

**ONEIDA INDIAN NATION
TRIBAL EMPLOYMENT RIGHTS ORDINANCE**

Ordinance No.: O-18-02

The Oneida Indian Nation (the "Nation") adopts and enacts this Ordinance pursuant to its powers of self-government to provide for the protection of employment rights for covered employees of the Nation.

Article I – Purpose and Scope

1. The purpose of this Ordinance is to prohibit discriminatory employment practices and policies on Nation lands, to provide for certain other employment rights for covered employees as specified herein, and to establish a fair, prompt and efficient mechanism for adjudication and remedy of disputes relating to employment rights under this Ordinance.
2. The Nation Representative(s) shall have the duty and authority to implement this Ordinance, and specifically shall have the authority to promulgate any additional regulations, rules and administrative guidelines as the Nation Representative(s) or his/her designee, deems appropriate to carry out the purposes of this Ordinance.

Article II – Definitions

1. Definitions. For purposes of this Ordinance:

(a) "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 services to the employer in exchange for compensation. "Employee" shall not include:

- (i) any person who is an elected or appointed official of the Oneida Indian Nation, including the Nation Representative(s), members of the Nation Council, or individuals directly appointed by the Nation Representative(s) or members of the Nation Council to support or assist the Nation Representative(s) or Nation Council, without compensation, in the fulfillment of their duties;
- (ii) any persons who participate in amateur athletic activity operated on a non-profit basis;
- (iii) a person otherwise engaged in the performing arts, unless, by written contract, such person is stipulated to be an employee of and subject to this Ordinance. "Engaged in the performing arts" shall mean performing any service in connection with the production of or performance in any musical, artistic endeavor or live performance, which requires musical, 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; or
- (v) an independent contractor or an individual employed by an independent contractor.

(b) "Employer" means the Oneida Indian Nation and its governmental entities, agencies and instrumentalities, and businesses, corporations, or entities owned by the Oneida Indian Nation or its instrumentalities.

(c) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that (i) it is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business, or (ii) the religious observance or practice conflicts with the Nation's religious or cultural tenets.

(d) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions, and sexual orientation; and a person affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in this Ordinance shall be interpreted to permit otherwise.

(e) Law, rule, or regulation" means: (i) any duly enacted Nation ordinance or law; (ii) any Nation rule or regulation promulgated pursuant to any Nation ordinance or law; or (iii) any internal rule, policy, or regulation of an employer that is for the purpose of protecting or promoting the health and safety of employees and/or the public.

(f) "Personnel action" means the hire, discharge, suspension or demotion or other employment action taken with respect to an employee's terms and conditions of employment.

(g) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of the affected employee; or who has managerial authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains.

Article III – Unlawful Employer Practices

1. Prohibited Employer Practices. It shall be an unlawful employment practice under this Ordinance for an employer:

- (a) to take any personnel action with respect to any employee because of such employee's race, color, religion, sex, sexual orientation, or national origin; or
- (b) take any personnel action against an employee because such employee:
 - (i) discloses, or threatens to disclose, to a supervisor or a Nation governmental body an activity, policy or practice of the employer that is in violation of law, rule, or regulation (as defined in Article II) which violation creates and presents a substantial and specific danger to the health or safety of that employee or others; or
 - (ii) opposes, to a supervisor or a Nation governmental body, any practice by an employer made an unlawful employment practice by this Ordinance, or makes a charge, testifies, assists, or participates in any manner in an investigation, proceeding, or hearing under this Ordinance.

2. Bona Fide Occupational Qualifications. Notwithstanding any other provision of this Ordinance, it shall not be an unlawful employment practice for an employer to take any personnel action, or to apply

different standards of compensation, or different terms, conditions, or privileges of employment, when such personnel action or differences are the result of a bona fide occupational qualification.

3. Native American/American Indian Preference. Notwithstanding any other provision of this Ordinance, nothing contained in this Ordinance shall be interpreted to prohibit or limit to any employer from utilizing employment practices under which a preferential treatment is given to any individual because such individual is an enrolled member of a federally-recognized Indian tribe.

4. Preferential Treatment Not to be Granted on Account of Existing Imbalance. Nothing contained in this Ordinance shall be interpreted to require any employer to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, sexual orientation, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, sexual orientation, or national origin employed by such employer in comparison with the total number or percentage of persons of such race, color, religion, sex, sexual orientation, or national origin in any community or other area, or in the available work force in any community or other area.

5. Establishing unlawful employment practice. Except as otherwise provided in this Ordinance, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, sexual orientation or national origin, or any employee action described in subsection 1(b) of this Ordinance, was the motivating factor for any employment practice.

Article IV –Remedy for Violation

1. Cause of Action. A person claiming to be aggrieved by a violation of this Ordinance may bring a civil action in the Oneida Indian Nation Court by filing with it a complaint pursuant to the Oneida Indian Nation Rules of Civil Procedure.

2. Damages. If the court finds that the employer has engaged or is engaging in an unlawful employment practice in violation of this Ordinance, it may award actual economic damages to the complaining party, including back pay for any unlawful employment practice found to have occurred within the statute of limitations period specified in Article V, with interest. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court may require the hiring, reinstatement, assignment or promotion of an individual as an employee, or the payment of punitive or non-economic damages.

3. Declaratory Relief Available in Certain Cases. On a claim in which an individual proves a violation under Article III of this Ordinance, but an employer demonstrates that it would have nonetheless taken the same employment action in the absence of the impermissible motivating factor, the court may grant declaratory relief, and may award attorney's fees and costs pursuant to subsection 4 of this Article, but may not award back pay or other economic damages.

4. Attorney's Fees. In any action or proceeding under this Ordinance, the court, in its discretion, may award the prevailing party recovery of the reasonable attorney's fees and costs the party incurred in pursuing the action.

5. Appeals. Any civil action or proceeding brought under this Ordinance shall be subject to appeal to the Oneida Indian Nation Court of Appeals as set forth in the Rules of Civil Procedure and the Rules of Appellate Procedure.

Article V – Statute of Limitations

1. Statute of Limitations. No claim to damages under this Ordinance shall be maintained unless a compliant has been filed in the Oneida Indian Nation Court within one (1) year after the alleged unlawful employment practice occurred. For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this Ordinance, on the later of: 1) the date the employee is first affected by the personnel action; or 2) the date the employee first learns, or should have learned through exercise of reasonable diligence, that they had been affected by the personnel action.


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 in 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.
3. 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.
4. Except as specifically set forth herein, 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 20th day of April, 2018.



Ray Halbritter
Nation Representative(s)