

**ONEIDA INDIAN NATION
WAGE AND HOUR ORDINANCE**

Ordinance No.: O-22-03

The Oneida Indian Nation (the “Nation”) adopts and enacts this Ordinance pursuant to its powers of self-government to provide for the protection of employees’ rights to fair and equitable payment of wages for work performed.

Article I – Purpose and Scope

1. The purpose of this Ordinance is to prohibit employment practices and policies on Nation Lands that result in unpaid wages for work performed by employees and to establish a fair, prompt and efficient mechanism for adjudication and remedy of disputes relating to wage and hour rights under 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 while acting in their capacity as 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 while participating in amateur athletic activities;
- (iii) a person while 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 while 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) an independent contractor or an individual employed by an independent contractor;
or
- (vi) any person excluded from the provisions of this Ordinance, in whole or in part, by any regulations, rules and administrative guidelines established and adopted by the Nation under Article III of this Ordinance.

(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 to the extent operating on Nation lands.

- (c) “Nation Lands” means lands possessed by the Nation within the Oneida Reservation.

Article III – Adoption of Standards

1. In fulfillment of the Nation’s objective to provide for the protection of employees’ rights and equitable treatment for work performed, for purposes of interpreting and applying the provisions of this Ordinance the Nation exercises its powers of self-government to adopt the standards set forth in the following regulations and guidance issued under the Fair Labor Standards Act (the “Standards”), as may be supplemented and/or modified by Regulations adopted pursuant to Article IV of this Ordinance:

- A. 29 CFR 541—Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Computer and Outside Sales Employees.
- B. 29 CFR Part 785—Hours Worked.

2. In the event that any of the Standards adopted by, and incorporated into, this Article by reference is updated, supplemented or superseded, the most recent edition of the respective Standard shall be automatically adopted and incorporated into this Ordinance in the place of the code Standard listed in this Ordinance without further action, unless the Nation Representative(s), or the designee of the Nation Representative(s), directs otherwise in writing.

3. The Nation Representative(s), or such other designee of the Nation Representative(s), may adopt additional rules consistent with the Standards through Regulations in accordance with Article IV of this Ordinance.

Article IV – Wage and Hour Regulations

1. The Nation shall establish and adopt wage and hour regulations, rules and administrative guidelines under this Ordinance to govern:

- (a) Assurance that Employees are fully paid for work performed, including minimum wage, overtime and spread-of-hours pay;
- (b) timely payment of wages;
- (c) proper deductions from wages and prevention of improper deductions from wages;
- (d) allocation of gratuities to Employees; and
- (e) such other wage and hour protections for Employees as the Nation deems necessary or advisable to implement this Ordinance.

Such wage and hour regulations, rules and administrative guidelines shall include definitions for minimum wage, overtime, spread-of-hours pay, deductions from wages, gratuities and such other terms as deemed necessary.

2. The Nation Representative(s) shall have the duty and authority to implement this Ordinance, and specifically shall have the authority to promulgate regulations, rules and administrative guidelines to be issued under this Ordinance, or as the Nation Representative(s) deems appropriate to carry out the purposes of this Ordinance.

Article V – Remedy for Violation

1. Cause of Action. A person claiming to be aggrieved by a violation of this Ordinance, or the regulations, rules and administrative guidelines promulgated under 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 lost wages resulting from any unlawful employment practice found to have occurred within the statute of limitations period specified in Article V, with interest. No order of the Court may require the hiring, reinstatement, assignment or promotion of an individual as an Employee, the payment of punitive or non-economic damages or the payment of attorney's fees and costs the party incurred in pursuing the action.
3. 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 VI – Statute of Limitations

1. Statute of Limitations. No claim to damages under this Ordinance shall be maintained unless a complaint has been filed in the Oneida Indian Nation Court within three (3) years after the alleged unlawful employment practice occurred.

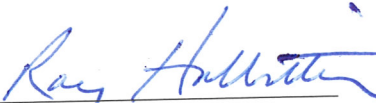
Article VII – Interpretation

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 Oneida Indian Nation Court 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 VIII – Effective Date

This Ordinance is effective upon its enactment.

Enacted this 22nd day of April, 2022



Ray Halbritter
Nation Representative(s)