

MASHANTUCKET PEQUOT TRIBAL LAWS

2009 SUPPLEMENT

TITLE 1. JUDICIARY	3
CHAPTER 2. COURT ADMINISTRATION	3
§ 1. Judges.....	3
CHAPTER 3. OFFICE OF THE PROSECUTOR	4
§ 1. Definitions.....	4
TITLE 2. CRIMINAL LAW	5
CHAPTER 8. SEX OFFENDER NOTIFICATION AND REGISTRATION LAW	5
§ 1. Declaration of Policy.....	5
§ 2. Definitions.....	5
§ 3. Application.....	6
§ 4. Risk to the Community	6
§ 5. Exceptions	8
§ 6. Release of Information / Community Notification / Immunity	8
§ 7. Sex Offender Notification Requirements	9
§ 8. Sex Offender Registration Requirements.....	9
§ 9. Duration of Registration.....	10
§ 10. Exemption from Registration	10
§ 11. Violations and Penalties	11
§ 12. Payment of Fines; Payment of Incarceration Costs.....	12
§ 13. Severability	12
§ 14. Effective Date	13
TITLE 6. FAMILY RELATIONS	14
CHAPTER 3. MARRIAGES	14
§ 4. Requirements for Issuance of Marriage License	14
TITLE 16. GENERAL REVENUE AND TAXATION CODE	15
CHAPTER 2. HOTEL OCCUPANCY	15
§ 2. Imposition and Rate of Tax.....	15
CHAPTER 4. RETAIL	15
§ 2. Imposition and Rate of Tax.....	15
TITLE 20. MASHANTUCKET PEQUOT CIVIL RIGHTS CODE	16
CHAPTER 1	16
§ 2. Jurisdiction and Waiver of Sovereign Immunity From Suit.....	16
TITLE 24. PROBATE LAW	18
CHAPTER 7. TRUSTS.....	18
§ 37. Special Needs Trust.....	18
TITLE 28 RIGHT TO WORK LAW	19
§ 1. Findings, Purpose, and Authority.....	19
§ 2. Definitions.....	20
§ 3. Right to Work.....	20
§ 4. Jurisdiction.....	21
§ 5. Civil Remedies	22
TITLE 31. MASHANTUCKET EMPLOYMENT RIGHTS LAW	23
CHAPTER 1.	23
§ 1. Short Title	23
§ 2. Findings, Purpose and Authority.....	23
§ 3. Definitions.....	24

CHAPTER 2	25
§ 1. Establishment of Mashantucket Employment Rights Office	25
§ 2. Establishment of the MERO Director Position	25
§ 3. Establishment of Mediation Panel.....	27
CHAPTER 3	28
§ 1. Scope of Coverage	28
§ 2. Hearings.	28
§ 3. Conflict with Other Laws or Policies	29
§ 4. Severability	29
§ 5. Sovereign Immunity.....	29
TITLE 32 MASHANTUCKET PEQUOT LABOR RELATIONS LAW.....	30
CHAPTER 1	30
§ 1. Title; Authority	30
§ 2. Findings	30
§ 3. Purpose	32
§ 4. Definitions	32
§ 5. Rights and Duties of Tribal Employers, Tribal Employees, and Labor Organizations	33
§ 6. Prohibited Practices	34
§ 7. Dispute Resolution for Prohibited Practices Questions.	35
§ 8. Free Speech Provision	36
§ 9. Collective Bargaining	36
§ 10. Negotiations Timetable; Dispute and Impasse Resolution	38
§ 11. Strikes and Lockouts prohibited	39
§ 12. Elections; Labor Organization Designation as Exclusive Representative; Appropriateness of Bargaining Unit; Representational Rights	39
§ 13. Decertification of exclusive representative.....	41
§ 14. Registration of Labor Organization	42
§ 15. Licensing of business agents.....	42
TITLE 33. MASHANTUCKET PEQUOT TRIBAL AND NATIVE AMERICAN PREFERENCE LAW	44
§ 1. Title; Authority	44
§ 2. Findings.....	44
§ 3. Purpose.....	45
§ 4. Definitions.....	45
§ 5. Preference in Employment.....	47
§ 6. Application Skills Bank	48
§ 7. Preference in Awarding Contracts (RESERVED).	49
§ 8. Certification for Tribally Owned and Native American Owned Businesses (RESERVED).....	49
§ 9. Claim Procedures; Investigations; Mediation.	49
§ 10. Tribal Court Review.....	50
§ 11. Sanctions, Penalties, or Awards	51
§ 12. Waiver of Sovereign Immunity From Suit.....	52

TCR061709-01 of 01 amended 1 M.P.T.L. ch. 2 §1(c) and 1 M.P.T.L. ch. 3 §1(d). All amendments follow and are indicated by notation and red text. See main volume for text of Title 1 not included in this Supplement.

TITLE 1. JUDICIARY

CHAPTER 2. COURT ADMINISTRATION

1 M.P.T.L. ch. 2 § 1

§ 1. Judges

a. Judges of the tribal court shall be appointed by the Tribal Council to serve a term of three years. Judges of the tribal court shall have the following qualifications: highest moral and ethical character; licensed to practice law in the highest court of any state of the United States; at least five years experience as a practicing attorney and/or judge; and significant experience and knowledge in federal Indian and tribal law. The Tribal Council may waive any of the above qualifications in exceptional circumstances.

b. Duties of Judges

Judges shall (1) faithfully uphold the Constitution and Laws of the Tribe; (2) hear and decide all claims properly brought before the court in a judicious, impartial, and efficient manner; and (3) seek continued legal and judicial education, particularly in federal Indian law.

c. The salary of the judges shall be established by the Tribal Council, and once set, shall not be reduced during the length of the appointment. Judges shall not be entitled to participate in any employee bonus compensation plan.

d. The Tribal Council finds that for the impartial and effective administration of justice, the continued independence of the judiciary is indispensable. It is in the interest of the Tribe to foster the dignity and integrity of the judiciary, and to these ends, it is desirable to establish appropriate procedures for the maintenance of judicial discipline, recognizing that the making of unpopular or erroneous decisions is not a sufficient ground for judicial discipline or a finding of a want of judicial integrity. Judges shall be subject to suspension or removal from office for (1) conduct prejudicial to the impartial and effective administration of justice which brings the judicial office in disrepute; (2) violation of any canon of judicial ethics; (3) failure to perform the duties of the office; (4) arrest and/or a final conviction of a felony or of a misdemeanor involving dishonesty or moral turpitude; (5) disbarment or suspension as an attorney at law; or (6) temperament which adversely affects the orderly carriage of justice.

e. Judges may be removed by a majority vote of the Tribal Council at a duly called meeting where such members are present and vote on the specific issue, provided that the Judicial Committee has first reviewed and investigated the matter giving rise to such removal action.

f. Judges shall be evaluated no less frequently than every three years.

CHAPTER 3. OFFICE OF THE PROSECUTOR

1 M.P.T.L. ch. 3 § 1

§ 1. Definitions

a. The Prosecutor/Special Tribal Advocate shall be appointed by the Tribal Council to serve either a part-time or full-time appointment for a term of three years.

b. The Prosecutor/Special Tribal Advocate shall have the following qualifications: (1) highest moral and ethical character; (2) license to practice law in the state of Connecticut and in the Mashantucket Pequot tribal court; (3) at least five years experience as a practicing attorney and/or judge, preferably in a prosecutorial capacity; and (4) significant experience and knowledge in federal Indian and tribal law. The Tribal Council may waive any of the above qualifications in exceptional circumstances.

c. The Prosecutor/Special Tribal Advocate shall: (1) faithfully uphold the Constitution and laws of the Tribe; (2) diligently present all criminal and child welfare matters, and any other matter as may be designated by tribal law before the tribal court; (3) represent the Tribe, upon the advice and consultation of the Office of Legal Counsel, in Indian child welfare matters in non-tribal forums; (4) present community education programs on subjects relative to the roles and responsibilities of the tribal prosecutor and tribal police; and (5) seek continued legal and judicial education, particularly in federal Indian law.

d. The **salary** of the Prosecutor/Special Tribal Advocate shall be established by the Tribal Council, and once set, shall not be reduced during the length of the appointment. The Prosecutor/Special Tribal Advocate shall not be entitled to participate in any employee bonus compensation plan.

e. The Prosecutor/Special Tribal Advocate shall be evaluated no less frequently than every three years.

f. The Prosecutor/Special Tribal Advocate may be removed by a majority vote of the Tribal Council at a duly called meeting where such members are present and vote on the specific issue, provided that the Judicial Committee has first reviewed and investigated the matter giving rise to such removal action.

TCR030609-08 of 10 amended 2 M.P.T.L. by adding a new ch. 8. The new ch. 8 to this law follows in red text. See main volume for text of Title 2 not included in this Supplement.

TITLE 2. CRIMINAL LAW

CHAPTER 8. SEX OFFENDER NOTIFICATION AND REGISTRATION LAW

2 M.P.T.L. ch. 8 § 1

§ 1. Declaration of Policy

a. The Mashantucket Pequot Tribal Council finds that sex offenders present a risk to re-offend and that the efforts of law enforcement to protect the community, conduct investigations and to apprehend those who commit sex offenses is impaired by the lack of information available about individuals who have pled to, or have been found guilty of, sex offenses.

b. The Mashantucket Pequot Tribal Council hereby establishes its policy to assist the efforts of federal, state and tribal law enforcement by requiring sex offenders who visit or reside on the Mashantucket Pequot Reservation to notify and register with the Mashantucket Pequot Tribal Police Department.

2 M.P.T.L. ch. 8 § 2

§ 2. Definitions

Where a term is not defined in this section, it shall be given its ordinary meaning, unless otherwise defined in this law. Terms used in this section shall have the following meaning, except where the context indicates otherwise:

- a. "Department" means the Mashantucket Pequot Tribal Police Department.
- b. "Chief" means the Chief of the Mashantucket Pequot Tribal Police Department, or his designee.
- c. "Indian" means a person who is a member of an Indian tribe.
- d. "Indian Tribe" means any federally recognized tribe, band, nation, rancheria, pueblo, colony, community or any other group of Indians, including any Alaska Native Village or Corporation.
- e. "Non-Indian" means a person who is not an Indian.
- f. "Reservation" means the Mashantucket Pequot Reservation as that term is defined in 25 U.S.C § 1752 (7) together with any land held by the United States governments in trust for the Tribe or any other area subject to the Tribe's Jurisdiction.
- g. "Resident" means any person who occupies a dwelling within the Reservation for a period of no less than 30 consecutive days in a calendar year.

h. "Tribal Court" means the Mashantucket Pequot Tribal Court or any court established by the Tribe to adjudicate and enforce the provisions of this law or violations of other tribal laws.

i. "Tribal Member" means a person who is enrolled as a member of the Mashantucket Pequot Tribe.

j. "Tribe" means the Mashantucket (Western) Pequot Tribe also known as The Mashantucket Pequot Tribal Nation.

k. "Visitor" means any person within the Reservation who is not a resident.

2 M.P.T.L. ch. 8 § 3

§ 3. Application

The notification and registration provisions of this law shall apply to any adult or juvenile residing on, or visiting, the Reservation:

a. Who has pled guilty to, been found guilty of, or who has been found not guilty by reason of insanity to any sex offense under Mashantucket Pequot Tribal Law; or

b. Who has pled guilty to, been found guilty of, or who has been found not guilty by reason of insanity, to any attempt, solicitation or conspiracy to commit a crime that requires or would require that person to register as a sex offender under federal law, or under the law of any state, other Indian tribe, territory, commonwealth, foreign country or other jurisdiction.

2 M.P.T.L. ch. 8 § 4

§ 4. Risk to the Community

a. Sex offenders present various "Levels of Risk" to the tribal community and shall be classified by the level of risk presented to the tribal community as identified by the Chief of the Mashantucket Pequot Tribal Police Department:

(1) The Chief is hereby authorized on behalf of the Tribe to take any and all necessary steps, including coordinating with other tribal, state and federal agencies, to obtain relevant and necessary information in determining the status and risk assessment level of each sex offender;

(2) The Chief shall determine the status and risk assessment level of each sex offender based upon the available information at the time of notification and registration;

(3) The Chief may change a sex offender's identified level of risk and/or further restrict activities and movements of a sex offender in accordance with his duty to best serve and protect the tribal community; provided that the Chief shall not change the initial level of risk of a sex offender without prior consultation with the Tribal Council; and

(4) The Chief shall, at a minimum, follow the guidelines set forth in subsection (2); provided that the Chief may impose more restrictive conditions on a case by case basis following consultation with the Mashantucket Pequot Tribal Council for a period not to exceed thirty

(30) days; provided further that any extension of such restrictive conditions must be approved by the Tribal Council.

b. Assigned assessment, parameters of tribal community concern, restrictions placed upon the movements and activities of a sex offender, and law enforcement notification requirements shall be as follows:

<u>Risk Assessment</u>	<u>Level of Concern</u>	<u>Restrictions</u>	<u>Notifications</u>
Level I	Low risk to re-offend within the community at large	No harassment or intimidation of and no contact with victim or witnesses	Victims, witnesses, immediate neighbors, school (if attending), family members
Level II	Moderate risk to re-offend within the community at large	All Level I restrictions; May not enter nor remain upon any property where there are minor children and a responsible adult is not present. May not stop, stand, loiter or enter within two hundred (200) feet of the external property lines or boundaries of any public or private school, day care or child care providers, child learning center, Headstart, school bus stop, crosswalk, or playground regardless of the presence of children.	All Level I notifications and day care, child care providers, Headstart, child learning centers, groups, organizations and businesses that serve women and children
Level III	High risk to re-offend within the community at large	All Level II restrictions; May not reside within five hundred (500)	All level II notifications and the public at large, law enforcement

feet of the external property lines of any location listed in the Level II criteria. agencies that monitor the exercising of this law or any other Tribal Law.

2 M.P.T.L. ch. 8 § 5

§ 5. Exceptions

Sex offenders, less than eighteen (18) years of age who are not legally emancipated, or have not been tried and found guilty as an adult, and have been assessed as a Level II or III offender, or the equivalent:

- a. Shall, if an Indian child, be referred to Indian Child Welfare Program within the Mashantucket Pequot Tribal Department of Social Services, and if a non-Indian child, be referred to Connecticut Child Protective Services, for an independent evaluation as to the danger presented, and any restrictions to be imposed, by the attendance of the child at any public or private school located on the Mashantucket Pequot Reservation.
- b. The Tribal Court shall decide if the cost of any evaluation will be the responsibility of the legal parent or guardian of the child.

2 M.P.T.L. ch. 8 § 6

§ 6. Release of Information / Community Notification / Immunity

- a. Release of Information.

Tribal officials are authorized to release relevant and necessary information regarding sex offenders to the public when such information is reasonably necessary for protection of the tribal community.

- b. Tribal Community Notification Requirements.

Within seventy two (72) hours of the registration of a sex offender, the Chief shall notify the individuals, groups and organizations identified according to the risk assessment levels of Section 4(b) by any reasonable method, including public posting, mailing, or personal delivery.

- c. Immunity.

Tribal officials are immune from civil liability for damages for any discretionary decision to release relevant and necessary information pursuant to this law.

2 M.P.T.L. ch. 8 § 7

§ 7. Sex Offender Notification Requirements

a. Visitors.

All persons to whom this law is applicable must notify the Chief, through the Mashantucket Pequot Tribal Police Department, upon entering and remaining on the Mashantucket Pequot Reservation as follows:

(1) Any person visiting or intending to visit the Reservation for a period exceeding twenty four (24) hours, but less than seven (7) calendar days, shall notify the Chief and provide their current physical address(es) and/or the location(s) within eight (8) hours of arrival; and

(2) Any person visiting or intending to visit the Reservation for a period exceeding seven (7) calendar days must notify the Chief and complete all the registration requirements of this law within eight (8) hours of arrival.

b. Residents.

All persons to whom this law is applicable must notify the Chief, through the Mashantucket Pequot Tribal Police Department, upon entering and remaining on the Mashantucket Pequot Reservation as follows:

(1) Any person currently residing on the Reservation at the time of enactment of this law shall notify and register with the Chief within thirty (30) calendar days;

(2) Any person intending to reside within the external boundaries of the Reservation must notify the Chief and complete all the registration requirements of this law at least fourteen (14) calendar days prior to moving to the Reservation;

(3) Any person that resides on the Reservation shall provide notification to the Chief at least fourteen (14) calendar days prior to a change of residence.

2 M.P.T.L. ch. 8 § 8

§ 8. Sex Offender Registration Requirements

All persons to whom this law is applicable and who are required to register as a sex offender under its provisions shall:

a. At the time of registration, provide the Chief, through the Mashantucket Pequot Tribal Police Department, with a copy of any required registration form from the foreign jurisdiction.

b. Complete the registration form provided by the Department which shall include the following information:

(1) Full name and all aliases which the person has used or under which the person has been known;

(2) A complete description of the person including height, weight, eyes, hair, any tattoos and/or scars, date of birth and social security number;

(3) A current photograph (a new photograph shall be provided on an annual basis during the month of January to the Department);

(4) Name of each offense to which the person pled guilty or was found guilty; the name used at the time of conviction; the names of victims and witnesses to each offense; where each offense was committed; and the name of the court and location of jurisdiction;

(5) The name and location of each jail, facility or institution to which the person was committed for each offense; and

(6) Physical address and telephone number of current residence and place of employment.

2 M.P.T.L. ch. 8 § 9

§ 9. Duration of Registration

a. Any person to whom this law applies shall be required to register during any period of probation, parole or community placement.

b. Except as otherwise specifically provided herein, any person to whom this law applies shall continue to comply with the requirements of this law **for life** while residing on the Mashantucket Pequot Reservation.

2 M.P.T.L. ch. 8 § 10

§ 10. Exemption from Registration

a. Petition to Tribal Court.

Any person required to register as a sex offender pursuant to this law may, after a period of fifteen (15) years from the last date of discharge from probation, parole or release from incarceration, whichever is greater, petition the Tribal Court for a show cause hearing to determine if an exemption from the registration requirements is appropriate. In the petition, the petitioner shall provide clear and convincing evidence that the petitioner is not a risk to commit a new violation for any violent crime or any crime related to the requirements of registration as a sex offender based upon:

(1) An affidavit indicating that the petitioner is not knowingly under investigation for, has not pled guilty to, nor been convicted of any crime in any jurisdiction for the period of the previous twelve (12) consecutive years;

(2) A certified copy of any and all judgments of conviction which caused the petitioner to report as a sex offender;

(3) An affidavit and copy of notice as proof that the petitioner, at their own expense, has for the previous fourteen (14) calendar days posted notices at all tribal buildings of their intent to petition the Court to obtain an exemption from sex offender registration.

b. Show Cause Hearing.

(1) The Tribal Court may grant a hearing if it finds that the petition is sufficient; and

(2) The Tribal Court may exempt the petitioner from the registration requirement only after a hearing on the petition in open court. The Tribal Court shall base its decision only upon a finding by clear and convincing evidence that the petitioner is not a risk to commit a new violation of any violent crime or any crime related to the requirements of registration as a sex offender.

2 M.P.T.L. ch. 8 § 11

§ 11. Violations and Penalties

a. Failure to Notify

No person, required to provide notice of their status as a sex offender pursuant to the provisions of this law, shall knowingly fail to notify the Department of their status as a sex offender.

(1) Violation of this section by a Mashantucket Pequot tribal member or other Indian is a class C criminal offense;

(2) Violation of this section by a non-Indian is a civil offense and the Tribal Court shall impose a minimum civil fine of five-hundred dollars (\$500), not to exceed one-thousand dollars (\$1,000).

b. Failure to Register

No person, required to register as a sex offender pursuant to the provisions of this law, shall knowingly fail to register as a sex offender with the Department.

(1) Violation of this section by a Mashantucket Pequot tribal member or other Indian is a class B criminal offense:

(A) First Violation

Tribal Court shall impose a minimum penalty of 60 days jail time and a fine of \$1,000.00;

(B) Second and Subsequent Violations

Tribal Court shall impose a minimum penalty of 180 days jail time and a fine of \$2,500.00; provided that the Tribal Court upon its own initiative or any person authorized pursuant to tribal law - may file a complaint for the exclusion and removal of any Indian other than a Mashantucket Pequot tribal member upon his or her second violation of this section.

(2) Violation of this section by a non-Indian is a civil offense. The Tribal Court shall impose a minimum civil fine of two-thousand and five hundred dollars (\$2,500); provided that the Tribal Court upon its own initiative or any person authorized pursuant to tribal law may file a complaint for the exclusion and removal of such non-Indian.

c. Furnishing False or Misleading Information

No person shall knowingly furnish, or cause to be furnished, any false or misleading information to be included on the Sex Offender Registration form.

(1) Violation of this section by a Mashantucket Pequot tribal member or other Indian is a class B criminal offense.

(2) Violation of this section by a non-Indian is punishable by a civil fine of no less than one-thousand dollars (\$1,000); provided that the Tribal Court upon its own initiative or any person authorized pursuant to tribal law may file a complaint for the exclusion and removal of such non-Indian.

d. Obstruction of Tribal Community Notification

No person shall, without prior approval of the Chief, remove, alter, mutilate or destroy any notice to the tribal community posted pursuant to this law.

(1) Violation of this section by a Mashantucket Pequot tribal member or other Indian is a class C criminal offense;

(2) Violation of this section by a non-Indian is a civil offense and the Tribal Court shall impose a minimum civil fine of five-hundred dollars (\$500), not to exceed one-thousand dollars (\$1,000).

2 M.P.T.L. ch. 8 § 12

§ 12. Payment of Fines; Payment of Incarceration Costs

a. Any monetary penalty or civil fine assessed by the Tribal Court pursuant to this law shall be paid in full within three (3) months from judgment.

b. Except as provided in sub-section (d) of this section, all persons subject to this law shall be required to repay the Mashantucket Pequot Tribe within one (1) year of the date of their release for the costs of their incarceration and any related expenses. The conditions of such repayment shall be set by the Tribal Court.

c. All portions of any sentence not served, or fine not paid, may be construed as a subsequent violation and may be added to the penalties incurred; provided that the Tribal Court upon its own initiative or any person authorized pursuant to tribal law may file a complaint for the exclusion and removal of such person.

d. The Tribal Court shall determine if a parent or legal guardian of an offender that is a minor child shall be responsible for any monetary penalties or incarceration costs required by this section.

2 M.P.T.L. ch. 8 § 13

§ 13. Severability

In the event any provision of this law is found to be invalid or unenforceable for any reason, such determination shall not affect the remaining terms.

2 M.P.T.L. ch. 8 § 14

§ 14. Effective Date

This law shall become effective as of the date of passage by tribal council resolution approving and adopting the same. The Department shall cause to be published and/or posted at tribal buildings a notice to the tribal community of the notification and registration requirements of sex offenders.

Historical and Statutory Notes

Effective March 6, 2009, TCR030609-08 of 10, amended 2 M.P.T.L. by adding a new Chapter 8 covering sex offender registration and notification.

TCR022009-01 of 01 amended 6 M.P.T.L. by removing ch. 3 §§4(c) and 4(d).
Following is the revised §4. See main volume for text of Title 6 not included
in this Supplement.

TITLE 6. FAMILY RELATIONS

CHAPTER 3. MARRIAGES

6 M.P.T.L. ch. 3 § 4

§ 4. Requirements for Issuance of Marriage License

a. The Tribal Clerk shall issue a marriage license when both applicants have appeared before the Clerk, made application for a license, and provided the requisite information as provided in this law. The application shall be dated, signed and sworn to, or affirmed by, each applicant. In the event that the applicants make application separately, the last dated application shall be deemed the date of the application.

b. The application shall state each applicants' name, age, tribal affiliation (if any), the particular socio-economic or cultural tie to the Mashantucket Pequot Tribal Nation, occupation, address, birth place, marital status (whether divorced or widowed), names and dates of birth of any minor children, and conservatorship or guardianship status, if any; and both applicants shall submit a certified birth certificate. Any person who intentionally provides false information may be subject to the full penalties provided by Tribal law.

c. Marriage license applications and copies of the marriage license shall be filed with the Tribal Clerk as part of the official records of the Tribe, and a duplicate original marriage license shall be given to the married parties.

HISTORICAL AND STATUTORY NOTES

Effective February 20, 2009, TCR022009-01 of 01 amended 6 M.P.T.L. by removing the requirement of HIV blood testing in order to obtain a marriage license (removal of ch. 3 §§4(c) and 4(d).

TCR072309-06 of 09 amended 16 M.P.T.L. ch.2 §2(a) and ch. 4 §2(a) regarding the hotel occupancy and retail sales tax rates. All amendments to this law follow and are indicated by notation and are in red text. See main volume for text of Title 16 not included in this Supplement.

TITLE 16. GENERAL REVENUE AND TAXATION CODE

CHAPTER 2. HOTEL OCCUPANCY

16 M.P.T.L. ch. 2 § 2

§ 2. Imposition and Rate of Tax

- a. For the privilege of the use and occupation of a Room in a Hotel located on the Mashantucket Pequot Reservation for a consideration, a tax is hereby imposed on all use and occupancy of any Room or Rooms and Occupancy-related services at a rate of 13% with respect to each use and occupancy of any Room or Rooms in a hotel or lodging house.
- b. The tax shall be imposed upon the Person for whom the Room, goods or services are provided and collected by the provider of the Room, goods or services.

CHAPTER 4. RETAIL

16 M.P.T.L. ch. 4 § 2

§ 2. Imposition and Rate of Tax

- a. For the Sale of tangible personal property in any location on the Mashantucket Pequot Reservation, a tax is hereby imposed at a rate of 7% of the total sales price.
- b. The tax shall be imposed upon the Person purchasing the goods and collected by the provider of the goods.

HISTORICAL AND STATUTORY NOTES

Effective July 23, 2009, TCR072309-06 of 09 amended 16 M.P.T.L. by increasing the hotel occupancy tax rate by 1% in ch. 2 §2(a) and the retail tax rate in ch. 4 §2(a).

TCR121809-04 of 04 amended 20 M.P.T.L. ch. 1 §2(dc). All amendments follow and are indicated by notation and red text. See main volume for text of Title 20 not included in this Supplement.

TITLE 20. MASHANTUCKET PEQUOT CIVIL RIGHTS CODE

CHAPTER 1

20 M.P.T.L. ch. 1 § 2

§ 2. Jurisdiction and Waiver of Sovereign Immunity From Suit

a. The tribal court shall have jurisdiction over claims alleging a violation or violations of the rights enumerated under Section 1 of this Title.

b. The Tribe hereby expressly waives its sovereign immunity from suit in the tribal court for claims against the Tribe alleging a violation(s) of the rights enumerated in Section 1, as provided for and defined in this Title. Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe from suit in state or federal court or in any action before any state or federal agency, or in any other forum or context.

c. There shall be no cause of action in the tribal court under this Title relating to, or which may affect, activities of the Elders Council or Peacemakers Council.

d. There shall be no cause of action in the tribal court under this Title relating to, or which may affect Title 33, M.P.T.L., the ~~the Tribe's Indian Preference Policy~~Mashantucket Pequot Tribal and Native American Preference Law.

HISTORICAL AND STATUTORY NOTES

Effective December 18, 2009, TCR121809-04 of 04 amended 20 M.P.T.L. by changing the reference in ch. 1 §2.d. from the Indian Preference Policy to the Mashantucket Pequot Tribal and Native American Preference Law.

TCR050509-01 of 01 amended 24 M.P.T.L. by adding ch. 7 §37 regarding special needs trusts. All amendments to this law are indicated by notation and red text. See main volume for text of Title 24 not included in this Supplement.

TITLE 24. PROBATE LAW

CHAPTER 7. TRUSTS

24 M.P.T.L. ch. 7 § 37

§ 37. Special Needs Trust

The Probate Court shall recognize and enforce the terms of any special needs or supplemental needs trust created under tribal or other laws. Such trust shall be enforced in accordance with the general trust provisions of tribal law. Special Needs Trusts may be established by the guardian, conservator, or the beneficiary or other individual with the power to otherwise establish trusts under tribal law.

Historical and Statutory Notes

Amendments. Effective May 5, 2009, TCR050509-01 amended Title 24 with the addition of §37 to 24 M.P.T.L. ch. 7, expressly recognizing special needs trusts

This replaces 28 M.P.T.L. in its entirety.

TITLE 28 RIGHT TO WORK LAW

28 M.P.T.L. ch. 1 § 1

§ 1. Findings, Purpose, and Authority

a. The Tribe finds that:

(1) It has exercised its sovereignty in enacting laws to govern employment relationships on the Reservation, and has determined that it is in the best interests of all Employees on the Reservation to have the right to choose to work and not be prohibited from working on the Reservation based upon requirements of membership in, affiliation with, or financial support of a labor organization.

(2) Employees should have the right to work and not be discriminated against due to either membership or non-membership in a labor organization.

(3) It is the public policy of the Tribe that in order to maximize individual freedom of choice in the pursuit of employment and to encourage and enhance an employment atmosphere conducive to economic growth, the right of individuals to work on the Reservation shall not be denied or hindered based upon membership in a labor organization.

(4) It has the inherent authority to exclude persons from the Reservation and to place conditions on entry, on continued presence and on conduct within the Reservation.

(5) The Tribe's position is that the National Labor Relations Act does not apply to it as a government given the significant impact its application would have on the Tribe's exercise of sovereignty, including the numerous laws adopted that currently govern employment on the Reservation. However, given the uncertain climate of the issue before the courts, even if a court were to determine that the NLRA applies to the Tribe as an employer, it would not preempt the Tribe's right to enact this law providing all Employees on the Reservation, whether working for the Tribe or not, with the right to work and not requiring any Employee to affiliate with, join, or financially support a labor organization in order to work on the Reservation.

(6) It has enacted the Mashantucket Pequot Labor Relations Law under which Tribal employees have the right to elect to be represented by a labor organization and in order to encourage labor organizations to utilize tribal law and to preserve tribal sovereignty the Tribe, notwithstanding the above findings, recognizes an exception to the absolute prohibitions under Section 3(a) of this Law when Tribal Employees are represented by a labor organization certified under tribal law.

b. The purpose of this law is to ensure for all persons on the Reservation the right to work and pursue employment without the restraints of mandatory affiliation with, membership in, or payment of dues, fees, or assessments to a labor organization.

c. The Mashantucket Pequot Tribal Council, the governing body of the Tribe, enacts this law governing employment and labor on its Reservation pursuant to the Tribe's inherent sovereign authority to govern activities on the Reservation, whether the activities are of tribal members, non-members, Indians, or non-Indians, and whether based on consensual relationships with

the Tribe or conduct which impacts and affects the health, safety, political and economic integrity of the Tribe and the Reservation community including members, Employees, vendors, patrons and others who enter the Reservation.

28 M.P.T.L. ch. 1 § 2

§ 2. Definitions

a. "Employee" means any individual employed by an Employer.

b. "Employer" means any person, firm, association, corporation and other entity operating in or upon the Mashantucket Pequot Reservation and directly or indirectly employing one or more Employees to perform work, and includes the Tribe. This Law does not apply to any such person, firm, association, corporation or other entity which has a principal place of business located outside the Mashantucket Pequot Reservation and operates in or upon the Mashantucket Pequot Reservation pursuant to an agreement with the Tribe to perform construction-related activities.

c. "Labor organization" means any organization or agency or group of Employees or Employee committee or plan in which Employees participate that is organized or exists for the purpose of dealing with an employer or employers concerning hours of employment, wages, rates of pay, working conditions or grievances of any kind relating to employment.

d. "Tribe" means the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation and includes any subdivision, agency, arm or department thereof including but not limited to the Mashantucket Pequot Gaming Enterprise, the Pequot Pharmaceutical Network, the Mashantucket Pequot Museum & Research Center, but does not include any legal entity established and organized by the Tribe under the laws of any state with a principal place of business located outside of the Reservation.

e. "Mashantucket Pequot Reservation" means the "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 and all other lands subject to the jurisdiction of the Tribe.

f. "Person" means any individual, labor organization, corporation, partnership, company, association or other legal entity.

g. "Union dues" means dues, fees, assessments or other charges of any kind or amount or their equivalents paid or payable, directly or indirectly, to a labor organization or its agents and includes payments to any charity or other third party in lieu of such payments to a labor organization.

28 M.P.T.L. ch. 1 § 3

§ 3. Right to Work

a. No person shall be required, in order to obtain employment or as a condition of employment or continuation of employment on the Mashantucket Pequot Reservation, to do any of the following:

1. Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
2. Become or remain a member of a labor organization or be affiliated with a labor organization; or

3. Pay union dues as defined in this Law.

Provided, however, that a Labor Organization certified as the exclusive bargaining representative under Tribal Law may lawfully enter into a union security agreement with a Tribal Employer where said agreement does not violate the Indian Civil Rights Act, 25 U.S.C. § 1302, or the Tribal Civil Rights Code, 20 M.P.T.L. ch. 1, Section 1¹ and no election has been conducted by a special master or a MERO Board in which a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement.

b. Except as specifically provided in this Law, any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and any Employer that requires Employees of such Employer to obtain or maintain membership in any labor organization or to pay union dues as defined in this Law or otherwise violates the rights of Employees as defined by this Law, is against the public policy of the Tribe and is hereby declared to be null and void and of no legal effect.

c. No Employer shall deduct labor organization dues, charges, fees, contributions, fines or assessments from an Employee's earnings, wages or compensation, unless the Employer has first received from the Employee a written order or consent signed by the Employee, which written order or consent shall be terminable at any time by the Employee by giving at least thirty days written notice of such desire to terminate the order or consent to the Employer.

d. No Employer shall discriminate or retaliate against any Employee on the basis of an Employee's decision to participate or refrain from participating in any labor organization, or based upon an Employee's activities related to such participation in or refusal to participate in any labor organization.

e. No Person, labor organization, or officer, agent or member thereof, or Employer, or officer or agent thereof shall threaten or intimidate, in any manner, any Person, Employer, or Employee or prospective employee or any member of an Employee's family to compel or attempt to compel such Employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or to otherwise forfeit rights guaranteed under this Law.

28 M.P.T.L. ch. 1 § 4

§ 4. Jurisdiction

a. The Mashantucket Pequot Tribal Court shall have jurisdiction over all causes of action alleging violations of this Law.

b. The Tribe hereby expressly waives its sovereign immunity from suit for claims alleging violations of this Law against the Tribe in the Mashantucket Pequot Tribal Court. Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe in the state or federal courts, or any other forum or context.

28 M.P.T.L. ch. 1 § 5

¹ In determining whether an agreement violates these laws, the Tribal Court should be guided by the federal court decisions interpreting similar limitations found in the U.S. Constitution applicable to public sector employees.

§ 5. Civil Remedies

a. Any person injured as a result of any violation or threatened violation of the provisions of this Law shall be entitled to petition the Mashantucket Pequot Tribal Court for injunctive relief from or against any person who violates or threatens any violation of this Law, and may, in addition thereto, file a claim to recover any and all damages, including costs and reasonable attorney's fees, resulting from the violation or threatened violation. The remedy shall be independent of and in addition to any other penalties and remedies prescribed by applicable Law.

b. Any claim brought under this Law must be commenced by the filing of a complaint with the Tribal Court in accordance with the Mashantucket Pequot Rules of Civil Procedure and within 180 days from the date of the violation(s) or threatened violation(s) of the Law which form the basis of the complaint

Historical and Statutory Notes

Amendments. October 28, 2008 - EXTCR102808-01 of 02 - amends EXTCR081607-01.

TCR062909-04 of 06 amended the 31 M.P.T.L. making various amendments throughout. All amendments to this law are indicated by notation and red text.

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

Following are amended Sections 2(a)(2) and 2(b)(1)-(2)

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 process to regulate employment for all employers on the Reservation.

(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 Employment 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 Employment Rights Office that includes the position of Director to oversee the office, 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

**Following are renumbered Sections 3(b) through 3(l)
due to deletion of old subsections 3(b) and 3(c)**

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 "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.

c. 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.

d. The term "MERO" means the Mashantucket Employment Rights Office.

e. The term "order of agreement" shall mean a written explanation of the agreement contemplated by the two parties and witnessed by the mediation panel.

f. 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.

g. 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.

h. The term "Record" means the written documentation of all evidence (whether by way of testimony or documentary) presented to the MERO in a particular case or matter.

i. The term "Tribal Council" shall mean the governing body of the Mashantucket (Western) Pequot Tribe as outlined in the Tribal Constitution.

j. 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.

k. The terms "Tribal Member" and "Member" shall mean any person who is duly enrolled as a member of the Mashantucket (Western) Pequot Tribe.

l. 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 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.

Following is renumbered Chapter 2, Section 2 due to deletion of old Section 2; and new subsections 2(c)(10) and 2(c)(11), and subsequent renumbered subsections 2(c)(12) and 2(c)(13)

31 M.P.T.L. ch. 2 § 2

§ 2. 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;

(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;

(10) To adopt rules and/or regulations to insure that confidential information is kept confidential by the MERO, provided that nothing herein precludes the MERO from providing information to other parties to a case for adequate case processing or to the Tribal Court in conjunction with an appeal or enforcement action;

(11) To 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 and true and accurate copies of all documentary evidence considered by the MERO;

(12) 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; and

(13) 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.

Following is renumbered Section 3 and amended Section 3(f)

31 M.P.T.L. ch. 2 § 3

§ 3. 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 in the MERO's processes for the applicable case.

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

Following is a new Chapter 3, Section 2 and renumbered Sections 3 - 5

§ 2. Hearings.

a. Any hearings held before the MERO or in a proceeding under the auspices of the MERO must provide at a minimum the following procedural protections:

1. Written notice of the hearing, by certified mail return receipt requested, or in such other manner determined to be effective under the circumstances, 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) a copy of any rules or regulations governing the hearing.

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

3. 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 MERO to participate;

4. Each party shall have the right to present relevant sworn testimony and documentary evidence;

5. Each party shall have the right to call witnesses and to cross examine witnesses called by any other hearing participant;

6. Compliance with formal rules of evidence is not required, provided that the hearing is conducted in a manner that provides for the determination of the facts in an orderly and reasonable manner;

7. All proceedings shall be recorded and a complete transcript shall be made and maintained by the MERO;

8. The proceedings may be adjourned, postponed, or continued at the discretion of the MERO when it determines it is advisable or necessary; and

9. Any matter to be proven must be done so by a preponderance of the evidence, unless otherwise provided in applicable Law.

31 M.P.T.L. ch. 3 § 3

§ 3. 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 § 4

§ 4. 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 § 5

§ 5. 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 Mediation Panel, and the MERO Director all as established by this title.

Historical and Statutory Notes

Derivation. Effective July 6, 2007, TCR070607-08 of 20 enacted the Mashantucket Employment Rights Ordinance.

Amendments. Effective June 29, 2009, TCR062909-04 of 06 amended the 31 M.P.T.L. by removing references to the MERO Commission, setting forth hearing procedures, and various technical amendments (typographical, grammatical, renumbering, etc)

TCR072309-04 of 09 amended 32 M.P.T.L. making various technical amendments throughout. All amendments to this law are indicated in red text.

TITLE 32 MASHANTUCKET PEQUOT LABOR RELATIONS LAW

CHAPTER 1.

32 M.P.T.L. ch. 1 §1

§ 1. Title; Authority

This Law may be cited as the "Mashantucket Pequot Labor Relations Law". This Law is adopted pursuant to the inherent authority of the Mashantucket Pequot Tribal Council, the lawful governing body of the Mashantucket Pequot Tribe, to regulate employment and labor relations 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.

32 M.P.T.L. ch. 1 §2

§ 2. Findings

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

a. The public policy of the Tribe is that all employees working within Tribal territory be treated fairly: that there be fair and appropriate employment practices; fair and comprehensive wages and benefits; and fair and impartial procedures for resolving employment and labor relations issues. In furtherance of this public policy, the Tribe has adopted employment laws governing Tribal employment, and the Judicial and Administrative Support Committees of the Tribal Council recently reviewed the employment practices and procedures applicable to all employers on the Reservation and developed a phased approach to create the Mashantucket Employment Rights Office and related labor and employment laws. Based upon those recommendations, the Tribal Council adopted Title 31 of the Mashantucket Pequot Tribal Laws, establishing the Mashantucket Employment Rights Office, to fully regulate employment and labor relations on the Reservation and to provide administrative review and enforcement of Tribal employment and labor relations laws.

b. The Tribe, as an employer, provides excellent employment to thousands of people on its Reservation through the Mashantucket Pequot Gaming Enterprise, the Mashantucket Pequot Museum & Research Center, the Pequot Pharmaceutical Network, the Child Development Center, and other departments, divisions, entities or enterprises of the Tribe. The Tribe, as a government, has guaranteed, through Tribal employment and labor relations laws and policies, fair treatment to its employees.

c. Employees have the right under Tribal law to form, join, or assist labor organizations, to engage in collective bargaining and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection as specifically provided in this Law and the right to refrain from any such activities. Based on the recent reversal of 30 years of precedent by a federal agency and a federal court, the Tribe acknowledges that labor organizations may seek the right to represent Tribal employees pursuant to federal law, commonly known as the National Labor Relations Act ("NLRA") 29 U.S.C. §§ 151-169.

d. The NLRA was adopted in 1935 to encourage the practice of collective bargaining and to protect the exercise of self-organization by employees for the purpose of negotiating the terms and conditions of their employment with employers in the private sector. The NLRA expressly exempts federal, state and local governments from its definition of "employer," recognizing, among other things, that government employees provide essential services to their communities and that labor strikes could inflict unique harms in those communities. Nonetheless, pursuant to their inherent authority, the vast majority of state governments and the federal government have adopted legislation to govern labor relations between **their** respective **governments** as **employers** and **their** employees. Generally, to protect the public interest, as well as the orderly operation and functioning of the government, such legislation limits the scope of collective bargaining, prohibits strikes by employees and creates a procedure for the resolution of labor disputes.

e. The NLRA and its extensive legislative history are silent in relation to its application to Indian tribal governments as employers. This is not surprising given the fact that the U.S. Congress had just addressed the status of Indian tribes in the Indian Reorganization Act of 1934 ("IRA"), 25 U.S.C. § 461 et seq., which protects tribal self-governance and promotes tribal economic development through enterprises operated directly by Indian tribes. As a matter of federal policy, the IRA sought to achieve two distinct but inseparable objectives: tribal self-governance and tribal economic self-sufficiency. By promoting both, the IRA sought to "rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism." H.R. Rep. No. 73-804 (1934).

f. Since 1934, the United States government has consistently strengthened its policy of protecting tribal self-government and promoting tribal economic self-sufficiency through legislation, including, but not limited to the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. §§ 450 et seq. ("the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities"); the Indian Tribal Justice Act of 1993, 26 U.S.C. § 3601 ("the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government"); the Indian Financing Act of 1974, 25 U.S.C. § 1451 ("to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources"); the Tribal Self-Governance Act of 1994, 25 U.S.C. §§ 450a, 458aa et seq. ("transferring control to tribal governments ...over funding and decision making for Federal programs, services, functions and activities strengthens the Federal policy of Indian self-determination"); and the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701 et seq. ("to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments").

g. Given its inherent authority over employment and labor relations on the Reservation, the tribal regulation of employment on the Reservation, and the longstanding federal policy protecting tribal self-government and promoting tribal self-sufficiency, the Tribe finds that the NLRA does not apply to the **Tribal** government as an employer. Application of the NLRA to the **Tribal** government as an employer would substantially impair the ability of the Tribe to exercise its sovereign authority, including undermining **Tribal** employment laws, subjecting the **Tribal** government to the threat of strikes, and disrupting the **Tribal** government's ability to provide essential services to the community.

h. The Tribe has various departments, subdivisions and agencies within its government, including the Mashantucket Pequot Gaming Enterprise, an arm of the **Tribal** government, which operates (under the Tribal Council's control and

oversight) the Tribal gaming operation known as Foxwoods Resort Casino. As provided by the Indian Gaming Regulatory Act, the Tribe's gaming operation funds the tribal government including various governmental services such as police, fire, utilities, education, the judicial system, environmental, health, social services and parks and recreational facilities. As an arm of the government, the Tribal employees at the Mashantucket Pequot Gaming Enterprise are government employees and have a recognized property right in their employment through various decisions of the Mashantucket Pequot Tribal Court. See Johnson v. Mashantucket Pequot Gaming Enterprise, I MPR 15 (1996).

i. The Tribe has considered and determined that it is appropriate to provide Tribal Employees with a procedure under Tribal law to determine whether they wish to be represented by a labor organization for the purposes of collective bargaining as defined in this Law.

32 M.P.T.L. ch. 1 §3

§ 3. Purpose

The purpose of the Mashantucket Pequot Labor Relations Law is to provide Tribal Employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between the Tribe as an employer and Tribal Employees, and to protect the health, safety, political integrity and economic security of the Tribe.

32 M.P.T.L. ch. 1 §4

§ 4. Definitions

- a. "Tribal Employer" or "Tribe" means the Mashantucket Pequot Tribe, also known as the Mashantucket Pequot Tribal Nation, including any subdivision, agency, arm, department, entity or business thereof, but shall not include any entity created by the Tribe under the laws of any state and which is located principally outside of the Reservation of the Tribe.
- b. "Tribal Employee" means any employee of a Tribal Employer except:
 1. Appointed or elected officials of the Tribe, including but not limited to Tribal Councilors and their staff, Tribal Court Judges, the Mashantucket Pequot Tribal Gaming Commissioners, the Workers Compensation Commissioner, or officials of any other commission or regulatory body of the Tribe, or
 2. Supervisory employees, Managerial employees, or Confidential employees (as those terms are defined herein),
- c. "Supervisory employees" or "supervisor" means any individual having authority, in the interest of a Tribal Employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.
- d. "Managerial employees" or "manager" means any individual who represents a Tribal Employer's interest and who formulates and effectuates a Tribal Employer's policies by expressing and making operative the decisions of the Tribal Employer.
- e. "Confidential employees" means any individual who assists and acts in a confidential capacity to persons who formulate and effectuate a Tribal Employer's policies with regard to confidential matters including, but not limited to, employee relations, labor relations, business plans or performance, tribal government, and other Tribal

interests, or those who regularly substitute for employees having such duties.

- f. "MERO" means the Mashantucket Pequot Employment Rights Office established pursuant to Title 31 of the Mashantucket Pequot Tribal Laws.
- g. "Labor organization" means any lawful organization whose primary purpose is the representation of employees in collective bargaining.
- h. "Exclusive bargaining representative" means a labor organization that, as a result of certification under this Law, has the right to represent Tribal employees in an appropriate bargaining unit for the purpose of collective bargaining.
- i. "Certification" means the designation by the MERO of a labor organization as the exclusive representative for all Tribal employees in an appropriate bargaining unit.
- j. "Appropriate bargaining unit" means a group of Tribal employees designated as such by the MERO in accordance with the provisions of this Law and particularly subsection 12(g) for the purpose of collective bargaining.
- k. "Collective bargaining" is defined in Section 9 of this Law.
- l. "Impasse" means failure of a Tribal Employer and an exclusive bargaining representative, after good-faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement.
- m. "Lockout" means an act by a Tribal Employer which prevents its employees from going to work for the purpose of pressuring Tribal employees and/or their exclusive bargaining representative to accept the Tribal Employer's bargaining proposals.
- n. "Strike" means a Tribal employee's refusal, in concerted action with other Tribal employees, to report for duty or his willful absence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of Tribal employment;
- o. "Tribal Court" means that Mashantucket Pequot Tribal Court as created and established by Title 1 of the Mashantucket Pequot Tribal Laws.
- p. "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.

32 M.P.T.L. ch. 1 §5

§ 5. Rights and Duties of Tribal Employers, Tribal Employees, and Labor Organizations

a. Tribal Employees shall have the right of free choice to refrain from or engage in self-organization, from forming, joining, or assisting labor organizations, from bargaining collectively through representatives of their own choosing, engaging in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to engage in any or all such activities.

b. When a labor organization has been designated by the MERO through the processes provided hereunder as the representative of the majority of Tribal Employees in an appropriate bargaining unit, that labor organization shall be recognized by the Tribal Employer as the exclusive bargaining representative for the Tribal Employees of such unit.

c. When a labor organization has been designated in accordance with the provisions of this Law as the exclusive bargaining representative of Tribal Employees in an appropriate bargaining unit, it shall have the right to act

for and to negotiate agreements covering all Tribal Employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to labor organization membership; and such labor organization shall have the duty of fair representation to the employees in that unit.

d. A Tribal Employee represented by a labor organization may at any time present a grievance directly to a Tribal Employer and the Tribal Employer may address said grievance directly with the Tribal Employee without intervention of a labor organization; provided that the resolution of such grievance may not violate the terms of a collective bargaining agreement then in effect and the exclusive bargaining representative has been given the opportunity to be present at the adjustment of said grievance.

e. The Tribal Employer and such labor organization as has been designated as the exclusive bargaining representative of Tribal Employees in an appropriate bargaining unit, through appropriate officials or their representatives, shall have the duty to bargain collectively, as defined in Section 9 of this Law.

32 M.P.T.L. ch. 1 §6

§ 6. Prohibited Practices

a. A Tribal Employer shall not:

1. Interfere with, restrain or coerce Tribal Employees in the exercise of their rights set forth in this Law;
2. Dominate or interfere with the formation, existence or administration of any labor organization;
3. Discriminate in regard to hire or tenure of employment or any term or condition of employment because of the Tribal Employee's exercise of rights under this Law, including because a Tribal Employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony or filed a claim or charges under this Law;
4. Refuse to bargain collectively in good faith with a labor organization that has been designated in accordance with this Law as the exclusive representative of the Tribal Employees in an appropriate bargaining unit; and
5. Refuse to comply with a collective bargaining agreement that has been entered into by the Tribal Employer and the exclusive bargaining representative.

b. A labor organization shall not:

1. Interfere with, restrain or coerce any Tribal Employee in the exercise of any right set forth in this Law;
2. Restrain or Coerce a Tribal Employer in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances;
3. Discriminate against a Tribal Employee with regard to labor organization membership, or because of race, color, religion, creed, age, sex, national origin or membership in the Tribe or a Native American Tribe;
4. Force or require a Tribal Employer to recognize or bargain with a particular labor organization as the representative of Tribal Employees if another labor organization has been certified as the exclusive bargaining representative of such Tribal Employees under the provisions of this Law;
5. Refuse to bargain collectively in good faith with a Tribal Employer, if it has been designated as the exclusive bargaining

- representative of Tribal Employees in an appropriate bargaining unit under the provisions of this Law;
6. Refuse or fail to comply with a collective bargaining or other agreement with a Tribal Employer;
 7. Attempt to influence the outcome of a Tribal government election in any manner, provided, however, that this subsection does not apply to a Tribal Employee who is a Tribal Member acting in his or her individual capacity;
 8. Picket homes or private businesses of elected Tribal officials or Tribal employees;
 9. Breach *its* duty of fair representation as provided in subsection 5(c) of this Law.

32 M.P.T.L. ch. 1 §7

§ 7. Dispute Resolution for Prohibited Practices Questions.

a. Filing a Claim; Adjudication of Claim. When a question arises as to whether a practice prohibited by this Law has been committed, a claim may be filed with the MERO for a determination of whether the prohibited practice alleged has been or is being committed. The MERO shall adopt procedures for the administrative processing of such claims. Unless a party requests a MERO Three Member Board as described below, claims filed with *the* MERO shall be referred to the Tribal Court for the adjudication of the *claims*. The Tribal Court shall appoint an impartial special master with substantial experience in labor relations and labor law and experience or advanced training in Tribal Law to hear and determine the claim. The person filing the claim must give the other party notice of the filing the same day it is filed. Within five (5) days of a claim being filed, either party may request adjudication of the claim under this Law by a MERO Board. If such a request is filed a panel shall be established consisting of three members appointed at the outset of each case. Within five (5) days of the request for the MERO Board, the Tribal Employer and the Labor organization (or if a claim is filed by a Tribal Employee, the Tribal Employee *and responding party*), will each appoint one member of the Board. The members appointed by each of the parties shall confer and jointly appoint a third member, who shall be the presiding officer of that MERO Board. If the members appointed by the parties cannot agree within *five* (5) days upon a third member, *the* MERO shall request from the American Arbitration Association a random panel of seven (7) arbitrators who are members of the National Academy of Arbitrators and the members appointed by the *parties* shall select a presiding officer from said list within five (5) days of receipt of the list. The costs of the MERO Board and any fees associated with the proceedings shall be shared equally by the parties. The Tribal Court may adopt special procedures for claims to be heard by a special master; otherwise the Mashantucket Rules of Civil Procedure shall apply and the case shall proceed before the special master and be considered in the same manner as any other civil matter.

b. Decisions and Orders. If, after all evidence is considered and arguments heard, the special master or the MERO Board, as the case may be, determines that a prohibited practice has been or is being committed, it shall state its findings of fact and conclusions of law, and shall issue and serve on the party committing the prohibited practice *a decision and* order requiring it or him/her to cease and desist from such prohibited practice, and shall take such further affirmative action as will effectuate the policies of this Law including, but not limited to: (1) reinstatement of an employee discriminated against in violation of this Law, with or without back pay; (2) ordering relief that will make an individual whole; provided that nothing herein shall authorize awarding damages for emotional distress or pain and suffering.

c. Dismissal. If, after all evidence is considered and arguments heard, the special master or the MERO Board, as the case may be, determines that a prohibited practice has not been or is not being committed, it shall state its findings of fact and conclusions of law and shall issue a decision and order dismissing the claim.

d. Decisions and Appeals. Decisions of a special master and decisions of a MERO Board shall be adopted by the Tribal Court and become a final decision of the Tribal Court, unless the Tribal Court determines, under a clear and convincing evidence standard of review, that the decision of the special master or the MERO Board, as the case may be, resulted from fraud or bias or is in direct conflict with Tribal law. The decision of the Tribal Court, whether based on the adoption of a special master's decision or the decision of a MERO Board, shall be final and there shall be no appeal to the Mashantucket Pequot Court of Appeals.

e. Sovereign Immunity. The Tribe hereby waives its sovereign immunity from suit for claims brought under this section against a Tribal Employer before the Tribal Court or MERO including a MERO Board if one is formed at the request of a party or parties. Nothing contained herein shall be construed as a waiver of the Tribe's sovereign immunity from suit in the state or federal courts or in any state or federal agency or any other forum or context.

f. Sanctions for Frivolous Conduct. If it is ultimately determined that a claimant or respondent has engaged in frivolous conduct, including advancing a claim or defense that had no reasonable basis in fact or law, the special master appointed by the Tribal Court or a MERO Board, as the case may be, may order the party engaging in such conduct to pay the costs and reasonable attorneys' fees of the other party.

32 M.P.T.L. ch. 1 §8

§ 8. Free Speech Provision

The expressing of any views, argument, or opinion by a Tribal Employer or a labor organization, or the dissemination thereof, whether in verbal, written, printed, graphic, or visual form, shall not constitute or be evidence of a prohibited practice under any of the provisions of this Law, if such expression contains no threat of reprisal or promise of benefit.

32 M.P.T.L. ch. 1 §9

§ 9. Collective Bargaining

a. Duty to Bargain Collectively. To bargain collectively is the performance of the mutual obligation of a Tribal Employer and the designated exclusive bargaining representative of Tribal Employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, except for those matters excluded from collective bargaining as provided in this Law, or the negotiation of an agreement or any question arising there under, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession or to agree to a proposal that would contradict or violate Tribal law. Nothing in Tribal law shall be construed to preclude a Tribal Employer and the designated exclusive bargaining representative of Tribal Employees from negotiating under Tribal law a procedure for binding resolution of contractual disputes, including disputes related to the discipline or discharge of Tribal Employees; provided that any such procedure shall provide protection for the due process rights of Tribal Employees equal to or greater than the protections provided under Title 8 M.P.T.L.; and provided further, that any Tribal Employee who has a right to review under the Board of Review process and Title 8, shall have the right to

elect whether to proceed under the Board of Review and Title 8 or, alternatively, elect to proceed under the procedure established for resolution of contractual disputes pursuant to a collective bargaining agreement.

b. Exceptions Concerning Tribal Gaming Regulatory Authority. Nothing contained in this Law shall in any way diminish the authority and power of the Mashantucket Pequot Tribal Gaming Commission or any other agency, commission or regulatory body established by the Tribe to regulate the conduct of gaming on the Reservation and safeguard the integrity of the gaming including the prevention of illegal activity or influences affecting the gaming on the Reservation. Further, nothing contained in this Law or this section shall require a Tribal Employer to bargain concerning gaming regulatory issues including but not limited to:

1. The enforcement of all rules, whether in laws, rules, ordinances or procedures, with respect to the gaming operation and facility, and the power to conduct investigations and hearings with respect thereto;
2. Ensuring the physical safety of gaming operation patrons and employees, and any other person while in the gaming facility;
3. The physical safeguarding of assets transported to, within, and from the gaming facility;
4. The prevention of illegal activity from occurring within the gaming facility or with regard to the gaming operation, including, but not limited to the maintenance of employee procedures and surveillance systems;
5. The recording of any and all occurrences within the gaming facility that deviate from normal operating policies and procedures, which includes maintenance of a closed circuit surveillance system;
6. The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud or the like, consistent with industry practice;
7. The conduct of audits of the gaming operation;
8. The specifications, standards and procedures for each game;
9. The maintenance of a cashier's cage; or
10. Minimum employee and supervisor staffing requirements related to such regulation of gaming.

Provided, however, that the above list is not intended to remove from bargaining subjects that are otherwise appropriate for bargaining and which are not related to the conduct of gaming on the Reservation and safeguarding the integrity of the gaming, including the prevention of illegal activity or influences affecting the gaming on the Reservation. Provided further that whenever practicable, a Tribal Employer shall bargain with a duly certified labor organization regarding the implementation and effects of directives of the Mashantucket Pequot Tribal Gaming Commission.

c. Union Security Clauses. If a labor organization has been certified as the exclusive bargaining representative under Tribal law then a Tribal Employer may lawfully enter into a union security agreement where said agreement does not violate the Indian Civil Rights Act, 25 U.S.C. § 1302 or the Tribal Civil Rights Code, 20 M.P.T.L. ch. 1, Section 1² and no election has been conducted by a special master or MERO Board in which a majority of

² In determining whether an agreement violates these laws, the Tribal Court should be guided by the federal court decisions interpreting similar limitations found in the U.S. Constitution applicable to public sector employees.

the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement. Other than under these conditions, nothing contained in this Law shall require a Tribal Employer to bargain concerning any union security clause, such as union shop, agency shop, or dues check-off provisions. The obligation of a Tribal Employer to bargain collectively pursuant to this law shall not be construed as authorizing the Tribal Employer and a labor organization to bargain and enter into an agreement that would be or is in conflict with the provisions of any other Law of the Tribe, including but not limited to the Tribal Right to Work Law, codified in Title 28 M.P.T.L.

c. Tribal and Native American Preference. Pursuant to the Mashantucket Pequot Tribal and Native American Preference Law, 33 M.P.T.L., Tribal Employers are required to give certain preferences in employment to members of the Tribe, their spouses and Native Americans. Nothing contained in this Law shall be construed to require or permit a Tribal Employer to bargain concerning the requirements imposed upon employers pursuant to Tribal law regarding Tribal and Native American preference, or shall in any way affect a Tribal Employer's obligation to follow Tribal law, policies or custom and traditions regarding Tribal and Native American preference in employment. In the event of a conflict between the Tribal law regarding Tribal and Native American preference and this Law, the Tribal law on Tribal and Native American preference shall govern.

d. Modification or Termination of Collective Bargaining Agreement. If there is in effect a collective-bargaining agreement covering Tribal Employees, the duty to bargain collectively shall also mean that no party to such agreement shall terminate or modify such contract, unless the party desiring such termination or modification—

1. Serves a written notice upon the other party to the agreement of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such agreement contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;
2. Offers to meet and confer with the other party for the purpose of negotiating a new agreement or an agreement containing the proposed modifications; and
3. Complies with Section 11 of this Law prohibiting Strikes and Lock Outs.

32 M.P.T.L. ch. 1 §10

§ 10. Negotiations Timetable; Dispute and Impasse Resolution

a. Negotiations Timetable. If either a Tribal Employer or a labor organization which has been designated as the exclusive bargaining representative for an appropriate bargaining unit under this Law desires negotiations with respect to an original or successor collective bargaining agreement, such party shall serve written notice of such desire upon the other party. For successor collective bargaining agreements, such notice must be served upon the other party no earlier than one hundred twenty (120) days prior to the expiration of the existing collective bargaining agreement and no later than sixty (60) days prior thereto. Negotiations shall commence within 30 days of such service, unless the parties mutually agree to a different date.

b. Mediation. Upon the joint request of the parties, at any time after negotiations have begun, the Chair of the Tribe's Peacemaker's Council shall designate a Mediation Panel, pursuant to Title 31 M.P.T.L., to assist the parties in continuing the negotiations and reaching an agreement, or the parties may agree to the designation of a single mediator selected by agreement of the parties.

c. Impasse. If the parties to negotiations do not reach an agreement within **one hundred fifty** (150) days after negotiations have begun, then either party may file a petition with the **MERO**. If either party requests within five (5) days of the petition being filed, a MERO Board shall be formed as provided in Section 7(a) of this law to resolve the impasse and all issues on which the parties cannot agree, **otherwise the claim shall be referred to the Tribal Court, which shall appoint a special master**. The party filing the petition must give the other party notice of the filing on the same day that it is filed.

(i) Upon appointment, the special master or the MERO Board shall immediately adopt procedures for reaching a decision resolving all issues within sixty (60) days of the filing of the petition and shall convene a hearing to allow the parties to provide evidence and argument to the **special master or the MERO Board**. The parties shall have the right to submit written briefs. The record is officially closed at the later of the close of the hearing, or the special master's or **the MERO Board's** receipt of briefs.

(ii) Each party shall submit to the special master or the MERO Board, and to each other, a proposal setting forth its position on how each of the unresolved issues shall be resolved.

(iii) The special master's or **the MERO Board's** authority is limited to selecting one party or the other's complete proposal with respect to each issue and shall render a decision or award addressing each of the unresolved issues based on the complete proposal selected for that issue. The special master or **the MERO Board** shall issue an award within 60 days of the filing of the petition, unless the time period is extended by mutual agreement of the parties.

(iv) The costs of the **MERO Board** and any fees associated with the MERO Board proceeding shall be shared equally by the parties.

32 M.P.T.L. ch. 1 §11

§ 11. Strikes and Lockouts prohibited

Strikes of any kind and lockouts are strictly prohibited. A labor organization shall not cause, instigate, encourage or support a Tribal Employee strike. A Tribal Employer shall not cause, instigate or engage in a lockout of its employees.

32 M.P.T.L. ch. 1 §12

§ 12. Elections; Labor Organization Designation as Exclusive Representative; Appropriateness of Bargaining Unit; Representational Rights

a. Petition for Election. A labor organization may file a petition with the MERO Director stating that thirty **(30)** percent or more of the Tribal **Employees** in an appropriate bargaining unit, provided for under this Law, desire to be exclusively represented for the purposes of collective bargaining within the unit by the petitioning organization and request the designation of said organization as their exclusive representative. A petition filed hereunder must contain either the signatures of thirty **(30)** percent of the **Tribal Employees** in the bargaining unit proposed, or be accompanied by the submission of authorization cards from at least thirty **(30)** percent of the Tribal Employees in the bargaining unit. The petition must also describe the bargaining unit including a designation of each job category or position which the labor organization states should be included in the bargaining unit.

b. Receipt of Petition for Election. Upon receipt of such a petition the MERO Director shall, unless a party requests a MERO Board as defined in

Section 7(a) of this Law, refer the petition to the Tribal Court. The Tribal Court shall appoint an impartial special master with substantial experience in labor relations and labor law to act on the petition. If either party requests a MERO Board, one shall be formed pursuant to the procedures set forth in Section 7(a) of this law. The costs of the MERO Board and any fees associated with the proceedings shall be shared equally by the parties. The special master or the MERO Board shall review the petition, verify the labor organization's showing of interest, certify that it is in compliance with this Law, review and decide any issues or objections raised concerning the petition or the appropriateness of the bargaining unit, and conduct a secret ballot election as provided herein.

c. Hearings. The special master or the MERO Board shall have authority to convene a hearing for the purpose of addressing any and all issues relating to the petition. At the hearing, the parties shall have the opportunity to present evidence on any and all issues relating to the petition. The parties shall have the right to submit briefs to the special master or the MERO Board. The parties may appeal any determinations of the special master or the MERO Board to the Tribal Court and its decision shall be final as to such issues. The Tribal Court shall adopt the decision of the MERO Board or the special master, unless the Tribal Court determines, under a clear and convincing evidence standard of review that the decision of the special master or the MERO Board, as the case may be, resulted from fraud or bias or is in direct conflict with Tribal law. The decision of the Tribal Court, whether based on the adoption of a special master's decision or the decision of a MERO Board, shall be final and there shall be no appeal to the Mashantucket Pequot Court of Appeals.

d. Secret Ballot Election. When all issues, if any, relating to the petition have been resolved, the special master or the MERO Board shall conduct a secret ballot election if it determines that a valid petition has been filed. The ballot for the special election shall contain the name of any labor organization submitting a petition in compliance with subsection (a) of this section, and contain clear language providing the Tribal **Employees** with a choice to either select the labor organization that filed the petition as the exclusive representative for the Tribal **Employees** within the bargaining unit or to choose not to be represented by any labor organization.

e. Election Result and Appeal. If a majority (fifty percent plus one) of the Tribal **Employees** in the proposed bargaining unit vote in favor of certification of a labor organization, the special master or MERO Board shall certify the labor organization as the exclusive bargaining representative for the appropriate bargaining unit. If a labor organization does not receive a majority vote for certification, then the labor organization shall not be certified as the exclusive representative of the bargaining unit. If either the Tribal Employer or the labor organization has a good faith reason to believe that the election was not conducted in a fair and impartial manner or that fraud or prohibited practices affected the outcome of the election, the Tribal Employer or labor organization may file such objections with the special master or **the** MERO Board within ten (10) days after the election. The special master or **the** MERO Board shall conduct such investigation as it deems appropriate to resolve such objections. Whether to hold an evidentiary hearing on such objections shall be within the discretion of the special master or **the** MERO Board. Any determination of the special master or MERO Board on such objections to the election may be appealed to the Tribal Court and its decision shall be final on such issues. The Tribal Court shall adopt the decision of the MERO Board or the special master, unless the Tribal Court determines, under a clear and convincing evidence standard of review, that the decision of the special master or the MERO Board, as the case may be, resulted from fraud or bias or is in direct conflict with Tribal law. The decision of the Tribal Court, whether based on the adoption of a special

master's decision or the decision of a MERO Board, shall be final and there shall be no appeal to the Mashantucket Pequot Court of Appeals.

f. Time Limitation. No election shall be directed or held in any bargaining unit within which an election has been conducted in the twelve (12)-month period immediately preceding the proposed representation election.

g. Determination of Appropriateness of Bargaining Unit. In determining the appropriateness of a bargaining unit, the special master or MERO Board shall take into consideration but shall not be limited to considering the following factors:

1. That an appropriate bargaining unit is based on occupational groups or groups of employees who share clear and identifiable communities of interest in employment terms and conditions and related personnel matters;
2. The effects of over-fragmentation;
3. Principles of efficient administration of the Tribal government; and
4. Any history of collective bargaining for Tribal employees.

h. Guards or Other Security Personnel. A labor organization shall not be certified as the representative of employees in a bargaining unit of guards or other security personnel if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards or other security personnel.

i. Deauthorization. Upon the filing with the MERO Director, by thirty (30) per centum or more of the employees in a bargaining unit covered by a collective bargaining agreement containing a union security clause, of a petition alleging they desire that the authorization to enter such an agreement be rescinded, the MERO shall, unless a party requests a MERO Board as defined in Section 7(a) of this Law, refer the petition to the Tribal Court. The Tribal Court shall appoint an impartial special master with substantial experience in labor relations and labor law to act on the petition. If either party requests a MERO Board, one shall be formed pursuant to the procedures set forth in Section 7(a) of this law. The costs of the MERO Board and any fees associated with the proceedings shall be shared equally by the parties. The special master or the MERO Board shall hold a secret ballot election of the employees in such unit and certify the results thereof to the affected labor organization and Tribal Employer. If a majority of the employees in the bargaining unit vote to rescind such authorization, then the provision for a union security clause shall be null and void and of no further force or effect. If the secret ballot election does not result in a majority of employees voting to rescind, then the provision in the collective bargaining agreement shall remain in full force and effect.

32 M.P.T.L. ch. 1 §13

§ 13. Decertification of exclusive representative

a. A Tribal Employee or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent of the Tribal Employees in the bargaining unit make a written request to the MERO for a decertification election. If such a request is filed, the MERO shall conduct the decertification election in the same manner as a certification election is conducted pursuant to this Law. A labor organization will be decertified as the exclusive representative of an appropriate bargaining unit if a majority (fifty percent plus one) of the Tribal Employees in the bargaining unit vote for decertification.

b. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the MERO no earlier than ninety (90) days and no later than forty-five (45) days before the expiration of the collective bargaining agreement or at any time after the agreement has

expired; provided, however, that if the term of a collective bargaining agreement is more than three years, a request for decertification may be made at any time after the expiration of the third year.

32 M.P.T.L. ch. 1 §14

§ 14. Registration of Labor Organization

a. Requirement to Register. Every labor organization operating within the territorial jurisdiction of the Tribe shall file a report with the Office of Legal Counsel for the Tribe, on or before 60 days after enactment of this Title and thereafter on or before December 31 of each year. The report, which shall be filed by the president of the labor organization or another duly authorized officer of the labor organization, shall contain the following information:

1. The name and address of the labor organization;
2. The names and addresses of the president, secretary, treasurer, and business agent(s) of the labor organization;
3. The name and address of the national and/or international organization, if any, with which the labor organization is affiliated;
4. A copy of the collective bargaining agreement(s) between the labor organization and any employer within the territorial jurisdiction of the Tribe;
5. A copy of the current Constitution and By-laws of the labor organization, as well as any amendments, i.e., the basic written rules governing the organization; and
6. A copy of the Labor Organization's Annual Report.

b. Submission of New Information. The president of the labor organization shall file with the Office of Legal Counsel for the Tribe a notice of any changes to the information required above within 30 days after the changes are made and provide any additional information requested by the Office of Legal Counsel.

c. Violations. It shall be a violation of this subsection for any labor organization or any person acting on behalf of any labor organization to fail to register or to make any false statements on any reports required to be filed pursuant to this Law.

32 M.P.T.L. ch. 1 §15

§ 15. Licensing of business agents.

a. No person shall act as a business agent of a labor organization within the territorial jurisdiction of the Tribe unless that person has received a license from the MERO.

1. Any person who seeks such a license shall pay a license fee of \$25, submit a statement signed by the president and the secretary of the labor organization which establishes the individual's authority to act as a business agent for the organization, and agree to undergo a background investigation.
2. No person shall be issued a license to act as a business agent within the territorial jurisdiction of the Tribe if that person has been convicted of a felony, has been convicted of a misdemeanor involving moral turpitude, is currently facing charges on a felony or on a misdemeanor involving moral turpitude or, based on the background investigation, is deemed by the MERO to be of questionable moral character.
3. If at any time after issuance of the license the MERO receives reliable information that the licensee should be deprived of his

or her license based on the factors stated above, then the MERO may suspend or revoke the license. The license shall run for the calendar year for which it is issued unless sooner surrendered, suspended, or revoked.

4. All licenses shall expire at midnight on December 31 of each year but may be renewed by the MERO on a form prescribed by the MERO for that purpose and upon payment of an annual renewal fee of \$25. However, if any license has been surrendered, suspended or revoked during the year, then the applicant must go through the requirements set forth in subsection (a)(1) above.
 5. Any person denied a license or whose license is suspended shall have the right to **appeal such a determination to the Tribal Court.**
- b. It shall be a violation of this **Section** for any person to:
1. Act as a business agent **on the Reservation** for a labor organization without having obtained a valid license;
 2. **Act** as a business agent of any labor organization without the authority of the labor organization to do so;
 3. **Make** any false statement on any reports required to be filed pursuant to this Law;
 4. **Make** any false statement in an application for a business agent's license.

c. If the MERO Director, after investigation, determines that any person is in violation of this section of the Law, the Director may impose penalties. **The MERO Director may also refer the matter to the Mashantucket Pequot Council of Elders to determine if an order of exclusion or banishment is appropriate,** or, if the violation affects the Tribe's gaming operation, to the Mashantucket Pequot Tribal Gaming Commission for possible exclusion from the gaming facilities as may be allowed under Title 3, Section 5, of the Mashantucket Pequot Tribal Laws. Any person adversely affected by the imposition of penalties by the MERO **Director** shall have the right to **appeal such imposition of penalties to the Tribal Court.**

32 M.P.T.L. ch. 1 §16

§ 16. Time For Filing Appeals

Any appeal to the Tribal Court allowed under this Law must be filed with the Tribal Court within twenty (20) days after the mailing of the determination, decision or order being appealed. If an appeal is not filed within that time period, the determination, decision or order shall be final.

Historical and Statutory Notes

Derivation. Effective August 16, 2007 - EXTCR081607-01 enacted the Mashantucket Pequot Labor Law.

Amendments. Effective October 28, 2008 - EXTCR102808-01 of 02 - amends EXTCR081607-01. Effective July 23, 2009, TCR072309-04 of 09, approved various technical amendments throughout.

TCR062909-05 of 06 amended the 31 M.P.T.L. making various amendments throughout. All amendments to this law are indicated by notation and red text.

TITLE 33. MASHANTUCKET PEQUOT TRIBAL AND NATIVE AMERICAN PREFERENCE LAW

33 M.P.T.L. ch. 1 § 1

§ 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.

33 M.P.T.L. ch. 1 § 2

§ 2. Findings

Following are amended Section 2(a) and new Section 2(e)

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

a. It has a **Native American** 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.

e. As recognized in the Constitution, the Mission Statement and the Strategic Objectives of the Mashantucket Pequot Tribal Nation, it is in the interests of all Tribal Members, the citizens of Mashantucket, to conserve and develop common resources and promote the welfare of Tribal Members and their descendants.

33 M.P.T.L. ch. 1 § 3

§ 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.

33 M.P.T.L. ch. 1 § 4

§ 4. Definitions

Following are new Sections 4(a) - (c), (e), (h), (j), (m) - (o), and amended Sections 4(f), (g), (i), and (p)

a. "Cultural Opportunity" means an accommodation for a cultural conviction unique to an individual's Tribal or Native American culture.

b. "Employee" means an employee of an Employer who performs work, in whole or in part, on the Reservation, excluding appointed or elected officials of the Tribe.

c. "Employment Opportunities" means consideration for hire, hire, transfer, promotion, training, and non-disciplinary retention, including in any reorganization or layoff.

d. "Employer" means any Person that employs five (5) or more employees who, during any thirty day period, each spend, cumulatively, forty (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 or local governments.

e. "Hardship" means some identifiable direct or indirect operational harm or expense.

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

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

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

i. "Native American" or "Indian" 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 (Western) 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.

j. "Natural Progression" means an employment position that is a logical next step in a career path for a current Employee.

k. "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.

l. "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.

m. "Shift Assignments" shall mean those shift assignment opportunities resulting from an open position, or those opportunities to maintain a shift assignment during shift reassignments.

n. "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 (3) years and has been issued an identification badge as a tribal spouse by the Tribal Clerk's Office and who is in good standing.

o. "Tribal Council" means the governing body of the Mashantucket (Western) Pequot Tribe.

p. "Tribal Member" means a duly enrolled member of the Mashantucket (Western) Pequot Tribe who is in good standing.

q. "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.

§ 5. Preference in Employment

Following are new Sections 5(c) - (k)

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. *Preference Exception.* Preference in the Employment Opportunity of promotion is not required to be given when the position is not otherwise open but results from a restructuring or reorganization and is filled through Natural Progression by an employee already performing substantial duties of the position.

d. *Additional Preference; Tribe as Employer.* In addition to any other preference provided herein or by practice or policy, when the Tribe is the Employer, it shall provide to Tribal Members and Spouses of Tribal Members notification at least two (2) days in advance of posting or advertising of employment position openings, and preference in Shift Assignments.

e. *Cultural Opportunities; Tribe as Employer.* In addition to any other preferences provided herein, when the Tribe is the Employer, Cultural Opportunities shall be provided to Tribal Members, Spouses of Tribal Members and Native Americans, unless providing the Cultural Opportunity would cause Hardship to the Employer.

f. *Exhaustion of Paid Leave.* When a preference in employment involves the Employer's provision of leave or time away from work to a Native American who is not a Tribal Member or Spouse, the Employer may require the employee to utilize any available paid, accrued leave time prior to receiving leave or time off without pay.

g. *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 preference policy statement in all job announcements and advertisements and applicable employer personnel policies consistent with this Law.

h. *Exclusion; Key Employees or Positions.* The preference in Employment Opportunities required by and set forth in this Law shall not be applicable to personnel actions regarding any key employees or positions. For the purposes of this Law, a "key employee" includes an individual holding a substantial ownership interest in the Employer or an individual with unique employer or industry knowledge that provides a significant competitive advantage to the Employer. For purposes of this Law, a "key position" includes a high-level managerial or critical function position such that the Employer would risk significant damage or loss if the position were not filled with the best qualified candidate regardless of preference or political appointee as defined by TCR121201-01 of 04. The Person claiming the exclusion bears the burden of proving the key employee or position by a preponderance of the evidence.

i. *Collective Bargaining Agreement.* Every collective bargaining agreement covering Employees on the Reservation must be in compliance with the preference requirements of this Law.

j. *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 Tribal Members, Tribal Member Spouses and/or Native Americans, as applicable, 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 11 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 review by the Tribal Court.

k. *Tribal and Native American Preference (IP) Officer.* The Tribe as an Employer must employ an individual whose job duties include overseeing Tribal Employer compliance with the employment preferences required by this Law. The individual's responsibilities shall include, without limitation, participation in any employment decisions related to this Law, such as the preferences provided in Section 5 and any disciplinary determinations, including discharge. This position shall not be eliminated by the Tribal Employer unless the Mashantucket Pequot Tribal Council approves such action.

Following are amended Sections 6(a) and 6(b)

33 M.P.T.L. ch. 1 § 6

§ 6. Application Skills Bank

a. *Establish Skills Bank* The MERO shall establish an application skills bank to assist Employers in placing Tribal Members and Native Americans in employment positions on the Reservation. The MERO 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 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.

33 M.P.T.L. ch. 1 § 7

§ 7. Preference in Awarding Contracts (RESERVED).

33 M.P.T.L. ch. 1 § 8

§ 8. Certification for Tribally Owned and Native American Owned Businesses (RESERVED).

Following is a new Section 9

33 M.P.T.L. ch. 1 § 9

§ 9. Claim Procedures; Investigations; Mediation.

a. *Before Filing a Claim.* Before filing a claim with the MERO, an individual is required to follow any complaint processes offered by his/her Employer. If the individual's claim relates to employment with or by the Tribe, the individual must follow any complaint processes offered by the Tribal and Native American Preference Officer. A claimant's unreasonable failure to utilize an effective complaint process prior to filing a claim with the MERO may be raised as a defense to a claim of non-compliance with this Law.

b. *Claim.* A claim filed hereunder must be in writing on a form prescribed by the MERO. The MERO Office may require additional information from the claimant, including a sworn statement. The MERO 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 MERO Director determines that a violation of this Law has occurred, the MERO 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 to address the non-compliance, and shall provide notice to the affected party of the right to request review by the Tribal Court. If the MERO Director, after investigation, determines that there is no violation of this Law, the Director shall notify all interested parties of the MERO's decision to dismiss the claim, and shall provide notice to the claimant of the right to request review by the Tribal Court.

c. *Time Frames for Filing and Investigation.*

1. Contract Claims. (RESERVED)

2. Employment and Other Claims. A claim must be filed within one hundred eighty (180) days of the alleged noncompliance. The MERO must complete its investigation within a reasonable time after the claim is filed, but in no event later than ninety (90) days following the filing of the claim.

d. *Cooperation in Investigations.* All Persons subject to this Law have a duty to cooperate with any investigation conducted by the MERO under this Law. If a Person fails to cooperate, the MERO Director may impose penalties as provided under Section 11 of this Law; provided that the MERO Director sends written notice to the affected Person of the penalties being imposed, the reasons for such penalties, and the Person's right to request review by the Tribal Court.

e. *Mediation.* After investigation of an Employment Claim, 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 within sixty (60) days of referral to the mediation panel, as may be extended by agreement of the parties and consent of the mediation panel, the mediation will be considered closed and the MERO Director's decision and notice of right to request review by the Tribal Court will issue.

Following is a new Section 10

33 M.P.T.L. ch. 1 § 10

§ 10. Tribal Court Review

a. *Right to Appeal.* Any Person may appeal an adverse decision of the MERO Director under Sections 5 or 9 to the Tribal Court. A written appeal on a form provided by the Tribal Court clerk must be submitted to the Tribal Court. The notice of appeal must include a copy of the MERO decision being appealed. The Tribal Court is hereby granted jurisdiction over any such appeal. All appeals under this Title shall be heard by the court, not a jury. No costs shall be taxed against the Tribe.

1. Contract Claim Appeals. (RESERVED)

2. Employment or Other Claim Appeals. Except as provided in Section 10(a)(1), the Tribal Court must receive an appeal of a MERO decision within thirty (30) days of the MERO's mailing of the decision being appealed. Service of the appeal shall be made on any other parties to the case, and the MERO Director, by the Tribal Court clerk by registered or certified mail. In any appeal filed under this Section, the MERO shall file with the Tribal Court a copy of the official MERO case record. The case record shall be filed with the Tribal Court within thirty (30) days after the appeal is filed with the court. The Tribal Court shall conduct a de novo hearing, except that no party shall be permitted to introduce evidence not provided to the MERO during the investigation of the claim unless the evidence is newly discovered or was not available to the party during the

investigation notwithstanding the party's best efforts to secure the evidence. The MERO Director bears the burden of proof by a preponderance of the evidence.

b. *Enforcement Action.* Absent a timely appeal to the Tribal Court, the MERO Director's decision and any associated remedy shall be final. The MERO Director may bring an action in Tribal Court to seek enforcement of any final order of the MERO Director within one (1) year of the issuance of the MERO decision. The MERO shall file with the Tribal Court a copy of the official MERO case record within thirty (30) days after the enforcement action is filed with the court. The Tribal Court shall adopt the decision of the MERO unless the MERO decision is arbitrary and capricious, or in direct conflict with Tribal law.

c. *Court of Appeals.* Any decision by the Tribal Court under Sections 10(a)(2) or 10(b) may be appealed to the Mashantucket Pequot Court of Appeals. Any decision of the Court of Appeals shall be final.

Following is a new Section 11

33 M.P.T.L. ch. 1 § 11

§ 11. Sanctions, Penalties, or Awards

Any one or a combination of the following may be imposed by the MERO Director, after an investigation, or by the Tribal Court on appeal:

- a. An order of reinstatement, hiring, promotion, transfer or retention of the affected Employee either into the position sought if still available or into an available comparable position provided that the Employee meets the Minimum Necessary Qualifications, and/or training of the Employee.
- b. An order for compensatory damages to the Employee affected, which may include but not exceed one (1) year of lost wages, which the affected Employee has a duty to mitigate. If however the affected Employee has already been awarded such damages under any other law, lost wages shall not be allowed under this Law.
- c. 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. No award for attorney's fees may exceed one third of a lost wage award, if there is such an award, or in the absence of a lost wage award, fifty (50) hours of attorney time. Attorneys' fees 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.
- d. If it is determined that any Person's noncompliance with this Law was intentional or as otherwise provided in this Law, a civil monetary fine not to exceed \$250.00 per violation may be assessed with a maximum aggregate fine of \$1,000.00 per claim of non-compliance. Each day that a Person has been determined to be out of compliance with the requirements of this Law may be considered a separate violation.
- e. An order that the Person cease and desist from non-compliance.

- f. An order that the Person 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.
- g. The Tribal Court may enter a judgment for declaratory relief.
- h. In all claims where it is alleged that liability is based upon the action of an officer, agent, servant, or employee acting within the scope of his or her employment, there shall be no separate cause of action against the officer, agent, servant or employee.

Following is a new Section 12

33 M.P.T.L. ch. 1 § 12

§ 12. Waiver of Sovereign Immunity From Suit

a. *Waiver of Sovereign Immunity.* To the extent that a claim filed in the MERO Office is against the Tribe or review by the Tribal Court concerns claimed violations of this Law 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. Nothing in this law shall be construed to waive the sovereign immunity of the Tribe to the extent that sovereign immunity would be applicable to the officer, agent, servant or employee.

Historical and Statutory Notes

Derivation. Effective December 17, 2007, TCR121707-08 of 17 enacted the Mashantucket Pequot Tribal and Native American Preference Law.

Amendments. Effective June 29, 2009, TCR062909-05 of 06, amended the Mashantucket Pequot Tribal and Native American Preference Law effective upon enactment of the resolution with the exception that the provisions of Section 10, Tribal Court review, shall also be effective for and applicable to any cases pending before the MERO as of the date of enactment.