

Chapter 58 Garnishment Ordinance

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58.1-1. Purpose and Policy. The purpose of this Ordinance is to utilize the authority of the Oneida Tribe of Indians to provide an effective mechanism for creditors to access an employee's income for reduction of personal debt.

58.1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to afford all individuals due process.

58.2-1. Adoption, Amendment, Repeal. This law is adopted by the Oneida Business Committee by resolution # BC-4-2-97-G.

58.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or Oneida General Tribal Council.

58.2-3. 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.

58.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this law are hereby repealed unless specifically re-enacted after adoption of this policy.

58.2-5. This law may be cited as the "Garnishment Ordinance."

58.2-6. This law may be interpreted to allow the fullest protections available to respondents available by the federal Consumer Protection Act, 16 U.S.C. §1671, et seq., state laws protecting respondents in Child Support Orders, and other federal laws.

58.3-1. Definitions. This Article shall govern the definitions of words or phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

58.3-2. "Compensation" shall mean remuneration paid or payable for personal services and travel, denominated as wages, bonuses, salary, expenses, and/or mileage. Compensation shall include any trade-back-for-cash benefit or final paycheck involving pay-out of benefits for a discharged employee.

58.3-3. "Creditor" shall refer to one who seeks payment from the respondent through the process of garnishment, pursuant to a Final Judgment through a garnishment action. The Oneida Tribe is not excluded from being the creditor. This includes all departments, programs, enterprises, authorities, or other bodies created pursuant to Tribal law. Should the Oneida Tribe be the creditor, a designee of the department, program or enterprise shall represent the claim of indebtedness.

58.3-4. "Employee" shall mean any employee of the Oneida Tribe.

58.3-5. "Oneida Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.

58.3-6. "Garnishment" shall mean the process in which money in the hands of the Oneida Tribe of Indians of Wisconsin as employer, due to the respondent and are being claimed by a creditor.

58.3-7. "Reservation" shall mean all lands within the Oneida Indian Reservation of Wisconsin as

established by the Treaty with the Oneida, 1838.

58.3-8. "Respondent" shall mean the employee of the Oneida Tribe who is subject to a garnishment action within the Oneida Tribe or person subject to a repayment action.

58.3-9. "Hearing Officer" shall mean the Oneida Appeals Commission and the representative designated to hear the garnishment action.

58.3-10. "Accounting Department" means that department of the Oneida Tribe charged with managing the finances of the Oneida Tribe, specifically, the office charged with responsibility for the payroll of the Oneida Tribe. That office shall designate a representative for receiving garnishment orders, irrevocable voluntary payroll deduction agreements, and child support orders, which shall be forwarded to the Hearing Body.

58.4-1. Garnishment Action Procedure. Judgement Required. A creditor shall begin a garnishment action against an employee of the Oneida Tribe by first obtaining a final judgment from an appropriate court. A garnishment action under this section shall not begin unless the creditor has already obtained a valid final judgment and can show proof of judgment to the Hearing Officer.

58.4-2. Filing Action. The creditor shall be responsible for notifying the Hearing Officer of its intent to begin the garnishment action.

(a) A written notice shall be mailed or given to the Hearing Officer indicating the creditor, the intended respondent, the reason for the claim and the amount of the claim.

(b) The Hearing Officer shall, within ten days, set a date and time for a garnishment hearing. The date for the hearing shall be within sixty days of receipt of the first notification to the Hearing Officer.

(c) It is the responsibility of the Hearing Officer to notify the creditor, respondent, and any other parties in interest as to the date, time and place of the garnishment hearing.

58.4-3. Hearing. The Hearing Officer shall establish a designated date, time, and place to hear evidence in order to render a determination as to the validity of a claim by the creditor in a garnishment action and the amount of the garnishment order to be entered. Hearings shall not be utilized to challenge the validity of the final judgement other than the authenticity of the document. The time may be used to resolve one or more deduction claims of one or more employees. However, each claim shall be heard and determined separately. This hearing will be known as the Garnishment Hearing.

58.4-4. Final Decision. The Hearing Officer will make the final decision as to the garnishment action within five days of the garnishment hearing and notify by formal order all parties within ten days of the decision.

58.4-5. Representation. The respondent and creditor may represent themselves or be represented by someone to speak on their behalf, if they so choose. Both parties shall have an equal opportunity to present evidence as to the action to be taken before a Hearing Officer at the garnishment hearing.

58.4-6. Notice of Garnishment. The Hearing Officer will notify the Accounting Department should a decision to garnish an employee's compensation be made. Such notice shall be forwarded after the deadline for an appeal has passed. Provided that, no garnishments shall be allowed where an appeal has been filed by an employee within the appeal deadline. The notice shall contain the amount to be garnished, how long the garnishment will take place or the number of garnishment and any related fees authorized under this Ordinance.

58.4-7. Garnishment Implementation. The Accounting Department shall begin garnishments within ten days of notification of the judgment. The Accounting Department shall then:

(a) Send to the creditor the allowable amount garnished from the employee's paycheck following each payroll period.

(b) Notify the employee and creditor when the garnishments are terminated.

58.4-8. Summary Process. Where the claim of indebtedness is \$50.00 or less, it shall be processed summarily by the Hearing Officer unless the debtor formally requests a hearing.

58.4-9 Appeals. A respondent has ten days from the date of receipt of the notice to file an appeal of a garnishment order with the Oneida Appeals Commission.

58.4-10. Records. The Hearing Officer shall keep complete records of all garnishment actions that are started and/or completed. The records shall contain:

(a) Correspondence and notices to all parties involved.

(b) Bookkeeping records.

(c) Garnishment evidence presented by all parties.

(d) Decisions made by the Hearing Officer.

58.5-1. Garnishment Action Fee. At the time of creditor's first notice to the Hearing Officer, the creditor shall pay a fee of \$25.00 which shall be known as the Garnishment Action Fee. The Hearing Officer is not required to begin any action on the claim until the fee is paid. The fee shall be charged to the respondent should a decision be made to garnish. The fee will be applicable in each case, except that in cases where indebtedness is with a department, program or enterprise of the Oneida Tribe.

58.5-2. Administrative Fee. An administrative fee of \$5.00 shall be deducted monthly along with the ordered garnishment until the amount claimed is paid in full. This fee is to cover the cost of garnishing as expended by the Accounting Department.

58.5-3. Amount of Garnishment. The Hearing Officer may order the employee's compensation to be subject to a garnishment of up to twenty percent of the employee's disposable weekly wage, the remainder to be identified as a protected subsistence allowance. Provided that, in calculating twenty percent, the Hearing Officer shall not include amounts garnished regarding child support orders. The employee may voluntarily request more to be deducted. The request shall be made directly to the Accounting Department.

58.5-4. Exceptions to 20 % Presumption. It is presumed that the beginning amount to be deducted in any garnishment hearing shall begin at twenty percent of the employee's weekly wages. The respondent is responsible for presenting evidence that it is unreasonable to require the full twenty percent to be deducted. Examples of exceptions shall include, but not be limited to, pre-existing garnishment orders, child support orders that would leave less than 50% of the debtor's wages, other evidence presented which would cause garnishments such that additional garnishment orders would cause undue harm.

58.6-1. Irrevocable Voluntary Payroll Deduction. An employee may request an irrevocable voluntary payroll deduction negotiated with a creditor for legal debts. The request must be signed by the employee and submitted to the Accounting Department.

58.6-2. Preemption of Garnishment Acton. If the request is made prior to a garnishment action

decision or during a garnishment action:

- (a) The irrevocable voluntary payroll deduction request must be made to the Hearing Officer.
- (b) The Hearing Officer shall notify the creditor of the request.
- (c) If the parties agree, the Hearing Officer may then cancel the hearing, notify all parties and forward the executed agreement to the Accounting Department.

58.6-3. Administrative Fee. An administrative fee of \$5.00 shall be assessed monthly so long as the irrevocable voluntary payroll deduction is in effect.

58.7-1. Recognition of Order. Orders for child support against any employee shall be recognized and enforced, provided that the order has been issued from a court of competent jurisdiction.

58.7-2. Authenticity of Order. The Hearing Officer shall receive such orders, and verify the authenticity of the order. Upon verification of the child support order, the Hearing Officer shall forward such order to the Accounting Department for action.

58.7-3. Administrative Fee. An administrative fee of \$5.00 shall be assessed monthly so long as the child support deduction is in effect.

58.8-1. Discharge from Employment. The Oneida Tribe shall not discharge an employee because an employee is being subjected to garnishment actions.

58.8-2. Jurisdiction. All creditor filing a garnishment action must sign a Jurisdiction Submission Statement. The statement will indicate that the creditor is submitting to the jurisdiction of the Oneida Tribe in that particular action.

End.

Adopted - BC-6-2-92
Adopted - BC-6-10-92
Adopted - BC-4-2-97-G