

**MASHANTUCKET PEQUOT TRIBAL LAWS
2010-2011 SUPPLEMENT**

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TCR042910-02 of 03 amended ch. 3 of 6 M.P.T.L., the Mashantucket Pequot Family Relations Law. This replaces 6 M.P.T.L. ch. 3 in its entirety.

TCR031011-06 of 09 amended ch. 8 §4 of 6 M.P.T.L. making the section applicable to support orders issued by the Mashantucket Pequot Tribal Court in addition to foreign support orders.

TITLE 6. FAMILY RELATIONS

CHAPTER 3. MARRIAGES

6 M.P.T.L. ch. 3 § 1

§ 1. Governing Law

Upon enactment of this law or any amendment thereto, the provisions herein shall govern all matters relating to the performance of marriages on the Mashantucket Pequot Reservation.

6 M.P.T.L. ch. 3 § 2

§ 2. Authority to Perform Marriages

a. Persons Authorized to Perform Marriages. Mashantucket Pequot Tribal officials authorized to join persons in marriage include Tribal Council Members, the Chair or Vice Chair of the Elders Council, and other officiators who are certified by the Tribal Clerk as having the authority to perform marriages on the Mashantucket Pequot Reservation pursuant to this Law.

b. Qualifications of Officiators. Persons authorized to perform marriages, other than Tribal Officials, shall meet the following qualifications:

(1) if a Mashantucket Pequot Tribal member, be in good standing with the Tribe, and ordained or licensed and in good standing with his or her religious affiliation, which affiliation is recognized by a state, tribe or other jurisdiction within the United States, or licensed to perform marriages under the laws of a state, tribe or other jurisdiction within the United States.

(2) if not a Mashantucket Pequot Tribal member, be ordained or licensed and in good standing with his or her religious affiliation, which affiliation is recognized by a state, tribe or other jurisdiction within the United States, or licensed to perform marriages under the laws of a state, tribe or other jurisdiction within the United States.

(3) if an official from a federally recognized Indian tribe, other than the Mashantucket Pequot Tribal Nation, the person must be authorized to perform marriages under the laws of a federally recognized Indian tribe.

c. Application. Qualified Officiators, other than Mashantucket Pequot Tribal officials under Section 2(a) of this Chapter 3, seeking authority to perform marriages on the Mashantucket Pequot Reservation shall file an application with the Tribal Clerk and certify his or her familiarity with the Tribal Law, in particular, 6 M.P.T.L. ch. 3, and shall submit such application and a seventy five dollar (\$75.00) application fee to the Tribal Clerk.

d. Certification Procedure.

(1) Upon review and determination that the qualifications have been satisfied and the application is in order, the Tribal Clerk shall certify the application and administer the Oath of office to the Officiator.

(2) Each Officiator, after taking the Oath, shall furnish his or her signature to the Tribal Clerk upon a certificate prescribed and provided by the Tribal Clerk, provided that failure to take the Oath or to furnish a signature to the Tribal Clerk shall disqualify such person from performing marriages on the Mashantucket Pequot Reservation.

(3) The Tribal Clerk shall keep a record of the names of Officiators having been certified as having the authority to perform marriages pursuant to this Law.

(4) The Tribal Clerk shall transmit a copy of the certificate to the Officiator.

(5) The certificate shall be sufficient evidence that the Officiator is duly authorized to perform marriages on the Mashantucket Pequot Reservation and Officiators shall cause the certificate to be displayed to any person who seeks his or her service to marry.

(6) Such certification shall be valid for a period of three years, at which time the Officiator may renew his or her certification providing that he or she remains in good standing with the Tribe and with his or her religious affiliation or the jurisdiction in which he or she is licensed.

e. Authority of Tribal Officials and Officiators.

(1) Tribal Officials and Officiators may perform marriages on the Mashantucket Pequot Reservation provided that persons being married have obtained a tribal marriage license pursuant to Section 4 of this Law.

(2) At the conclusion of the marriage ceremony, the Officiator shall recite either of the following depending on the preference of the couple being married: "By the authority vested in me by the Mashantucket Pequot Tribal Nation, I now pronounce you married" Or "By the authority vested in me by the Mashantucket Pequot Tribal Nation, I now pronounce you husband and wife".

(3) Tribal Officials and Officiators may accept a modest gift or remuneration for their services, and shall not perform such services for profit or commercial purposes.

6 M.P.T.L. ch. 3 § 3

§ 3. Marriage License Required

a. Two persons may be joined in marriage on the Mashantucket Pequot Reservation provided that:

- (1) both applicants have attained the age of 18 years;
- (2) both applicants have complied with the license requirements of this law;

(3) neither applicant is married;

(4) the marriage is performed by an authorized Tribal Official or Officiator pursuant to tribal law;

(5) the marriage is not between a person and such person's parent, grandparent, child, grandchild, sibling, parent's sibling, sibling's child, stepparent or stepchild; and

(6) neither applicant is under the supervision or control of a conservator or, if under said supervision and control, the conservator provides written consent to such marriage.

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 first dated application shall be deemed the date of the application and the license shall be valid for 65 days from the date of application.

b. The application shall state each applicants' name, age, tribal affiliation (if any) address, birth place, marital status (including whether divorced, annulled or widowed and proof of that status), conservatorship or guardianship status, if any; and both applicants shall submit proof of identification as required by the Tribal Clerk. . 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. The Tribal Clerk may charge reasonable fees for the issuance of a marriage license and for certified copies of any records held by the Tribal clerk; provided that the Tribal Clerk shall publish a schedule for any such fees charged.

6 M.P.T.L. ch. 3 § 5

§ 5. Marriage Certificate

The person who joins any persons in marriage shall certify upon the marriage license certificate the fact, time and place of the marriage, and return it to the Tribal Clerk for filing within ten days of the marriage ceremony.

6 M.P.T.L. ch. 3 § 6

§ 6. Recognition of Marriages Performed off the Reservation

All marriages celebrated off of the Mashantucket Pequot Reservation shall be recognized as valid pursuant to Tribal law, provided the marriage was legal in the jurisdiction where celebrated and consistent with Tribal customs and policy.

6 M.P.T.L. ch. 3 § 7

§ 7. Validation of Marriages Performed

All marriages performed on the Mashantucket Pequot Reservation prior to June 1, 2002 pursuant to a state marriage license are hereby recognized as valid pursuant to Tribal law.

CHAPTER 8. RECOGNITION AND ENFORCEMENT OF FOREIGN SUPPORT ORDERS

6 M.P.T.L. ch. 8 § 4

§ 4. Maximum Amount of Withholding. Time Periods. Priority of Multiple Orders

In determining the maximum amount permitted to be withheld from the obligor's disposable income for any time period which is subject to an income withholding order, the time periods within which the employer/payer must implement the support order, the priorities for withholding and allocating income withheld for multiple child support obligees, and any other withholding terms or conditions not specified in the order, an employer/payer shall comply with Section 1673 of Title 15 of the United States Code and Section 52-362 of the Connecticut General Statutes, to the extent such provisions do not contravene tribal law. **In addition to foreign support orders this section shall be applicable to income withholding orders and support orders issued by the Mashantucket Pequot Tribal Court.**

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).
Effective April 29, 2010, TCR042910-02 of 03 amended 6 M.P.T.L. ch. 3 making various various amendments throughout.
Effective March 10, 2011, TCR031011-06 of 09 amended 6 M.P.T.L. ch. 8 §4 making the section applicable to support orders issued by the Mashantucket Pequot Tribal Court in addition to foreign support orders.

TCR041411-01 of 07 amended 8 M.P.T.L., the Employment Law. This replaces 8 M.P.T.L. in its entirety.

TITLE 8. EMPLOYMENT

CHAPTER 1. EMPLOYEE REVIEW CODE

8 M.P.T.L. ch. 1 § 1

§ 1. Definitions

Unless otherwise required by the context, the following words and phrases shall be defined as follows:

a. "Active Discipline" means discipline for the past 12 month period. In situations where identifiable similar policy violations, behavior issues, or performance problems consistently reoccur over a period of years, the Active Discipline may extend beyond the 12 month standard.

b. "Arbitration Award" means a determination, decision or award rendered by an independent third-party arbitrator or arbitrators in a grievance arbitration pursuant to a Collective Bargaining Agreement entered under Title 32 M.P.T.L. between an Employer and the exclusive bargaining representative of employees of the Employer.

c. "Benefits" means vacation, sick leave, medical coverage or other employment enhancements provided to employees.

d. "Board of Review" means an impartial panel of employees who are assembled to review a Disciplinary Action and issue a Final Decision which may be appealed by either party to the tribal court.

e. "Board of Review Record" or "Record" means the evidence presented to the Board of Review. This Record shall include all Active Discipline and any other relevant material in the Employee's personnel file. In connection with the determination required pursuant to §8(f)(3) herein, the Record may include performance reviews, character witness statements, commendations, and other discipline.

f. "Collective Bargaining Agreement" means an agreement entered between an Employer and an exclusive bargaining representative certified under tribal law, with respect to wages, hours and other terms and conditions of employment as provided under Title 32 M.P.T.L.

g. "Day" means calendar day. Whenever a deadline falls on a weekend or holiday observed by the Mashantucket Pequot Tribe, the deadline shall be extended to the next business day.

h. "Disciplinary Action" means any action by an Employer that results in an employee being suspended or separated from employment due to the Employee's violation of any of the Employer's policies and/or procedures or, in the case of employees covered by a Collective Bargaining Agreement, the Employee's violation of any term of the Collective Bargaining Agreement or any applicable Employer policy and/or procedure.

i. "Employee" means a natural person employed by an Employer who has been the subject of Disciplinary Action and who properly requested and participated in a Board of Review hearing. "Employee" shall also refer, where appropriate, to an Employee's attorney. The term "Employee" will not include the following categories: High Level Executives; probationary employees; Political Appointees; casual and part-time employees; any employee who is voluntarily or involuntarily separated from employment as a direct result of the implementation of the Staffing Reorganization/Reassignment Policy; any employee who is terminated due to a violation of a condition of employment, such as, a licensing requirement, or an employee who is excluded by the Mashantucket Pequot Tribal Gaming Commission or the Mashantucket Pequot Elders Council.

j. "Employer" means the Mashantucket Pequot Tribal Nation, the Mashantucket Pequot Gaming Enterprise, or any other subdivision, arm, agency, department, entity or enterprise of the Tribal Nation.

k. "File" means to physically place into the possession of the Mashantucket Pequot Tribal Court Clerk. Filing is not effective upon mailing.

l. "Final Decision" means the decision of the Board of Review as to whether to uphold or rescind a Disciplinary Action and shall include articulated findings with respect to the factors set forth in §8(f)(1-4).

m. "High Level Executive" means a Director or above and/or a professional who may not oversee other employees but who has specialized knowledge, such as an advanced degree, in a particular field.

n. "Moderator" means the person appointed by the Mashantucket Pequot Tribal Council to facilitate the Board of Review hearing including receiving the requests for a Board of Review, communications with the Employee and Employer concerning the Board of Review, the appointment of panels, assembling the Board of Review Record, the conduct of the hearing and transmittal of the Record to the tribal court when necessary.

o. "Political Appointee" means an employee on the staff of a member of the Mashantucket Pequot Tribal Council or an employee who is appointed to his or her position by Tribal Council and reports directly to the Tribal Council.

8 M.P.T.L. ch. 1 § 2

§ 2. Jurisdiction

a. The tribal court is hereby granted jurisdiction to review a Final Decision of the Board of Review. The tribal court is also granted jurisdiction to confirm, vacate or modify an Arbitration Award and to enforce an agreement to arbitrate contained in a Collective Bargaining Agreement entered pursuant to 32 M.P.T.L.

b. The Tribe hereby expressly waives its sovereign immunity and the sovereign immunity of any arm, department, subdivision, agency or entity of the Tribe from suit in the tribal court for actions founded upon a review of a Final Decision; provided that the Employee has exhausted all remedies available under the Employer's policies and/or procedures and the suit has been timely filed. The Tribe hereby further expressly waives its sovereign immunity from suit and

the sovereign immunity of any arm, department, subdivision, agency or entity of the Tribe for an arbitration conducted pursuant to a Collective Bargaining Agreement and for actions brought in tribal court pursuant to Section 11 of this Title to enforce an agreement to arbitrate, or to confirm, vacate or modify an Arbitration Award, so long as such suit has been timely filed.

c. An action pursuant to this Title shall be the Employee's exclusive cause of action against the Employer provided that the Employee has first exhausted all administrative remedies. Notwithstanding the foregoing, if there is a Collective Bargaining Agreement in effect and it gives the Employee the option of either a Board of Review or arbitration to challenge Disciplinary Actions, Employees covered by that Collective Bargaining Agreement may select arbitration as provided under the Collective Bargaining Agreement and if an Employee selects arbitration it shall be the Employee's exclusive remedy against the Employer.

8 M.P.T.L. ch. 1 § 3

§ 3. Filing an Appeal from a Final Decision

a. Either party may seek review of a Final Decision with the Mashantucket Pequot Tribal Court by filing an appeal as provided herein.

b. Within 30 days of mailing the Final Decision to the Employer (by regular mail) and the Employee at his/her last known address (by certified mail, return receipt requested) or within 30 days after personal delivery of the Final Decision upon the Employer and Employee, either party may file a notice of appeal in the office of the tribal court clerk on a form provided by the tribal court clerk. Service of the appeal shall be made by the tribal court clerk by registered or certified mail. A fifty dollar filing fee is required to be paid to the tribal court for such an appeal.

c. The filing of an appeal shall stay the implementation of a Final Decision of the Board of Review, such that the Disciplinary Action initially imposed shall govern the Employee's employment status pending the outcome of the appeal.

d. As part of the appeal of the Final Decision, either party may seek review of alleged violation(s) of procedural due process rights, as that term is defined herein, with respect to the conduct of the Board of Review proceeding; provided the party intending to seek review of a violation of procedural due process rights alleges such a claim(s) in the notice of appeal by stating the following information: (1) date of Disciplinary Action; (2) date of the Board of Review; (3) date of Decision of Board of Review; (4) each and every specific procedural error which the party claims constitutes a violation of procedural due process rights, specifying the date on which such act occurred and who committed such act; and (5) the alleged impact of such violation on the appealing party. Failure to comply with the foregoing constitutes a waiver of such claim(s).

e. In an appeal under this Title, other than reviewing the Final Decision, the tribal court may consider only whether the appealing party's procedural due process rights, as those terms are defined herein, were violated and shall not review, any other violations of rights enumerated in 20 M.P.T.L. Civil Rights Code, or in any other tribal or federal statute. Claims based upon rights, other than such procedural due process rights, shall be pursued under 20 M.P.T.L. Civil Rights Code and shall be brought against the Tribe.

f. As to both parties under this Title, "procedural due process rights" shall mean the parties' rights at the Board of Review to a meaningful opportunity to be heard including an opportunity to present witnesses and to question witnesses. Further, both parties are entitled to representation by legal counsel, if desired, retained at their own expense.

g. As to the Employee under this Title, "procedural due process rights" shall include those rights listed in subsection 3(f) of this Title and the right to adequate notice of the Disciplinary Action, including the basis for such action.

8 M.P.T.L. ch. 1 § 4

§ 4. Record before the Court

The Record shall consist of:

- a. a transcript of all recorded proceedings before the Board of Review;
- b. a copy of all evidence, whether testimonial or documentary, presented to the Board of Review;
- c. a copy of the Final Decision rendered by the Board of Review; and
- d. notice of the Final Decision by the Moderator.

8 M.P.T.L. ch. 1 § 5

§ 5. Assembly of the Record

a. Within 30 days of filing of the appeal, the Moderator shall assemble the Record on appeal, shall certify to the tribal court that it is a true and correct copy of the original documents considered by the Board of Review, and shall file the Record with the tribal court. The Moderator shall bind and consecutively number pages of the Record and shall provide an index indicating the identity and page location of each document.

b. The Moderator shall provide a copy of the certified Record to the parties at no charge.

8 M.P.T.L. ch. 1 § 6

§ 6. Pre-Hearing Conference

a. Within 30 days of the filing of the Record, the court shall schedule and conduct a pre-hearing conference to deal with the following matters:

- (1) correction of the Record;
- (2) clarification of issues;
- (3) preparation of stipulations;
- (4) scheduling of briefs or other written argument;
- (5) setting of the hearing date and such other deadlines as the court deems appropriate;
- (6) setting a date for an additional pre-hearing conference; or

(7) other matters that may facilitate the resolution of the matter.

b. At the conclusion of the pre-hearing conference, the court may issue any necessary orders.

c. The court may extend or shorten deadlines in the interest of fairness or expediting the proceedings.

8 M.P.T.L. ch. 1 § 7

§ 7. Briefs

a. No later than 60 days from the filing of the Record, the appealing party shall file two copies of a typed or clearly legible copies of a brief which shall clearly and concisely set forth the specific reasons for requesting a review of the Final Decision. The brief shall not exceed 25 double spaced pages in length, unless permission is granted by the court, and shall include proper citations for any legal authorities relied upon and specific references to the Record.

b. The responding party's brief shall be filed within 30 days of the filing of the appealing party's brief and shall conform to the rules as described above.

c. The appealing party shall have the right to submit a reply brief within 10 days of the filing of the responding party's brief. The reply brief shall not exceed 10 double spaced pages in length and shall be limited to the issues raised in the responding party's brief.

d. At the conclusion of the hearing, the court may order additional briefs, as the court deems necessary.

e. The court, on its own or by way of motion filed by either party, may modify the foregoing briefing timetable as necessary and appropriate to accommodate its own calendar and/or that of the movant, so long as doing so would not cause undue hardship to the other party.

8 M.P.T.L. ch. 1 § 8

§ 8. Hearing

a. The hearing shall be held within 10 days of the filing due date of the reply brief, unless the court orders otherwise.

b. The hearing and the court's review shall be limited to the Record before the court, any briefs filed by the parties, and oral argument presented by the parties.

c. The court shall not substitute its judgment for that of the Board of Review as to the weight of the evidence or credibility of the witnesses.

d. The Record may only be supplemented with new evidence as set forth in this Section 8(d) and 8(e). In the interest of a fair review of the Employee's appeal, upon a showing of exceptional circumstances, the court may review new or additional evidence, or may remand the matter to the Board of Review to review new or additional evidence, provided that such new or additional

evidence is shown not to have been previously available for consideration at the Board of Review hearing through no fault of either party and that such new evidence is relevant and probative of the appeal.

e. In the unusual circumstance where testimony outside of the Record is deemed necessary and appropriate in connection with the matter being appealed, the court may compel the attendance of necessary witnesses. Prior to taking such testimony in connection with an appeal, however, the court shall assess whether the matter should be remanded to the Board of Review for purposes of taking and considering such testimony.

f. In reviewing an appeal, the court shall determine whether the Board of Review's Final Decision was appropriate by considering whether:

(1) There was a reasonable basis for the Board or Review's consideration that the Employee did or did not violate the policies and/or procedures established by the Employer for the position held by the Employee;

(2) There was a reasonable basis to find that the Employer did or did not substantially comply with the policies and/or procedures regarding discipline;

(3) The Employee was given a description of the offense or conduct that was the basis for the Disciplinary Action and both parties were afforded a reasonable opportunity to present and refute evidence regarding the offense or conduct and/or evidence of aggravating or mitigating circumstances relating thereto;

(4) There was a reasonable basis for the Board of Review's decision as to whether the form of discipline was or was not appropriate for the offense or conduct; and

(5) The Board of Review's decision is in violation of tribal law or exceeds the Board's authority under tribal law;

g. In reviewing an appeal when the Employee is covered by a Collective Bargaining Agreement, the court shall use the same standard of review set forth in subsection 8(f) of this Title, except that the review shall be based on whether or not the Employee violated and whether or not the Employer substantially complied with the Collective Bargaining Agreement and any applicable Employer policies and/or procedures.

8 M.P.T.L. ch. 1 § 9

§ 9. Miscellaneous

a. All actions brought pursuant to this Title shall be heard by the court and not a jury. No costs shall be taxed against the Tribe or its enterprises.

b. In all actions where it is alleged that the liability of the Employer is based upon or related to the action of an agent, servant, or employee of the Employer acting within the scope of his or her employment, there shall be no separate cause of action existing against said agent, servant, or employee, and nothing in this Title shall be construed to waive the sovereign immunity of the Tribe to the extent that sovereign immunity would be applicable to such individual.

c. With respect to any action brought hereunder, in addition to possible reinstatement of employment, damages awarded by the tribal court shall be limited to actual damages consisting of ascertainable loss of salary or wages, and/or benefits sustained as a result of a Disciplinary Action.

d. The following shall not apply to appeals against the Tribe or any arm, department, subdivision, agency or entity of the Tribe: (i) any rule of law imposing absolute or strict liability; (ii) any award or other judgment imposing consequential, punitive or exemplary damages; (iii) any award for loss of consortium; (iv) any award for pain and suffering or mental anguish; and (v) any order for injunctive relief.

8 M.P.T.L. ch. 1 § 10

§ 10. Rulings

a. Upon the consideration of the factors listed in Section 8(f), if the court finds that the Board of Review's decision was not appropriate it shall render a decision in favor of the appealing party pursuant to subsection (b) of this Section.

b. In the event the court renders a decision in favor of the Employee, the court may order reinstatement of the Employee and/or award lost wages and benefits as provided by this Title. Where appropriate, the court may hold a closed hearing with the parties so that the terms of an appropriate employment arrangement and a determination of damages may be made part of any final order of the court.

c. The court shall issue a written reasoned decision supported by references to the Record.

8 M.P.T.L. ch. 1 § 11

§ 11. Arbitration

a. Any party to a Collective Bargaining Agreement aggrieved by the alleged failure, neglect or refusal of another to arbitrate under an agreement to arbitrate contained in a Collective Bargaining Agreement may petition the tribal court for an order directing that such arbitration proceed in the manner provided for in such agreement.

b. At any time within one year after an Arbitration Award has been rendered, any party to the arbitration may petition the tribal court for an order confirming the award. The court shall grant such petition unless the Arbitration Award has been vacated or modified as prescribed in sections 11 (c) & (d) of this Title. If the Arbitration Award requires the performance of any act or payment of money, the tribal court may issue such orders as necessary to enforce such Arbitration Award.

c. Upon application of any party to an Arbitration Award, the tribal court shall make an order vacating an Arbitration Award if it finds, by clear and convincing evidence, any of the following defects: (1) the award has been procured by corruption, fraud or undue means; (2) there has been evident partiality, bias or corruption on the part of any arbitrator; (3) the award is in direct conflict with tribal law; (4) the arbitrator(s) were guilty of

misconduct in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made. Notwithstanding the time within which an Arbitration Award is required to be rendered, if an award issued pursuant to a grievance taken under a Collective Bargaining Agreement is vacated the court shall direct a rehearing unless either party affirmatively pleads and the court determines that there is no issue in dispute.

d. Upon application of any party to an Arbitration Award, the tribal court shall make an order modifying or correcting an Arbitration Award if it finds, by clear and convincing evidence, any of the following defects: (1) there has been an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award; (2) the arbitrators have awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted; or (3) the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to carry out the intent thereof and promote justice between the parties.

e. When interpreting and applying the provisions of Section 11 of Title 8, the tribal court shall be guided by the decisions of the federal courts interpreting similar provisions in the Federal Arbitration Act.

f. At any time during arbitration being conducted pursuant to a Collective Bargaining Agreement entered pursuant to 32 M.P.T.L. the parties to the arbitration may jointly petition or the arbitrator may petition the tribal court for a determination of any issue of tribal law. The tribal court shall issue its determination of tribal law and such determination shall bind the arbitrator(s) in rendering the Arbitration Award. Either party to the arbitration may appeal the tribal court's determination of tribal law to the Mashantucket Pequot Court of Appeals by filing a notice of appeal with the Court of Appeals within 20 days of the tribal court's determination.

g. Any application filed under Section 11(c) or 11(d) must be filed with the tribal court within 30 days after the parties to the Arbitration are notified of the Arbitration Award.

8 M.P.T.L. ch. 1 § 12

§ 12. Appeal

The decision of the court may be appealed to the Mashantucket Pequot Court of Appeals. The decision of the Court of Appeals shall be final.

8 M.P.T.L. ch. 1 § 13

§ 13. Application of Law

Any matter brought pursuant to this Title shall be determined in accordance with tribal law. The court may be guided, but shall not be bound by the common law of other jurisdictions.

§ 14. Effective Date

This Title and any amendments thereto shall apply to any Disciplinary Action imposed on or after its enactment. The amendments to this Title concerning arbitration under Collective Bargaining Agreements shall apply to any Collective Bargaining Agreement in effect on the date of enactment of the amendments and to any Collective Bargaining Agreement entered after their enactment.

HISTORICAL AND STATUTORY NOTES

Effective June 16, 1994, TCR061694-03 enacted the "Temporary Employment Appeals Process" for the exclusive use of Gaming Enterprise Employees.

Effective July 29, 1998, TCR072998-05 of 11 repealed TCR061694-03 the former Title 8 "Employment" (also known as the "Mashantucket Pequot Temporary Emergency Employment Appeal Law") and replaced it with Title 8, "Employment" expanding its applicability to all employees and provided other substantive amendments.

Effective July 15, 2004, TCR071504-07 deleted references throughout the Title to the "CHRO" and made other technical amendments.

Effective April 14, 2011, TCR041411-01 of 07 amended Title 8 making various substantive and technical amendments throughout, with such amendments being effective as provided in the law to Disciplinary Actions imposed on or after the date of enactment; provided that, the amendments relating to the increased role of the Moderator and the corresponding decrease in role for Employee Relations concerning the conduct of the Board of Review, shall become effective 30 days after the adoption of these amendments.

TITLE 32 MASHANTUCKET PEQUOT LABOR RELATIONS LAW

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 **votes cast are** 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.

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.

Effective June 24, 2010, TCR062410-01 of 04 amended Section 12(e) of the Mashantucket Pequot Labor Relations Law by deleting "the Tribal Employees in the proposed bargaining unit vote" and replacing it with "votes cast are".

TCR031810-01 of 01 enacted 34 M.P.T.L., the Mashantucket Pequot Tribal Occupational Safety & Health Law.

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.

§ 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.

Historical and Statutory Notes

Derivation. Effective March 16, 2010 -TCR031610-01 of 01 enacted the Mashantucket Pequot Tribal Occupational Safety and Health Law.

TCR102810-03 of 03 enacted 35 M.P.T.L., the Mashantucket Pequot Tribal Elders Financial Assistance Law.

TITLE 35. MASHANTUCKET PEQUOT TRIBAL ELDERS FINANCIAL ASSISTANCE

35 M.P.T.L. § 1

§ 1. Findings, Purpose and Authority.

The Tribe finds that:

a. There are elder members of the Tribe who may have chosen to retire or who may have reduced capacity to secure gainful employment or otherwise obtain sufficient income to be self-supporting; and

b. It is the policy of the Tribe to assure the essential welfare of its members by providing financial assistance to those Elders in need.

35 M.P.T.L. § 2

§ 2. Definitions.

a. "Administrator" means the Chief Financial Officer of the Tribe or her designee, or such other officer as may subsequently be appointed by the Tribal Council to make determinations of eligibility under this Title.

b. "Offset Income" means the sum of -
(1) Wages, salaries, tips, and any other income received by the recipient and required to be reported on Form W-2 or added to such amounts for purposes of reported employment income on a United States Individual Income Tax Return, plus
(2) net earnings from self-employment received by the recipient and required to be reported for purposes of the Self-Employment Tax on a United States Individual Income Tax Return, plus
(3) any other distribution of money to the recipient by or on behalf of the Tribe including but not limited to any Incentive program distribution, per capita payment, earned income supplement, meeting stipend, and any workers compensation payment or long term disability benefit attributable to the recipient's employment by the Tribe. Notwithstanding the foregoing, the first \$25,000 of such income received by a Participant shall not be included in Offset Income for purposes of calculating the limitation in benefits provided under Section 5 of this Law.

c. "Participant" means a member of the Mashantucket Pequot Tribal Nation in good standing who has reached Benefit Age.

d. "Payment Year" means the calendar year.

e. "Benefit Age" means the age of sixty years of age; provided, however, that solely with respect to any member who had attained the age of fifty-five years of age as of December 31, 2010, Benefit Age shall be deemed to mean the age of fifty-five years of age.

f. "Standard of Need" means the standard established from time to time by the Mashantucket Pequot Tribal Council to measure the amount of income necessary to meet the basic human needs of a Participant. Unless otherwise determined by Tribal Council following the establishment by the Tribal Council of an initial Standard of Need applicable to the Payment Year commencing January 1, 2011, such initial Standard of Need shall be increased annually on January

1st of each succeeding Payment Year by the rate of increase with respect to the twelve month period concluding on October 1st of the prior year in the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics, or such substitute consumer price index as may subsequently be published in lieu of such statistic and approved by the Administrator as most nearly equivalent to the existing Consumer Price Index for All Urban Consumers.

g. "Exempted Participant" means any member of the Mashantucket Pequot Tribal Nation in good standing who is 70 years of age or older.

35 M.P.T.L. § 3

§3. Determination of Eligibility.

a. Any Exempted Participant may apply to the Administrator for financial assistance under this Title on a form made available by the Administrator, and shall not be subject to the limitations on benefits regarding offset income as provided in Section 5 of this Law.

b. Any Participant may apply to the Administrator for financial assistance under this Title on a form to be made available by the Administrator. The form shall require that a copy of the applicant's most recent Federal income tax return, complete with all supporting schedules and W-2 forms, be appended to the application.

c. The Administrator shall determine the age of any individual applying for financial assistance under Title 35 through use of birth certificates or, in the case of a missing birth certificate, such other evidence of age as the Administrator finds clear and convincing. The Administrator is authorized to request and receive information from the Tribal Clerk as may be required to determine or verify the birth date and age of any individual applying for financial assistance under Title 35.

d. In the event that the Administrator determines that the individual is not eligible for the full amount of financial assistance under this Title for which such applicant has applied as a result of Offset Income, the Administrator shall notify the applicant of the determination of the amount of assistance, if any, to which such individual is entitled.

e. In the event that the Administrator denies the application for assistance under this Section or determines that the individual is not eligible for the full amount of financial assistance under this Title, the Administrator shall provide a written explanation of her determination setting forth the reason(s) for the determination, and if the individual does not agree with such determination, an appeal of Administrator's decision may be filed with the Finance Committee of the Mashantucket Pequot Tribal Council, which will review the Administrator's determination and decide whether to uphold, reverse or modify the determination. The Finance Committee shall set forth its decision in writing. If an individual is aggrieved by the decision of the Finance Committee, an appeal may be filed in the Tribal Court in accordance with Section 4 of this Law.

35 M.P.T.L. § 4

§4. Tribal Court Review of Finance Committee's Decision.

a. The tribal court is granted jurisdiction over an appeal seeking review of a final determination by the Finance Committee under this Title; provided that such appeal is filed with the tribal court within thirty (30) days

following the issuance of the Finance Committee's final determination and is filed by the person aggrieved by such final determination. The tribal court is also granted jurisdiction to hear any claim brought pursuant to Section 6(b) of this Title by the Administrator to recover excess payments.

b. The Tribe hereby expressly waives its sovereign immunity from suit in the tribal court for an appeal seeking review of a final determination by the Finance Committee under this Title.

c. The appeal under this section shall be instituted in the same manner that an employee appeal is instituted under Rule 3 of the Mashantucket Pequot Rules of Civil Procedure, except that the appeal under this section may only be brought against the Mashantucket Pequot Tribal Nation as the defendant. No separate cause of action shall exist against an agent, servant or employee of the Tribe acting within the scope of his or her employment or authority, and nothing in this law shall be construed to waive the sovereign immunity of the Tribe to the extent applicable to an agent, servant or employee of the Tribe and such sovereign immunity is waived only for purposes of an action against the Tribe in tribal court as specifically provided in this Section 4.

d. Within thirty (30) days of filing the appeal the Finance Committee, or its designee, shall certify to the Tribal Court the record considered in rendering the final determination which record shall consist of all evidence and materials before the Administrator and the Finance Committee, the Administrator's decision, and the Finance Committee's decision.

e. In deciding the appeal, the Court shall consider the record and any additional evidence it decides appropriate pursuant to Section 4(g) of this Title.

f. The Court shall determine whether there was a reasonable basis for the Finance Committee's final determination. If the Court determines that there was no reasonable basis to support the Finance Committee's final determination then the Court may reverse or modify the final determination. Otherwise, the Court shall affirm the Finance Committee's final determination.

g. Either party to the appeal may, within twenty (20) days of the certification of the record, file a request with the Court to present additional evidence to the Court. The party making such request shall specify, in detail, the additional evidence requested, the form of the evidence, and explain how the additional evidence is relevant and probative. In addition, the requesting party shall explain the good and sufficient reasons for failure to present the evidence in the proceedings or record before the Administrator. The other party may file an objection to such additional evidence or seek permission to present responsive evidence.

h. All appeals filed under this Title shall be tried to the tribal court and not to a jury. No costs shall be taxed against the Tribe.

i. The following shall not apply in appeals filed under this Law: (1) any rule of law imposing absolute or strict liability, or providing for punitive or exemplary damages; and (2) any order for injunctive relief.

§5. Income Limitation.

a. No Participant who receives Offset Income during any Payment Year in an amount equal to or greater than the Standard of Need shall be eligible for financial assistance under this Title during such Payment Year; provided that the first \$25,000 of Offset Income shall not be calculated as Offset Income for purposes of this limitation. There is no income limitation or requirement for Exempt Participants.

b. Any Participant who receives Offset Income during any Payment Year in an amount less than the Standard of Need and is otherwise eligible for financial assistance under this Title shall be entitled to financial assistance, with respect to any Payment Year, in an amount equal to the difference between the Standard of Need and the Offset Income received by such Participant during such Payment Year.

c. A Participant who receives financial assistance under this Title shall affirm under penalties of perjury the amount, if any, of Offset Income to which such Participant is entitled with respect to each Payment Year, and shall annually furnish a copy of such individual's Federal income tax return as filed with the Internal Revenue Service within thirty days after filing such return. Every Participant receiving financial assistance under this Title shall also execute in such form as may be required by the Administrator a consent to the disclosure by the Internal Revenue Service to the Administrator of a true copy of such individual's Federal income tax return.

d. Exempted Participants are not subject to the income limitations in this Section 5.

35 M.P.T.L. § 6

§6. Payment of Benefits; Recovery of Excess Payments.

a. A Participant who is eligible for financial assistance under this Title shall receive an amount on a monthly basis equal to one twelfth, or on a bi-weekly basis equal to one twenty-sixth, of the Standard of Need with respect to such Payment Year, less applicable offsets. The Chief Financial Officer of the Tribe shall make arrangements to disburse financial assistance under this Title through such means of payment as may be feasible and efficient in his or her sole discretion.

b. In the event that the Administrator determines that a Participant has received financial assistance under this Title in excess of the amount to which such Participant was properly entitled under this Title, the Administrator shall make demand for return of such excess payment and shall unless such demand is satisfied within thirty days of notice to the Participant (i) offset such excess payments against future financial assistance under this Title that may be payable to the Participant, or (ii) commence an action in Tribal Court to recover such excess payment with interest for the period from the payment of such excess amount to the time of recovery of such excess payment at the interest rate charged with respect to the same period for purposes of late payment of Federal Income Taxes for an individual; provided, however, that the Administrator in his or her sole discretion may waive the demand for interest in the event that the Administrator determines that the excess payment resulted solely from an error by the Administrator in calculating benefits payable.

35 M.P.T.L. § 7

§7. Penalties for Fraud.

a. Any person who provides false information on an application to establish eligibility for financial assistance under this Title or for purposes of verification of eligibility of earned income shall be subject to denial of eligibility for financial assistance under this Title for a period of four years. The Administrator shall notify any individual subject to this penalty of such denial of eligibility. Such denial shall be subject to review by the Tribal Court in accordance with Section 4 of this Title.

b. Any person who obtains financial assistance by willfully providing false information on an application to establish eligibility for financial assistance under this Title or for purposes of verification of eligibility of earned income shall be guilty of the criminal offense of defrauding the Tribe. Whoever is convicted of such offense shall be punished by incarceration for up to one year in jail and/or a fine of not more than \$5,000.

35 M.P.T.L. § 8

§8. Income Taxation and Other Deductions and Offsets.

a. Financial assistance payments under this Title are subject to federal taxation and will have applicable tax withheld in accordance with regulations of the Internal Revenue Service. Financial assistance payments under this Title to participants who are not residents of Mashantucket are also subject to state income taxes (where applicable), and will have applicable taxes withheld.

b. The Tribe has the right to deduct from or offset against any amounts otherwise payable to a Participant under this Title 35 for any amounts that may be owed to the Tribe by said Participant, or as otherwise allowed by applicable law.

35 M.P.T.L. § 9

§9. Effective Date.

This Title shall take effect upon enactment with respect to the authority of the Administrator to receive and process applications for assistance and to render determinations of eligibility and with respect to the authority of the Tribal Court to review such determinations. The assistance provided pursuant to this Title shall commence on January 1, 2011, unless a later commencement date is established by Tribal Council.

35 M.P.T.L. § 10

§10. Termination of Benefits.

The benefits paid under this Title shall cease upon the death of the recipient and no benefits shall be paid to the estate of a recipient.

Historical and Statutory Notes

Derivation. Effective October 28, 2010 TCR102810-03 of 03 enacted the Mashantucket Pequot Tribal Elders Financial Assistance Law.

Title 36. RESERVED

TCR112210-01 of 06 enacted 37 M.P.T.L., the Mashantucket Pequot Tribal Whistleblower Law.

Title 37. Mashantucket Pequot Tribal Whistleblower Law

37 M.P.T.L. ch. 1 § 1

§ 1. Title

This law shall be known and may be cited as the Whistleblower Law.

37 M.P.T.L. ch. 1 § 2

§ 2. Purpose

The Tribal Council finds and declares that it is in the vital interest of the Mashantucket Pequot Tribal Nation that its government operates in accordance with law and without fraud, waste or mismanagement. If this interest is to be protected, tribal officials, and employees must work in a climate where conscientious service is encouraged and disclosures of illegalities or improprieties may be made without reprisal or fear of reprisal.

37 M.P.T.L. ch. 1 § 3

§ 3. Reporting of information to the Office of Inspector General. Investigation by Office of Inspector General (OIG).

a. Protected Employee: Any person having knowledge of any matter involving corruption, unethical practices, violation of tribal, federal or state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any tribal department or at any tribal enterprise, who transmits facts and information in his possession concerning such matter to the Office of Inspector General (OIG) or other appropriate official or employee. The act of reporting shall be deemed protected conduct.

b. Investigation: The OIG, or other office as appropriate, shall review such matter and conduct an investigation into the matter as such office shall deem appropriate. OIG shall have power to question witnesses and require the production of any necessary books, papers or other documents, where necessary, for the purpose of investigation. Upon the conclusion of the investigation, the Office of Inspector General shall where necessary, report their findings to the Tribal Council.

c. Prohibited Conduct: No tribal officer or employee and no enterprise executive or employee, shall take or threaten to take any personnel action against any Protected Employee in retaliation for such employee's good faith disclosure of information to the appropriate person under the provisions of section 3(a) above.

d. Relief From Violation: If a Protected Employee alleges that a personnel action has been threatened or taken in retaliation for such employee's disclosure of information to the appropriate person under the provisions of

section 3(a) of this law, the employee may file a complaint for the retaliatory action with the OIG who shall investigate pursuant to section (a) of this law. The OIG shall cooperate and share with the Employee the findings of their investigation.

e. False Claims: Any employee of the tribal government, tribal enterprise or large tribal contractor, who is found to have, with knowledge, made false charges under subsection (a) of this law, shall be subject to disciplinary action by his employer up to and including dismissal.

37 M.P.T.L. ch. 1 § 4

§ 4. Remedies for Violation

a. In the event that any Protected Employee has been subject to Prohibited Conduct as described in section 3(c) hereof, such employee shall have the following remedies:

- (i) To the extent that the employee has been the subject of disciplinary action, as defined in 8 M.P.T.L. ch. 1 §1(e) the disciplined employee may raise such issue in an appeal taken pursuant to Title 8 and if the Court finds that the disciplinary action complained of is Prohibited Conduct, the Court may order reinstatement of the employee and/or award lost wages and benefits suffered by the employee;
- (ii) In the alternative a Protected Employee may institute an action in Tribal Court for any harm suffered by the employee as a result of such Prohibited Conduct, and as a remedy the Court may award actual damages for monetary losses, and in addition thereto the Court may fashion a remedy designed to restore the employee to any benefits or conditions of employment which the employee was deprived of by virtue of the Prohibited Conduct. Any cause of action instituted under this subsection shall, in the event of a Gaming Enterprise employee, be brought in the same manner as a tort claim under Title 4, and, in the event of a non-Gaming Enterprise employee, be brought in the same manner as a tort action to which the Tribe is a party under Title 12.
- (iii) An action under section 4(a)(ii) above must be instituted within one (1) year of the Prohibited Conduct. If an employee has asserted Prohibited Conduct in a proceeding described in Section 4(a)(i) above they are barred from instituting an additional action under 4(a)(ii).

37 M.P.T.L. ch. 1 § 5

§ 5. Waiver of Sovereign Immunity

The Tribe hereby waives its sovereign immunity from suit against the Tribe and the Gaming Enterprise for actions in the Tribal Court, founded upon Prohibited Conduct as defined herein. Nothing herein shall be construed as a waiver of the sovereign immunity from suit against the Tribe or the Gaming Enterprise in state or federal court, or in any action before any state or federal agency, or in any other forum or context.

Historical and Statutory Notes

Derivation. Effective November 22, 2010 TCR112210-01 of 06 enacted the Mashantucket Pequot Tribal Whistleblower Law.

TCR031810-01 of 01 amended the M.P.R.C.P. Rule 4(d) deleting "with some person of suitable age and discretion then residing therein."

MASHANTUCKET PEQUOT RULES OF CIVIL PROCEDURE

M.P.R.C.P. 4

Rule 4. Process

d. Summons: Personal Service. The summons and complaint shall be served together. Personal service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given. The court, on motion, upon a showing that service as prescribed above cannot be made with due diligence, may order service to be made by leaving a copy of the summons and of the complaint at the defendant's dwelling house or usual place of abode; or to be made by mail pursuant to subdivision (f) of this Rule or by publication pursuant to subdivision (g) of this Rule.

Historical and Statutory Notes

Derivation. TCR020497-04 adopted the Mashantucket Pequot Rules of Civil Procedure.

Amendments. Effective March 18, 2010, TCR031810-01 of 01 amended Rule 4(d) of the Mashantucket Pequot Rules of Civil Procedure by deleting "with some person of suitable age and discretion then residing therein"