

ONEIDA INDIAN NATION

REGULATIONS GOVERNING EMPLOYER POLICIES FOR WAGE & HOUR COMPLIANCE

The regulations below were promulgated by the Oneida Indian Nation and are effective June 27, 2022.

PART 1: PURPOSE AND DEFINITIONS

Section 1.1. Purpose. It is the policy of the Oneida Indian Nation (the “Nation”) to ensure that employees working on Nation Lands are paid fairly and consistently and in compliance with applicable law, and to prohibit employment practices and policies on Nation Lands that result in unpaid wages for work performed by employees. In furtherance of this policy, the Nation establishes these Regulations to require all employers covered by these Regulations to adopt the wage and hour policies contained in these Regulations or that exceed the stated standards. These Regulations are promulgated under the authority of the Oneida Indian Nation Wage and Hour Ordinance (Ordinance No. O-22-02) (also referred to in these Regulations as the “Ordinance”) and shall be subject to remedy for violation solely as provided for in such Ordinance.

Section 1.2. Definitions. For purposes of these Regulations, all terms defined in Article II of the Ordinance (as such may be amended from time to time) have the same meaning set forth in such ordinance.

PART 2: EMPLOYER REQUIREMENT TO ESTABLISH WAGE & HOUR POLICIES

Section 2.1. Requirement to Adopt Policy. Every Employer shall adopt wage and hour policies and procedures that comply with these Regulations.

Section 2.2. Distribution of Policy. An Employer must make a written copy of its wage and hour policies available to each Employee, and must provide Employees with a printed copy of the policies upon request.

Section 2.3. Definitions.

2.3.1. Employees means any person, other than an independent contractor or an individual employed by an independent contractor, who is employed by an employer to render services to the employer in exchange for compensation, subject to any exclusions set forth in Article II of the Ordinance or in these Regulations. In addition to any other exclusions included in these Regulations or in the Ordinance, participants in the Nation-sponsored youth work learn program shall not be deemed Employees subject to the provisions of these Regulations or the Ordinance.

2.3.2. Employer means the Nation and its governmental entities, agencies and instrumentalities, and businesses, corporations, or entities owned by the Nation or its instrumentalities to the extent operating on Nation Lands.

2.3.3. Exempt Employees means employees whose job duties and/or salary qualify them for one or more “exemptions for overtime,” including but not limited to those exemptions for overtime recognized under the Fair Labor Standards Act (“FLSA”) and as interpreted in 29 C.F.R. Part 541 entitled “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Computer and Outside Sales Employees.” Generally, Exempt Employees are paid a predetermined amount of compensation (salary) regardless of the number of hours they actually work and are not eligible for overtime pay even if they

work in excess of 40 hours per week. The Nation Representative shall establish through promulgating a notice or order a minimum salary level for Exempt Employees, of which ten (10%) may consist of non-discretionary bonuses, incentive pay, and commissions.

- 2.3.4. Non-Exempt Employees.** Employees whose job duties and/or wage type require them to be eligible for overtime compensation. Non-Exempt Employees are generally paid on an hourly or salary basis and receive overtime pay as required by applicable law.
- 2.3.5. Food Service Worker.** A Food Service Worker is any employee who is primarily engaged in the serving of food or beverages to guests or customers in the hospitality industry, including, but not limited to, servers, bartenders, captains, porters and bussing personnel; and who regularly receives tips from such guests, patrons or customers.
- 2.3.6. Service Employee.** A Service Employee is an employee, other than a food service worker, who customarily receives tips from guests, patrons or customers.
- 2.3.7. Tipped Employees.** The term “Tipped Employees” shall mean Food Service Workers and Service Employees.
- 2.3.8. Regular Rate of Pay.** The “regular rate” of pay, which determines the overtime rate Non-Exempt Employees are paid, is determined by dividing total compensation in the workweek (except for applicable exclusions) by total hours worked in the week. Only the following types of payments are excludable from the regular rate: gifts and payments in the nature of gifts on special occasions; payments for occasional periods when no work is performed due to vacation, holidays, or illness; reimbursable business expenses; other payments that are not compensation for work performed; discretionary bonuses; health, dental or life insurance premiums; state, federal or local taxes; social security; voluntary contributions to a 401(k) or pension plan; and repayment for overpayment of wages.

Section 2.4. Timekeeping.

- 2.4.1. Accuracy of Timekeeping.** Accurately recording time worked is the responsibility of every Non-Exempt Employee and exempt managers. Employers shall maintain a designated time and attendance system that accurately reflects all regular and overtime hours worked, any absences, late arrivals, early departures, and unpaid meal periods. Employers should also establish a procedure under which Employees can report if their paycheck does not accurately reflect all of their hours worked and the Employer can investigate promptly all such reports and remediate any errors found.
- 2.4.2. “Off-the-Clock” Work.** Employers should establish policies and procedures confirming that Non-Exempt Employees are prohibited from performing any “off-the-clock” work. This should apply regardless of where or when such work occurs. “Off-the-clock” work means work that an Employee performs but fails to record.
- 2.4.3. Meal and Rest Periods.** When Non-Exempt Employees take a continuous, uninterrupted break from work of at least 30 minutes, this is a “meal period.” The Employer may, but is not required to, count these periods as hours worked and, at the Employer’s discretion, such time need not be recorded as hours worked. Any breaks of less than 30 minutes are “rest periods,” however, and must be counted as hours worked. If a Non-Exempt Employee’s meal period is interrupted by Employer-mandated work responsibilities, the Employee shall record the full period as hours

worked and consult with his or her supervisor as to whether the Employee should take a separate meal period later during the shift.

- 2.4.3.1. In instances where only one Employee is on duty or is the only one in a specific position, it is permissible for the Employee to eat on the job without being relieved. Employees should account for all such time as hours worked for pay purposes.

2.4.4. Falsification or Tampering. Employees must not falsify, tamper, or alter their or another Employee's time and must not report, which includes punching in for, another Employee's time. Employers should establish policies and procedures for Employees to report any falsification or tampering time records and for the prompt investigation and remediation of any such reports.

Section 2.5. Minimum Wage. Non-Exempt Employees must be paid a minimum hourly rate for all non-overtime hours worked. Such minimum hourly rate shall be established by the Nation Representative(s) through promulgating a notice or order.

2.5.1. Tip Credits. An Employer may take a credit towards the minimum wage rate if an Employee receives enough tips and if the Employee has been notified of the tip credit consistent with Section 2.12 below. Such Employees shall be considered "Tipped Employees."

2.5.2. Tip Credit Rates. Tipped Employees, including Food Service Workers and Service Employees, shall receive a cash wage of at least a minimum amount to be established by the Nation Representative(s) through promulgating a notice or order. Any credits taken by an Employer for tips shall not exceed the hourly tip credit rates to be established by the Nation Representative(s) through promulgating a notice or order, provided that the total of tips received plus the cash wages paid equals or exceeds the minimum wage rate established by the Nation Representative(s) pursuant to Section 2.5.

Section 2.6. Deductions for Non-Exempt Employees. All deductions from Non-Exempt Employees' pay, including for employee benefits, personal dry cleaning, rent for Employer-provided housing, must be authorized in writing by the Employer and the affected Employee. Deductions from pay shall not reduce a Non-Exempt Employee's hourly rate below the applicable minimum wage established under Section 2.5, subject to the following exceptions:

- (i) deductions for health, dental or life insurance premiums,
- (ii) deductions for state, federal or local taxes and social security;
- (iii) deductions for voluntary contributions to a 401(k) or pension plan, and/or
- (iv) deductions for rent for Employer-provided housing.

Section 2.7. Overtime.

2.7.1. Overtime Work Authorization. Employers shall establish policies and procedures (i) requiring supervisors notify Non-Exempt Employees when they are required to work overtime; (ii) informing Non-Exempt Employees that they are not allowed to work overtime unless it has been authorized in advance by the Employer; and (iii)

confirming that all work time must be recorded regardless of whether it is authorized or not.

2.7.2. Overtime Rate of Pay. Non-Exempt Employees who work in excess of 40 hours in one (1) week will be paid at one and one-half times (1½) their “regular rate of pay.” For purposes of calculating overtime, the workweek begins at 12:01 a.m. Monday and ends at midnight on the following Sunday. Overtime pay is based on actual hours worked. Only actual hours worked are used in any overtime calculation. Meal breaks (even if paid by the Employer), paid time off, paid sick leave, jury duty, holidays or any type of leave of absence are not hours worked for purposes of performing overtime calculations, unless an Employer procedure expressly provides otherwise.

2.7.3. Overtime Rate of Pay for Tipped Employees. An Employer shall pay an Employee for overtime at a wage rate of 1½ times the Employee’s regular rate for hours worked in excess of 40 hours in one workweek. When an Employer is taking a credit toward the minimum wage pursuant to Section 2.5.1 above, the overtime rate shall be the Employee’s regular rate of pay before subtracting any tip credit, multiplied by 1½, minus the tip credit. An Employer should not subtract the tip credit first and then multiply the reduced rate by 1½.

Example: A Tipped Employee (when the minimum wage is \$13.20, and the maximum tip credit is \$4.15), who is regularly paid \$13.20 per hour minus a tip credit of \$4.15 per hour, for a cash wage rate of \$9.05 per hour, and who works 50 hours in a workweek, should receive the following pay, including overtime pay:

Regular rate:	\$13.20 per hour
Overtime rate:	$\$13.20 \times 1.5 = \19.80 per hour
Wage rate for 40 hours:	$\$13.20 - \$4.40 = \$8.80$ per hour
Wage rate for 10 hours:	$\$19.80 - \$4.40 = \$15.40$ per hour
Wages for the week:	$\$8.80 \times 40$ hours = \$352.00
	$\$15.40 \times 10$ hours = \$154.00
	Total = \$506.00

Section 2.8. Safe Harbor for Exempt Employees.

2.8.1. General. Employers should establish policies and procedures requiring Employees to review their pay stubs promptly to identify and to report all errors to their supervisor or other appropriate member of management or Human Resources.

Exempt Employees will receive a salary which is intended to compensate them for all hours worked for an Employer. This salary will be established at the time of hire or when an Employee becomes classified as an Exempt Employee. While it may be subject to review and modification from time-to-time, such as during performance review times, the salary will be a predetermined amount that will not be subject to deductions for variations in the quantity or quality of the work performed by the Employee, subject to the

exceptions outlined in these Regulations.

2.8.2. Permitted Deductions. An Exempt Employee's salary is subject to certain deductions. For example, an Exempt Employee's salary can be reduced for the following reasons:

- Full-day absences for personal reasons.
- Full-day absences for sickness or disability, if the Exempt Employee has exhausted available paid sick leave and PTO.
- Intermittent absences, including partial-day absences, covered by the Employer's Family and Medical Leave policies, if the Exempt Employee has exhausted other paid leave available to them.
- Full day disciplinary suspensions for infractions of an Employer's written policies and procedures.
- To offset amounts received as payment for jury and witness fees or military pay.
- During the first or last week of employment in the event an Exempt Employee works less than a full week.
- Any workweek in which an Exempt Employee performs no work for the Employer.
- Certain types of deductions, such as the Exempt Employee's portion of health, dental or life insurance premiums; state, federal or local taxes, social security; voluntary contributions to a 401(k) or pension plan; repayment for overpayment of wages; and any deductions disclosed and acknowledged in the Employer's wage deduction authorization completed by the Employee.

2.8.3. Deductions Not Permitted. In any workweek in which an Exempt Employee performs any work, their salary will not be reduced for any of the following reasons:

- Partial-day absences for personal reasons, sickness or disability.
- Absence on a holiday when the facility is closed, or because the facility is otherwise closed on a scheduled workday.
- Absences for jury duty, attendance as a witness, or military leave in any week in which the Exempt Employee has performed any work.

Employers shall establish policies and procedures for Exempt Employees to report any improper deduction that they believe may have been made and for the Employer to investigate any such report and reimburse the Employee if it is determined that any improper deductions were taken. In addition, Employers shall establish policies providing that corrective action will be taken where appropriate, up to and including termination, for

any Employee who violates the policy and that any form of retaliation against individuals who report alleged improper deductions or who cooperate in the Employer's investigation of such reports is strictly prohibited.

Section 2.9. Employment of Minors. Persons 14 and 15 years of age may only work for an Employer outside of school hours. Children under 14 years of age may not be employed by any Employer.

Section 2.10. Paid Time Off ("PTO"). Paid Time Off ("PTO") includes all types of requests for time off, including pay for personal, vacation and sick time. An Employee's entitlement to PTO shall be governed by the written policies established by each Employer.

Section 2.11. Payments Upon Separation or Status Change.

2.11.1. Last Paycheck Upon Separation. Employers shall pay Employees their final paychecks minus any authorized deductions on the next feasible regularly-scheduled pay dates following their separation from employment.

2.11.2. Payment of Accrued and Unused PTO Upon Separation or Status Change. Payment of any accrued but unused PTO upon separation from employment or change in employment status shall be governed by the written policies established by each Employer.

Section 2.12. Spread of Hours. The *spread of hours* is the length of the interval between the beginning and end of an Employee's workday. The spread of hours for any day includes working time plus time off for meals plus intervals off duty. On each day on which the spread of hours exceeds 10, a Non-Exempt Employee shall receive one additional paid 30 minute meal break.

Section 2.13. Call-In Pay.

(a) A Non-Exempt Employee who by request or permission of the Employer reports for duty on any day, whether or not assigned to actual work, shall be paid at the applicable wage rate:

- (1) for at least three hours for one shift, or the number of hours in the regularly scheduled shift, whichever is less;
- (2) for at least six hours for two shifts totaling six hours or less, or the number of hours in the regularly scheduled shift, whichever is less; and
- (3) for at least eight hours for three shifts totaling eight hours or less, or the number of hours in the regularly scheduled shift, whichever is less.

(b) For purposes of this section, *applicable wage rate* shall mean:

- (1) Payment for time of actual attendance at work calculated at the Employee's regular or overtime rate of pay, whichever is applicable, minus any customary and usual tip credit;
- (2) Payment for the balance of the period calculated at the basic minimum hourly rate with no tip credit subtracted. Payment for the balance of the period is not payment for time worked or work performed and need not be included in the regular rate for the purpose of calculating overtime pay.

- (c) *A regularly scheduled shift* is a repeating shift that an Employee normally works on a periodic basis.

Section 2.14. Written Notice of Pay Rates, Tip Credit and Pay Day. At the start of employment, an Employer shall provide each Employee with written notice of the Employee's regular pay rate, overtime pay rate (if applicable), the amount of tip credit, if any, or other allowances to be taken from the minimum wage, and the Employee's regular payday. The notice for Tipped Employees shall also state that extra pay will be provided if tips are insufficient to bring the Employee up to the minimum wage. Such notice shall also be required prior to any reduction in the Employee's rate of pay.

Section 2.15. Wage Statement to Employee. Every Employer shall provide to each Employee a statement, commonly referred to as a pay stub, with every payment of wages. The pay stub must list hours worked, rates paid, gross wages, credits or allowances claimed, if any, deductions and net wages.

Section 2.16. Gratuities.

2.16.1. Distribution of Gratuities. Employers are prohibited from demanding, accepting, or retaining, directly or indirectly, any part of an Employee's gratuity or any charge purported to be a gratuity. A charge purported to be a gratuity must be distributed in full as gratuities to the Employees who provided the service.

2.16.2. Tip Sharing.

2.16.2.1. Directly tipped Employees may share their tips on a voluntary basis with other service employees or food service workers who participated in providing service to customers.

2.16.2.2. An Employer may require directly tipped food service workers to share their tips with other food service workers who participated in providing service to customers and may set the percentage to be given to each occupation. However, Employees must handle the transactions themselves.

2.16.2.3. Nothing in this section shall be interpreted as requiring an Employer to compensate participants in tip sharing for tips wrongfully withheld from the tip sharing by any participant.

2.16.3. Tip Pooling.

2.16.3.1. Directly tipped Employees may mutually agree to pool their tips on a voluntary basis and to redistribute the tips among directly tipped Employees and indirectly tipped Employees who participated in providing the service.

2.16.3.2. An Employer may require food service workers to participate in a tip pool and may set the percentage to be distributed to each occupation from the tip pool. Only food service workers may receive distributions from the tip pool.

2.16.3.3. Nothing in this section shall be interpreted as requiring an Employer to compensate participants in tip pooling for tips wrongfully withheld from the tip pool by any participant.

2.16.4. Records of Tip Sharing or Tip Pooling.

2.16.4.1. Employers who operate a tip sharing or tip pooling system must establish, maintain, and preserve records which include: (1) a daily log of the tips collected by each Employee on each shift, whether in cash or by credit card; (2) a list of occupations that the Employer deems eligible to receive tips through a tip sharing or tip pool system; (3) the shares of tips that each occupation is scheduled to receive from tip sharing or tip pooling; and (4) the amount in tips that each Employee receives from the tip share or tip pool, by date.

2.16.4.2. Such records must be regularly made available for participants in the tip sharing or tip pooling systems to review. Nothing in this section shall be interpreted as granting any Employee the right to review the payroll records of any other Employee.

2.16.5. Administrative charge not purported to be a gratuity or tip.

- (a) A charge for the administration of a banquet, special function, or package deal shall be clearly identified as such and customers shall be notified that the charge is not a gratuity or tip.
- (b) The Employer shall provide notification to its customers sufficient to ensure that a reasonable customer would understand that such charge was not purported to be a gratuity.
- (c) *Adequate notification* shall include a statement in the contract or agreement with the customer, and on any bill listing prices, that the administrative charge is for administration of the banquet, special function, or package deal, is not purported to be a gratuity, and will not be distributed as gratuities to the Employees who provided service to the guests. The statements shall use ordinary language that is readily understood.
- (d) A combination charge, part of which is for the administration of a banquet, special function or package deal and part of which is to be distributed as gratuities to the Employees who provided service to the guests, must be broken down into specific percentages or portions, in writing to the customer, in accordance with the standards for adequate notification in subdivision (c) of this section. The portion of the combination charge which will not be distributed as gratuities to the Employees who provided service to the guests shall be covered by subdivisions (a), (b) and (c) of this section.

Section 2.17. Uniform maintenance. Maintaining required uniforms includes washing, ironing, dry cleaning, alterations, repair, or any other maintenance necessary.

- (a) Where an Employer does not maintain required uniforms for any Non-Exempt Employee, the Employer shall pay the Employee, in addition to the Employee's agreed rate of pay, uniform maintenance pay at the weekly rate established by the Nation Representative through promulgating a notice or order.
- (b) No uniform maintenance pay will be required in any instance where the Employer maintains uniforms for Employees and/or offers uniform maintenance services (e.g., laundry service) that an Employee chooses not to utilize.

- (c) *Wash and wear exception to uniform maintenance pay.* An Employer will not be required to pay any uniform maintenance pay, where required uniforms:
- (1) are made of “wash and wear” materials;
 - (2) may be routinely washed and dried with other personal garments;
 - (3) do not require ironing, dry cleaning, daily washing, commercial laundering, or other special treatment; and
 - (4) are furnished to the Employee in a sufficient number equal to the average number of days per week worked by the Employee, or the Employee has the option of being reimbursed by the Employer for the purchase of such a sufficient number of uniforms.

PART 3: COMPLIANCE DATE

Section 3.1. Compliance Date. An Employer must be in compliance with these Regulations, no later than ninety (90) days after the effective date set forth above.

PART 4: MISCELLANEOUS

Section 4.1. The Nation does not, by enacting these Regulations, 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.

Section 4.2. These Regulations are not subject to review or modification in any state or federal court or by any authority outside the Nation and are not subject to review or modification in any Nation court.

Section 4.3. These Regulations do not create any 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 Employer or person, except as may expressly exist in the Ordinance.