



MERO

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

RESPONSE TO PUBLIC INQUIRY
UNDER THE
MASHANTUCKET PEQUOT TRIBAL
AND NATIVE AMERICAN PREFERENCE LAW

The following Response to Public Inquiry under Title 33, M.P.T.L., as amended, (“Preference Law”) provides employers with the benefit of the MERO’s interpretive guidance relating to a specific public inquiry. This response is based solely on the facts presented below. The reader is expected to be familiar with the terminology utilized in the law and procedures manual.

Public Inquiry: The employer is subject to the Preference Law. Several employees in the same position held by Employee X, as well as several employees in the position immediately superior, were laid off as a result of a reduction in force. Employee X, a preference eligible employee, submitted a voluntary employment resignation five (5) days after the employees were laid off. The position held by Employee X is on the Reservation and not exempt from the Preference Law requirements. Is the employer required to post or otherwise advertise the vacated position or may it be filled with one of the laid off employees?

MERO Response: Any open position that must be filled in compliance with the Preference Law (hereinafter “Preference Position”) is required to be properly publicized. Employee X’s resignation received just five (5) days after the reduction in force does not result in a Preference Position under the following circumstances:

- (1) At the time of the reduction in force, the employer had no actual or constructive knowledge that the position would be vacated,
- (2) The position was vacated voluntarily,
- (3) The vacated position was one affected by the reduction in force,
- (4) The employer fills the position with an employee who was laid off during the reduction in force just prior to Employee X submitting a resignation,
- (5) The employer does not delay in recalling a laid off employee after notification of the position being vacated,
- (6) Any preference eligible laid off employee who meets the minimum necessary qualifications receives preference for the vacated position, and
- (7) To the extent applicable, the principles of the Interim Select and General Guidance for Reorganizations & Layoffs issued by the MERO on July 30, 2009, are followed. (e.g., the vacated position can not be filled without posting or other advertising by a laid off employee for whom the position would be considered a promotion from the prior position held by the employee with the employer)

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Page 1 of 1

MERO-RPI-33
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