

TITLE 33. MASHANTUCKET PEQUOT TRIBAL AND NATIVE AMERICAN PREFERENCE LAW

Section 1. Title; Authority

This title may be cited as the “Mashantucket Pequot Tribal and Native American Preference Law”. This title is adopted pursuant to the inherent authority of the Mashantucket Pequot Tribal Council, the lawful governing body of the Mashantucket Pequot Tribe, to regulate labor and employment within the Reservation. Further, the Tribe has the inherent authority to exclude persons from the Reservation and to place conditions on entry and continued presence on the Reservation, and to govern conduct within the Reservation.

Section 2. Findings

The Mashantucket Pequot Tribe, through the Mashantucket Pequot Tribal Council finds that:

- a. It has an Indian Preference Policy that requires preference in employment decisions for Tribal Members and Native Americans. This policy is applicable to the Tribe, its arms, subdivisions, entities and organizations and does not contain an enforcement mechanism or an administrative process to ensure compliance.
- b. There are an increasing number of non-tribal employers on the Reservation and there is a need to establish the requirements of Native American and Tribal preferences for all employers, as well as establish a process for enforcing the requirements of the law.
- c. There continues to be a need and desire to promote individual and tribal economic development within the Mashantucket Pequot Tribal Nation, both through Employment Opportunities and through contracting opportunities. To further the Tribe's goal to provide opportunities for professional growth and economic empowerment of its Tribal Members and Native Americans, and in recognition of the importance of cultural and traditional beliefs of Native Americans and the need for this influence in the employment environment, the Tribe recognizes that it is important to provide individuals and employers with guidance on these issues, the administrative structure to regulate this area, and a forum to address any issues that may arise concerning compliance with this Law.
- d. In order to foster and advance its culture, mission, and laws, it is important to support the preservation and development of tribal families including tribal member spouses. As part of its culture and community, the Tribe recognizes that a person who is not married to a tribal member but who qualifies as a significant other, as provided under tribal custom and practice, is part of the tribal family and treated the same as a tribal spouse. Providing preference in employment opportunities to tribal members and their spouses furthers the important goal of preserving tribal families by promoting the economic well being of the tribal family and assuring that all family members can share in the benefits and responsibilities of tribal employment.

Section 3. Purpose

The purposes of this Law are:

- a. To clearly set forth the requirements for all Employers within the jurisdiction of the Tribe to provide preference in Employment Opportunities for Tribal Members and Native Americans who meet the Minimum Necessary Qualifications of the job; and
- b. To designate duties and obligations of the Mashantucket Employment Rights Office regarding the implementation of the various provisions and requirements of this Law, including the investigation and resolution of any claimed violations of the law, providing guidance to both individuals who may qualify for preference and Employers, and communicating the requirements of this Law to Employers and others.

Section 4. Definitions

- a. "Employment Opportunities" means hiring, transfer, promotion, training, and retention including

in any reorganization or layoff.

b. "Employer" means any Person that employs five or more employees who, during any 30 day period, each spend, cumulatively, 40 or more hours performing work on the Mashantucket Pequot Reservation. Employer shall include the Tribe and any agency, subdivision, arm, department, instrumentality, or entity thereof located or engaged in work on the Reservation. The term Employer excludes federal, state, local or other tribal governments.

c. "MERO Commission" or "Commission" means the MERO Commission established and defined in Title 31 M.P.T.L.

d. "MERO Director" or "Director" means the Director of MERO as established and defined in Title 31I M.P.T.L.

e. "MERO" or "Office" means the Mashantucket Employment Rights Office as established and defined in Title 31 M.P.T.L.

f. "Minimum Necessary Qualifications" shall mean those job-related qualifications that are essential to the performance of the basic responsibilities of each employment position, including any essential qualifications concerning education, training and job-related experience. Demonstrated ability to perform essential and basic responsibilities shall be deemed satisfaction of necessary qualifications.

g. "Native American" means an individual enrolled in and recognized as a member by his or her tribe or tribal community; provided that the tribe or tribal community is recognized by the Mashantucket Pequot Tribe (through a Mashantucket Pequot Tribal Council Resolution), the Federal Government, by a state in the United States, or as a First Nation in Canada.

h. "Person" means both natural persons and artificial persons, including, but not limited to, entities considered Employers hereunder, corporations, partnerships, joint ventures, limited liability companies, sole proprietorships, associations, unions, trusts, trustees, and agents.

i. "Reservation" means the Mashantucket 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. "Spouse" shall mean a husband or wife joined in lawful marriage, or a significant other who is now and has been residing with a member of the Mashantucket Pequot Tribe for no less than three years and has been issued an identification badge as a tribal spouse by the Tribal Clerk's Office.

k. "Tribal Member" means a duly enrolled member of the Mashantucket Pequot Tribe who is in good standing.

l. "Tribe" means the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation and includes any arm, department, agency, subdivision, enterprise or organization within or wholly owned by the Tribe. Tribe does not include any entity created under state laws that is owned by the Tribe and operates primarily outside of the Tribe's Reservation.

Section 5. Preference In Employment

a. *Preference; Tribe as Employer.* When the Tribe is the Employer, it shall give preference in Employment Opportunities first to Tribal Members, then to Spouses of Tribal Members, and then to other Native Americans; provided that the Tribal Member, Spouse of Tribal Member or Native American, as the case may be, meets the Minimum Necessary Qualifications. Thereafter, the Employment Opportunity shall be open to any other candidate who meets the Minimum Necessary Qualifications of the position. If no candidate for an Employment Opportunity meets the Minimum Necessary Qualifications, then preference shall be given first to Tribal Members, then to Spouses of Tribal Members, and then to other Native Americans, who are capable of being trained to the

Minimum Necessary Qualifications of the position. The requirement for giving preference provided in this subsection 5.a. also applies to the hiring of student interns throughout the year or for after school, weekend, or summer vacation employment.

b. *Preference; Non-tribal Employers.* For Employers other than the Tribe, preference in Employment Opportunities shall be given to individuals who are members of a federally recognized Indian tribe and who live on or near a reservation; provided that they meet the Minimum Necessary Qualifications. Thereafter, the Employment Opportunity shall be open to any other candidate who meets the Minimum Necessary Qualifications of the position. If no individual in the foregoing situations meet the Minimum Necessary Qualifications, then preference shall be given to a member of a federally recognized Indian tribe living on or near a reservation who is capable of being trained to the Minimum Necessary Qualifications of the position, if such an individual has applied for the position.

c. *Posting Requirements.* Employers are required to comply with all job posting requirements which may be mandated in any rules, regulations and/or guidelines promulgated by the MERO Director. All Employers shall include and specify a Native American employment preference policy statement in all job announcements and advertisements and employer personnel policies affected by this Law. When the Tribe is the Employer it shall also include and specify a Tribal employment preference policy statement in all job announcements and advertisements and employer personnel policies affected by this Law. A copy of all such job announcements and advertisements and employer personnel policies shall be forwarded to the MERO as soon as available, but no later than publication date.

d. *Exclusion; Key Employees.* The preference in Employment Opportunities required by and set forth in this Law shall not be applicable to personnel actions regarding any key employee. For the purposes of this Law, a "key employee" includes: (1) One who is an owner of the Employer; or (2) One who is in a high-level supervisory position or who performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the Employer. Within a deadline established by the MERO Director, Employers shall identify and submit a list of all key employee positions to the MERO Director. The MERO Director shall notify, in writing, the Employer of the approval or disapproval of said list within a reasonable time of its receipt.

e. *Collective Bargaining Agreement.* Every collective bargaining agreement covering employees on the Reservation must include the Native American preference and, if the Employer is the Tribe, the Tribal Member preference requirements of this Law. To the extent that any such agreement is in effect prior to enactment of this Law, such agreement shall include the preference requirements of this Law in the next renewal or extension of the agreement.

f. *Reports.* Each Employer shall submit to the MERO Director on or before September 30th of each year, a report on a form prescribed by the MERO stating the number of employees hired by the Employer during the previous year and whether such employees remain employed by the Employer at the time the report is submitted. Such report shall also indicate the number of Native Americans employed by job category, number hired, number terminated and length of employment. All Employers shall also submit to the MERO Director, in a timely manner, such information (including documentation) as the MERO Director requests to enable him or her to determine whether the Employer is in compliance with this Law and any rules and regulations promulgated pursuant to this Law. If a Person subject to the provisions of this Law fails to provide the requested information, the MERO Director may impose penalties as provided under Section 10 of this Law; provided that the MERO Director sends written notice to the affected Person detailing the penalties being imposed and the reasons for such penalties and notice that the affected Person has the right to request a hearing before the MERO Commission within 14 business days of the mailing of the notice by the MERO Director. If a hearing is requested, the procedures set forth in Section 9 of this Law shall apply.

Section 6. Application Skills Bank

a. *Establish Skills Bank* The MERO Director shall establish an application skills bank to assist Employers in placing Tribal Members and Native Americans in jobs on the Reservation. The MERO Director shall communicate with Tribal Members, and to the extent possible other Native Americans, to obtain a resume or

application setting forth all necessary information in order to compile a list of Tribal Members and Native Americans who may be available for employment and the skills and qualifications of each individual.

b. Annual update The MERO Director shall update the skills bank on an annual basis including the determination of any additional Tribal Members or Native Americans who should be included in the skills bank and to update qualifications of each individual in the skills bank.

Section 7. Preference In Awarding Contracts (RESERVED).

Section 8. Certification For Tribally Owned and Native American Owned Businesses (RESERVED).

Section 9. Investigations; Complaint Procedures; Hearing.

a. Investigations. Upon a written claim filed by an interested Person, or as initiated by the MERO Director, the MERO Office shall investigate alleged non-compliance with this Law. All Persons subject to this Law have a duty to cooperate with any investigation conducted by the MERO Office under this Law. Failure to cooperate, as determined by the Commission, may subject a Person to the penalties provided in Section 10 of this Law.

b. Claim. A claim filed hereunder must be made in writing on a form prescribed by the MERO Office and must be filed within 180 days after the alleged noncompliance. The MERO Office may require additional information from the claimant, including a sworn statement, and must complete its investigation within a reasonable time after the claim is made, but in no event later than 90 days following the filing of the claim. The MERO Office shall notify the Person against which a claim is made and shall give such Person an opportunity to provide information concerning the alleged non-compliance. If after conducting the investigation, the Director determines that a violation of this Law has occurred, the Director shall notify the Person found to be in violation or to have violated the Law of the sanctions and/or remedy being imposed by the MERO Office to address the non-compliance, and provide the affected party with an opportunity to request a hearing before the Commission. If the affected party does not request a hearing before the Commission within 14 business days after the date the MERO Office mails the notice, the proposed sanction and/or remedy shall be imposed. If the MERO Director, after investigation, determines that there is no violation of this Law, the Director shall send notice to all interested parties of its decision to dismiss the claim, and shall provide notice to the claimant of the right to request a hearing before the Commission within 14 business days after the date the MERO Office mails the notice of dismissal of the claim.

c. Mediation. After investigation, if all parties agree, any matter may be referred to the MERO mediation panel for resolution as provided under Title 31 M.P.T.L. If the mediation does not produce an agreement between the parties, then each party shall have 30 days after the close of the mediation to request a hearing before the MERO Commission. Upon receipt of a request, a hearing shall be scheduled and conducted as provided in this Law.

d. Commission Hearing.

(1) Notice. Upon receipt by the MERO Office of a request for a hearing under subsection 9(b), the Commission, within 30 days after the request for a hearing is filed, shall set a date for a hearing and shall give written notice of the hearing, by certified mail return receipt requested, to all interested parties including the claimant, the party against whom the allegations have been made, and the MERO Director. At a minimum, the notice shall include:

- (a) the date, time and location of the hearing;
- (b) the nature of the hearing;
- (c) the right to be present and to participate in the hearing;
- (d) the right to present witnesses and documentary evidence and to cross examine witnesses;
- (e) the right to be represented by legal counsel at the party's own expense; and
- (f) provide the parties with any rules or regulations governing the hearing.

(2) Subpoena. On its own initiative or upon request of any Person notified of the hearing, the Commission may subpoena identified witnesses, documents or records.

(3) Hearing Procedures. Pursuant to Title 31 of the Mashantucket Pequot Tribal Laws, the Commission has the authority to adopt rules and/or regulations governing the conduct of its hearings. Any such rules or regulations adopted shall apply to hearings conducted under this Law; provided that they provide, at a minimum, for the following:

- (a) Each party notified of the hearing shall have the right to be present at and participate in the hearing. Other persons claiming to be interested in the matter may petition the Commission to participate.

- (b) Each party shall have the right to present relevant sworn testimony and documentary evidence with all relevancy determinations being made by the Commission;
 - (c) Each party shall have the right to call witnesses and to cross examine witnesses called by any other hearing participant;
 - (d) The chairperson of the Commission or another Commissioner designated by the chairperson shall preside over the hearing;
 - (e) Compliance with formal rules of evidence is not required, provided that the Commission shall determine the facts in an orderly and reasonable manner;
 - (f) All proceedings shall be recorded and a complete transcript shall be made and maintained by the Commission;
 - (g) The proceedings may be adjourned, postponed, or continued at the discretion of the Commission when it determines it is advisable or necessary; and
 - (h) Any matter to be proven must be done so to the satisfaction of the Commission by a preponderance of the evidence, unless otherwise provided in this Law.
- (4) Conflict of Interest. Pursuant to Section 2(e) of Title 31 M.P.T.L., if, at any hearing before the MERO Commission, the Commission determines that a Conflict of Interest, as that term is defined in Title 31, exists involving any individual Commissioner and a participant in the hearing, the Commission shall disqualify that individual Commissioner from participation in the hearing and an alternate Commissioner shall be appointed for the hearing.
- (5) Commission Decision. When the Commission has heard all evidence and arguments that it deems necessary to make a decision, it shall close the hearing. The Commission shall take the matter under advisement and issue a written decision no later than 30 days after closing the hearing; provided that, if the Commission requires a review of the hearing transcript in order to render its decision, the close of the hearing shall be deemed to be the date upon which the full transcript of the hearing is received by the Commission. At a minimum, the Commission's decision shall include findings of fact and of law; a detailed description of any order, penalty and/or remedy imposed, if any; and a statement of the right to appeal to the Mashantucket Pequot Tribal Court as provided in this Law.

Section 10. Sanctions, Penalties, or Awards.

Any one or a combination of the following may be imposed by the MERO Director, after an investigation and if a party does not request a hearing, or by the Commission after a hearing, upon a determination that a Person has failed to comply with the requirements of this Law, or any rules or regulations promulgated hereunder:

- a. An order for compensatory damages to the person affected which may include but not exceed one year of lost wages, which the affected person has a duty to mitigate. If however the affected person has already been awarded such damages under any other law, lost wages shall not be allowed under this Law.
- b. If it is determined that a violation of this Law was intentional or due to gross negligence, an award of attorney's fees may be made; provided that no award for such may exceed one third of a lost wage award, if there is such an award, and such award must be substantiated by contemporaneous records of hours billed and the billing rate(s) charged which must be consistent with prevailing billing rates of attorneys practicing before the Tribal Court.
- c. Reinstatement or hiring of the affected Person either into the position sought or into a comparable position provided that the Person meets the Minimum Necessary Qualifications for that comparable position;
 - (1) Require employment, promotion, transfer, retention and/or training of the Tribal Member or Native American injured by the violation.
 - (2) If it is determined that an Employer's noncompliance with this Law was intentional then a civil monetary fine not to exceed \$250 per violation may be assessed. Each day that an Employer has been determined to be out of compliance with the requirements of this Law may be considered a separate violation.
 - (3) An order that the Employer implement such changes in policies, procedures and/or conduct as are deemed necessary for the purpose of securing compliance with any requirement of this Law

Section 11. Appeals to Tribal Court; Waiver of Sovereign Immunity From Suit

a. *Appeal.* Any Person who is aggrieved by a final decision of the MERO Commission may appeal that decision to the Mashantucket Pequot Tribal Court; provided that any such appeal must be filed within 30 days after the Commission mails written notification of its final decision to the parties. Any party filing an appeal to the Tribal

Court must send written notice of the appeal to the other parties to the Commission decision being appealed and to the MERO Director. The notice of appeal must include a copy of the Commission decision being appealed. The Tribal Court is hereby granted jurisdiction over any such appeal

b. *Waiver of Sovereign Immunity.* To the extent that a claim filed in the MERO Office is against the Tribe or a hearing before the Commission concerns claimed violations of this Law against the Tribe, or an appeal to the Tribal Court concerns claims against the Tribe, the Tribe hereby expressly waives its sovereign immunity from suit for such claims and in such forums for the limited purpose of resolving the dispute as provided in this Law. Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe from suit in any other forum or for any other claim, including any claim in state or federal court or in any state or federal agency, or in any other forum or context.

c. *Record; Procedure.* In any appeal filed under this Section, the MERO Commission shall file with the Tribal Court a copy of the Record before the Commission including all evidence whether documentary or testimony, a full transcript of the hearing before the Commission, any decision of the MERO Director, and the MERO Commission's decision. The Record shall be filed with the Tribal Court within 30 days after the appeal is filed. The procedure governing appeals under Title 8 M.P.T.L. shall generally govern an appeal under this Law; provided that the Tribal Court may grant exceptions to such procedure as it deems necessary given the circumstances and differences between this Law and Title 8. The Tribal Court shall review the final decision of the Commission using an abuse of discretion standard of review. A final decision of the Tribal Court hereunder may be appealed to the Mashantucket Pequot Court of Appeals.

Section 12. Confidentiality

The MERO Director shall adopt rules and/or regulations to insure that confidential or sensitive information, including sensitive business information is kept confidential by the MERO Office and its employees, and other interested parties.

Derivation: Effective July 6, 2007, TCR070607-08 enacted the Mashantucket Employee Rights Ordinance (MERO).