

TITLE 34 MASHANTUCKET PEQUOT TRIBAL OCCUPATIONAL SAFETY & HEALTH LAW

34 M.P.T.L. § 1

§ 1. Title; Authority

This title may be cited as the "Mashantucket Pequot Tribal Occupational Safety and Health Law." This law is enacted by the Mashantucket Pequot Tribal Council as the governing body of the Mashantucket Pequot Tribal Nation and pursuant to the inherent authority of the Mashantucket Pequot Tribal Nation to regulate activities and govern conduct on its Reservation and to place conditions on entry and continued presence on the Reservation.

34 M.P.T.L. § 2

§ 2. Findings

The Mashantucket Pequot Tribal Council finds that:

- a. In or about 1998 the Mashantucket Pequot Public Safety Committee received recommendations to develop a centralized Tribal Occupational Safety and Health program to insure safe and healthful working conditions for all employees on the Reservation and to further exercise and enhance Tribal sovereignty.
- b. The Tribal Council adopted a resolution in 1998 establishing the Tribal OSHA Program to administer and enforce employee safety and health regulations and practices on the Reservation and on all tribally owned or occupied properties including enterprises of the Tribal Nation. Since 1998 the Tribal OSHA program has fulfilled its mission of insuring safe and healthy working conditions for all employees on the Reservation.
- c. It is important to more fully describe the regulatory authority of the Tribal OSHA as it relates to enforcement of the TOSHA law and to clarify the role of the Tribal Court in the enforcement of the law and the rights of appeal.

34 M.P.T.L. § 3

§ 3. Definitions

- a. "Employee" means an individual employed by an Employer and who performs work, in whole or in part, for the Employer on the Reservation.
- b. "Employer" means any Person that employs Employees who perform work, in whole or in part, on the Reservation. Employer shall include the Tribal Nation. The term Employer excludes federal, state or local governments.
- c. "Mashantucket Pequot Tribal Council" or "Tribal Council" means the governing body of the Tribal Nation pursuant to Article VI, Section 1 of the Constitution of the Mashantucket (Western) Pequot Tribe.
- d. "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.

e. "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 and any other area subject to the Tribe's jurisdiction.

f. "TOSHA" or "TOSHA program" means the Tribal Occupational Safety and Health Administration Program.

g. "TOSHA Commissioner" or "Commissioner" means the person appointed by the Tribal Council as the Commissioner of TOSHA.

h. "Tribe" or "Tribal Nation" means the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation and includes any arm, department, agency, subdivision, enterprise, entity or organization of the Tribe or wholly owned by the Tribe.

34 M.P.T.L. § 4

§ 4. Authority of TOSHA Commissioner

a. The TOSHA Commissioner shall be responsible for administering and enforcing the TOSHA program which has the purpose and mission of insuring employee safety and health on the Reservation and on all tribally owned or occupied properties including enterprises of the Tribe.

b. The TOSHA Commissioner has the authority to:

(i) Adopt rules, regulations and/or procedures to govern the enforcement and administration of the TOSHA program;

(ii) Conduct educational programs so that all persons, including both Employees and Employers, are advised as to the existence of the TOSHA program and understand the process and procedures established for TOSHA;

(iii) Establish a system of inspection for all Employers located on the Reservation and for all tribally owned enterprises whether located on or off of the Reservation; and

(iv) Establish a system of enforcement as to all violations of safety and health regulations which system shall include a process for follow-up to insure correction of all violations.

34 M.P.T.L. § 5

§ 5. Adoption of Federal Standards

The standards and regulations of the Federal Occupational Safety and Health Administration are adopted as the tribal standards and regulations to be enforced through TOSHA on the Reservation provided that the adoption of such standards and regulations is not intended to and does not waive the Tribe's immunity from suit in any state or federal forum, whether administrative or judicial, or in any other forum except as provided in this Law. To the extent that this Law establishes a process or procedure different from that adopted in the federal regulations, the tribal law shall govern.

§ 6. Duties of Employers and Employees

- a. Each Employer -
- (1) shall furnish to each Employee employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or physical harm to the Employer's Employees;
 - (2) shall comply with occupational safety and health standards promulgated under or adopted by this Law.
- b. Each Employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this law which are applicable to his or her own actions and conduct.

§ 7. Inspections, Investigations, and Recordkeeping

- a. *Authority to enter, inspect and investigate places of employment.* In order to carry out the purposes of this Law, the Commissioner or her designee, upon presenting appropriate credentials to the owner, operator or agent in charge, is authorized --
- (1) to enter without delay and at reasonable times any workplace or environment where work is performed by an Employee of an Employer including, but not limited to, any factory, plant, establishment, construction site, or other area; and
 - (2) to inspect and investigate during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such Employer, owner, operator, agent or Employee.
- b. *Maintenance, preservation, and availability of records; issuance of regulations; posting of notices by employer.*
- (1) Each Employer shall make, keep and preserve, and make available to the Commissioner or her designee such records regarding the Employer's activities relating to this Law, as the Commissioner may prescribe by regulation as necessary or appropriate for the enforcement of this Law or for developing information regarding the causes and prevention of occupational accidents and illnesses. The Commissioner may also issue regulations requiring that Employers, through posting of notices or other appropriate means, keep their Employees informed of their protections and obligations under this Law.
 - (2) The Commissioner may prescribe regulations requiring Employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.
 - (3) Any information obtained by the Commissioner under this Law shall be obtained with a minimum burden upon Employers, especially those operating small businesses.
- c. *Employer and Employee Representative Accompany Commissioner on inspection of workplace.* Subject to any regulations adopted by the Commissioner, a

representative of the Employer and a representative authorized by the Employer's Employees shall be given an opportunity to accompany the Commissioner or her authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Commissioner or her authorized representative may consult with a reasonable number of Employees concerning matters of health and safety in the workplace.

d. *Request for inspection by employees or representative of employees.* Any Employee or representative of Employees who believes that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Commissioner or her authorized representative of such violation or danger, Any such notice shall be in writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the Employee or the representative of Employees, and a copy shall be provided to the Employer or his agent no later than at the time of the inspection, except that upon request of the person giving such notice his or her name and the names of the individual Employees referred to therein shall not appear in such copy or on any record published, released, or made available to the public. If upon receipt of such notification the Commissioner determines there are reasonable grounds to believe that such violation or danger exists, she shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Commissioner determines there are no reasonable grounds to believe that a violation or danger exists she shall notify the Employees or representative of Employees in writing of such determination.

e. *Results of enforcement activities; employee evaluations.* The Commissioner shall not use the results of enforcement activities, such as the number of citations issued or penalties assessed, to evaluate any employee involved in enforcement activities under this Law or to impose quotas or goals with regard to the results of such activities.

34 M.P.T.L. § 8

§ 8. Citations

a. *Authority to Issue.* If, upon inspection or investigation, the TOSHA Commissioner or her authorized representative believes that an Employer has violated a requirement of this Law, or of any standard, rule or order adopted pursuant to Sections 4 or 5 of this Law, she shall with reasonable promptness issue a citation to the Employer which citation may include the assessment of fines or penalties. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Secretary may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

b. *Posting.* Each citation issued under this section, or a copy or copies thereof shall be posted as provided in any rules or regulations issued by the TOSHA Commissioner, at or near such place a violation referred to in the citation occurred.

c. *Time for issuance.* No citation may be issued under this section after the expiration of six months following the occurrence of any violation unless such violation is an on going violation.

34 M.P.T.L. § 9

§ 9. Enforcement

a. *Right to An Informal Conference.* If after an inspection or investigation, the Commissioner issues a citation she shall, within a reasonable time after the termination of such inspection or investigation, notify the Employer of the citation and penalty, if any, proposed to be assessed and that the Employer has ten (10) business days within which to notify the Commissioner that the Employer wishes to be heard by the Commissioner in an informal conference the purpose of which is to discuss an informal resolution of the citation and proposed penalty. Notification of a citation and/or penalties to the Employer must be made by a method of delivery that insures receipt by Employer. If, within ten (10) business days from the mailing of the notice issued by the Commissioner the Employer fails to request an informal conference, the citation and the assessment or penalty, as proposed, shall be deemed a final order of the Commissioner. If an Employer requests an informal conference pursuant to this Section and such conference is held but an informal settlement agreement is not entered, the citation and assessment or penalty shall become a final order of the Commissioner.

b. *Right to Contest Final Order.* A Person who is aggrieved by a final order of the Commissioner may contest the final order by filing a notice of contest with the Mashantucket Pequot Tribal Court within ten (10) business days from the date that an order of the Commissioner becomes final, whether by failure to enter an informal settlement agreement at the informal conference or due to an Employer's failure to request an informal conference within the time provided in Section 9(a).

c. *Procedure For Contesting Final Order.* The notice of contest shall specify the final order being challenged and attached a copy of such order; the date on which such order became final; the factual and legal basis supporting the requested reversal or modification of the final order; and state whether a hearing is requested. The notice shall name the Commissioner as the defendant. The Person filing the notice of contest shall serve, either by personal delivery or by regular mail, a copy of the notice of contest on the Commissioner. The Commissioner shall, within 10 days of filing of the statement of contest, file with the Court a responsive pleading addressing the factual and legal claims made in the statement of contest, providing a copy of any record before the Commissioner including any reports, citations, communications and/or orders, and a statement as to whether a hearing is requested. The Court may determine whether any further pleading or evidence is required and whether a hearing is necessary; provided that the Court shall make all efforts to expedite the process and decision.

d. *Remedies; Standard of Review.* The Court shall confirm a final order of the Commissioner unless it determines that the Commissioner clearly abused her discretion in rendering the final order. If the Court determines that the Commissioner clearly abused her discretion, the Court may vacate the order or modify the order if it is determined that such a modification would address the abuse of discretion identified by the Court.

e. *Stay of Enforcement.* The filing of a notice of contest shall not, of itself, stay enforcement of a final order of the Commissioner. An application of a stay may be made to the Court.

f. *Failure to Correct Violation; Enforcement Actions.* If an Employer fails to comply with any order issued by the Commissioner, including failure to correct a violation for which a citation has been issued within the period permitted for its correction and failure to pay a penalty assessed by the Commissioner, the Commissioner shall notify the Employer of such failure and of any penalty proposed to be assessed by reason of such failure, and that the Employer has ten (10) business days from receipt of notice to correct the noncompliance including the payment of any penalties assessed. Any notification made to an Employer must be by a method of delivery that insures receipt by the Employer. If an Employer continues to be in noncompliance at the expiration of the 10-day period, the Commissioner may bring an action in the Mashantucket Pequot Tribal Court seeking enforcement of her order, compliance with a citation and/or payment of penalties imposed, or such other appropriate relief.

34 M.P.T.L. § 10

§ 10. Discharge or Discrimination Prohibited

a. No Employer shall discharge or cause to be discharged, or in any manner discriminate against any Employee because such Employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to this Law or has testified or is about to testify in any such proceeding or because of the exercise by such Employee on behalf of himself or others of any right afforded by this Law.

b. Any Employee who believes that she has been discharged or otherwise discriminated against by an Employer in violation of this subsection may, within one hundred and eighty days (180) days after such violation occurs, bring a civil action in the Mashantucket Pequot Tribal Court pursuant to this Law. The Tribal Court shall have jurisdiction over such claims against Employers. The Tribe hereby waives the sovereign immunity from suit of the Tribe and its subdivisions, arms, departments and entities for an action in tribal court under this Section of the Law.

34 M.P.T.L. § 11

§ 11. Tribal Court Jurisdiction; Waiver of Sovereign Immunity

a. The Mashantucket Pequot Tribal Court shall have jurisdiction to hear and determine the claims established in this Law including those contesting a final order of the Commissioner, a civil claim by an Employee pursuant to Section 10 of this Law, and an enforcement action by the Commissioner under Section 9(f) of this Law.

b. The Tribe hereby waives its sovereign immunity from suit and the immunity of any arm, agency, department, subdivision, enterprise, or entity of the Tribe for actions in the Mashantucket Pequot Tribal Court brought under this Law contesting a final order of the Commissioner or pursuant to Section 10 of this Law.

34 M.P.T.L. § 12

§ 12. Preservation of Other Law

Nothing in this Law shall be construed to supersede or in any manner affect the Tribal Workers' Compensation law, Title 13 M.P.T.L., or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of Employers and Employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.