

TITLE 51. MASHANTUCKET PEQUOT FAMILY AND MEDICAL LEAVE LAW

CHAPTER 1. TITLE; AUTHORITY; FINDINGS; & PURPOSE;

51 M.P.T.L. ch. 1 § 1

§ 1. Title; Authority;

The Title of this Law shall be the Mashantucket Pequot Family and Medical Leave Law. This Law is adopted pursuant to the inherent authority of the Mashantucket Pequot Tribal Council, the governing body of the Mashantucket Pequot Tribe, to regulate employment within the Reservation.

51 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 in accordance with the Tribe's cultural values: that there be fair and appropriate employment practices including 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 Committee of the Tribal Council recently reviewed certain employment laws and policies applicable to all employers on the Reservation and developed a phased approach to formally address family and medical leave through the Mashantucket Employment Rights Office and the Tribal Court.

b. The Tribe, as an employer, provides employment to thousands of people on its Reservation through the Mashantucket Pequot Gaming Enterprise, the Mashantucket Pequot Museum & Research Center, Pequot Health Care, and other departments, divisions, entities or enterprises of the Tribe. ("Tribal Employers") The Tribe, as a government, has historically provided, through Tribal employment laws and policies, fair treatment to its Employees including comprehensive benefits and leave protections.

c. The Tribe believes that codifying, expanding, and strengthening the family and medical leave protections for Employees of the Tribe will promote important cultural values and strengthen the community.

d. Given the Tribe's inherent authority over employment on the Reservation, the Tribal regulation of employment on the Reservation, and the longstanding federal policy protecting tribal self-governance and promoting tribal self-sufficiency, the Tribe finds that the federal

Family and Medical Leave Act ("FMLA") does not apply to the Tribal Employers. Application of the FMLA to the Tribal Employers would substantially impair the ability of the Tribe to exercise its sovereign authority, including undermining Tribal employment laws.

e. The State of Connecticut lacks regulatory authority on the Reservation.

f. The Tribe has considered and determined that it is important to require Tribal Employers to provide Tribal Employees with reasonable leave for medical reasons, for the birth, placement, and care of a child, for the care of a family member who has a serious health condition, and to support and care for seriously injured or ill military family members.

51 M.P.T.L. ch. 1 § 3

§ 3. Purpose

The purpose of this Law is to provide leave and workplace protections to Eligible Employees who require time away from work to attend to family or medical issues.

CHAPTER 2. DEFINITIONS

51 M.P.T.L. ch. 2 § 1

§ 1. Definitions

a. "Child" means a biological, adopted, or foster child, a stepchild, a Tribal Member Dependent Child as defined under 46 M.P.T.L., a legal ward, or in the alternative, a child of an individual standing *in loco parentis*, or an individual to whom the Eligible Employee or Covered Servicemember, as appropriate, stood in *in loco parentis* when the individual was a child. A child may be of any age.

b. "Continuous Leave" means leave taken on consecutive workdays.

c. "Covered Active Duty" means duty during deployment of a member of the United States Armed Forces to a Foreign Country, provided that for the National Guard or Reserve Servicemembers, the deployment is under a United States government call or order to active duty in support of a contingency operation.

d. "Covered Servicemember" means:

- i. A current member of the United States Armed Forces, including the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or

- ii. A veteran who is undergoing medical treatment, recuperation or therapy, for a serious injury or illness and who was discharged or released from the United States Armed Forces under conditions other than dishonorable at any time during the five (5) year period preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.
- e. "Eligible Employee" means an Employee of an Employer covered by this Law who has been employed:
- i. For at least six (6) consecutive months, as defined in the MERO's regulations, by the Employer with respect to whom leave under this Law is requested, for leave for the Employee's own serious health condition under Ch.3 § 1(a)(iv) or for leave for organ or bone marrow donation under Ch. 3 § 1(a)(v); and
 - ii. For at least twelve (12) months and at least one thousand two hundred fifty (1,250) hours of service with such Employer during the twelve-month period immediately prior to the date leave under this Law is to commence, for any leave under this Law other than for the Employee's own serious health condition.
- f. "Employ" means to permit to work.
- g. "Employer" means the Mashantucket (Western) Pequot Tribe a/k/a Mashantucket Pequot Tribal Nation, including any arm, department, agency, subdivision, enterprise or organization within or wholly owned by the Tribe employing Employees on the Mashantucket Pequot Reservation. As to wholly owned tribal enterprises and organizations, this definition of Employer does not include such enterprises and organizations that do not have a principal place of business or are not headquartered on the Reservation.
- h. "Employment Benefits" means all benefits provided or made available to Employees by the Employer, including, but not limited to, group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy or through an Employer sponsored Employee benefit plan.
- i. "Family Member" means a spouse, sibling, child, grandchild, parent or grandparent.
- j. "Foreign Country" means areas outside the United States or any Territory or possession of the United States, including international waters.
- k. "Grandchild" means a grandchild related to an individual by blood, marriage, adoption by a child of the grandparent, or foster care by a child of the grandparent.

l. "Grandparent" means a grandparent related to an individual by blood, marriage, adoption of a minor child by a child of the grandparent, or foster care by a child of the grandparent.

m. "Health Care Provider" means:

- i. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the jurisdiction in which the doctor practices; or
- ii. Any other person determined by the MERO to be capable of providing health care services.

n. "*In loco parentis*" includes, but is not limited to, persons with day-to-day responsibilities to care for or financially support a child or, in the case of an Eligible Employee, who had such responsibility for the Employee when the Employee was a child. A biological or legal relationship is not necessary.

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

p. "Next of Kin" means, when used with respect to an individual, the nearest blood relative of that individual.

q. "Outpatient Status" with respect to a Covered Servicemember means the status of a member of the U.S. Armed Forces assigned to:

- i. A military medical treatment facility as an outpatient; or
- ii. A unit established for the purpose of providing command and control of members of the U.S. Armed Forces receiving medical care as outpatients.

r. "Parent" means a biological parent, adoptive parent, stepparent, foster parent, parent-in-law or legal guardian of an Eligible Employee or an Eligible Employee's spouse, an individual standing *in loco parentis* to an Eligible Employee, or an individual who stood *in loco parentis* to the Eligible Employee when the Employee was a child.

s. "Reduced Schedule Leave" means a leave schedule that reduces the usual number of working hours per workweek, or hours per workday, of an Employee.

t. "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.

u. "Right to Sue" means the cessation of case processing and release of jurisdiction by the MERO to permit the filing of a claim under this Law in Tribal Court.

v. "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves:

- i. Inpatient care in a hospital, hospice, or residential medical care facility; or
- ii. Continuing treatment by a Health Care Provider.

w. "Serious Injury or Illness" means an injury or illness incurred or aggravated in the line of duty on active duty in the U.S. Armed Forces that may render a Covered Servicemember, medically unfit to perform the duties of their office, grade, rank, or rating, and for a veteran, manifested itself before or after the member became a veteran.

x. "Sibling" means a biological sibling, half-sibling, step-sibling, adopted sibling, foster sibling, or sibling-in-law of the Eligible Employee or the Eligible Employee's spouse.

y. "Spouse" means a party to a marriage or a partner of a civil union where the marriage or civil union is legal in the jurisdiction in which it was performed.

z. "Tribal Court" means the Mashantucket Pequot Tribal Court.

aa. "Tribe" means the Mashantucket (Western) Pequot Tribe, also known as the Mashantucket Pequot Tribal Nation.

CHAPTER 3. LEAVE REQUIREMENT

51 M.P.T.L. ch. 3 § 1

§ 1. General Provisions

a. Entitlement to Leave. An Eligible Employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:

- i. Because of the birth of a Child of the Employee and in order to care for such Child;
- ii. Because of the placement of a Child with the Employee for adoption or foster care;
- iii. In order to care for a Family Member of the Employee, if such Family Member has a Serious Health Condition;

- iv. Because of a Serious Health Condition that makes the Employee unable to perform the functions of the position of such Employee;
- v. In order to serve as an organ or bone marrow donor; or
- vi. Because of any qualifying exigency (as the MERO shall, by regulation, determine) arising out of the fact that the Family Member of the Employee is on Covered Active Duty (or has been notified of an impending call or order to Covered Active Duty).

b. **Servicemember Caregiver Leave.** An Eligible Employee who is the Family Member, or Next of Kin of a Covered Servicemember with a Serious Injury or Illness shall be entitled to a total of 26 workweeks of leave during a single 12-month period beginning on the first day of Servicemember Caregiver leave. An Eligible Employee is entitled to a combined total of 26 workweeks of leave for any qualifying reasons under this Law during the single 12-month period, provided the Employee is entitled to no more than 12 or 14 workweeks, as applicable, for the reasons in Ch. 3 § 1(a).

c. **Expiration of Entitlement.** The entitlement to leave under Ch. 3 § 1(a)(i) or (ii) above for a birth or placement of a Child shall expire at the end of the 12-month period beginning on the date of such birth or placement.

d. **Additional Leave.** If the 12 workweeks of leave under Ch. 3 § 1(a) are exhausted, an Eligible Employee shall be entitled to two (2) additional workweeks of continuous leave during the 12-month period, because of a Serious Health Condition that makes the Employee unable to perform the functions of the position of such Employee.

51 M.P.T.L. ch. 3 § 2

§ 2. Intermittent or Reduced Schedule Leave

a. **In General.** Leave under Ch. 3 § 1(a)(i) or (ii) shall not be taken by an Employee intermittently or on a reduced schedule unless the Employee and the Employer of the Employee agree otherwise. Subject to Ch. 3 § 5(b) and Ch. 4 § 2(e), (f) or (g), as appropriate, leave under § Ch. 3 § 1(a)(iii), (iv) or (v), or Ch. 3 § 1(a)(b), may be taken intermittently or on a reduced schedule when medically necessary. Subject to Ch. 3 § 5(c) and Ch. 4 § 2(e), leave under Ch. 3 § 1(a)(vi) may be taken intermittently or on a reduced schedule. The taking of leave intermittently or on a reduced schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the Employee is entitled under Ch. 3 § 1 beyond the amount of leave actually taken. Leave under Ch. 3 § 1(d) shall not be taken intermittently or on a reduced schedule.

b. **Alternative Position.** If an Employee receives intermittent leave, or leave on a reduced schedule, that is foreseeable based on planned medical treatment, the Employer may require such Employee to transfer temporarily to an available alternative position offered by the Employer for which the Employee is qualified and that:

- i. Has equivalent pay and benefits; and
- ii. Better accommodates recurring periods of leave than the regular employment position of the Employee.

51 M.P.T.L. ch. 3 § 3

§ 3. Unpaid Leave Permitted

Except as provided in Ch. 3 § 4, leave granted under Ch. 3 § 1 or Ch. 3 § 2 above may consist of unpaid leave. Where an Employee is otherwise exempt under applicable wage and hour law, the compliance of an Employer with this Law by providing unpaid leave shall not affect the exempt status of the Employee.

51 M.P.T.L. ch. 3 § 4

§ 4. Relationship to Paid Leave

a. **Unpaid Leave.** If an Employer provides paid leave for fewer than 12 or 14 workweeks, as applicable, under Ch. 3 § 1(a) and Ch. 3 § 1(d), or 26 workweeks in the case of leave provided under Ch. 3 § 1(b), the additional weeks of leave necessary to attain the 12, 14, or 26 workweeks, as appropriate, required under this Law may be provided without compensation.

b. **Substitution of Paid Leave**

- i. **In General.** An Eligible Employee may elect, or an Employer may require, substitution of any accrued paid time off of the Employee for leave provided under Ch. 3 § 1(a) (i), (ii), (iii) or (vi) for any part of the 12-week period, Ch. 3 § 1(b) for any part of the 26-week period, or Ch. 3 § 1(d) for any part of the two (2) week period.
- ii. **Serious Health Condition or Organ or Bone Marrow Donor.** An Eligible Employee may elect, or an Employer may require, the substitution of any accrued paid time off of the Employee for leave provided under Ch. 3 § 1(a) (iii), (iv) or (v) for any part of the 12 week period, Ch. 3 § 1(b) for any part of the 26 week period, or Ch. 3 § 1(d) for any part of the two (2) week period, provided that nothing in this Law shall require an Employer to provide paid sick leave or paid medical leave in any situation in which such Employer would not normally provide any such paid leave.

- iii. **Paid Leave Reserve.** An Eligible Employee may retain not less than two (2) weeks of paid, accrued leave, provided that an Employer may prescribe the type of paid leave retained through a uniform policy.

51 M.P.T.L. ch. 3 § 5

§ 5. Foreseeable Leave

a. **Notice for Leave for Expected Birth or Placement of a Child.** In any case in which the necessity for leave under Ch. 3 § 1(a)(i) or (ii) is foreseeable based on an expected birth or placement, the Employee shall provide the Employer with not less than thirty (30) days' notice, before the date the leave is to begin, of the Employee's intention to take such leave, except that if the date of the birth or placement requires leave to begin in less than thirty (30) days, the Employee shall provide such notice as soon as is practicable.

b. **Duties of Employee for Planned Medical Treatment.** In any case in which the necessity for leave under Ch. 3 § 1(a)(iii), (iv), or (v); Ch. 3 § 1(b); or Ch. 3 § 1(d) is foreseeable based on planned medical treatment, the Employee:

- i. Shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the Employer, subject to the approval of the Health Care Provider of the Employee or the Health Care Provider of the Family Member, or Covered Servicemember; and
- ii. Shall provide the Employer with not less than thirty (30) days' notice, before the date the leave is to begin, of the Employee's intention to take leave under the applicable subparagraph, except that if the date of the treatment requires leave to begin in less than thirty (30) days, the Employee shall provide such notice as soon as is practicable.

c. **Notice for Leave Due to Covered Active Duty of Family Member.** In any case in which the necessity for leave under Ch. 3 § 1(a)(vi) is foreseeable, the Employee shall provide reasonable notice to the Employer as soon as practicable.

51 M.P.T.L. ch. 3 § 6

§ 6. Spouses Employed by the Same Employer

In any case in which both Spouses are employed by the same Employer and both are entitled to leave under Ch. 3 § 1, each is entitled to their full leave entitlement under Ch. 3 § 1.

CHAPTER 4. CERTIFICATION

51 M.P.T.L. ch. 4 § 1

§ 1. In General

An Employer may require that a request for leave under Ch. 3 § 1(a)(iii), (iv), or (v); Ch. 3 § 1(b); or Ch. 3 § 1(d) be supported by a certification issued by the Health Care Provider of the Eligible Employee or of the Family Member of the Employee, or the Servicemember for whom the Employee is the Next of Kin, as appropriate. The Employee shall provide, in a timely manner, a copy of any required certification to the Employer.

51 M.P.T.L. ch. 4 § 2

§ 2. Sufficient Certification

Certification provided under Ch. 3 § 1(a)(iii), (iv), or (v) or Ch. 3 § 1(d) shall be sufficient if it states:

- a. The date on which the Serious Health Condition commenced;
- b. The probable duration of the Serious Health Condition;
- c. The appropriate medical facts within the knowledge of the Health Care Provider regarding the Serious Health Condition;
- d.
 - i. For purposes of leave under Ch. 3 § 1(a)(iii), a statement that the Eligible Employee is needed to care for the Family Member and an estimate of the amount of time that such Employee is needed to care for the Family Member;
 - ii. For purposes of leave under Ch. 3 § 1(a)(iv), a statement that the Employee is unable to perform the functions of the position of the Employee; or
 - iii. For purposes of leave under Ch. 3 § 1(a)(v), and in lieu of Ch. 4 § 2(a), (b), and (c), a statement that the Eligible Employee is donating an organ or bone marrow, with an approximate donation date and estimated duration of leave.
- e. In the case of certification for intermittent leave, or leave on a reduced schedule for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;
- f. In the case of certification for intermittent leave, or leave on a reduced schedule, under Ch. 3 § 1(a)(iv) or (v), a statement of the medical necessity for the intermittent leave or leave on a reduced

schedule, and the expected duration of the intermittent or reduced schedule leave;

g. In the case of certification for intermittent leave, or leave on a reduced schedule, under Ch. 3 § 1(a)(iii), a statement that the Employee's intermittent leave or leave on a reduced schedule is necessary for the care of the Family Member who has a Serious Health Condition, or will assist in the recovery, and the expected duration and schedule of the intermittent or reduced schedule leave; or

h. In the case of certification related to Covered Active Duty, any certification required by MERO regulation.

51 M.P.T.L. ch. 4 § 3

§ 3. Second Opinion

a. **In General.** In any case in which the Employer has reason to doubt the validity of the certification provided under Ch. 4 § 1 for leave under Ch. 3 § 1(a)(iii) or (iv), or Ch. 3 § 1(d), the Employer may require, at the expense of the Employer, that the Eligible Employee obtain the opinion of a second Health Care Provider designated or approved by the Employer concerning any information certified under Ch. 4 § 2 for such leave.

b. **Limitations.** A Health Care Provider designated or approved under Ch. 4 § 3(a) shall not be employed on a regular basis by the Employer.

51 M.P.T.L. ch. 4 § 4

§ 4. Resolution of Conflicting Opinions

a. **In General.** In any case in which the second opinion obtained pursuant to Ch. 4 § 3 differs from the opinion in the original certification provided under Ch. 4 § 1, the Employer may require, at the expense of the Employer, that the Employee obtain the opinion of a third Health Care Provider designated or approved jointly by the Employer and the Employee concerning the information certified under Ch. 4 § 2.

b. **Finality.** The opinion of the third Health Care Provider concerning the information certified under Ch. 4 § 2 shall be considered to be final and shall be binding on the Employer and the Employee.

51 M.P.T.L. ch. 4 § 5

§ 5. Subsequent Recertifications

For certifications provided under Ch. 3 § 1(a)(iii) or (iv), the Employer may require that the Eligible Employee obtain subsequent recertification on a reasonable basis.

CHAPTER 5. EMPLOYMENT & BENEFITS PROTECTION

51 M.P.T.L. ch. 5 § 1

§ 1. Restoration to Position

a. **In General.** Except as provided in Ch. 5 § 2, any Eligible Employee who takes leave under Chapter 4 for the intended purpose of the leave shall be entitled, on return from such leave:

- i. To be restored by the Employer to the position of employment held by the Employee when the leave commenced; or
- ii. To be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

b. **Benefits.** The taking of leave under Chapter 4 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

c. **Limitations.** Nothing in this section shall be construed to entitle any restored Employee to:

- i. The accrual of any seniority or employment benefits during any period of leave; or
- ii. Any right, benefit, or position of employment other than any right, benefit, or position to which the Employee would have been entitled had the Employee not taken the leave.

d. **Certification.** As a condition of restoration under Ch. 5 § 1(a) for an Employee who has taken leave under Ch. 3 § 1(a)(iv) or (v) or Ch. 3 § 1(d), the Employer may have a uniformly applied practice or policy that requires each such Employee to receive certification from the Employee's Health Care Provider that the Employee is able to resume work, except that nothing in this paragraph shall supersede a valid collective bargaining agreement entered into under Mashantucket Pequot Tribal Law that governs the return to work of such Employee.

e. **Construction.** Nothing in this subsection shall be construed to prohibit an Employer from requiring an Employee on leave under Chapter 3 to report periodically to the Employer on the status and intention of the Employee to return to work.

51 M.P.T.L. ch. 5 § 2

§ 2. Exemption Regarding Highly Compensated Employees

a. **Denial of Restoration.** An Employer may deny restoration under Ch. 5 § 1 to any highly compensated Eligible Employee if:

- i. Such denial is necessary to prevent substantial and grievous economic injury to the operations of the Employer;
- ii. The Employer notifies the Employee of the intent of the Employer to deny restoration on such basis at the time the Employer determines that such economic injury would occur; and
- iii. In any case in which the leave has commenced, the Employee elects not to return to employment after receiving such notice.

b. For purposes of Ch. 5 § 2(a), a highly compensated Eligible Employee is a salaried Eligible Employee who is among the highest paid ten percent (10%) of the Employees employed by the Employer.

CHAPTER 6. MAINTENANCE OF HEALTH BENEFITS

51 M.P.T.L. ch. 6 § 1

§ 1. Coverage

Except as provided in Ch. 6 § 2, during any period that an Eligible Employee takes leave under Chapter 3, the Employer shall maintain coverage under any "group health plan" (as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986) for the duration of such leave at the level and under the conditions coverage would have been provided if the Employee had continued in employment continuously for the duration of such unpaid leave.

51 M.P.T.L. ch. 6 § 2

§ 2. Failure to Return from Leave

The Employer may recover from the Employee the premium that the Employer paid for maintaining coverage for the Employee under such group health plan during any period of unpaid leave under Chapter 3 if:

- a. The Employee fails to return from leave under Chapter 3 after the period of leave to which the Employee is entitled has expired; and
- b. The Employee fails to return to work for a reason other than:

- i. The continuation, recurrence, or onset of a Serious Health Condition, or Serious Injury or Illness under Ch. 3 § 1(b), that entitles the Employee to leave under Ch. 3 § 1(a)(iii) or (iv), Ch. 3 § 1(b), or Ch. 3 § 1(d); or
- ii. Other circumstances beyond the control of the Employee.

51 M.P.T.L. ch. 6 § 3

§ 3. Certification of Inability to Return to Work

a. **Issuance.** An Employer may require that a claim that an Employee is unable to return to work because of the continuation, recurrence, or onset of the Serious Health Condition, or Serious Injury or Illness under Ch. 3 § 1(b), described in Ch. 6 § 2(i), be supported by:

- i. A certification issued by the Health Care Provider of the Family Member, or Covered Servicemember, as appropriate, in the case of an Employee unable to return to work because of a condition specified in Ch. 3 § 1(a)(iii) or Ch. 3 § 1(b); or
- ii. A certification issued by the Health Care Provider of the Eligible Employee, in the case of an Employee unable to return to work because of a condition specified in Ch. 3 § 1(a)(iv) or Ch. 3 § 1(d).

b. **Copy.** The Employee shall provide, in a timely manner, a copy of such certification to the Employer.

c. Sufficiency of Certification.

- i. **Leave Due to a Serious Health Condition of Employee.** The certification described in Ch. 6 § 3(a)(ii) shall be sufficient if the certification states that a Serious Health Condition prevented the Employee from being able to perform the functions of the position of the Employee on the date that the leave of the Employee expired.
- ii. **Leave Due to a Serious Health Condition of Family Member.** The certification described in Ch. 6 § 3(a)(i) for leave under Ch. 3 § 1(a)(iii) shall be sufficient if the certification states that the Employee is needed to care for the Family Member who has a Serious Health Condition on the date that the leave of the Employee expired.

CHAPTER 7. PROHIBITED ACTS

51 M.P.T.L. ch. 7 § 1

§ 1. Interference with Rights

a. **Exercise of Rights.** It shall be unlawful for any Employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this Law.

b. **Discrimination.** It shall be unlawful for any Employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this Law.

c. **Interference with Proceedings or Inquiries.** It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual:

- i. has filed any claim, or has instituted or caused to be instituted any proceeding, under or related to this Law;
- ii. has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this Law; or
- iii. has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this Law.

CHAPTER 8. NOTICE

51 M.P.T.L. ch. 8 § 1

§ 1. Notice

a. Employers shall post and keep posted, in conspicuous places on the premises of the Employer where notices to Employees and applicants for employment are customarily posted, or if the Employer customarily provides information by electronic means, electronically on an internal or external website accessible to Employees and applicants, a notice, to be prepared or approved by the MERO, setting forth excerpts from, or summaries of, the pertinent provisions of this Law and information pertaining to the filing of a claim.

b. If the Employer willfully violates this Section, the MERO may assess a civil money penalty not to exceed \$100.00 for each separate offense.

CHAPTER 9. CLAIM FILING & MANDATORY CONCILIATION

51 M.P.T.L. ch. 9 § 1

§ 1. Claim Filing

a. An individual may bring a claim on their own behalf alleging a violation of this Law by filing a claim under oath with the MERO, on a form designated for such filing by the MERO, within one hundred and eighty (180) calendar days of the alleged violation, setting forth the facts of the alleged violation and provisions of this Law believed to be violated.

b. If an Employee has been subject to disciplinary action as defined in 8 M.P.T.L., and receives a Board of Review or arbitration decision under 8 M.P.T.L., the Employee is barred from instituting an action under this Law. An Employee who would otherwise be eligible to proceed under 8 M.P.T.L., who files a claim under this Law is barred from instituting or proceeding with a claim under 8 M.P.T.L. after the commencement of the conciliation conference provided in Ch. 9 § 2.

c. A claim filed with the MERO shall be docketed by the MERO, which shall provide a copy of the claim to the Employer.

51 M.P.T.L. ch. 9 § 2

§ 2. Mandatory Conciliation

a. The MERO shall schedule a mandatory conciliation conference within twenty-one (21) days of the date of filing of the claim.

b. The parties are required to attend the mandatory conciliation conference. Postponements will be granted only for good cause shown.

c. A conciliation agreement may include any of the remedies that may be awarded by the Tribal Court pursuant to this Law.

d. A conciliation agreement signed by the parties and approved by the MERO is final and binding upon the parties.

e. If within ninety (90) business days of the date of the filing of the claim, a pending claim is not resolved through conciliation, the MERO shall issue a Right to Sue notice to the claimant. Nothing herein precludes the MERO from issuing a Right to Sue notice or dismissal earlier if warranted by the circumstances.

CHAPTER 10. JURISDICTION

51 M.P.T.L. ch. 10 § 1

§ 1. Limited Waiver of Immunity from Suit

The Tribe hereby expressly waives its immunity and the immunity of any arm, department, agency, subdivision, enterprise or organization within or wholly owned by the Tribe and considered an Employer under this Law from suit in the Tribal Court for actions arising under this Law. This waiver of immunity from suit is expressly limited to suits in the Tribal Court and as otherwise limited under this Law, including, but not limited to, the mandatory MERO conciliation requirement.

51 M.P.T.L. ch. 10 § 2

§ 2. Tribal Court Jurisdiction

The Tribal Court is hereby granted jurisdiction over claims arising under this Law, provided that prior to filing with the Tribal Court, the administrative process provided in this Law has been exhausted. The administrative process is considered exhausted at the earlier of the MERO's dismissal of a claim, issuance of a Right to Sue notice or one hundred eighty (180) calendar days after a claim is filed with the MERO.

CHAPTER 11. ENFORCEMENT OF MASHANTUCKET PEQUOT FAMILY & MEDICAL LEAVE LAW RIGHTS

51 M.P.T.L. ch. 11 § 1

§ 1. Statute of Limitations

An action may be initiated in Tribal Court within two (2) years of the alleged violation (except that a claim arising out of a willful violation may be filed within three (3) years of the alleged violation) if the administrative process has been exhausted. If a claimant fails to file an action within the two (2) or three (3) year period, as applicable, or fails to exhaust the administrative process, the claimant shall lose the right to bring an action in Tribal Court under this Law.

51 M.P.T.L. ch. 11 § 2

§ 2. Initiating an Action

To initiate an action in Tribal Court, the claimant is required to file with the Tribal Court and serve on the Employer and the MERO in accordance with the Rules of the Court:

- a. A complaint setting forth the identity of the Employer, allegations of fact and the provisions of this Law believed to be violated, provided that a claim filed with the MERO may be filed as the complaint;
- b. A copy of the MERO dismissal, Right to Sue notice or a statement that one hundred eighty (180) days from filing the claim with the MERO passed without a Right to Sue notice having been issued; and
- c. Any other documents required by the Tribal Court.

51 M.P.T.L. ch. 11 § 3

§ 3. No Individual Liability

All actions arising under this Law must be brought against the Employer, and not any individual officer, agent or Employee of the Employer. There shall be no individual personal liability assessed under this Law.

51 M.P.T.L. ch. 11 § 4

§ 4. Deferral to MERO

If the MERO dismissed the claim or the MERO's Right to Sue notice indicates a person's failure to appear at a mandatory conciliation without good cause, the Tribal Court may defer processing of the complaint and order the parties to attend a conciliation conference before the MERO or take such other action as is warranted under the circumstances.

51 M.P.T.L. ch. 11 § 5

§ 5. No Jury Trial; No Costs to Tribe

All complaints under this Law shall be tried to the Tribal Court and not to a jury. No costs shall be taxed against the Tribe.

51 M.P.T.L. ch. 11 § 6

§ 6. Standard of Proof

An Employee shall be required to prove the elements of the complaint by a preponderance of the evidence, and the Employer shall be required to prove by a preponderance of the evidence any affirmative defense.

51 M.P.T.L. ch. 11 § 7

§ 7. Interpretation of Law

When interpreting this Law, the MERO and the Tribal Court shall follow Tribal Law and precedent and may be guided by similar federal law and decisions.

51 M.P.T.L. ch. 11 § 8

§ 8. MERO Enforcement Action

The MERO may bring an action in Tribal Court to enforce a conciliation agreement no later than one (1) year after the last act required by the agreement. No filing fee is required to be paid to the Tribal Court by the MERO. The MERO shall file with the Tribal Court a copy of the conciliation agreement within thirty (30) days after the enforcement action is filed with the Tribal Court. The Tribal Court shall enforce the conciliation agreement absent terms that are in direct conflict with Tribal Law. Conciliation agreements shall not be included in the public record.

51 M.P.T.L. ch. 11 § 9

§ 9. No Waiver of Sovereign Immunity

Nothing provided in this Law shall be construed to be a waiver of the sovereign immunity of the Tribe, the Mashantucket Pequot Gaming Enterprise, a tribal enterprise, or an Employee, servant, or agent thereof, from suit in state or federal court or in any action before any state or federal agency, or in any other forum or context not provided for in this Law.

51 M.P.T.L. ch. 11 § 10

§ 10. Appeals

Any decision by the Tribal Court may be appealed to the Mashantucket Pequot Court of Appeals. Any decision of the Court of Appeals shall be final.

CHAPTER 12. REMEDIES

51 M.P.T.L. ch. 12 § 1

§ 1. Sole and Exclusive Remedies

If an individual proves by a preponderance of the evidence that their Employer engaged in a prohibited act as defined in Chapter 7 of this Law, the Tribal Court may grant any one or a combination of the remedies set forth herein, and these shall be the Employee's sole and exclusive remedies:

a. Payment of wages, salary or Employment Benefits lost by such Employee by reason of the Employer's violation of this Law, plus interest at the prevailing rate; or

b. In a case in which wages, salary, and/or Employment Benefits have not been denied or lost to such Employee, any actual monetary losses sustained by the Employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 or 14 weeks, as applicable, as provided in Ch. 3 § 1(a), or 26 weeks, as provided in Ch. 3 § 1(b), of wages or salary for such Employee, plus interest at the prevailing rate.

c. Liquidated damages in an amount equal to the above compensatory damages if the Employee proves by a preponderance of the evidence that the act or omission leading to the violation of this Law was made in bad faith.

d. Reinstatement of such Employee, either into the same position or into a comparable position that such Employee is qualified to hold that is of equivalent status, wages and benefits, as determined by the Court.

51 M.P.T.L. ch. 12 § 2

§ 2. Attorney's Fees and Costs

Reasonable attorney's fee and costs may be awarded to the prevailing party; provided that if the Employee is the prevailing party, the Employee proves by a preponderance of the evidence that the Employer's violation of this law was willful, and if the Employer is the prevailing party, the Employer proves by a preponderance of the evidence that the Employee's claim was frivolous and without merit.

CHAPTER 13. ADDITIONAL BENEFITS OR RIGHTS/COLLECTIVE BARGAINING AGREEMENTS

51 M.P.T.L. ch. 13 § 1

§ 1. Additional Benefits or Rights

Nothing in this Law shall be construed to discourage Employers from providing family or medical leave benefits or rights that are more generous than those required by this Law. No claim or action alleging a denial of any such additional family or medical leave benefits or rights may be brought under this Law.

51 M.P.T.L. ch. 13 § 2

§ 2. Collective Bargaining Agreements

a. **More Protective.** Nothing in this Law shall be construed to diminish the obligation of an Employer to comply with any collective bargaining agreement made under Mashantucket Pequot Tribal Law that provides greater

family or medical leave rights to Employees than the rights established under this Law.

b. **Less Protective.** The rights established for Eligible Employees under this Law or any amendment made by this Law shall not be diminished by any collective bargaining agreement entered into pursuant to Mashantucket Pequot Tribal Law.

CHAPTER 14. REGULATIONS

51 M.P.T.L. ch. 14 § 1

The MERO shall prescribe such regulations as are necessary to carry out this Law not later than one hundred eight (180) calendar days after enactment.

CHAPTER 15. EFFECTIVE DATE

51 M.P.T.L. ch. 15 § 1

This Law shall be effective upon enactment by the Mashantucket Pequot Tribal Council.

Historical and Statutory Notes

Derivation.

Effective January 12, 2023, TCR011223-05 of 07, enacted the 51 M.P.T.L. "Mashantucket Pequot Family & Medical Leave Law".