



**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. The employer filled an open position in compliance with the Preference Law and the successful candidate is an existing employee. The employer imposes a ninety (90) day probationary period each time an individual is placed in a new position, whether through hire or transfer. Per established employer policy, when a position is filled by an existing employee, there may be circumstances within the ninety (90) day probationary period during which the employee is permitted to return to the position from which the employee came and while that possibility remains viable, the vacated position remains vacant. The vacated position is on the Reservation and not exempt from the Preference Law. Is the employer required to post or advertise the position the employee vacated during the ninety (90) day probationary period?

**MERO Response:** Any open employment position that must be filled in compliance with the Preference Law (hereinafter “Preference Position”) is required to be properly publicized. The vacated position does not constitute a Preference Position during any portion of the ninety (90) day probationary period during which the transferred employee may return to his/her original position as long as the position remains vacant otherwise and the employer’s policy regarding transfer back to the vacated position is enforced in a consistent manner. In addition, generally the vacated position does not constitute a Preference Position thereafter so long as the employer does not intend to fill the position and the position remains vacant.