohol on the breath
- (b) impaired gait
- (c) slurred or abnormal speech
- (d) disruptive behavior
- (e) sleeping on the job
- (f) frequent and unexplained absences from the work station
- (g) erratic work performance
- (h) involvement in a serious work site accident or pattern of accidents
- (i) irresponsibility in completing tasks
- (j) wasted materials or damaged equipment
- (k) mood swings
- (l) outbursts of inappropriate anger, fears, or laughter
- (m) inappropriate remarks
- (n) complaints from co-workers, associates or the public

7-4. When a supervisor observes or becomes aware of on the job employee behavior that would give reason to believe the employee may be under the influence, it is the supervisor's responsibility to direct the employee to stop work and explain their behavior.

- (a) If the employee's explanation is acceptable, then no further action is required of the supervisor, however, the supervisor should take action to ensure the behavior does not occur again.
- (b) If the employee's explanation is unacceptable or not forthcoming, then the supervisor may:
 - (1) Discipline the employee; or
 - (2) Request the employee to obtain an EAP assessment and return documentation showing he or she did so; or
 - (3) After receiving the approval of the director, ask the employee to undergo a medical examination as defined in 3-1(d) and directed in Article IX.
 - (A) The director may deny authority to request such testing only where reasonable grounds for suspecting drug or alcohol use have not been met by the supervisor.
 - (i) If the director denies the request to test the employee, the supervisor may request alternative action from the director and/or may discipline the employee appropriately. The supervisor shall also document the behavior that led to the request, including the date, witnesses, and other relevant information.

Article VIII. Employee Refusal to Take a Medical Examination

8-1. The employee may refuse to take the test. However, the request to participate in a medical examination shall be considered an instruction to perform a work assignment. A refusal to participate in a medical examination shall result in any of the following actions:

- (a) If it is the first time a suspected problem is noted, the employee shall be suspended without pay for the remainder of his or her shift, and the supervisor shall create a written

disciplinary action which describes the specific behavior observed, the explanation of the employee, the date/time the incident occurred and any other information deemed pertinent by the supervisor. The employee may submit their own incident report at any time after the written disciplinary action is completed. This written disciplinary action taken after refusal to take a medical examination shall be placed in the employee's file.

(1) A suspension for failure to participate in a medical exam shall last for up to five (5) days.

(A) An employee may return to work only after reasonable documentation that such behavior will not occur on the job in the future has been received by the supervisor. This documentation may include a letter from the employee and shall be received by the supervisor within five (5) days after the suspension began. An employee failing to take such action shall be automatically terminated from employment and is ineligible for reemployment within the Tribe for one (1) year.

(B) The supervisor may require the employee to receive an assessment from the EAP after the documentation is received.

(b) If it is the second time a problem is suspected and the employee refuses to take a medical examination, the employee shall be treated as if he or she had failed the medical exam a second time and the consequences shall be the same as under 9-6(b).

(c) If it is the third time a problem is suspected and the employee refuses to take a medical examination, the employee shall be treated as if he or she had failed the medical exam a third time and the consequences shall be the same as under 9-6(c).

Article IX. Fitness for Duty Medical Examination

9-1. When it is determined that a medical examination is necessary, the supervisor shall use, in all cases, the least intrusive most specific test.

9-2. The following are approved medical examinations:

(a) Urine drug testing administered by the Department or a facility approved by the Human Resource Department. A urine drug test shall be used only in cases where drug use is suspected.

(b) Preliminary Breathalyzer test or alco-sensor intoxometer administered by the Department or a facility approved by the Human Resource Department. These tests shall be administered only in cases where alcohol use is suspected.

9-3. In all cases where an employee agrees to take a medical examination, the following shall take place:

(a) A consent form, approved by the Oneida Law Office, shall be signed by the employee who is being tested; and

(b) The employee shall be sent directly to the testing site within two hours of the request for a medical exam. An employee failing to report to a test site within two hours shall be considered to have refused to take the medical exam.

(1) Supervisors are required to make transportation arrangements for employees choosing to undergo drug or alcohol testing. Any transportation arrangements shall be limited to transporting the employee to the testing site and returning to the employment site.

- (c) The employee is placed on immediate suspension without pay until:
- (1) negative test results are received from the Department; or
 - (2) if positive test results are received, the employee completes the appropriate requirements under 9-6.

9-4. If an outside test facility is utilized, the test facility shall forward all results to the Department. The Department shall contact the employee to inform him or her of the results of the test and the steps to be taken based on those results.

9-5. Negative Test Results. If the test is negative, the Department shall notify the supervisor of the employee's ability to return to work. The employee shall be notified to return to work and, if the behavior warranting the test did not justify suspension on its own, shall receive full back pay for any regularly scheduled hours they were suspended. An employee receiving a negative test result shall have a notation of such results placed on the documentation within his or her employee file. The supervisor shall take appropriate action to verify that the behavior leading to the request for a medical examination does not reoccur.

9-6. Positive Test Results. Actions taken as a result of positive test results shall follow the guidelines set out herein:

- (a) First occurrence.
 - (1) The employee is referred to the EAP and is required to complete a return to work agreement as defined in 3-1(f).
- (b) Second occurrence.
 - (1) The employee is automatically suspended without pay for five (5) days, beginning from the date of notification.
 - (2) The employee is referred to the EAP and is required to complete a return to work agreement as defined in 3-1(f).
- (c) Third occurrence.
 - (1) The employee is terminated from employment with the Tribe and ineligible for re-employment with the Tribe for one (1) year.
- (d) Return to work agreements shall be received by the supervisor within ten (10) days after date of referral. Failure to provide the supervisor with a return to work agreement within the appropriate time results in termination of the employee who shall be ineligible for re-employment with the Tribe for one (1) year.

9-7. In no case is a medical examination requested under this policy to be used by the Tribe to prosecute an employee in a criminal venue. Provided however, that results of said test(s) may be placed in the employee health file of that employee and used in any grievance matter.

End.

See GTC-1-31-94-B

Adopted by the BC on 8-17-94

Emergency Amendments BC-4-20-95-C

Adopted - BC-10-25-95-A (repealed previous versions)

Amended BC-10-20-99-A

Amendments Adopted BC-12-05-07-B