



Mashantucket Pequot
Tribal Nation

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

Guide for Tribal Employers re: Rights of Preference Eligible Individuals

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

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

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

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| 1st | Tribal Member – duly enrolled member of the Mashantucket (Western) Pequot Tribe. |
| 2nd | Spouse of MPTN member – man or woman joined in lawful marriage with a Tribal Member or a surviving spouse with a child as defined in Title 29. |
| | Adopted Child (includes Dependent Child) – 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. |
| 3rd | Native American – 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. |

2. 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 provided when the Tribe is the employer are:

- ❖ Tribal Members and Spouses/Adopted Children receive preference in shift assignments and early outs, 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, all preference employees receive cultural opportunities, which are accommodations for cultural convictions unique to an individual’s tribal or Native American culture.

3. 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.

4. What is preference in training? Training preference includes admission to an existing program and additional training if the preference employee is not succeeding, but the employer is not required to create a training program not otherwise existing or available to employees. See, also, No. 8, below.

5. What is shift assignment preference? Shift assignment preference is provided to Tribal Members (first) and Spouses/Adopted Children (second) for open positions and to maintain shift assignments during reassignments, but is not intended to displace employees or provide preference for work schedules. See MERO-FR2021-001 for additional information.

6. What is early out preference? An early out, sometimes called a force out, is when an employee is released after they appear for work or during their shift due to lack of work. Preference is provided to

¹ 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.

Tribal Members (first) and Spouses/Adopted Children (second) to be the first offered an early out and the last required to take an early out.

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

- (a) Temporary positions, generally 4 weeks (160 hours) or less annually.
- (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. positions designated by the Tribal Council as “key” in accord with the law, and
 - vi. all Tribal Court positions, political appointees, and elected officials.²
- (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 the Tribal Council.
- (e) A cultural opportunity preference under the Preference Law may be denied if providing preference would cause a hardship for the employer.

8. When should the Office of Tribal and Native American Preference (ONAP) be involved?

- Within the first 90 days that a preference employee holds a position, the ONAP and the department must hold a meeting with the employee to assess performance and training needs, and
- The law requires that the ONAP participate in employment preference, discipline and any other employment decisions related to the law.
- For additional information, contact the ONAP at 860-312-3425.

9. What if an employee believes a Tribal employer violated the Preference Law? A claim may be filed with the ONAP within 180 days of the claimed violation. The ONAP resolves or decides the claim within 60 days. A claim may be filed with the MERO within 15 calendar days of the ONAP decision date. If, after a hearing, the MERO concludes that the Preference Law was violated, it may order the violation to be remedied. Remedies may include the employer offering an open employment opportunity and/or paying lost wages. The MERO’s decision may be appealed to the Tribal Court.

10. 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 at <https://MERO.mptn-nsn.gov>, 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 at MERO.mptn-nsn.gov or by contacting the MERO.

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