

TITLE 31. MASHANTUCKET EMPLOYMENT RIGHTS LAW

CHAPTER 1.

31 M.P.T.L. ch. 1 § 1

§ 1. Short Title

This law shall be known as the Mashantucket Employment Rights Law.

31 M.P.T.L. ch. 1 § 2

§ 2. Findings, Purpose and Authority

a. The Tribe finds that:

(1) It has enacted various laws that govern aspects of employment on the Reservation; however, it does not have a centralized office to oversee the regulation of employment on the Reservation whether it concerns tribal or non-tribal employees.

(2) There is a need for a centralized employment process for all employers on the Reservation and the establishment of a Commission to hear claims under tribal employment laws.

(3) There is a need for an administrative process that utilizes the cultural preference for the resolution of disputes through a non-adversarial process such as the Peacemaker's Council. It is therefore important to the Tribe that employees and employers have an avenue to mediate and resolve disputes in this manner.

(4) It recognizes its continued commitment to create and foster a diverse employment atmosphere where differences are respected. This commitment can best be fulfilled through the establishment of the Mashantucket Pequot Employment Rights Office to oversee, coordinate and enforce tribal employment laws and assist employees and employers in understanding the requirements of those laws.

b. The purpose of this Law is:

(1) To promote responsible Tribal governance and self sufficiency of the Mashantucket Pequot Tribal Nation by creating a centralized Mashantucket Employee Rights Office to coordinate and regulate equitable employment on the Mashantucket Pequot Reservation and various other Tribal Entities.

(2) To create a structure for the Mashantucket Employee Rights Office that includes the position of Director to oversee the office, a Commission to hear and decide complaints, and a Mediation panel to bring the culture of the Tribe and its preference for non-adversarial resolution of disputes to this structure.

c. Authority

The Tribe enacts this law as an exercise of its inherent sovereign powers and the powers delegated to it by the Constitution of the Mashantucket (Western) Pequot Tribe.

31 M.P.T.L. ch. 1 § 3

§ 3. Definitions

For purposes of this Title:

- a. The term "conflict of interest" means the existence of a relationship between a person in a decision-making position with another person, employer or entity that may improperly influence the person's decision making to the detriment of the Tribe and shall include the appearance of a conflict even if the person believes the relationship would not affect his or her judgment in a matter.
- b. The term "Commission" shall mean the Mashantucket Employment Rights Commission as established in Chapter 2 of this law.
- c. The term "Commissioner" shall mean an individual who is hired to serve and does serve as a member of the Mashantucket Employment Rights Commission.
- d. The term "Employee" shall mean any individual employed by an employer with or without a contract. This includes but is not limited to part-time employees, full time employees, and regular.
- e. The term "Employer" shall mean any person, company, contractor, subcontractor or other entity located or engaged in work on the Reservation, trust lands and all area within the exterior boundaries of the reservation employing two or more persons, without regard for whether the employer or its owner is Indian or Non-Indian or a member of the Mashantucket (Western) Pequot Tribe or not. The term "employer" excludes Federal, State and County governments.
- f. The term "MERO" means the Mashantucket Employment Rights Office.
- g. The term "order of agreement" shall mean a written explanation of the agreement contemplated by the two parties and witnessed by the mediation panel.
- h. The term "Person" means both persons and artificial persons, including, but not limited to corporations, partnerships, joint ventures, lessees, contractors, subcontractors, sole proprietorships, associations, trustees, public officials, Board members, fiduciaries and a private interest or private party and their agents.
- i. The term "Reservation" means the Mashantucket (Western) Pequot Reservation, as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe or any other area subject to the Tribe's jurisdiction.
- j. The term "Record" means the written documentation of all evidence (whether by way of testimony or documentary) presented to the Commission in a particular case or matter before the Commission.
- k. The term "Tribal Council" shall mean the governing body of the Mashantucket (Western) Pequot Tribe as outlined in the Tribal Constitution.
- l. The term "Tribal Entity" shall include all departments, businesses, boards and entities owned and operated by or under the auspices of the government and/or any branch of the government of the Tribe.
- m. The terms "Tribal Member" and "Member" shall mean any person who is duly enrolled as a member of the Mashantucket (Western) Pequot Tribe.
- n. The term "Tribe" shall mean the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation.

CHAPTER 2.

31 M.P.T.L. ch. 2 § 1

§ 1. Establishment of Mashantucket Employment Rights Office

There is hereby established the Mashantucket Employment Rights Office charged with carrying out all tasks assigned to it by tribal law related to the regulation of employment on the Reservation. The Director of MERO shall be the head of the office as more fully established and described in Chapter 2, Section 4 of this law, and shall carry out the day to day functions and duties of the MERO. The Commission, established in Chapter 2, Section 2 of this law, shall hear all matters as provided by tribal law, while the Mediation panel established by Chapter 2, Section 5 of this law shall provide employees and employers with an opportunity to resolve disputes through a non-adversarial process.

31 M.P.T.L. ch. 2 § 2

§ 2. Establishment of MERO Commission

a. There shall be a MERO Commission with five members: one tribal member, two non-tribal members; alternates include one Tribal Member and one non-tribal Member. The Commission will consist of three regular members that will sit for hearings and make a decision. If there is a conflict of interest between a party and one of the Commissioners, or a particular member of the Commission can not attend the hearing, then an alternate Commissioner will be selected by the Director based on availability. The Commissioners shall be on an as needed basis.

b. The non-tribal member Commissioners shall be appointed by the majority vote of the Tribal Council only upon the recommendation of the joint action of the Judicial Committee and Administrative Support Committee after review of the qualifications of each candidate and an interview with each qualified candidate. If the Tribal Council does not choose one of the Committee's qualified candidates for hire, the process goes back to the committee for additional qualified candidates to be interviewed and then recommended to Tribal Council. A qualified candidate for the non-tribal member Commissioner positions must meet the following minimum qualifications:

- (1) Be licensed to practice law and be in good standing in the state of Connecticut;
- (2) Have a minimum of ten (10) years of experience in labor and employment law;
- (3) Have the highest moral and ethical character;
- (4) Submit to and pass a background check, including a criminal background check and any required licensing; and
- (5) Knowledge and experience in federal Indian law and tribal law or agreement to obtain training and education in these areas, and passage of the Tribal Bar exam.
- (6) Be willing to complete any required training or continuing education requirements, including in the areas of Federal Indian law, Tribal law, Human Resource guideline, or any other related areas.

c. The tribal member Commissioners shall be appointed by the majority vote of the Tribal Council only upon recommendation by the joint action of the Judicial Committee and Administrative Support Committee after the committee reviews the qualifications of each candidate and conducts interviews with each qualified

candidate. If the Tribal Council does not choose one of the Committee's qualified candidates for hire, the process goes back to the committee for additional qualified candidates to be interviewed and then recommended to Tribal Council. A qualified candidate for the tribal member Commissioners position must meet the following minimum qualifications:

- (1) Have a bachelor's degree;
- (2) Have a minimum of 3–5 years experience in one of the following or a combination of the following areas: human resources, law, compliance or regulatory work;
- (3) Have the highest moral and ethical character;
- (4) Submit to and pass a background check, including a criminal background check and any required licensing;
- (5) Successfully complete an interview and be selected through a majority vote of the Joint Committee of the Judicial Committee and the Administrative Support Committee;
- (6) Demonstrate good judgment and communication skills, and a positive work ethic demonstrated through evaluations and attendance records from work experience;
- (7) Be willing to complete any required training or continuing education requirements, including in the areas of Federal Indian law, Tribal law, Human Resource guideline, or any other related areas.

d. The Judicial Committee and Administrative Support Committee will interview and recommend candidates to the Tribal Council for appointment by the majority vote as Commissioners. If the Tribal Council does not choose one of the Committee's qualified candidates for hire, the process goes back to the committee for additional qualified candidates to be interviewed and then recommended to Tribal Council. The Commissioners will be appointed for a three year term, and shall serve on an as needed with a competitive compensation being set by Tribal Council.

e. Any Commissioner shall be disqualified from involvement in decisions in which he or she has a conflict of interest or the Commissioner's involvement would present an appearance of a conflict of interest. It shall be the decision of the Commission as a whole to decide if one Commissioner has a conflict of interest and should be disqualified from a particular decision.

f. A Commissioner may be removed from office by a majority vote of the Tribal Council at a duly called meeting where a quorum is present; provided that there has first been a complete investigation of the matter giving rise to the removal. A Commissioner may be subject to suspension or removal from office for: (1) conduct prejudicial to the impartial and effective administration of justice which may impair the ability of the Commission to effectively hear and decide matters; (2) violation of any applicable code of ethics; (3) commission of a crime; or (4) gross neglect of duty, misfeasance or malfeasance in office.

h. If a Commissioner shall resign, become incapacitated, is banished, excluded, or dies the Commissioner's position shall be considered vacated automatically, and the Administrative Support and Judicial Committees shall seek candidates to fill the vacancy and bring their recommendation to Tribal Council.

31 M.P.T.L. ch. 2 § 3

§ 3. Powers and Duties of the Commission

The Commission shall:

- a. Adopt procedures or regulations governing the activities of the Commission, including procedures for

hearings before the Commission;

b. Hold hearings and make decisions on labor and employment matters within its jurisdiction as provided in tribal law, and to administer oaths to witnesses and enforce all rules, regulations, procedures and/or guidelines promulgated by the Commission;

c. Keep a written record of all proceedings before it and compile an official Record in all matters before it that shall include, at a minimum, a transcript of all testimony given before the Commission and true and accurate copies of all documentary evidence considered by the Commission in the matter;

d. Have the power to summon and examine under oath such witnesses, and direct the production of, and examine or cause to be produced or examined such documents in relation to any matter at issue as the Commission may find proper;

e. Have the power to certify official acts and have all powers necessary to enable the Commission to perform the duties imposed upon it by the provisions of tribal law;

f. Have the power to select one of the Commissioners to act as the Chair of the Commission for administrative purposes and if necessary for the orderly conduct of hearings and matters before the Commission;

g. To grant any remedy, penalty, fine, or other relief as provided by tribal law; and

h. Any and all other duties that are deemed necessary to carry out the purpose of this MERO Law.

31 M.P.T.L. ch. 2 § 4

§ 4. Establishment of the MERO Director Position

a. There is hereby established the position of the Director of MERO who shall have primary responsibility for day-to-day administration and operation of MERO and its employees. The compensation for this position shall be competitive and set by Tribal Council and the Director shall report directly to Tribal Council.

b. The Director shall be appointed by the majority vote of the Tribal Council based only on the recommendation of the joint action of the Judicial Committee and Administrative Support Committee which shall select a candidate provided that the candidate must meet the following minimum qualifications:

(1) Be licensed to practice law and be in good standing in the state of Connecticut and have practiced in the area of labor and employment law for a minimum of 10 years, or have a either a Juris Doctorate or a Master's Degree and have a minimum of 10 years experience in government regulation, employment or administration;

(2) Demonstrate an ability to organize and manage a newly formed government office in the nature of MERO;

(3) Have familiarity with or experience in tribal employment rights or equivalent type of experience;

(4) Demonstrate excellent communication and organizational skills;

(5) Be of the highest ethical and moral character; and

(6) Submit to and pass a background check, including a criminal background check and any required licensing.

c. The Director shall have those powers deemed necessary to properly carry out the duties and functions of the

MERO which include but are not limited to the following:

- (1) To develop a budget for MERO for submission and approval by Tribal Council;
- (2) To supervise expenditures pursuant to the approved budget, and guard against and report any misuse or fraudulent use of the monies allocated pursuant to the budget;
- (3) To develop, execute, and oversee a plan for implementation and distribution of this law and for any rules, regulations, procedures and/or guidelines established by MERO, to all employers and to all government or tribal entities receiving contracts or grants for work to be done on the Reservation;
- (4) To perform any duty or requirement imposed upon the Director by any tribal law, including but not limited to any and all requirements related to Indian and tribal preferences;
- (5) To adopt rules, regulations and/or procedures for the operation of the MERO and recommend the adoption of rules and regulations to the Commission for conduct of its hearings or for any other related matter;
- (6) To hire personnel as required for the efficient operation of the MERO and as approved in the MERO budget. Initially, such personnel shall, at a minimum, include an administrative assistant and an investigator;
- (7) To accept and review any claims, complaints, requests for information or any other matter related to the MERO office or as referred to MERO by any other tribal law;
- (8) To conduct or direct personnel to conduct any necessary investigations;
- (9) To assign, where appropriate, any of the above duties to MERO personnel; and
- (10) To conduct surveys including those of Tribal Members, Native Americans, employers and tribal entities that work for the Tribe to ensure effectiveness and efficiency of tribal employment rights laws.
- (11) To create and generate quarterly reports and statistics of MERO complaints; including but not limited to the success of the complaint, how it was resolved, and who were the parties to the complaint and bring those statistics to Tribal Council.

31 M.P.T.L. ch. 2 § 5

§ 5. Establishment of Mediation Panel

a. There is hereby established a mediation panel to help resolve disputes between employers and employees arising under the Tribe's labor and employment laws. The mediation panel shall be comprised of three members from the Tribe's Peacemaker's Council who will be designated, on a case by case basis, by the Chair of the Peacemaker's Council provided that each member of the panel meet the following qualifications:

- (1) Have a bachelor's degree or equivalent work experience with the Tribe;
- (2) Have the highest moral and ethical character;
- (3) Submit to and pass a background check, including a criminal background check and any required licensing;
- (4) Demonstrate good judgment and communication skills, and a positive work ethic demonstrated through evaluations and attendance records from work experience; and

(5) Complete training or educational programs in Indian and tribal preference in employment, non-discrimination law, tribal law, federal Indian law, and other areas as determined by the Director of MERO.

b. The Chair of the Peacemaker's Council shall establish rules and regulations to govern mediation before the panel, and for determining the composition of the mediation panel.

c. The Director shall establish rules and regulations for an employer or employee to request mediation and referral to mediation.

d. All parties to any mediation before this panel must agree to the mediation as a first step to the resolution of a dispute between the parties.

e. At the end of a mediation agreement, there shall be a written order of agreement between the parties that shall be signed by the parties and the mediation panel.

f. If an agreement can not be met at the end of the mediation process, or if there is a violation of the order of agreement that the parties signed after mediation, the process will continue to a MERO Commissioner's Hearing for resolution.

CHAPTER 3.

31 M.P.T.L. ch. 3 § 1

§ 1. Scope of Coverage

a. This Law shall apply to all areas within the Reservation and shall apply to all persons, employees, employers, whether tribal or non-tribal, subject to the jurisdiction of the Tribe and Tribal law.

b. This Law shall be effective as of the date of its enactment.

31 M.P.T.L. ch. 3 § 2

§ 2. Conflict with Other Laws or Policies

To the extent that any provision of this Law conflicts with any other law or any policy or procedure issued by any person, employer or Tribal entity, this law shall govern; except if expressly provided otherwise herein.

31 M.P.T.L. ch. 3 § 3

§ 3. Severability

If any provision or part of this Law or its application to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this Law and the unaffected provisions of the Law shall continue to be in full force and effect.

31 M.P.T.L. ch. 3 § 4

§ 4. Sovereign Immunity

Nothing contained in this Title shall be construed to waive the sovereign immunity of the Tribe or any arm, subdivision, department, commission, office, officer, employee or agent of the Tribe, including the MERO, the MERO Commission, the MERO Mediation Panel, and the MERO Director all as established by this title.