Mashantucket Pequot Tribal Nation

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

Frequently Asked Questions About the MERO

IMPORTANT: Individuals who wish to file a claim or charge under the Preference Law, the Labor Relations Law or the Family and Medical Leave Law must do so within 180 calendar days of the event believed to be a violation of the applicable law.

What is the MERO? The MERO is an agency of the Mashantucket Pequot Tribal Nation (MPTN) that administers certain Tribal labor and employment laws and programs. Currently, the MERO enforces the following codified laws:[1] Title 32, the Mashantucket Pequot Labor Relations Law (Labor Law), Title 33, the Mashantucket Pequot Tribal and Native American Preference Law (Preference Law), and Title 51, the Mashantucket Pequot Family and Medical Leave Law (MFML Law).

What does the MERO do? The MERO administers and enforces certain laws and programs, including educating about their requirements and benefits, developing and implementing processes for enforcement, and hearing and deciding certain cases.

Will the MERO Director be my attorney? No, the MERO Director does not represent any individuals or companies. You may hire an attorney of your choice at your cost to represent you in MERO proceedings.

How do I reach the MERO? The MERO is located in the Mashantucket Pequot Museum and Research Center. To make an appointment, please call 860-396-6505 or e-mail MERO@mptn-nsn.gov.

MASHANTUCKET PEQUOT TRIBAL AND NATIVE AMERICAN PREFERENCE LAW (Preference Law)

What is the Preference Law? The Preference Law provides preference for certain employment opportunities on the Mashantucket Pequot Reservation to eligible MPTN family members and Native Americans.

Which employers must provide preference? Generally, the MPTN and employers of five (5) or more employees working on the Reservation must provide preference for most positions on the Reservation.

Who is eligible for preference?

- Most businesses on the Reservation are required to provide preference to members of federally recognized Native American tribes.
- When the MPTN is the employer, preference is tiered, with MPTN Members first, their Spouses and Adopted Children second, and Native Americans (including members of tribes with federal, state, Canadian First Nation or Mashantucket Pequot recognition) third.
- An individual also must meet the minimum necessary qualifications of the position to be eligible for preference.

Who is a "Spouse"? A Spouse is a man or woman joined in lawful marriage with an MPTN Member, or a surviving spouse with a minor child as defined in Title 29, who is in good standing with the Tribe.

Who is an "Adopted Child"? An Adopted Child is any person in good standing with the Tribe who was legally adopted by an MPTN Member. A dependent child who was in the custody and care of an MPTN member and resided in the MPTN member's household as a family member for at least seven (7) years on or before reaching the age of 18, is treated the same as an adopted child under the Preference Law.

What are "Employment Opportunities"? Generally, Employment Opportunities include hire, transfer, promotion, training and retention (non-disciplinary). Additional benefits provided when the MPTN is the employer are:

- MPTN Members/Spouses/Adopted Children receive the following preferences:
  - at least 2 days advance notice of open positions;
  - preference for open position shift assignments and to keep a shift assignment in a rebid; and
  - to be the first to be offered an early out and the last to be required to take an early out.
- Unless there is a hardship for the employer, individuals with preference receive accommodations for cultural convictions unique to a preference employee's tribal or Native American culture.

[1] The MERO currently administers limited aspects of select Mashantucket Pequot contracting programs. For additional information, please see https://MERO.mptn-nsn.gov/contracting-programs/.

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Where are jobs posted? Open positions on the Reservation are posted in various sources, including:

- ❖ facebook.com/MEROmessage (for jobs with businesses other than the MPTN); and
- ❖ foxwoods.com/about/careers (for jobs with the MPTN, including Foxwoods).

What are "Minimum Necessary Qualifications" (MNQs)? MNQs are those qualifications necessary to perform the basic responsibilities of the position, such as education, skill and/or experience requirements.

What is an "Early Out"? An Early Out, sometimes called a force out, is when an employee is released from work after reporting to work during their work period due to a lack of work.

Is preference required for ALL employment opportunities? No, there are exceptions, for example:

- ❖ Preference need not be afforded when the position is:
  - Temporary, generally 4 weeks (160 hours) or less annually;
  - Properly filled through "natural progression" or with Tribal Council approval; or
  - Designated as "key," as that term is defined in the law.

Must a job be offered to the most qualified preference applicant? No, the law requires selection of an applicant from the highest preference tier who meets the MNQs. For example, if there are 3 MPTN member applicants who meet the MNQs for 1 open position, any of the 3 may be offered the position.

Is there any training available for an employee? Depending on the job, training may be provided. In addition, if MPTN is the employer, within the first 90 days of working in a position, the preference employee meets with the Office of Native American Preference (ONAP) and the department. The department provides performance feedback and the ONAP assesses training needs, which may result in the preference employee receiving available training.

What if I believe my employer violated the Preference Law? Contact the MERO, even if you are not certain if you have the basis for a claim. The MERO may assist you in determining if you have a claim. To be timely, a claim must be filed within 180 calendar days of the event claimed to be in violation of the Tribe's Preference Law.

Where do I file my claim? If the employer is not the MPTN, a claim may be filed with the MERO. A claim against the MPTN may be filed with the ONAP. (Call 860-312-3410) The ONAP investigates, attempts to resolve the claim and, if necessary, issues a decision. A claim may be filed with the MERO within 15 calendar days of the ONAP's decision.

What happens at the MERO? The MERO offers voluntary conciliation or mediation to help the parties resolve a claim. Unresolved claims are generally decided by the MERO Director after a hearing. If the MERO concludes that the employer was not in compliance with the Preference Law, the employer may be ordered to remedy the noncompliance. Remedies may include the employer providing an employment opportunity to the claimant and/or paying lost wages and/or making changes to policies or practices. A MERO final decision may be appealed to the Tribal Court.

MASHANTUCKET PEQUOT LABOR RELATIONS LAW (Labor Law)

What is the Labor Law? The Labor Law generally protects the right of employees of the Mashantucket Pequot Tribe (Tribe) (except managers, supervisors, confidential employees, political appointees, and elected officials) to freely choose to join or not to join a union, or to engage in other protected activities. The Labor Law also provides a framework for collective bargaining between a Tribal employer and a union when a union represents a group of employees. The MERO's responsibilities include processing (1) petitions for union elections, (2) charges that may be brought against a union or Tribal employer relating to union organizing, collective bargaining or other issues covered by the Law and, (3) impasse resolution cases where a union and Tribal employer are unable to reach agreement on certain terms of a contract through collective bargaining.

What types of activities are "protected" under the Labor Law? Generally, protected activity is when an employee of the Tribe (1) supports or joins a union, (2) refrains from engaging in union activity, or (3) acts with one or more other employees to try to change terms or conditions of employment.

What types of election cases does the MERO handle? The most common elections determine if a group of the Tribe's employees wishes to be represented for collective bargaining by a union or if a group of the Tribe's employees represented by a union wishes to continue to be represented by the union.

What types of charges may be brought under the Labor Law? Unions and Tribal employers have certain responsibilities under the MPLRL. For example, they are not allowed to interfere with, restrain or coerce the Tribe's employees in the exercise of their rights to engage in or refrain from engaging in union or protected activities. In addition, a Tribal employer may not discriminate against an employee in hire or terms and conditions of employment because the employee engaged in activities protected under the law. If a union becomes the certified exclusive representative of a group of employees, both the union and the Tribal employer are required to negotiate in good faith to reach the terms of a collective bargaining agreement. Breaches of these or other requirements may result in charges being brought before the MERO by a union, a Tribal employer or an individual employee of the Tribe. To be timely, a claim must be filed within 180 days of the event claimed to be in violation of the Tribe's Labor Law.

What if a Tribal employer and a certified union are unable to reach agreement during negotiations? If at least 150 days have passed since the start of collective bargaining, either party may file a petition requesting resolution of an impasse in negotiations. With respect to each disputed issue, one party's proposal is chosen.

Who decides Labor Law cases? The cases may be decided by a special master of the Tribal Court, or, if a party to the case so chooses, a MERO Board. The members of a MERO Board are chosen by the parties. When an individual files a prohibited practice charge, the MERO Director may exercise their discretion to investigate the case first. If a party does not accept the MERO Director's decision, the case may proceed to a MERO Board or Special Master. Appeals of MERO Board or Special Master decisions are decided by the Tribal Court.

MASHANTUCKET PEQUOT FAMILY AND MEDICAL LEAVE LAW (MFML Law)

What is the MFML Law? The MFML Law provides unpaid leave and workplace protections to eligible employees of the Mashantucket Pequot Tribe (Tribe) who require time away from work to attend to family or medical issues.

Depending on the reason for the qualifying leave, an eligible employee of the Tribe may receive 12, 14, or 26 workweeks of unpaid leave during a 12-month period, specifically:

a. 12 workweeks of leave for one or more of the following reasons:
   (1) the birth or placement (adoption or foster care) of a child and care for the child within the first year after birth or placement,
   (2) the needed care of a family member with a qualifying serious health condition,
   (3) the employee's own qualifying serious health condition that makes them unable to perform their job,
   (4) human organ or bone marrow donation;
   (5) a qualifying exigency related to a family member's military deployment;
b. An additional two (2) workweeks of continuous leave for the employee's own qualifying serious health condition; and
c. 26 workweeks of leave for an eligible employee who is a family member or next of kin of a current or veteran covered servicemember with a serious injury or illness, to care for the covered servicemember.

The combined total leave under the MFML Law in a 12-month period may not exceed 26 weeks. Spouses employed by the Tribe who are otherwise eligible for leave under the MFML Law each receive their full leave entitlement regardless of the qualifying reason for taking leave.

Who is eligible for family and medical leave under the MFML Law? Most employees of the Tribe who work on the Mashantucket Pequot reservation are eligible for leave if, as of the requested leave start date, they meet the time in service and hours of service eligibility criteria associated with the reason for the leave:

a. To be eligible for leave for the employee's own serious health condition or to provide an organ or bone marrow donation, the employee must be employed by the Tribe for 6 consecutive months (26 weeks).
b. To be eligible for all other leave, the employee must be employed by the Tribe for at least 12 months within the prior 7 years and at least 1,250 hours of service during the 12-month period (52 weeks) immediately prior to the start of the leave. Generally, the 1,250 hours includes only hours worked.

What is a serious health condition under the MFML Law? A serious health condition is an illness, injury, impairment, or physical or mental condition which involves:

a. **Inpatient care** (overnight stay in a hospital, hospice, nursing home or residential care facility) or subsequent treatment related to the inpatient care; or
b. **Incapacitation** of more than 3 consecutive calendar days **plus**

(1) Two in person or telemedicine visits with a health care provider where the first visit is within 7 days of the first day of incapacity and the second visit is within 30 days of the first day of incapacity; or
(2) One in person or telemedicine visit with a health care provider within 7 days of the first day of incapacity and a regimen of treatment, such as prescription medication or physical therapy; or

c. Any period of incapacity because of **pregnancy** or prenatal care; a doctor's visit each time is not required; or
d. Any period of incapacity, or treatment for such incapacity, due to a **chronic serious health condition**, such as diabetes, asthma, or epilepsy. A chronic serious health condition requires at least 2 in person or telemedicine visits with a health care provider per year and continues or recurs over an extended period of time;
e. A period of incapacity that is **permanent or long-term** due to a condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider, such as Alzheimer's disease or the terminal stages of cancer; or
f. **Multiple treatments**, such as restorative surgery after an injury; or the likelihood of incapacity of more than 3 consecutive calendar days if the patient did not receive the medical intervention or treatment, such as cancer (chemotherapy, radiation), severe arthritis (physical therapy) or kidney disease (dialysis).

What is a "serious injury or illness" for military caregiver leave under the MFML Law? The definition of a serious injury or illness depends on whether the covered servicemember is a current or veteran servicemember. See MERO Form 51-6130, *Information About Military-Related Leave*, for more information about military-related leaves.

May my employer ask that I demonstrate a "family member" relationship? Yes, if you give notice of the need for qualifying leave to care for a family member, your employer may ask you to provide a simple statement signed by you that verifies your relationship to the individual for whom you seek leave, or you may use MERO Form 51-6350 *Verification of Relationship.*

When do I need to tell my employer if I need to take leave under the MFML Law?

a. If your leave is **foreseeable**, meaning that you know ahead of time that you will need leave, such as for childbirth or a scheduled surgery, generally you must provide 30-days advance notice of the need for leave.
b. If your leave is **not foreseeable**, or your need for leave becomes known to you less than 30 days in advance, you must provide notice as soon as practical under the circumstances, which generally would be the same day you know you have a need for leave, or the following business day.

How must my notice of the need for family or medical leave be provided to my employer? Unless there are unusual circumstances, such as your incapacity, you must comply with your employer's usual and customary notice and procedural requirements for requesting leave.

What do I need to tell my employer about my need for leave under the MFML Law? You need to provide enough information so your employer can reasonably determine whether the MFML Law may apply to your leave request, such as that you are incapacitated due to pregnancy, were hospitalized overnight and are unable to perform the functions of your job, or that your family member is under a doctor's continuing care. Your employer may request additional information to make its determination.

When must my employer tell me if the leave will be approved? Generally, within 5 business days of receiving sufficient information for a determination, your employer must notify you in writing whether leave will be designated as approved or unapproved leave under the MFML Law.

What if my employer does not follow the Law? Your employer is prohibited from interfering with or denying your rights under the Mashantucket Pequot Family and Medical Leave Law, or retaliating against you for exercising your rights or opposing an unlawful practice. If you believe your rights under the MFML Law have been violated, you may file a claim with the MERO within 180 calendar days of the event believed to be a violation of the MFML Law. For more information, see MERO Form 51-7100, *Information for Claimants*, and MERO Form 51-7200, *Claim of Family or Medical Leave Violation*.

For forms or additional information, please visit the MERO website at https://MERO.mptn-nsn.gov, or contact the MERO.