

ONEIDA INDIAN NATION WORKERS' COMPENSATION ORDINANCE

Ordinance No.: O-15-1

The Oneida Indian Nation (the "Nation") adopts and enacts this Ordinance pursuant to its powers of self-government to establish a Nation Workers' Compensation program. This Ordinance supersedes and replaces Ordinance No.: O-14-6.

Article I – Purpose and Scope

1. The purpose of this Ordinance is to authorize the Nation to establish the sole and exclusive program for the payment of benefits to covered employees who sustain injury arising out of and in the course of employment for a covered employer, and to establish a fair, prompt and efficient mechanism for exclusive adjudication of disputes relating to such benefits.
2. The Nation Representative(s) shall have the duty to implement this Ordinance, and specifically shall have the duty to promulgate additional regulations, rules and administrative guidelines as the Nation Representative(s), or such other designee, deems appropriate to carry out the purposes of this Ordinance (the "Rules").

Article II – Definitions

1. Definitions. For purposes of this Ordinance:

"Employee" means any person, other than an independent contractor or an individual employed by an independent contractor, who is employed by an employer subject to this Ordinance to render personal services, or who is an elected or appointed official of the Oneida Indian Nation. "Employee" shall not be interpreted to include:

- i. any person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business;
- ii. any persons who are members of a supervised amateur athletic activity operated on a non-profit basis;
- iii. a musician or a person otherwise engaged in the performing arts, unless, by written contract, such musician or person is stipulated to be an employee of an subject to this Ordinance. "Engaged in the performing arts" shall mean performing any service in connection with the production of or performance in any artistic endeavor or live performance, which requires artistic or technical skill or expertise.
- iv. a person operating pursuant to an Exhibitor's License issued by the Nation Department of Taxation, or any similar temporary Nation business or performance license, or any person employed by such person.
- v. a person whose employment is covered under the Federal Employees' Compensation Act (5 U.S.C. § 8101 et seq.) or any other United States federal workers' compensation program.

“Employer” means the Oneida Indian Nation and its governmental entities, agencies and instrumentalities, and businesses or corporations owned by the Oneida Indian Nation or its instrumentalities.

Article III – Compensation for Covered Injuries; Exclusive Remedy

1. Compensable Injury. An employer subject to this Ordinance shall, in accordance with this Ordinance and any Rules promulgated pursuant to this Ordinance, compensate an employee of the employer for his/her disability or death resulting from an injury arising out of and in the course of the employment, without regard to fault as a cause of the injury. The employer shall provide benefit levels that meet or exceed the benefit levels required or provided by New York State’s Workers’ Compensation Law.

2. Exclusive Remedy. Except as provided in this Ordinance, an employer shall not be liable in any action for damages on account of an injury sustained by an employee arising out of and in the course of employment, or on account of disability or death resulting from injury so sustained, unless such injury to the injured employee is sustained due to an intentional tort perpetrated by the employer or at the employer's direction, provided, however, that nothing in the preceding clause shall be interpreted to create a right of action for an employee so injured. The remedies provided in this Ordinance shall be exclusive and in place of any other liability or remedy whatsoever, to an injured employee, his personal representatives, spouse, parents, dependents, next of kin, agents, heirs, or assigns. Provided, however, that nothing in this Ordinance shall prohibit an employee from securing, by written agreement with his/her employer, additional compensation from the employer for the injury or from enforcing any agreement for additional compensation under applicable law.

Article IV – Arbitration

1. Arbitration. In the event of any disputes or controversies arising under Article III of this Ordinance, the sole and exclusive remedy of both the employee and the employer shall be to request binding arbitration of such dispute or controversy in accordance with the procedures of the American Arbitration Association or any successor thereto (the “AAA”). Such binding arbitration shall be pursuant to the AAA Commercial Arbitration Rules. The arbitration proceedings shall be presided over by one (1) arbitrator. The arbitrator shall be selected in the following matter:

- (a) The AAA shall send simultaneously to each party to the dispute an identical list of 10 names of persons chosen from the National Roster. If the parties agree to an arbitrator from the submitted list, then they shall advise the AAA of their agreement.
- (b) If the parties are unable to agree upon an arbitrator, each party shall have 14 calendar days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable to that party. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the

appointment cannot be made from the submitted lists, the AAA shall appoint an arbitrator from among other members of the National Roster without the submission of additional lists.

The award of the arbitrator will be final, binding and non-appealable. An action to enforce any arbitration award may be brought in any court of competent jurisdiction. All arbitration proceedings shall be held in Oneida County, New York, or at such place as the parties may jointly agree. Each party shall bear its own attorneys' fees and expenses. The Nation, however, will pay the costs of the arbitration, including the arbitrator's fees.

Article V – Statute of Limitations

1. Statute of Limitations. No claim to compensation under this Ordinance shall be maintained unless a written notice of claim for compensation has been filed within two (2) years of:
 - A. In the case of accidental injury, the date of the accident, or if death results therefrom, within two (2) year after the date of such death; or
 - B. In the case of occupational disease, within two (2) years from the first manifestation of a symptom of the occupational disease, or from the last workplace exposure to incidents of repetitive trauma, or from the date that the employee knew or should have known that the disease is or was due to the inherent nature of the employment, whichever date is later.
2. Waiver of Statute of Limitations. The employer shall be deemed to have waived the bar of the statute provided in Article V, Section 1 unless the objection to the failure to file the notice of claim within two (2) years is raised on the first hearing on such claim at which all parties in interest are present.

Article VI Interpretation

1. By adoption of this Ordinance, the Oneida Indian Nation hereby consents to a limited waiver of sovereign immunity for the sole and limited purpose of allowing remedies specified in this Ordinance and only in the forum set forth this Ordinance. This limited waiver of sovereign immunity is strictly limited to the remedies contained in this Ordinance. No other private right of action by any person, partnership, association, corporation, trust, legal representative, or any other entity is created, nor is the Oneida Indian Nation's sovereign immunity waived for any other right of action.
2. Except as set forth in section 1 of this Article, the Nation does not, by enacting this Ordinance, waive in any respect its sovereign immunity, or that of its agents or officers, in any manner, under any law, for any purpose, or in any place.
2. This Ordinance is not subject to review or modification in any state or federal court or by an authority outside the Nation and is not subject to review or modification in any Nation court. Nothing in this Ordinance shall constitute, or be construed as, the Nation's consent to the extension of jurisdiction by the State of New York or by any municipality over matters coming within the purview of this Ordinance.
3. This Ordinance does not create any other right, cause of action or benefit enforceable at law or in equity by any person against the Nation, its agents, its officers or employees, or any other person.

Article VII – Effective Date

This Ordinance is effective upon its enactment.

Enacted this 3rd day of March, 2015.



Ray Halbritter
Nation Representative(s)