



Mashantucket Pequot  
Tribal Nation

## MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

### Guide for Tribal Employers re: Rights of Preference Eligible Individuals (COVID-19 Edition)

**Under Title 33, the Mashantucket Pequot Tribal and Native American Preference Law**

The Mashantucket Pequot Tribal and Native American Preference Law (“Preference Law”) provides that Tribal employers afford preference in employment opportunities to eligible Tribal Members, their Spouses and Adopted Children, and Native Americans.<sup>1</sup> The Mashantucket Employment Rights Office (“MERO”) enforces the Preference Law.

**Who is required to receive preference?** Preference must be afforded in the following order:

<b>(1)</b>	<b>Tribal Member</b> – duly enrolled member of the Mashantucket (Western) Pequot Tribe.
<b>(2)</b>	<b>Spouse of MPTN member</b> – man or woman joined in lawful marriage with a Tribal Member or surviving spouse with child as defined in Title 29.
	<b>Adopted Child (or Dependent Child)</b> – person legally adopted by a Tribal Member or who was in the custody and care, and resided with, a Tribal Member for at least 7 years by the age of 18.
<b>(3)</b>	<b>Native American</b> – individual enrolled in and recognized as a member by a tribe or tribal community with Federal, State, Canadian First Nation or Tribal Council Resolution recognition.

**What are “employment opportunities” requiring preference?** With certain exceptions, employment opportunities generally include hire, transfer, promotion, training and non-disciplinary retention, including in any reorganization or layoff. An individual must meet the minimum necessary qualifications of a position to be eligible for preference.

Additional benefits required to be provided when the Tribe is the employer are:

- ❖ Tribal Members and Spouses/Adopted Children receive preference in shift assignments and at least two (2) days advance notice of employment openings; provided that if a Tribal Member is selected for a position, the notice requirement is satisfied.
- ❖ Unless it causes a hardship for the employer, preference eligible individuals receive cultural opportunities, which are accommodations for cultural convictions unique to an individual’s tribal or Native American culture.

**What are “minimum necessary qualifications”?** Minimum necessary qualifications are those qualifications that are necessary to perform the basic responsibilities of the position, such as requirements related to education, skills or experience.

**What is preference in training?** Training preference includes admission to an existing program and additional training if the preference employee is not succeeding; provided that the employer is not required to create a training program not otherwise existing or available to employees.

**What is shift preference?** Shift preference is required to be provided to Tribal Members and Spouses/Adopted Children for open positions and to maintain shift assignments during reassignments, but is not intended to displace employees or provide preference for work schedules.

<sup>1</sup> This guidance is designed for Tribal Employers only. The Preference Law differs substantially with respect to both preference eligibility and benefits depending on whether the employer is the Tribe or a non-Tribal entity.

**When is preference not required to be afforded?** Exceptions include:

- (a) Temporary positions, generally 4 weeks (160 hrs) or less.
- (b) “Key” positions, which are
  - i. positions whose occupants hold substantial ownership interests in the employer,
  - ii. high level managerial or critical function positions such that the employer would risk significant damage or loss if the positions were not filled with best qualified candidates,
  - iii. positions that have a substantial impact on the ability of the employer to execute its strategic objectives,
  - iv. positions that directly enhance the strategic capabilities of the employer,
  - v. any position designated by the Tribal Council as “key,” provided the Tribal Council identifies how the position meets the criteria of the law, and
  - vi. all Tribal Court positions, political appointees, and elected officials.<sup>2</sup>
- (c) When an opening is filled by the natural progression (a logical next step in a career path for a current employee) of an employee within the department who was already performing or overseeing substantial duties of the position; provided that if a vacated position exists, the position is considered an employment opportunity for which preference is afforded.
- (d) When an opening resulting from a restructure is filled through the natural progression of an employee who was already performing substantial duties of the position; or the opening is filled as approved by Tribal Council.
- (e) Preference in cultural opportunities under the Preference Law may be denied if providing preference would cause a hardship for the employer.

**When should the Office of Tribal and Native American Preference (ONAP) be involved?** The law requires that the ONAP be involved within the first 90 days a preference employee holds a position (to assess performance and training needs), and in employment preference, discipline and any other employment decisions related to the law. For additional information, contact the ONAP:

- ❖ **Joshua Carter** – 396-2265 - JoshCarter@foxwoods.com
- ❖ **Steven Thomas** – 312-3425 - SThomas@foxwoods.com

**What if an employee believes there is a violation of the Preference Law?** A claim against a Tribal employer must be filed first with the ONAP within 180 days of the claimed violation of the law. The 120 day period between March 10 and July 8, 2020, is excluded from the 180 day count. Any claim filed with the MERO must be filed within 15 days of the ONAP’s decision; provided that with respect to any claim pending before the ONAP between March 10 and July 6, 2020, a claim may be filed with the MERO within 30 calendar days of receipt of the ONAP decision. If the MERO concludes that the employer violated the Preference Law, it may order the employer to remedy the violation. Remedies may include requiring the employer to offer an open employment opportunity and/or to pay lost wages. The MERO’s decision may be appealed to the Tribal Court.

**Is there any additional information available about the Preference Law?** Yes, forms, the procedures manual, other guidance documents and MERO decisions are available on the MERO website accessed through [www.mptnlaw.org](http://www.mptnlaw.org), or by contacting the MERO.

Disclaimer: The information provided is intended to be accurate but general information. For additional information, please refer to Title 33, M.P.T.L., and any regulations, rules and manuals issued by the MERO, which are available on the website or by contacting the MERO.

<sup>2</sup> Elected and appointed officials are also specifically excluded from the law’s definition of “employee.”