



Mashantucket Pequot
Tribal Nation

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

PROCEDURES MANUAL

**For Claims Under Title 51,
The Mashantucket Pequot Family and Medical Leave Law**

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1.0 Introduction

This manual (Procedures Manual) will set forth the procedures of the Mashantucket Employment Rights Office (MERO) for claims under Title 51, the Mashantucket Pequot Family and Medical Leave Law (MFML Law).

Claims under Title 51 may be filed with the MERO within 180 days of the event believed to be a violation of the MFML Law. The MERO is charged with conciliating the claim, which means the MERO works with the parties to try to find a resolution to the issues in dispute.

Claim processing commences with the filing of the claim and concludes with the resolution of the claim through conciliation, or the issuance of a Right to Sue notice or dismissal. Under the MFML Law and regulations, conciliation is mandatory. Although parties must participate in the MERO's conciliation efforts in all cases, there is no obligation for either party to agree to a resolution of the claim in the conciliation process.

This manual provides guidance on the MERO's procedures under the MFML Law, including the conciliation process and the parties' rights and responsibilities during the MERO's processing of the claim. The reader is also directed to the MFML Law and Sections 51-1-1-1 to 51-14-1-1 of the MERO Regulations for guidance.

2.0 MERO Process Overview

The following provides a brief general overview of the MERO's case processing. This overview is not intended to be comprehensive; please review the entire manual for additional information.

- In most cases, an employee may file a claim of violation against their Tribal employer with the MERO within 180 days of the event believed to be unlawful.
- Within 21 days of the filing of the claim, a conciliation conference is scheduled. Both the claimant and the employer are required to attend the mandatory conciliation conference.
- Generally, the employer files an answer to the claim with the MERO within 15 calendar days of the filing of the claim.
- The employer and the claimant are generally both asked to submit certain information to the MERO within two (2) business days before the conciliation conference to assist the MERO in the conciliation.
- Conciliation efforts may continue beyond the conciliation conference but generally no longer than 90 business days after a claim is filed.
- If conciliation is successful, the parties enter into a binding conciliation agreement that the MERO approves.
- If conciliation is unsuccessful, the MERO releases its jurisdiction, which allows the claimant to take their claim to the Mashantucket Pequot Tribal Court (Tribal Court).

- Under certain circumstances, additional time may be needed for the MERO’s case processing. For example, either party may file a motion or request that the MERO may need to address before continuing with conciliation.

3.0 Representation by an Attorney or Union Representative

An individual or employer is not required to retain an attorney to file a claim or participate in a MERO proceeding. However, claimants and employers may be represented by an attorney of their own choosing and at their own cost.

Alternatively, a claimant may choose to be represented by their union if the labor organization is certified under Tribal law to represent a bargaining unit that includes the claimant’s position.

The MERO represents the law and does not represent any claimants or employers under the MFML Law.

4.0 Claims Before the MERO

4.1 When May a Claim be Filed

To be timely, a claim must be filed with the MERO within 180 calendar days of the event believed to be a violation of the MFML Law.

4.2 Who May File a Claim

Except as provided in Section 4.2.1., an individual who believes that their rights under the MFML Law have been violated, may file a claim with the MERO. An individual who files a claim may be referred to as the “claimant.”

4.2.1. Exception

An employee who was disciplined or discharged and appealed the action under Title 8, M.P.T.L., may not file a claim under the MFML Law on the same basis as their Title 8 appeal if they received a Board of Review or arbitration decision under Title 8.

4.3 Who May a Claim be Filed Against

A claim may be filed against the employee’s Tribal employer. Claims may not be filed against individual supervisors, managers, or other employees of the employer. The employer against which a claim is made may be referred to as the “respondent.”

4.4 Where and in What Manner May a Claim be Filed

4.4.1 Filing a Claim with the MERO

To file a claim with the MERO, a claimant must submit to the MERO a completed MERO Form 51-7200, *Claim of Family or Medical Leave Violation*. Claim forms are available on the MERO website or from the MERO office. The claim must be fully completed, typed or printed neatly in ink and signed with an original (wet) signature under oath before a notary, the MERO Director, or other person authorized to administer oaths in the jurisdiction where the claim is signed. Claims may be filed with the MERO as follows:

- a. Submit the original signed claim to the MERO. The MERO encourages the original claim to be delivered in a manner that provides proof of the date of the MERO's receipt. The claim will be considered filed on the date received by the MERO.
- b. Submit the completed and signed claim form electronically, by email to MERO@mptn-nsn.gov. The claim will be considered conditionally filed on the date received by the MERO electronically or the following date if the claim is received after 5:00 p.m. Eastern Time. The original signed claim must be received by the MERO within ten (10) business days of the conditional filing date or the claim will not be processed. If the original signed claim is received within ten (10) business days, the claim will be considered filed on the date the MERO received the electronic copy.

4.5 Claim Processing

4.5.1 Initiating the MERO Process

Upon receipt of a completed and signed MERO Form 51-7200, *Claim of Family or Medical Leave Violation*, the MERO will assign a MERO docket number to the claim, note the date of filing, and create a case file.

4.5.2 Service of Claim

A copy of the docketed MERO Form 51-7200, *Claim of Family or Medical Leave Violation*, will be served on the respondent by the MERO via electronic mail. The claimant also will receive a copy of the docketed claim via email, or by U.S. Mail if the claimant indicated on the claim form that they do not have access to email.

4.5.3 Manner of Processing

The MERO will schedule a mandatory conciliation conference within 21 days of the filing of a claim. Follow-up sessions will be scheduled as needed.

4.5.4 General Responsibilities of the Parties During Claim Processing

Both the claimant and the employer are responsible for reviewing and complying with the MFML law, as well as any regulations, rules or manuals issued by the MERO. The parties are expected to cooperate fully with the MERO's processes, including the following:

- Attending and fully participating in the conciliation conference;
- Providing complete and accurate information about any claim or defenses;
- Providing all documentary and other evidence reasonably available; and
- Complying with MERO's deadlines for submission of information.

Failure or refusal to cooperate in the MERO's processes may include the following:

- Failing to respond to contact attempts;
- Withholding information or evidence relevant to the case;
- Failing to inform the MERO of a change of address or other contact information;
- Failing to attend or participate fully in conciliation efforts; and
- Interfering with the MERO's processes.

4.5.5 Rescheduling Requests

Either party's request for a conciliation conference postponement must be submitted to the MERO in writing and provide good cause for the request. Before submitting a request for a postponement, the requesting party should contact the opposing party and ask for their position on the request, and try to get agreement on another date for the conciliation. The results of this outreach should be included in the request for postponement submitted to the MERO.

Postponement requests of more than 10 calendar days will not be granted absent a showing of extraordinary circumstances.

4.5.6 Amending a Claim

A filed claim may be amended by the claimant on their own initiative or upon the request of the MERO to clarify the claimant's claims. Additions to a claim that are sufficiently related to the original claim allegations do not require a new claim to

be filed. Amending the claim will not lengthen the amount of time the case will be pending before the MERO.

A claimant should include all their allegations in their original claim and not rely on the possibility of amending a claim. An amendment may not include additions that are not closely related to the original claim. Allegations that are not closely related to the original claim require a new claim to be filed, which would be subject to the 180-day time limit for filing.

4.5.7 Claim Answer and Defenses

The respondent is required to file with the MERO a written answer by admission or denial to each numbered and unnumbered allegation of the claim, and an enumeration of its known defenses, within 15 calendar days of the service of the claim, or if the respondent files a motion to dismiss, within five (5) business days of the date of the MERO decision on the motion to dismiss.

4.5.8 Motion to Dismiss

A motion to dismiss is a written request by the employer to dismiss a claim for a reason that would not require any further processing of the case. For example, a motion to dismiss by the employer may be appropriate if the employee received a Board of Review or arbitration decision under Title 8 or the MERO does not have jurisdiction under the MFML Law because the claim does not allege a violation of the law. An employer may file a motion to dismiss requesting dismissal of the case in its entirety.

A motion seeking dismissal of certain allegations, which would not dispose of the entire case if granted, will be denied without consideration of the merits. Any select allegations the employer believes should be dismissed may be addressed at the conciliation conference.

4.5.8.a Filing a Motion to Dismiss.

The employer may file a written motion to dismiss within 15 calendar days of the date of service of the claim.

i) Motion to Dismiss Based on Title 8 Board of Review or Arbitration Decision

Any motion to dismiss that is based on the employee having received a Board of Review or arbitration decision under Title 8 that the employer alleges is also the basis of the employee's MFML Law claim

must be accompanied by a copy of the Board of Review or arbitration decision.

4.5.8.b Answering a Motion to Dismiss

The MERO will notify the claimant of the filing of a motion to dismiss. The claimant will have five (5) business days from receipt of the motion to file a written response to the motion explaining to the MERO why the employer's request should not be granted.

i) Answering a Motion to Dismiss Based on Title 8 Board of Review or Arbitration Decision

If the claimant disagrees with the employer's request to dismiss the MERO claim because of a Title 8 decision, the claimant must show that the allegations of the MERO claim are not closely related to the claimant's appeal of their suspension or termination under Title 8.

4.5.8.c Stay of Case Processing

Upon receipt of a motion to dismiss, the MERO may issue a notice to the parties that the processing of the case has been held in abeyance until the pending motion is decided by the MERO. Holding the case in abeyance means that a "stay" is placed on the case; that the processing clock stops and the MERO does not move forward with conciliation or other case processing until the motion or matter is decided. The parties will be advised in writing when the processing stay is lifted. The period during which a case is stayed does not count against the 90 business days afforded the MERO to conciliate the case.

4.5.8.d Deciding a Motion to Dismiss

The MERO will issue a written decision addressing the motion to dismiss.

4.5.9 Other Motions or Matters

A party may file a motion or request if it believes there is a matter requiring the MERO's attention related to the case. Within its discretion, the MERO may invoke a stay, request a response from the opposing party, and/or issue a written decision with respect to the matter. The parties will be advised in writing how the MERO intends to proceed.

5.0 Conciliation

5.1 Introduction

The MFML Law provides for a mandatory conciliation conference to be scheduled within 21 days of the filing of a claim. Conciliation is a non-binding process where the MERO's representative or designee explores with the claimant and the employer the possibility of resolving the claim. Both the claimant and the employer, directly or through their legal representatives, are required to attend the mandatory conciliation conference and cooperate with the conciliation process, but there is no requirement to agree to a resolution.

Conciliation efforts are considered confidential. The parties will be required to execute and comply with a conciliation agreement, see MERO Form-31-1164, *MERO Agreement for Conciliation*.

All parties are required to attend the conciliation conference. Each represented party must have a representative in attendance at the conciliation conference with actual authority to negotiate and enter into a conciliation agreement.

Conciliation will be conducted in accordance with the MERO's guidelines and may continue after a conciliation conference is held. Conciliation efforts generally may be conducted for up to 90 business days from the filing of a claim, excluding any period during which the case processing is stayed.

Nothing said or done during the course of conciliation may be used in any subsequent claim proceedings. Information discovered during conciliation should not be made public without the written consent of the persons concerned and the MERO.

5.2 Conciliation Participants

The following persons and/or entities may participate in the conciliation process.

5.2.1 Conciliator

The conciliator is the representative or designee of the MERO conciliating the MFML Law claims.

5.2.2 Claimant

The claimant is the employee who filed a claim alleging a violation of the MFML Law. The claimant is required to attend the conciliation conference.

5.2.3 Claimant's Attorney or Union Representative

The claimant may be represented by an attorney of their choice and at their cost. Alternatively, a claimant may choose to be represented by their union if the labor organization is certified under Tribal law to represent a bargaining unit that includes the claimant's position.

Claimants who wish to have an attorney or union representative present at the conciliation should arrange to secure an attorney or union representative well in advance. A request to postpone the conciliation conference to allow the claimant additional time to secure an attorney or the assistance of a union representative may not be granted.

5.2.4 Support Person

The claimant may seek permission from the MERO to have a support person present at the conciliation conference. Any request must be by email or other writing and may be submitted up to two (2) business days in advance of the scheduled conciliation conference. Making a request too close in time to the proceeding or appearing at the conciliation conference with an unauthorized support person may result in the MERO's denial of permission for attendance.

5.2.5 Respondent or Employer

The respondent is the employer the claimant claims violated the MFML Law. The employer is required to attend the conciliation conference through an attorney or other representative.

5.2.6 Employer Attorney

The employer may be represented by an attorney of their choice and at their cost. Employers that wish to have an attorney present at the conciliation should arrange to secure an attorney well in advance. A request to postpone the conciliation conference to allow the employer additional time to secure an attorney may not be granted.

5.2.7 Employer Organizational Representatives

One or more employer organizational representatives who have the authority to negotiate and execute conciliation agreements on behalf of the respondent(s) must be present at the conciliation conference. An organizational representative who is familiar with the facts of the case may be present at the conciliation conference.

5.3 Conciliation Conference Postponements

Either party's request for a conciliation conference postponement must be submitted in writing and provide good cause for the request. Before submitting a request for postponement, the requesting party should contact the opposing party and ask for their position on the request and try to get agreement on another date for the conciliation. The results of this outreach should be included in the request for postponement submitted to the MERO.

Postponement requests of more than 10 calendar days will not be granted absent a showing of extraordinary circumstances.

5.4 Documents Required Prior to the Conciliation Conference

Both parties may receive requests for documents to be submitted to the MERO two (2) business days in advance of the conciliation conference. These submissions generally will be required to be served on the opposing party unless the MERO directs otherwise.

5.3.1 Employer's Documents

Generally, the respondent is asked to submit all documents relating to leave requests and decisions by the employer.

5.3.2 Claimant's Documents

Generally, the claimant may be requested to submit any documents supporting their allegations.

5.3.3 Both Parties

In addition to the documents requested by the MERO, both parties may submit any additional documents and arguments to the MERO no later than two (2) business days prior to the scheduled conciliation conference. Any additional documents and arguments filed with the MERO are not required to be provided to the opposing party.

5.3.4 Submission of Sensitive Documents

Issues under the MFML Law may involve information, such as health information, that requires heightened security to protect confidentiality. These documents must be transmitted by a method that maintains confidentiality. The MERO will also consider written requests from the parties to redact (block) certain information or present sensitive documents at the conciliation conference rather than in advance.

5.3.5 Statement of the Case

The claimant and the respondent may be asked to file with the MERO a statement of the case no later than two (2) business days prior to the conciliation conference. A statement of the case should contain the key facts and legal issues in the case. The statement of the case is not required to be provided to the opposing party.

5.5 Claim Resolution.

Generally, any resolution reached in conciliation will be documented in a conciliation agreement signed by the claimant and the employer and approved by the MERO. A conciliation agreement may include any of the remedies that may be awarded under the MFML Law.

Any conciliation agreement signed by the parties is effective as of the date the agreement is signed by the MERO Director. An approved conciliation agreement is final and binding on the parties and may be enforced by the MERO in the Mashantucket Pequot Tribal Court.

6.0 Relief Available Through Conciliation

A conciliation agreement may include any of the remedies that are available from the Tribal Court. See 51 M.P.T.L. ch. 12 §§ 1 and 2. The Court may grant one (1) or a combination of the below remedies as justified by the facts of a particular case, if the claimant demonstrates by a preponderance of the evidence that the respondent violated the MFML Law.

6.1 Wages, Salary or Employment Benefits

The claimant may receive lost wages, salary or employee benefits by reason of the respondent's violation of the MFML Law, plus interest at the prevailing rate.

6.2 Monetary Losses

In a case in which wages, salary, and/or employment benefits have not been denied or lost to the claimant, a claimant may receive any actual monetary losses they sustained as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 or 14 weeks, as applicable, as provided in 51 M.P.T.L. ch. 3 § 1(a), or 26 weeks, as provided in 51 M.P.T.L. ch. 3 § 1(b), of wages or salary for the claimant, plus interest at the prevailing rate.

6.3 Liquidated Damages

A claimant may receive liquidated damages in an amount equal to the damages described in Section 6.1 and 6.2 received by the claimant, if the claimant proves by a preponderance of the evidence that the act or omission leading to the violation of the Law was made in bad faith.

6.4 Reinstatement to a Position

A claimant may be reinstated either to the same position or to a comparable position that the claimant is qualified to hold that is of equivalent status, wages and benefits.

6.5 Reasonable Attorney's Fees and Costs

The Tribal Court may award a prevailing party reasonable attorney's fees and costs under the below circumstances.

6.5.1 To the Claimant

The respondent may be required to pay the claimant's reasonable attorney's costs and fees if the claimant proves by a preponderance of the evidence that the respondent's violation of the MFML Law was willful, that the respondent knew its conduct violated the MFML Law or showed reckless disregard for whether its conduct violated the MFML Law.

6.5.2 To the Respondent

The claimant may be required to pay the employer's reasonable attorney's costs and fees if the respondent proves by a preponderance of the evidence that the claimant's claim was frivolous and without merit.

6.6 Claimant's Duty to Mitigate Damages

A claimant has a duty to mitigate their damages. For example, a claimant alleging a violation that, if proven, would result in an award of lost wages, is expected to make efforts to reduce the harm of the violation through job searches, and the lost wages may be reduced by the claimant's earnings during the mitigation period. The respondent bears the burden of proving a claimant's failure to mitigate.

7.0 Settlements – MERO and Private

7.1 MERO Conciliation Agreements

A MERO conciliation agreement is a written agreement to resolve the disputed issues in a MFML Law claim that results from the parties' participation in conciliation by the MERO. A conciliation agreement is an agreement between the respondent and the claimant that is subject to approval by the MERO. An approved conciliation agreement is final and binding on the parties. MERO conciliation agreements are confidential.

The MERO may monitor or verify compliance with a conciliation agreement. If the MERO receives substantial evidence that a party to the conciliation agreement is in material breach of the terms of the agreement, the MERO may seek enforcement of the agreement in the Tribal Court.

7.2 Private Settlements Differ from MERO Conciliation Agreements

The term "private settlement" refers to an agreement negotiated and signed by a claimant and a respondent for the express purpose of resolving the issues in a MFML Law claim outside of the MERO's processes. The parties may conduct private negotiations and enter into a private settlement agreement with no involvement from the MERO. Private settlement agreements are not approved by the MERO.

If a party subsequently breaches a private settlement agreement, the MERO will not seek enforcement of the terms of the settlement in the Tribal Court. Any relief from breach of the terms of a private settlement agreement would be determined by the terms of the agreement.

Parties are required to appear for a conciliation conference and participate in the MERO's conciliation efforts, even if they are engaged in private settlement negotiations. If the parties execute a private settlement while a case is being processed by the MERO, the parties should notify the MERO. The MERO process will continue unless and until the MERO approves a withdrawal request. A withdrawal request based on a private settlement agreement may not be approved until the MERO receives assurances that the private agreement is finalized.

7.3 Withdrawal of a MERO Claim by Reason of a Private Settlement or Conciliation Agreement

The claimant may complete MERO Form 51-7290, *Withdrawal Request*, to request withdrawal of the claim.

A withdrawal request approved by the MERO is a final resolution of the claim before the MERO. The claimant will not be permitted to re-file the same claim based on the same

set of facts. The MERO will not issue a dismissal or Right to Sue notice if a claim is withdrawn. Withdrawal of a claim does not allow the claimant to take their claim to the Tribal Court.

7.4 Settlements are Not Considered Public Information by the MERO

The fact of settlement of a claim will be considered public information, whether the settlement was reached through MERO conciliation or private negotiations. The terms of any settlement will not be considered public information, whether the settlement was reached through MERO conciliation or private negotiations.

8.0 MERO Case Processing Conclusions

A claim filed with the MERO may be concluded with or without a conciliation agreement. The MERO may approve a withdrawal request. The MERO may issue the claimant a Right to Sue notice or a dismissal of the claim, and the claimant may file a suit in the Tribal Court.

8.1 Withdrawal

If conciliation efforts result in a binding conciliation agreement, the claimant is asked to withdraw their claim based on the resolution. See Section 7.3 above.

8.2 Right to Sue Notice

If conciliation efforts do not result in a settlement of the claim, or under certain other circumstances, the MERO will issue a Right to Sue notice, which allows the claimant to take their claim to the Tribal Court. A Right to Sue notice means the MERO is finished trying to resolve the claim, and is no longer working on the case. The Right to Sue notice gives the claimant permission to take their case to the Tribal Court if they wish. The MERO issues MERO Form 51-7800, *Notice of Dismissal and/or Right to Sue*. Additional information about filing a claim in Tribal Court may be found in MERO Form 51-7810, *Information About Filing a Title 51 Suit in Tribal Court*.

8.3 Dismissal of Claim

A claim may be dismissed by the MERO in certain circumstances, such as if:

- It is determined that the employee already received a Board of Review or arbitration determination;
- The alleged facts fail to state a claim under Title 51; or
- The claim is not timely filed with the MERO.

The MERO issues MERO Form 51-7800, *Notice of Dismissal and/or Right to Sue*. Additional information about filing a claim in Tribal Court may be found in MERO Form 51-7810, *Information About Filing a Title 51 Suit in Tribal Court*.

8.4 MERO Failure to Act

If a case has been pending before the MERO for at least 180 days, excluding any periods when the case was stayed (processing paused), and the MERO has taken no action on the case, the case is considered concluded.

9.0 A Claimant's Right to File a New Claim

9.1 Right to File a New Claim

Regardless of the outcome of a particular claim, the claimant retains the right to file a new claim. A new claim may allege:

- violation of the MFML Law that occurred after the allegations of a prior claim; or
- retaliation for previously having filed and pursued a claim under the MFML Law.

To be timely filed, any new claim must be filed with the MERO within 180 calendar days of the event alleged to be a violation of the MFML Law.

9.2 Settlements and New Claims

Neither a private settlement nor a conciliation agreement may require a claimant to waive their rights to file claims that arise after the events addressed in the settlement.

10.0 Initiating a Suit in Tribal Court

10.1 Who May File a Suit in Tribal Court

The law requires that the MERO claim process be completed before an action alleging a violation of the MFML Law may be filed with the Tribal Court. The MERO claim process is considered completed if 1) the claimant has received from the MERO a Right to Sue notice or a dismissal of the claim; or 2) at least 180 calendar days (excluding any stay) have passed after filing a claim with the MERO and the MERO has taken no action.

10.2 When Must a Suit be Filed

To be timely filed, an action must be filed with the Tribal Court within two (2) years of the date(s) of the alleged violation of the MFML Law or three (3) years if the alleged violation is willful. Merely claiming a violation is willful is not sufficient; a claim of a willful violation must be supported by allegations of fact that the employer knew its

conduct violated the MFML Law or showed reckless disregard for whether its conduct violated the MFML Law.

10.3 Who is the Defendant

An action under 51 M.P.T.L. ch. 11 § 2 may be brought against an employer only. An action may not be brought against an individual employee or representative of the employer.

10.4 What Must be Filed

To initiate an action in the Tribal Court, the following must be filed with the Court and served on the employer in accordance with the rules of the Court:

10.4.1 Complaint

A complaint, which may consist of one (1) of the options below.

- A writing setting forth the employer's identity, allegations of fact, and provisions of the MFML Law believed to be violated, or
- A copy of the claim or amended claim submitted to the MERO on the claim form provided by the MERO.

It is the claimant's responsibility to make sure that whatever the claimant submits to the Tribal Court as the complaint includes all the claims of wrongdoing that the claimant wishes to allege.

10.4.2 MERO Outcome

One (1) of the following must be submitted to the Tribal Court with the complaint:

- A copy of the MERO Right to Sue notice;
- A copy of the MERO dismissal; or
- A statement that 180 calendar days have passed since the claim was filed with the MERO and no dismissal, Right to Sue notice or other determination was issued by the MERO.

10.4.3 Support for Willful Allegation

If the claimant alleges that the respondent committed a willful violation of the MFML Law, the complaint must include, or be supplemented with a writing that includes facts that, if proven, would support a finding that the employer knew

that its conduct violated the MFML Law or showed reckless disregard for whether its conduct violated the MFML Law.

10.4.4 Other

The Tribal Court may require additional documents or have additional requirements for initiating an action in the Tribal Court under Title 51. Contact the Tribal Court for more information.

10.5 How cases proceed at the Tribal Court

Suits filed in the Tribal Court will proceed in accordance with the rules of the court. An action filed under the MFML Law is heard and decided by a judge. A jury trial is not available for an MFML Law action.

10.6 Standard of proof

The standard of proof is a preponderance of the evidence, meaning that something must be proven to be more likely than not. As applied to MFML Law actions:

- **Employee**
An employee is required to prove the elements of the complaint by a preponderance of the evidence.
- **Employer**
An employer is required to prove any affirmative defense by a preponderance of the evidence.

The Tribal Court's interpretation of the MFML Law is required to follow Tribal law and Tribal law precedent. Interpretation of the Law may be guided by the Federal Family and Medical Leave Act (Act) and decisions interpreting the Act.

10.7 Deferral to the MERO

Under either of the circumstances described below, the Tribal Court may defer to the MERO the processing of an action under the MFML Law filed in the Tribal Court or take such other action as warranted by the circumstances. Deferral means the Tribal Court sends the case to the MERO with specific instructions to the MERO and/or the parties.

10.7.1 MERO Dismissal

If the MERO dismissed the claim, the Tribal Court may defer the case to the MERO with instructions to the MERO and/or the parties to correct the deficiencies leading to the dismissal, if correction is permitted.

10.7.2 Right to Sue

If the MERO's Right to Sue notice indicates that the conciliation did not take place, because of a person's failure to appear at the conciliation conference without good cause, the Tribal Court may defer the case to the MERO with an appropriate order, such as an order for the MERO to conciliate the case and for the parties to attend the conciliation.

10.8 Appeals of Tribal Court Decisions

Any decision of the Tribal Court may be appealed to the Mashantucket Pequot Court of Appeals in accordance with the rules of the court. Any decision of the Mashantucket Pequot Court of Appeals shall be final.

11.0 Enforcement of a Conciliation Agreement

A conciliation agreement that is signed by the parties and approved by the MERO is final and binding on the parties. The MERO may monitor or verify the parties' compliance with the provisions of their agreement. If the MERO receives substantial evidence that a party to the conciliation agreement is in material breach of one or more of the terms of the agreement, the MERO may seek enforcement of the agreement in the Tribal Court.

11.1 Who May File an Enforcement Action

The MERO may file an action in the Tribal Court to enforce a final and binding conciliation agreement if a party does not comply with the terms of the agreement. The MERO will not seek enforcement of a private settlement agreement.

11.2 When Must an Enforcement Action be Filed

The MERO may bring an action in Tribal Court to enforce a conciliation agreement no later than one (1) year after the last act required by the agreement. No filing fee is required to be paid to the Tribal Court by the MERO.

11.3 Filing the Conciliation Agreement with the Court

Within thirty (30) days after the enforcement action is filed with the Tribal Court, the MERO files a copy of the parties' conciliation agreement with the Tribal Court. Any conciliation agreement filed with the Tribal Court in a MERO enforcement action is considered confidential and does not become part of the Court's public record.

11.4 Actions of the Tribal Court

Under the MFML Law, the Tribal Court enforces a binding conciliation agreement unless the agreement includes terms that are in direct conflict with Tribal law.

12.0 General Provisions Applicable to All Cases before the MERO

12.1 Time Calculations

Unless otherwise indicated, when the MFML Law or this manual provide for a time period of five (5) days or less, weekends and Tribal holidays shall be excluded. Any time period in excess of five (5) days shall include weekends and Mashantucket Pequot Tribal Nation holidays. The date of filing or notice from which a time period begins to run is not counted. Generally, annual Tribal Holidays are published on the MERO website.

12.2 Methods of Service of Documents

Unless otherwise specified, any reliable delivery method is acceptable for the delivery of documents to the MERO, including facsimile and e-mail. Unless otherwise specified, acceptable methods of delivery to and between parties include any reliable methods under the circumstances, which may include e-mail. The parties must serve documents on the opposing party in a manner that provides for the opposing party's receipt no later than the business day of the MERO's receipt.

Text messages are not an acceptable method of service. If a claimant has indicated on the claim form, that they do not have email access, email is not considered an acceptable method of delivering documents to the claimant. Any documents that an employer is required to serve on a claimant who has indicated they do not have email access must be served by hand-delivery, next day mail or other manner that assures the claimants receipt within one (1) business day.

Documents that contain highly confidential information such as health information are required to be served in a manner that preserves the confidentiality of the information. Generally, for example, emails that are not encrypted or password protected by a password provided to the recipient or in some other way are not secure.

12.3 Communicating with Parties

If an attorney or representative has entered a notice of appearance (MERO Form-31-0001) on behalf of a party in a contested case, the MERO's communications to/with the party will be to/with the attorney or representative of record.

12.4 Extensions of Time

Any request for extension of time must be submitted to the MERO in writing and provide substantiation for the request. The MERO will consider requests for extensions of time for good cause shown. See also Section 4.5.5 regarding conciliation conference rescheduling requests.

12.5 Public Documents

Under the MFML Law, conciliation agreements approved by the MERO will not be public. Parties may mutually agree in writing to disclose the agreement.

Nothing in this Procedures Manual or otherwise precludes the MERO from disclosing any information, including documents, as may be necessary or required by any case processing, including without limitation, any appeals, enforcement actions, or other legal process.

13.0 MFML Law Procedures Manual Amendments and Conflicts

13.1 Amendments

This MFML Law Procedures Manual may be amended from time to time at the MERO's discretion. The current MFML Law Procedures Manual supersedes prior versions of the Manual.

13.2 Conflicts

If any provision of this manual conflicts with any provisions of Title 51, the Mashantucket Pequot Family and Medical Leave Law, or Sections 51-1-1-1 to 51-14-1-1 of the MERO Regulations, the relevant provision of the Law or regulations shall control.