



**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 33 M.P.T.L., as amended, (“Preference Law”) provides the public 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:** Does the Preference Law require a light duty program offered by a Tribal employer to participants in the Tribe’s Disability Program, 36 M.P.T.L., to be made available to preference eligible individuals other than Tribal Members?

**MERO Response:** There are several scenarios under which “light duty” work could be made available to Disability Program participants. A fact specific analysis of the structure of a given program would be required to determine Preference Law applicability. Nevertheless, the following discussion is provided to assist in making determinations about developing appropriate programs.

The Mashantucket Pequot Tribal Disability Program is a program that Tribal law specifies is open only to MPTN Tribal members. 36 M.P.T.L. § 3(a)(i). The law provides for certain offsets against benefit entitlements, with an exception provided for the first \$288 per week of earned income, including wage income. 36 M.P.T.L. § 2(i). Program eligibility requirements preclude a participant from working on a full-time or regular part-time (24 hours per week) basis. 36 M.P.T.L. § 3(a)(i)(iv).

In the course of implementing the Mashantucket Pequot Tribal Disability Program, the program administrator is exploring the possibility of the Tribe as an employer providing light duty opportunities, although no decisions have been made regarding the structure of a light duty program, including whether the positions would be “make work” or existing open positions, or the source of the compensation for any light duty work. Title 36 does not specifically provide for, or address, light duty work for program participants.

The Preference Law requires employers to afford employment opportunities to minimally qualified preference eligible individuals. 33 M.P.T.L. ch. 1 § 5. When the Tribe is the employer, preference in certain employment opportunities, including hire and training, is required to be extended first to Tribal members, then to Tribal member spouses and third to Native Americans. 33 M.P.T.L. ch. 1 § 5.

Generally, employers maintain light duty programs for certain of their employees, such as employees who suffer injuries or illnesses, or employees who suffer workplace injuries or

illnesses. If a Tribal employer maintains a light duty program for certain employees, those positions would be required to be awarded in accordance with the preference requirements of Title 33. Therefore, within the designated pool of eligible minimally qualified employees, if there were a situation where multiple employees were available for limited light duty opportunities, the light duty opportunities would be required to be afforded first to Tribal members, next to Tribal member spouses and third to Native Americans.

If Tribal member Disability Program participants were added to an employer's existing light duty eligible pool, two potential changes to the pool may result. First, the added participants may introduce a new eligibility standard based on health status, because the criteria for determining illness or injury for purposes of eligibility under the employer's light duty program may not be coextensive with the criteria for determining disability under the Disability Program. Second, the added participants from the Disability Program may not be existing employees, thereby expanding the light duty pool to new hires. By adding Disability Program participants to an existing employer light duty program, the Tribal employer would effectively be extending to employee and non-employee Tribal members an additional employment opportunity preference. The limitation of such an additional preference to Tribal members is not provided for by Title 36 or other Tribal law; therefore, the Preference Law provisions relating to employment opportunities would be applicable, requiring Tribal member spouses and Native Americans who are similarly situated, meaning that they would meet the eligibility requirements of the Disability Program if they were Tribal members, to be admitted to the light duty pool and provided preference.<sup>1</sup>

Another approach to affording light duty opportunities for Title 36 Disability Program participants may be for a Tribal employer to create certain work opportunities that would not exist otherwise, solely for program participants and funded by the Tribal Disability Program. Work opportunities limited to program participants in this manner would not be required to be afforded to members of other preference categories. In other words, an employer's cooperation with the implementation of a governmental entitlement program by offering work opportunities funded through the program, and limited by the parameters of the program, would not be the type of structure that would implicate the Preference Law.

While the MERO hopes the above discussion is helpful, as a reminder, a fact specific analysis of the structure of a specific program would be required to determine Preference Law applicability.

---

<sup>1</sup> Certain exceptions to affording preference under the Preference Law may be applicable. For example, an employer is not required to afford preference when filling positions on a temporary basis not to exceed four (4) weeks and a total of 160 work hours. *See* RPI-33-0903 (September 2009).