Mashantucket Pequot Tribal Nation

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

CLAIMANT'S GUIDE TO MERO PREFERENCE LAW FORMAL HEARING

For formal hearings under 33 M.P.T.L. ch 1 § 9(a)(ii) and Title 40 of the Mashantucket Pequot Tribal Laws

GENERAL INFORMATION

Q 1. Why is the hearing important?

Answer. The hearing before the MERO Director is your chance to tell your story; your opportunity and responsibility to present evidence and testimony to prove your case. The MERO Director will not investigate or contact witnesses for you**.** They will make a decision on the basis of information in the file and evidence and testimony presented at the hearing. The MERO Director will not usually be able to consider evidence provided after the hearing.

Q 2. Do I need a lawyer?

Answer. An unrepresented claimant should be able to gather the necessary evidence for a MERO hearing. The MERO Director will assist you in presenting your case at the hearing. However, you have the right to be represented by an attorney. If you hire an attorney, you are responsible for paying your attorney's fee.

If you plan to get an attorney, do so as soon as possible so that your representative will have time to prepare. You must decide before the hearing whether you need representation. You will not be given a new hearing just because you later decide that you should have been represented, and a previously assigned hearing date will not necessarily be postponed should you decide to retain an attorney.

Q 3. How will I be notified of the hearing?

Answer. A Notice of Hearing will be emailed to you and the employer involved, indicating the time, date, place, and the issue(s) raised in your claim.

Q 4. What should I do if I cannot attend the hearing?

Answer. If you or one of your witnesses is unable to attend for any reason, notify the MERO immediately to request a postponement. Postponements are granted only for very good reasons. Last minute requests are generally denied unless you have a real emergency.

Q 5. What happens if one of the parties does not attend the hearing?

Answer. If you (the claimant) do not attend, the claim will probably be dismissed, although there may be exceptions. Excuses such as having overslept, being on a job interview, attending an unexpected appointment, or having forgotten about the hearing are not good reasons for missing a hearing. If the employer does not attend, the MERO Director's decision may be based solely on your (the claimant's) testimony and evidence.

Q 6. What if I have a language problem or a disability that will make it difficult for me to participate?

Answer. Notify the MERO as soon as possible to make arrangements for assistance.

PREPARING FOR THE HEARING

Q 7. Where do I start to prepare my case?

Answer. The notice of hearing summarizes the issue(s) that will be addressed at the hearing. If you have a decision from the Office of Native American Preference (ONAP) or from an investigation conducted by a non-tribal employer, reading the decision may help you determine the points of law that pertain to your case and what factors were used by the employer in reaching the decision.

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Prior to the hearing, the MERO Director may forward requests to either or both parties for the presentation of some specific witnesses or documents. However, you should not limit your presentation to any information requested by the MERO Director. You should present all relevant information at the hearing.

Q 8. How should I prepare for the hearing?

Answer. Determine what documentation and witnesses you will need to present your case. Gather any papers that relate to the issue such as correspondence between you and the employer. Find out if your witnesses who have direct knowledge of the events in question are available to attend the hearing. If a witness is not available or only available at a particular time of day, contact the MERO before the hearing to discuss the logistics.

Some types of evidence are stronger than others and you should present the best evidence possible. For example, hearing testimony by a witness with direct knowledge of the events is much stronger than providing their written statement, which may not be given much weight because the author is not available to be questioned. Your own testimony of events, any documents concerning the issue, and the testimony of any witnesses who observed or were directly involved in what happened are examples of best evidence.

At the hearing, you will have the opportunity to ask questions of the employer's witnesses, so you may wish to make notes of the questions you would like to ask. You also may wish to make notes of what you believe is important to your case and why it is important, so you will be ready for any questions that may come up at the hearing. Be prepared to tell the MERO Director everything you think is important and to present all witnesses and documents at the hearing. The MERO Director will limit the evidence to issues that are relevant to the case. You will not be allowed another hearing day to present evidence you did not offer the first time unless you had good cause for not presenting the evidence.

Q 9. What if I need to subpoena a witness?

Answer. If you have an attorney, your attorney should arrange for any necessary subpoenas. If you do not have an attorney, notify the MERO Director as soon as you have identified your need for a subpoena. The MERO Director will determine whether a subpoena is necessary and, if so, arrange for it to be served.

Q 10. May I send information to the MERO Director before the hearing?
Answer. Unless the MERO Director asks for something to be submitted in advance, you should not submit information before the hearing. Bring all information to the hearing.

Q 11. What is a pre-hearing conference?

Answer. A pre-hearing conference may be scheduled before the hearing to allow the MERO Director to address any questions or issues that, if not addressed in advance, may interfere with, or slow down, the hearing process. For example, the MERO Director may address questions about hearing procedures, ask the parties if they can stipulate to certain facts, or rule on a party's objections to the MERO's requests for documents or witnesses. The MERO Director also may ask the parties to help clarify the issues that will be addressed at the hearing. A pre-hearing conference may be initiated by the MERO Director or requested by either party. If you believe a pre-hearing conference is needed, contact the MERO as soon as possible.

Q 12. May I speak to the MERO Director before the hearing?

Answer. Yes, however, the MERO Director generally will be limited to discussing procedural issues. The MERO Director will not discuss matters relating to the substance of the claim unless both parties are present. Some of the circumstances when you should contact the MERO before the hearing are:

- If you require a postponement of the hearing;
- If you have questions about the hearing process or procedures;
- If you do not have access to a photocopier to make copies of your documents for the hearing;
- If a witness is not available or has time constraints on the day of hearing;
- If you would like to bring someone to the hearing who is not your attorney or a witness;
- If you believe a pre-hearing conference is necessary.

WHAT GOES ON AT THE HEARING

Q 13. When should I arrive and what should I bring to the hearing?

Answer. Plan to arrive at least ten minutes early. You should bring the following to the hearing:

(1) Three (3) copies of any documents that you wish to offer as evidence. If you do not have access to a copier, contact the MERO before the hearing. There may not be a copier available at the hearing.

(2) Any notes you have made to help you with your case.

(3) A pad of paper and pen to make notes during the hearing.

In addition, make certain any witnesses you have arranged to be present know where and when the hearing will be held. Bring the cell phone numbers of your witnesses in case you need to contact them.

Q 14. Who will be at the hearing?

Answer. The MERO Director will conduct the hearing. In addition to yourself (claimant), your attorney (if applicable), and your witnesses, the employer will have a representative present along with its witnesses. If you would like to bring someone to the hearing who is not your attorney or your witness, such as a friend or spouse for support, contact the MERO in advance to request permission. You may only bring someone other than your attorney and witnesses if you have received permission from the MERO Director before the hearing. The hearing is not open to the public.

Q 15. How will the hearing be conducted?

Answer. The MERO Director explains the procedure and receives into the record the relevant information already on file, which includes the claim and the employer's answer. If there are some documents or statements of fact that both parties agree upon, those may be received into the record through stipulations.

Before testimony is presented, you and the representative of the employer will each be permitted to make opening remarks about the case. All testimony must be under oath. In most cases, the claimant and their witnesses testify first, and the claimant offers any documents that they believe are important. The employer then presents its witnesses and documents.

Proper decorum is expected. Threatening, abusive or intemperate language or actions are not tolerated.

Q 16. How will I know what to tell the MERO Director?

Answer. The MERO Director will ask questions designed to obtain the necessary information. Listen carefully to the questions, and answer as directly and plainly as you can. Give complete and accurate information, but do not ramble or bring in unrelated information. Before the end of the hearing, the MERO Director will give you an opportunity to add anything you feel is important and make a closing statement.

Q 17. What if I forget to bring something or need to obtain more evidence?

Answer. You should ask the MERO Director to continue the hearing so that you can get whatever is needed. The MERO Director will grant your request only if the information is relevant and you have a good reason for not bringing it with you. You will not be allowed to introduce additional evidence once the hearing is over unless the MERO Director has agreed to keep the hearing open.

Q 18. What record will be made of the hearing?

Answer. The hearing will be recorded and transcribed, which will be the official record of the proceeding. Everyone will be asked to speak loudly and clearly enough to be heard and understood and not to interrupt when others are speaking.

Q 19. Are the rules the same as in Tribal Court?

Answer. No, the rules are more relaxed, but the MERO Director may look to the court's rules of evidence for guidance.

Q 20. What if I decide that I no longer wish to continue my claim?

Answer. You may withdraw your claim at any time before the MERO Director issues a decision. Contact the MERO for additional information.

THE MERO DIRECTOR'S DECISION

Q 21. What will the MERO Director's decision be based on?

Answer. Only information admitted into the record is used to decide the case. It is your responsibility to present this information. The MERO Director will not investigate or contact witnesses.

Q 22. How will I be informed of the decision?

Answer. The MERO Director will send a written decision by email and U.S. Mail to each of the parties or their representatives. The decision will include a notice of appeal rights that explains the right of either party to appeal to the Tribal Court.

Q 23. Will anyone else know about the decision?

Answer. The MERO's decisions are public information and, as such, are posted on the MERO's website.

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