

TITLE 31. MASHANTUCKET EMPLOYMENT RIGHTS LAW

CHAPTER 1. PURPOSE; DEFINITIONS

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; Authority

a. The Tribe finds that:

- (1) It has enacted various laws that govern aspects of employment on the Reservation; however, it does not have a centralized office to oversee the regulation of employment on the Reservation whether it concerns Tribal or non-Tribal employees.
- (2) There is a need for a centralized 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 Peacemakers. 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 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 at various 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 and By-Laws of the Mashantucket (Western) Pequot Tribe.

31 M.P.T.L. ch. 1 § 3

§ 3. Definitions

For purposes of this Title:

a. "Employee" means any person employed by an employer with or without a contract. This includes but is not limited to part-time employees, full time employees, and regularly or irregularly scheduled employees. "Employee" may include an applicant or former employee, as required to effectuate the purposes of Tribal law.

b. "Employer" means any person, company, contractor, subcontractor or other entity located or engaged in work on the Reservation, trust lands or any 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. "Employer" excludes Federal, State and County governments.

c. "Judicial Committee" and "Administrative Support Committee" mean the respective standing committees of the Tribal Council as provided in the Constitution and By-Laws of the Mashantucket (Western) Pequot Tribe.

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

e. "MERO Director" or "Director" means the Director of MERO.

f. "Native American" or "Indian" means any person enrolled in and recognized as a member by his or her tribe or tribal community.

g. "Order of Agreement" means a written explanation of the agreement contemplated by the parties to a mediation resolving issues between them and witnessed by the mediation panel.

h. "Peacemakers" shall have the same meaning as in 1 M.P.T.L. ch. 4.

i. "Person" means both natural 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 private interests or private parties, and their agents.

j. "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.

k. "Record" means the written documentation of all evidence (whether by way of testimony or documentary) presented to the MERO in a particular contested case or matter in which a formal hearing is held, or as required by the Tribal Administrative Procedures Act, 40 M.P.T.L., (TAPA), if applicable.

l. "Tribal Council" means the governing body of the Mashantucket (Western) Pequot Tribe as outlined in the Constitution and By-Laws of the Mashantucket (Western) Pequot Tribe.

m. "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.

n. "Tribal Member" or "Member" means any person who is duly enrolled as a member of the Mashantucket (Western) Pequot Tribe.

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

CHAPTER 2. MASHANTUCKET EMPLOYMENT RIGHTS OFFICE STRUCTURE

31 M.P.T.L. ch. 2 § 1

§ 1. Establishment of the 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 2 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 3 of this law shall provide employees and employers with an opportunity to resolve disputes through a non-adversarial process.

§ 2. Establishment of the Director of MERO 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 the MERO and its employees. The compensation for this position shall be competitive and set by the Tribal Council and the Director shall report directly to the 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 either a Juris Doctorate or a Master's Degree and have a minimum of 10 years of experience in government regulation, employment or administration;
- (2) Demonstrate an ability to organize and manage a newly formed government office in the nature of the 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 the MERO for submission and approval by the 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 laws within the MERO's jurisdiction and for any rules, regulations, procedures and/or guidelines established by the 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.;
- (7) To accept and review any claims, complaints, requests for information or any other matter related to the MERO office or as referred to the MERO by any other Tribal law;
- (8) To conduct or direct personnel to conduct any necessary investigations or hearings;
- (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 contested matters before it that shall include, for formal hearings, 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.
- (14) With respect to proposed legislation to be placed within the MERO's jurisdiction, including substantial amendments to

existing laws within the MERO's jurisdiction, to provide an opportunity for the public to submit oral or written comments and to compile the results for the Tribe's Judicial Committee or the Tribal Council, as applicable.

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 Peacemakers who will be designated, on a case by case basis, by the Chair of the Peacemakers, 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 Peacemakers 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. If the mediation results in an 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 cannot be reached during the mediation process, or if there is a violation of the Order of Agreement that the parties signed, the process will continue in the MERO's processes for the applicable case.

CHAPTER 3. SCOPE; PROCEDURE; GENERAL

31 M.P.T.L. ch. 3 § 1

§ 1. Scope of Coverage

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

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

31 M.P.T.L. ch. 3 § 2

§ 2. 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, provided that if the proceeding is subject to the Tribal Administrative Procedures Act, the TAPA shall control:

1. Written notice of the hearing, in such manner determined to be effective under the circumstances, including delivery of notice via electronic communication, to all interested parties including the claimant, charging party or petitioner and the party against whom the allegations have been made or respondent, 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, provided that if the rules or regulations are available on a publicly accessible website, the website address may be provided.
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 formal 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 Employee Rights Ordinance "MERO" ", Title 31 M.P.T.L

Amendments.

Effective June 29, 2009, TCR062909-04 of 06 made various amendments to Title 31 M.P.T.L. to clarify and reaffirm its intent.

Effective October 25, 2018, TCR102518-01 of 06, amended 31 M.P.T.L. by adding ch. 2 § 1c(14) to allow for public comment and making various technical amendments throughout 31 M.P.T.L.