

## CHAPTER 53

EQUAL EMPLOYMENT AND BUSINESS  
OPPORTUNITY

## Authority

N.J.S.A. 5:12-63, 69, 134 and 135.

## Source and Effective Date

R.2007 d.282, effective August 2, 2007.  
See: 39 N.J.R. 1659(a), 39 N.J.R. 3784(a).

## Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 53, Equal Employment and Business Opportunity, expires on August 2, 2014. See: 43 N.J.R. 1203(a).

## Chapter Historical Note

Chapter 53, Equal Employment Opportunity, with Subchapter 1, General Provisions, adopted as R.1978 d.16, effective January 23, 1978. See: 9 N.J.R. 603(c), 10 N.J.R. 83(a).

Pursuant to Executive Order No. 66(1978), Chapter 53, Equal Employment Opportunity, was readopted as R.1983 d.162, effective May 4, 1983. See: 15 N.J.R. 433(a), 15 N.J.R. 932(c).

Pursuant to Executive Order No. 66(1978), Chapter 53, Equal Employment Opportunity, was readopted as R.1988 d.234, effective April 28, 1988. See: 20 N.J.R. 640(a), 20 N.J.R. 1214(a).

Pursuant to Executive Order No. 66(1978), Chapter 53, Equal Employment Opportunity, was repealed by R.1988 d.392, effective August 15, 1988. See: 19 N.J.R. 1638(b), 20 N.J.R. 2095(a).

Subchapter 2, Set-Aside Goals for Casino Business with Minority and Women's Business Enterprises, was adopted as R.1989 d.167, effective March 20, 1989. See: 20 N.J.R. 2446(a), 21 N.J.R. 781(b).

Pursuant to Executive Order No. 66(1978), Chapter 53, Equal Employment Opportunity, was repealed by R.1989 d.168, effective March 20, 1989. See: 21 N.J.R. 18(b), 21 N.J.R. 781(a).

Pursuant to Executive Order No. 66(1978), Chapter 53, Equal Employment Opportunity, was readopted as R.1993 d.221, effective April 26, 1993, with amendments effective May 17, 1993. See: 25 N.J.R. 684(b), 25 N.J.R. 2000(a).

Pursuant to Executive Order No. 66(1978), Chapter 53, Equal Employment Opportunity, was repealed and Chapter 53, Equal Employment and Business Opportunity, was adopted as new rules by R.1993 d.406, effective August 16, 1993. See: 25 N.J.R. 1675(a), 25 N.J.R. 3843(b).

Pursuant to Executive Order No. 66(1978), Chapter 53, Equal Employment and Business Opportunity, was readopted as R.1996 d.33, effective December 15, 1995. See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

The Executive Order No. 66(1978) expiration date for Chapter 53, Equal Employment and Business Opportunity, was extended by gubernatorial directive from December 15, 2000 to December 15, 2001. See: 33 N.J.R. 291(a).

Chapter 53, Equal Employment and Business Opportunity, was readopted as R.2002 d.186, effective May 24, 2002. As a part of R.2002 d.186, Subchapter 5, Equal Business Opportunity and Affirmative Action Obligations of Casino Licensees and Applicants, was repealed, effective June 17, 2002. See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Chapter 53, Equal Employment and Business Opportunity, was readopted as R.2007 d.282, effective August 2, 2007. See: Source and Effective Date.

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## SUBCHAPTER 1. GENERAL PROVISIONS

### 19:53-1.1 Scope, policy and purpose

(a) It has long been the public policy of the State of New Jersey to promote equal employment and business opportunity by prohibiting discrimination.

(b) These rules are adopted in order to establish equal employment opportunity and equal business opportunity requirements for casino licensees and applicants, casino service industry enterprise licensees and applicants and construction contractors and subcontractors engaged in construction projects for casino licensees and applicants. These rules also establish affirmative action requirements for casino licensees and applicants, certain casino service industry enterprise licensees and applicants and construction contractors and subcontractors with regard to the employment of persons with disabilities.

Amended by R.1995 d.310, effective June 19, 1995.

See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

In (b), following "certified" in the last sentence, deleted "and provisionally certified".

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

In (b) added persons with disabilities.

Amended by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Rewrote (a); in (b), deleted "women, minorities and" in the second sentence and deleted the third sentence.

### 19:53-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Affectional or sexual orientation" is defined in N.J.S.A. 10:5-5.

"A typical hereditary cellular or blood trait" is defined in N.J.S.A. 10:5-5.

"Change in ownership or management" means any change in the ownership or management of a licensee or applicant which could enable an involuntary change in the existing policy of the licensee or applicant to occur, and shall include, without limitation, the sale of a controlling interest in the

licensee or applicant or a holding company thereof, or the replacement of the chief executive officer of the licensee or applicant.

"Construction" or "renovation" or "reconstruction" means any construction, renovation, reconstruction, rehabilitation, alteration, conversion, extension, demolition, repair or other changes or improvements of any kind whatsoever of any structure or facility to be used as an approved hotel, casino, casino simulcasting facility or related facility. These terms also include the maintenance, supervision, inspection, and other on-site functions incidental to the actual construction.

"Contract" means any written or unwritten agreement between two or more persons.

"Contractor" means any party performing or offering to perform pursuant to a contract.

"Disability" means a physical or mental impairment which is included in the definition of "handicapped" contained in the Law Against Discrimination, N.J.S.A. 10:5-5, or in the definition of "disability" contained in the Americans with Disabilities Act of 1990, 92 USC 12101, and attendant regulations.

"Equal business opportunity" means the opportunity of any person to buy from, sell to, lease from or to, license, contract with, trade with, provide goods, services or information to, or do business with any other person without regard to the race, creed, color, national origin, ancestry, affectional or sexual orientation, gender, age, marital status, nationality, atypical hereditary cellular or blood trait, liability for service in the armed forces of the United States, disability (where reasonable accommodation may be made to allow for such disability without causing an undue hardship on the person doing business) or rehabilitated offender status of such person or such person's partners, members, stockholders, directors, officers, managers or employees.

"Equal Employment and Business Opportunity Plan (EEBOP)" is defined in N.J.A.C. 19:53-6.

"Equal employment opportunity" means the opportunity of any person to apply for, obtain and retain employment, transfer, promotion, pay raises, benefits and training without regard to the race, creed, color, national origin, ancestry, affectional or sexual orientation, gender, age, marital status, nationality, atypical hereditary cellular or blood trait, liability for service in the armed forces of the United States, disability (where reasonable accommodation may be made to allow for such disability without causing an undue hardship on the employer) or rehabilitated offender status of such person.

"Equal opportunity officer" means a person appointed by a licensee or applicant, pursuant to the provisions of N.J.S.A. 5:12-135f and N.J.A.C. 19:53-1.4 or 3.1, to assure its compliance with this chapter and any Federal or State laws regarding equal employment and business opportunity.

"Liability" for service in the armed forces of the United States is defined in N.J.S.A. 10:5-5.

"Operations work force" means all employees of a casino licensee or applicant who work in or in support of the casino hotel, casino, casino simulcasting facility or a related facility.

"Rehabilitated offender" means any person who has been convicted of or has committed a disqualifying offense pursuant to N.J.S.A. 5:12-86 and who has been found rehabilitated from such offense pursuant to the provisions of N.J.S.A. 5:12-90h or 91d.

"Subcontract" means a binding legal relationship involving performance by a subcontractor of all or part of a contract or subcontract.

"Subcontractor" means any party engaged by a contractor or subcontractor to perform, under a subcontract, all or part of the work included in a contract or subcontract.

Amended by R.1993 d.573, effective November 15, 1993.

See: 25 N.J.R. 3955(a), 25 N.J.R. 5361(a).

Amended by R.1995 d.310, effective June 19, 1995.

See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted the definitions of "Provisionally certified MBE" and "Successor business".

Amended by R.1995 d.373, effective July 17, 1995.

See: 27 N.J.R. 849(a), 27 N.J.R. 2707(b).

Amended by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Deleted "Adjusted gross disbursements", "Apprentice", "Bus", "Certified MBE" or "certified WBE", "Commercial buyer", "DCED", "EEOC job categories", "Gross disbursements", "Journeyworker", "MBE", "Minority", "Minority business", "Net disbursement", "Project", "Project Labor Report", "Project Labor Report Summary", "Project Status Report", "Purchase agreement", "Purchase authorization", "Supplier", "WBE" and "Women business enterprise".

Amended by R.2005 d.86, effective March 7, 2005.

See: 36 N.J.R. 623(a), 37 N.J.R. 789(a).

Deleted "Chief executive officer".

Petition for Rulemaking.

See: 37 N.J.R. 812(a).

### 19:53-1.3 (Reserved)

Amended by R.1993 d.538, effective November 1, 1993.

See: 25 N.J.R. 3690(a), 25 N.J.R. 4929(b).

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Repealed by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Section was "Classification of employees; use of EEOC job categories".

### 19:53-1.4 Designation of equal opportunity officer by casino licensee or applicant; responsibility of chief executive officer and equal opportunity officer

(a) Each casino licensee or applicant shall designate a principal member of its organization to serve as an equal opportunity officer. A casino license applicant shall designate its equal opportunity officer prior to the start of actual construction by the applicant or by any affiliated entity of any structure or facility to be used as an approved casino hotel, or prior to the recruitment and employment of personnel necessary to undertake the business of the hotel or casino, whichever first occurs. The chief executive officer shall be ultimately responsible for insuring that equal em-

ployment opportunity is afforded to all prospective and actual employees, that equal business opportunity is afforded to all persons, that affirmative efforts are made to recruit and employ persons with disabilities, and that the licensee or applicant achieves full implementation of its approved EEBOP. The equal opportunity officer shall be directly responsible for the organization and effective and continuing implementation of its approved EEBOP. The position of equal opportunity officer shall require a casino key employee license.

(b) The responsibilities of the equal opportunity officer shall include, without limitation, the responsibility to:

1. Monitor and review all aspects of the personnel procedures and decisions of the casino licensee or applicant;
2. Recommend in writing to the chief executive officer the suspension of any personnel procedure, decision or transaction which is not consonant with the approved EEBOP of the casino license or applicant or with any Federal or State law regarding equal employment opportunity; and
3. Act as a liaison and to provide assistance to the Commission and the Division in the enforcement of section 134 of the Act and this chapter, which responsibility shall include, without limitation, the obligation to prepare and submit such reports, documentation and statistical information as the Commission shall require concerning the licensee's or applicant's:
  - i. Work force composition;
  - ii. Efforts to assure that equal employment opportunity is being afforded to all persons protected by N.J.S.A. 5:12-134;
  - iii. Good faith efforts to implement its EEBOP;
  - iv. Employment, promotion, demotion or transfer decisions;
  - v. Recruitment, recruitment advertising and union referral efforts;
  - vi. Rates of pay or other forms of compensation;
  - vii. Training programs and selection procedures;
  - viii. Layoff, recall or termination decisions; and
  - ix. Grievance procedures for, and disposition of, complaints related to equal employment opportunity.

(c) In addition to the responsibilities specified in (b) above, the equal opportunity officer shall have the responsibility to:

1. Monitor and review all aspects of the contracting and purchasing procedures and decisions of the licensee or applicant; and
2. Recommend in writing to the chief executive officer the suspension of any contracting or purchasing procedure, decision, or transaction which is not consonant with its approved EEBOP or with any Federal or State law regarding equal business opportunity.

(d) In addition to the responsibilities specified in (b) and (c) above, the equal opportunity officer shall have the responsibility to:

1. Monitor and review the employment, recruitment and union referral practices of all contractors and subcontractors used in connection with the actual construction, renovation or reconstruction of any structure or facility to be used as an approved hotel, casino, casino simulcasting facility or any related facility;

2. Recommend in writing to the chief executive officer the suspension of any contract or subcontract or payment thereof where the contractor or subcontractor is engaging in any employment, recruitment, referral or bidding practice which is not consonant with the Act or the rules of the Commission or with any Federal or State law regarding equal employment and business opportunity;

3. Accompany the Commission and the Division, if requested, during on-site inspections authorized pursuant to N.J.A.C. 19:53-2.7; and

4. Prepare and submit to the Commission such reports, documentation and statistical information as the Commission shall require concerning any contractor or subcontractor used by the licensee or applicant in connection with the construction, renovation or reconstruction of any structure or facility to be used as an approved hotel, casino, casino simulcasting facility or any related facility.

(e) In addition to any other requirements imposed by this section, a casino licensee or applicant shall comply with the following requirements concerning its equal opportunity officer:

1. The principal areas of responsibility of the equal opportunity officer shall be the implementation, monitoring and enforcement of the equal employment and business opportunity requirements established by the Act and this chapter. These responsibilities may include, without limitation, the following functions: recruitment; equal employment opportunity awareness training; legal and statistical analysis of work force composition and utilization; grievance counselling and fact-finding; career advancement counselling; assessment and adaptation of all personnel and compensation policies and procedures for conformity with the equal employment and business opportunity plan approved by the Commission and with any Federal or State equal employment and business opportunity laws; monitoring and coordinating contracting, purchasing and construction activities, and developing and maintaining the involvement of the licensee or applicant in the community in support of equal employment and business opportunity.

2. The title, rank and level of compensation of the equal opportunity officer shall be comparable to that of a director of a major department within the organization of the casino licensee or applicant.

3. The equal opportunity officer shall be provided with a staff sufficient to achieve full and timely implementation and enforcement of the EEBOP approved by the Commission and compliance with the Act and this chapter.

4. The equal opportunity officer shall report directly to the chief executive officer of the licensee or applicant or, in his or her absence, to the chief legal officer of the licensee or applicant.

(f) Whenever the equal opportunity officer of a casino licensee or applicant makes a suspension recommendation to the chief executive officer pursuant to (b)2, (c)2, or (d)2 above, a copy of the recommendation shall be maintained on file by the casino licensee or applicant for inspection by the Commission or Division upon request.

Amended by R.1995 d.306, effective June 19, 1995.

See: 27 N.J.R. 1162(a), 27 N.J.R. 2455(a).

Amended by R.1995 d.310, effective June 19, 1995.

See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted provisions covering "provisionally certified" MBEs and WBEs.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Amended by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

In (a), rewrote the third sentence; in (b), deleted "or affirmative action" in 2 and rewrote 3iii; in (c), deleted 3 and 4; in (d), deleted "or affirmative action" in 2 and rewrote 4; in (e)1, deleted "and affirmative action" in the first sentence and deleted "and affirmative action goals" in the last sentence.

Petition for Rulemaking.

See: 34 N.J.R. 3871(a), 4478(b).

#### Case Notes

Reduction of affirmative employment measures for handicapped workers under regulations governing casino employment was abuse of discretion. Matter of Repeal of N.J.A.C. 19:53, 282 N.J.Super. 217, 659 A.2d 941 (A.D.1995).

**19:53-1.5 Advisory boards**

(a) The Commission may establish an advisory board consisting of local or State officials, representatives of area businesses and communities, women and minority organizations, union officials, persons with disabilities, casino industry representatives or other interested parties. Such advisory board may make recommendations to the Commission, upon its request, concerning policies or techniques to assure equal employment and business opportunity for all persons in the casino industry and the casino-related construction industry.

(b) The Commission shall establish an Advisory Board on Persons With Disabilities to consider issues affecting persons with disabilities and the casino industry. This advisory board shall consist of persons with disabilities residing in the regional community, representatives of organizations which advance the interests of persons with disabilities and representatives of the casino industry. The purpose of the advisory board shall be to identify, investigate, and make recommendations to the Commission concerning issues which affect the ability of persons with disabilities to obtain employment and business opportunities with the casino industry. Such recommendations may include, at the discretion of the advisory board or upon request by the Commission, suggestions for the promulgation of specific regulations. The advisory board may also develop and recommend to the Commission a program which will permit the accurate identification and reporting of persons with disabilities who are employed by or doing business with the casino industry.

Amended by R.1993 d.538, effective November 1, 1993.

See: 25 N.J.R. 3690(a), 25 N.J.R. 4929(b).

Amended by R.1995 d.310, effective June 19, 1995.

See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted a provision covering "provisionally certified" MBEs and WBEs.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Amended by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

In (a), inserted "and business" following "equal employment" and deleted "and the participation of certified MBEs and WBEs in purchasing and contracting" preceding "in the casino industry".

**19:53-1.6 Powers of the Commission; effect of rules**

(a) Nothing in this chapter shall be construed as limiting the powers of the Commission or the Division as granted by the Act.

(b) Nothing contained in this chapter shall be interpreted to supplant, diminish, limit or in any way affect the scope and application of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000(e), the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq., or any other law regarding equal employment or business opportunity.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Amended by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

In (b), substituted "regarding equal employment or business opportunity" for "regarding equal employment opportunity, equal business opportunity or affirmative action".

**19:53-1.7 Enforcement and compliance; role of the Division**

Pursuant to section 76 of the Act, the Division shall assist the Commission in the enforcement of any applicable provisions of the Act and this chapter by prosecuting before the Commission proceedings for violation of the Act and this chapter and by providing the Commission with information necessary for proceedings involving enforcement of any of the applicable provisions of the Act and this chapter.

**19:53-1.8 Severability**

If any clause, sentence, subparagraph, paragraph, subsection, section, subchapter or other portion of these rules or the application thereof to any person or circumstance shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of these rules or the application of such portion held invalid to any other person or circumstances, but shall be confined in its operation to the clause, sentence, subparagraph, paragraph, subsection, section, subchapter, or other portion thereof directly involved in such holding or to the person or circumstance therein involved.

## SUBCHAPTER 2. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS, SUBCONTRACTORS AND CASINO LICENSEES AND APPLICANTS CONCERNING CONSTRUCTION

**19:53-2.1 Equal employment and business opportunity obligations of casino licensees and applicants concerning construction**

(a) Each casino licensee and applicant shall provide equal employment opportunity to all prospective and actual employees at all levels of the work force and equal business opportunity to all contractors or subcontractors employed in the construction, renovation or reconstruction of the casino hotel, casino, casino simulcasting facility or any related facility.

(b) No architectural plans or site plans of proposed construction, renovation or reconstruction of any structure or facility to be used as a casino hotel, casino, casino simulcasting facility or related facility shall be approved by the Commission, nor shall any contract or subcontract for such work be commenced, unless the casino licensee or applicant requires that, at a minimum, all contracts or subcontracts to be awarded in connection therewith shall contain appropriate provisions by which contractors or subcontractors or their assignees agree to afford:

1. Equal employment opportunity to all prospective employees and actual employees to be employed by the contractor or subcontractor; and

2. Equal business opportunity to all persons who wish to participate in the performance of the contract or subcontract.

(c) Prior to the commencement of any work by a contractor or subcontractor in connection with any construction, renovation or reconstruction of any structure to be used as a casino hotel, casino, casino simulcasting facility or related facility, each casino licensee or applicant shall require the construction contractor or subcontractor to include the mandatory contract language set forth in N.J.A.C. 19:53-2.7 in each contract or subcontract.

(d) No casino license shall issue to or be held by any person unless such person shall demonstrate to the Commission that, as of August 16, 1993, equal employment opportunity has been afforded, prior to the submission of architectural plans or site plans to the Commission, to all prospective employees and to all actual employees employed by a contractor or subcontractor in connection with the actual construction, renovation or reconstruction of any structure to be used as a casino hotel.

(e) A casino license applicant shall be required to designate an Equal Opportunity Officer in accordance with the provisions of N.J.A.C. 19:53-1.4 prior to the start of actual construction by the applicant or any affiliated entity of any structure or facility to be used as a casino hotel. The casino license applicant shall also be required to submit an EEBOP in accordance with the provisions of N.J.A.C. 19:53-6 prior to the start of actual construction of a casino hotel facility, the recruitment and employment of personnel necessary to undertake the business of the casino or hotel, or the filing of an application for casino licensure, whichever first occurs.

#### **19:53-2.2 Obligation of casino licensee or applicant to monitor all construction activity**

(a) Unless otherwise specified in the construction section of an approved EEBOP pursuant to N.J.A.C. 19:53-6, each casino licensee or applicant shall be required to develop and implement a monitoring system which allows the casino licensee or applicant to oversee all construction activity performed for the licensee or applicant at the casino hotel, casino, casino simulcasting facility or any related facility.

(b) The monitoring system shall provide for systematic coordination between the equal opportunity officer, the relevant departments within the organization of the casino licensee or applicant which contract for construction work and the purchasing department. The monitoring system shall include, without limitation, procedures which:

1. Outline the steps to be used by the casino licensee or applicant to obtain compliance from contractors and subcontractors who fail to fulfill their obligations under this subchapter;

2. Ensure that the mandatory construction contract and subcontract language required by N.J.A.C. 19:53-2.7 is actually included in all construction contracts and subcontracts;

3. Provide notification to all contractors and subcontractors of the obligations of the casino licensee or applicant under the Act and this subchapter; and

4. Encourage contractors and subcontractors to employ persons with disabilities at all levels of the work force.

Amended by R.1995 d.310, effective June 19, 1995.

See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted provisions covering "provisionally certified" MBEs and WBEs.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Amended by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Rewrote (b).

#### **19:53-2.3 (Reserved)**

Amended by R.1993 d.538, effective November 1, 1993.

See: 25 N.J.R. 3690(a), 25 N.J.R. 4929(b).

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Repealed by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Section was "Women and minority employment goals for the construction work force of casino licensees and applicants".

#### **19:53-2.4 (Reserved)**

Amended by R.1995 d.310, effective June 19, 1995.

See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted provisions covering "provisionally certified" MBEs and WBEs.

Amended by R.1997 d.112, effective March 3, 1997.

See: 28 N.J.R. 5169(b), 29 N.J.R. 795(a).

Changed filing deadline; and added (b)5, (c) and (d).

Repealed by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Section was "Reporting obligations of casino licensees and applicants concerning the construction work force".

#### **19:53-2.5 Special compliance obligations applicable to a casino license applicant building a casino hotel facility**

(a) In addition to complying with all of the regulatory requirements of N.J.A.C. 19:53-2.2 which are applicable to a casino license applicant, any casino license applicant which is planning to build or substantially renovate a casino hotel facility prior to licensure shall comply with the requirements of this section in accordance with a schedule to be set by the Commission based on the projected opening date of the casino hotel facility and the hearing schedule of the Commission.

(b) The casino license applicant shall submit a draft employment application to the New Jersey Division on Civil Rights (DCR) in accordance with N.J.A.C. 13:7 for review as to its consonance with the rules on pre-employment inquiries and procedures, revise the application as guided by the review and comments of DCR, and file a copy of the final version of the document and the notice of DCR approval with the Commission.

(c) Notwithstanding the provisions of N.J.A.C. 19:53-4.1, the casino license applicant shall submit for approval by the Commission a description of all hiring criteria and procedures used to determine whether to hire an applicant for employment or to transfer, upgrade or promote an existing employee. Each casino license applicant shall submit the following in satisfaction of this requirement:

1. A narrative description of the process of screening, interviewing and hiring applicants, which shall include a delineation of the responsibilities of the equal opportunity officer, director of personnel and other principals in that process;

2. A description of any tests, interview procedures or other procedures which will be administered to applicants or employees;

3. A jobs compendium for any positions directly or indirectly related to the construction phase of the casino hotel facility including, without limitation, the equal opportunity officer, the personnel department and the purchasing department;

4. An in-house job posting procedure which shall be a clearly-defined and comprehensively-applied process through which employees may bid for intradepartmental or interdepartmental promotion or transfer;

5. A training summary which shall include information as to:

- i. The job title of those employees who underwent skill enrichment training prior to opening; and

- ii. Any reasonable accommodations, specialized training or support programs provided for employees who were voluntarily self-identified as persons with disabilities;

6. A summary of the strategies and actual techniques used to hire persons with disabilities at all levels of the work force;

7. A completed recruitment questionnaire concerning the recruitment process as provided by the Commission;

8. Documentation of contacts with any recruitment sources such as referral agencies, colleges, executive search firms or organizations, and advertisements in media oriented to persons with disabilities;

9. An in-house complaint procedure for equal employment opportunity complaints to be addressed by the equal opportunity officer; and

10. An employee manual or handbook or other procedure designed to advise all employees of: the policy of

the casino license applicant on equal employment opportunity; prohibitions against discrimination and sexual harassment; the name, office location and phone number of the equal opportunity officer; and instructions to contact the equal opportunity officer in the event of an allegation of discrimination or harassment.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Amended by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

In (a), deleted "and N.J.A.C. 19:53-2.6"; rewrote (b); in (c), deleted "race, gender and" in 5i and deleted "women, minorities and" in 6 and 8.

#### 19:53-2.6 (Reserved)

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Repealed by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Section was "Special reporting obligations applicable to a casino license applicant building a casino hotel facility".

#### 19:53-2.7 Construction contracts and subcontracts; mandatory contract language

(a) Every contract or subcontract which concerns the construction of a casino hotel, casino, casino simulcasting facility or any related facility shall contain the following language concerning equal employment opportunity and equal business opportunity:

"During the performance of this contract (or subcontract), the contractor (or subcontractor) agrees that it will be bound by the equal employment and business opportunity requirements of the New Jersey Casino Control Act, N.J.S.A. 5:12-1 et seq., and the rules of the New Jersey Casino Control Commission, N.J.A.C. 19:53.

The contractor (or subcontractor) agrees that it will provide equal employment opportunity, as defined in N.J.A.C. 19:53-1.2, to all prospective and actual employees of the contractor (or subcontractor). The contractor (or subcontractor) agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth in detail the provisions of this equal employment opportunity clause.

The contractor (or subcontractor) agrees that it will include in all advertisements or solicitations for employees placed by or on behalf of the contractor (or subcontractor) a statement that it is an equal employment opportunity employer subject to regulation by the New Jersey Casino Control Commission.

The contractor (or subcontractor) agrees that it will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or representative of the contractor's (or subcontractor's) commitments under the Casino Control Act and the rules of the Casino Control Commission and shall post copies of the notice in conspicuous places available to employees and applicants for employment.



The contractor (or subcontractor) agrees that it will provide equal business opportunity, as defined in N.J.A.C. 19:53-1.2, to all persons who wish to participate in the performance of the contract (or subcontract). The contractor (or subcontractor) agrees to post in conspicuous places at its place of business and on the project site notices setting forth in detail the provisions of this equal business opportunity clause.

The contractor (or subcontractor) agrees that a representative of the Casino Control Commission and the Division of Gaming Enforcement shall be entitled to attend all construction project meetings and, at reasonable times and in a reasonable manner, to enter the contractor's (or subcontractor's) business facility or facilities or construction project site for determining whether the contractor or subcontractor is complying with the Casino Control Act and the rules of the Commission. The contractor (or subcontractor) agrees that the Commission or the Division, in making such determinations, shall be entitled to inspect or copy any relevant books and records of the contractor (or subcontractor)."

(b) In lieu of the mandatory language required by (a) above, a contractor or subcontractor may include the following language in the contract or subcontract:

"The parties to this contract (or subcontract) agree to incorporate into this contract (or subcontract) the mandatory equal employment and business opportunity contract language contained in the rules of the New Jersey Casino Control Commission at N.J.A.C. 19:53-2.7, as amended or supplemented from time to time, and to comply fully with the terms, provisions and obligations of N.J.A.C. 19:53."

Amended by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Deleted (c).

#### **19:53-2.8 (Reserved)**

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Repealed by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Section was "Reporting obligations of construction contractors and subcontractors".

#### **19:53-2.9 (Reserved)**

Repealed by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Section was "Quarterly assessment of good faith efforts of contractors and subcontractors to meet employment goals for women and minorities; referral to Division".

#### **19:53-2.10 (Reserved)**

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Repealed by R.1997 d.112, effective March 3, 1997.

See: 28 N.J.R. 5169(b), 29 N.J.R. 795(a).

Section was "Annual report on construction contractor and subcontractor work force of casino licensee or applicant; relation to annual EEOBOP assessment".

### **SUBCHAPTER 3. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION OBLIGATIONS OF CASINO SERVICE INDUSTRY ENTERPRISES**

#### **19:53-3.1 Designation of equal opportunity officer by casino service industry enterprise licensee; responsibility of chief executive officer and equal employment officer**

Each casino service industry enterprise licensee shall designate a principal member of its organization to serve as an equal opportunity officer. The chief executive officer shall be ultimately responsible for insuring that equal employment opportunity is afforded to all prospective and actual employees of the licensee, that equal business opportunity is afforded to all persons who do or would like to do business with the licensee, and that the licensee complies with or makes good faith efforts to comply with any affirmative action obligations imposed on the licensee by the Act and this chapter. The equal opportunity officer shall be directly responsible for the effective and continuing implementation of the equal opportunity and affirmative action obligations of the licensee.

#### **19:53-3.2 Equal employment and business opportunity obligations of all casino service industry enterprise licensees and applicants**

(a) Each casino service industry enterprise licensee and applicant shall provide equal employment opportunity to all prospective and actual employees at all levels of its work force.

(b) Each casino service industry enterprise licensee and applicant shall provide equal business opportunity to all persons who do or wish to do business with the licensee or applicant.

(c) The chief executive officer of each casino service industry enterprise licensee or applicant shall submit to the Commission an acknowledgement of the obligations imposed by this section and, if applicable, N.J.A.C. 19:53-3.3, with the application for initial casino service industry license, with each application for license renewal, and upon any change in the ownership or management of the casino service industry enterprise.

(d) Each casino service industry enterprise licensee or applicant shall be required to:

1. Post notices available to employees and applicants for employment of the equal employment opportunity obligations of the casino service industry enterprise licensee or applicant; and
2. Include a statement in all postings, advertisements or other solicitations for employment that it is an equal opportunity employer.



**19:53-3.3 Affirmative action obligations of casino service industry enterprise licensees and applicants which have 50 or more employees in New Jersey**

(a) Each casino service industry enterprise licensee and applicant which employs 50 or more employees in the State of New Jersey shall be required to undertake affirmative measures to ensure that persons with disabilities are recruited and employed at all levels of its work force and treated during employment without regard to their disability. Such affirmative efforts shall, without limitation, address all employment practices including:

1. Employment, promotion, demotion or transfer;
2. Recruitment, recruitment advertising or posting;
3. Layoff or termination;
4. Rates of pay and other forms of compensation or benefits; and
5. Selection for training programs.

(b) Each casino service industry enterprise licensee and applicant governed by this section shall be required to:

1. Post all employment openings for response by qualified in-house employees or, when appropriate, advertise such openings in newspapers of general circulation and other media which reach a cross-section of the population in the area from which the work force will be drawn;
2. Send notices of employment openings to and solicit the referral of qualified candidates for employment from:
  - i. Organizations which serve the interest of promoting equal employment opportunity for persons with disabilities; and
  - ii. Regional job banks or job fairs that are maintained or conducted in order to assist qualified persons with disabilities in obtaining employment;
3. Send to each labor union or representative of workers with which it has a collective bargaining agreement a notice of the obligations of the licensee or applicant under the Act and rules of the Commission;
4. Send to each labor union or representative of workers with which it has a collective bargaining agreement a request for referral of qualified candidates for employment who are voluntarily self-identified persons with disabilities; and
5. Evaluate any criteria, tests, interview procedures and other requirements for employment, promotion and transfer of employees to assure that they are not discriminatory in their impact or that no less discriminatory methods of evaluation or prediction of job performance are feasible.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Amended by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

In (a), deleted "women, minorities and" and "gender, minority status or"; in (b), deleted "women, minorities and" in 2i and deleted "women, minorities or" in 2ii and 4.

**19:53-3.4 (Reserved)**

Repealed by R.2002 d.186 effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Section was "Report by casino service industry enterprise licensees and applicants on the composition of their New Jersey work force".

**19:53-3.5 Sanctions**

(a) If the Commission determines that a casino service industry enterprise licensee or applicant is in violation of the Act or this subchapter, in addition to any action taken by the Commission to suspend or revoke the casino service enterprise license, the Commission may:

1. Order any or all casino licensees and applicants to terminate or suspend any business relationships or contracts with the casino service industry enterprise licensee or applicant;
2. Prohibit the casino service industry enterprise licensee or applicant from entering into any future contracts with any casino licensee or applicant for a period of time to be determined by the Commission; and
3. Take any other action authorized by the Act or the rules of the Commission.

**SUBCHAPTER 4. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION OBLIGATIONS OF CASINO LICENSEES AND APPLICANTS CONCERNING THE OPERATIONS WORK FORCE**

**19:53-4.1 Equal employment opportunity obligations of casino licensees and applicants concerning the operations work force**

(a) Each casino licensee and applicant shall provide equal employment opportunity to all prospective and actual employees at all levels of the operations work force.

(b) Each casino licensee and applicant shall be required to:

1. Post notices available to employees and applicants for employment of the equal employment opportunity obligations of the casino licensee or applicant;
2. Include a statement in all postings, advertisements or other solicitations for employment that it is an equal opportunity employer;
3. Post all employment openings for response by qualified in-house employees and, when appropriate, advertise such openings in newspapers of general circulation and other media which reach a cross-section of the population in the area from which the work force will be drawn;
4. Send to each labor union or representative of workers with which it has a collective bargaining agreement, a notice of the obligations of the casino licensee or applicant under the Act and this chapter;

5. Evaluate any criteria, tests, interview procedures and other requirements for employment, promotion or transfer of employees to assure that they are not discriminatory in their impact or that no less discriminatory methods of evaluation or prediction of job performance are feasible;

6. Provide to the Commission, upon request, a description of all criteria, tests, interview procedures or other procedures used to determine whether to employ an applicant for employment or to transfer, upgrade or promote an existing employee; and

7. If necessary, comply with the provisions of (c) below.

(c) In the event that any criteria, test, interview procedure or other employment procedure used by a casino licensee or applicant is shown to have a discriminatory impact, the casino licensee or applicant shall be required to demonstrate to the satisfaction of the Commission that no less discriminatory method of evaluation or prediction of job performance is feasible. In such case, the casino licensee or applicant shall justify the requirements imposed and shall demonstrate to the satisfaction of the Commission that any criteria, tests, interview procedures or other procedures used are truly predictive of job performance. The casino licensee or applicant shall discontinue the use of any criteria, tests, interview procedures or other employment procedures which have a discriminatory impact and which cannot be validated as truly predictive of job performance to the satisfaction of the Commission. In attempting to establish the validity of the criterion, test, interview procedure or other employment procedure, the casino licensee or applicant shall be guided by the rules of the New Jersey Division on Civil Rights and the U.S. Equal Employment Opportunity Commission.

#### **19:53-4.2 Reasonable accommodation in employment for persons with disabilities**

Casino licensees and applicants shall afford reasonable accommodation in employment to persons with disabilities in accordance with the requirements of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and attendant regulations, and Title I of the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and attendant regulations.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Rewrote section, formerly "Obligations of casino licensees and applicants concerning persons with disabilities; reasonable accommodation".

#### **19:53-4.3 (Reserved)**

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Repealed by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Section was "Affirmative action obligations of casino licensees and applicants concerning the operations work force".

#### **Case Notes**

Challenged regulations have the effect of encouraging discriminatory hiring. *Schurr v. Resorts International Hotel, Inc.*, 196 F.3d 486 (1999).

#### **19:53-4.4 (Reserved)**

Amended by R.1993 d.538, effective November 1, 1993.

See: 25 N.J.R. 3690(a), 25 N.J.R. 4929(b).

Repealed by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Section was "Women and minority employment goals for the operations work force of casino licensees and applicants".

#### **Case Notes**

The New Jersey State Casino Control Commission's affirmative action regulations did not erect a barrier to plaintiff's ability to compete fairly for the positions for which he applied; the obvious thrust of the regulations is that, in order to improve the representation of women and minorities in the certain job categories, a casino licensee should broaden the pool of applicants, not that casino licensees should prefer minorities and women to non-minorities and men in making hiring decisions. *Schurr v. Resorts Intern. Hotel, Inc.*, 77 Fair Empl. Prac.Cas. (BNA) 833 (D.N.J. 1998).

#### **19:53-4.5 (Reserved)**

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Repealed by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Section was "Quarterly report on the affirmative action efforts of casino licensees concerning the operations work force".

#### **19:53-4.6 (Reserved)**

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Amended by R.1997 d.112, effective March 3, 1997.

See: 28 N.J.R. 5169(b), 29 N.J.R. 795(a).

Changed filing deadlines throughout; and in (d), provided hearing criteria for noncomplying licensees.

Repealed by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Section was "Annual report by casino licensee or applicant on the composition of its operations work force".

### **SUBCHAPTER 5. (RESERVED)**

### **SUBCHAPTER 6. COMPLIANCE BY CASINO LICENSEES AND APPLICANTS— PREPARATION, IMPLEMENTATION AND REVIEW OF EQUAL EMPLOYMENT AND BUSINESS OPPORTUNITY PLAN (EEBOP)**

#### **19:53-6.1 Equal Employment and Business Opportunity Plan (EEBOP); purpose and basic elements**

(a) In order to insure compliance with the requirements of section 134 of the Act and this chapter, each casino licensee and applicant shall be required to submit an Equal Employment and Business Opportunity Plan (EEBOP) to the Commission for its approval. The EEBOP of each casino licensee or applicant shall address in specific terms the strategies, procedures and internal requirements which the casino licensee or applicant intends to implement so that the equal employment opportunity and equal business opportunity objectives of the Act and this chapter are achieved, both on a current and continuing basis.

(b) Each casino licensee or applicant shall be encouraged to use imagination and innovation in the development of its EEBOP. Although, in general, no particular format will be required, every EEBOP prepared by a casino licensee or applicant shall contain sections addressing each of the following areas:

1. General regulatory requirements;
2. Construction requirements; and
3. Operations work force requirements.

(c) The EEBOP of a casino license applicant which will be building or substantially renovating a casino hotel facility prior to licensure shall address:

1. All phases of the development of the project including planning and feasibility studies in preparation for initial construction; and
2. The qualifications of the Equal Opportunity Officer to perform the duties set forth in N.J.A.C. 19:53-1.4.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Amended by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

In (a), deleted "and affirmative action" and "and goals" in the second sentence; in (b), rewrote the introductory paragraph and deleted 4.

#### 19:53-6.2 General regulatory section of an EEBOP

(a) Every EEBOP submitted by a casino licensee or applicant shall include, at a minimum, the following:

1. A statement by the chief executive officer of the casino licensee or applicant setting forth the equal employment and business opportunity policies of the organization;
2. An acknowledgement by the chief executive officer of the obligations imposed by section 134 of the Act and this chapter; and
3. A description of the means by which the policies of the casino licensee or applicant concerning equal opportunity shall be disseminated and enforced including, without limitation, the following:
  - i. Orientation, sensitivity and ADA compliance training sessions for staff, including executives, managers, supervisors and placement personnel;
  - ii. The availability of the EEBOP to staff for review; and
  - iii. The inclusion of accountability for achieving the objectives of this chapter and the EEBOP of the casino licensee or applicant in the performance evaluations of executives, managers and supervisors.

(b) Other topics appropriate for inclusion in the general regulatory section of an EEBOP shall include, without limitation, the following:

1. A delineation of the role and responsibilities of the equal opportunity officer and his or her staff;

2. A description of the lines of communication and reporting within the organization as they relate to the objectives of this chapter;

3. A description of the resources which the casino licensee or applicant will make available to the advisory boards organized pursuant to the provisions of N.J.A.C. 19:53-1.5 and a commitment by the casino licensee or applicant to actively participate in and support the efforts of these advisory boards; and

4. A description of the procedures and techniques which the casino licensee or applicant will use to monitor implementation of the EEBOP and to assess the need for modifications.

Amended by R.1993 d.538, effective November 1, 1993.

See: 25 N.J.R. 3690(a), 25 N.J.R. 4929(b).

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Amended by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

In (a), deleted "and affirmative action" in the introductory paragraph of 3.

#### 19:53-6.3 Construction section of an EEBOP

(a) The construction section of an EEBOP prepared by a casino licensee or applicant shall describe in detail the means by which the licensee or applicant intends to comply with the equal opportunity and regulatory obligations imposed by N.J.A.C. 19:53-2. Topics appropriate for inclusion in the construction section of an EEBOP shall include, without limitation, the following:

1. Coordination and communication in the implementation of construction plans by the equal opportunity officer, the executive office, the facilities department, the purchasing department, and any other appropriate department;

2. Implementation of a monitoring system which will enable the casino licensee or applicant to evaluate the performance of contractors and subcontractors and the performance of the licensee's or applicant's own organization in fulfilling the equal employment and equal business opportunity requirements imposed by this chapter; and

3. Procedures and penalties to be used by the casino licensee or applicant if a contractor or subcontractor does not fulfill its obligations under this chapter.

Amended by R.1995 d.310, effective June 19, 1995.

See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted a provision governing provisionally certified MBEs and WBEs.

Amended by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

In (a), substituted "equal employment and equal business opportunity" for "reporting and documentation" in 2 and substituted "obligations under this chapter" for "goal, documentation or reporting requirements" in 3; deleted (b).

**19:53-6.4 Operations work force section of an EEBOP**

(a) The operations work force section of an EEBOP prepared by a casino licensee or applicant shall describe in detail the means by which the licensee or applicant intends to comply with the equal opportunity and regulatory obligations imposed by N.J.A.C. 19:53-4. Topics appropriate for inclusion in the operations work force section of an EEBOP shall include, without limitation, the following:

1. Coordination and communication in the personnel practices of the casino licensee or applicant by the equal opportunity officer, the executive office, the personnel department, and any other appropriate department;
2. The means by which the casino licensee or applicant shall address its obligation to provide equal employment opportunity to all persons protected by the provisions of N.J.S.A. 5:12-134; and
3. The means by which the casino licensee or applicant will insure that all required reports are completed and filed when due.

(b) The operations work force section of an EEBOP shall also describe in detail the manner in which a casino licensee or applicant shall undertake to satisfy its obligation to recruit and employ persons with disabilities. Topics appropriate for inclusion in this section of an EEBOP may include, without limitation, the following:

1. Strategies and measurable objectives for improving the employment of persons with disabilities at all levels of the work force including, without limitation, proactive initiatives in the following areas:
  - i. The use of recruitment programs, advertising, postings, referral agencies, search firms, job fairs and job banks;
  - ii. Employment processing, including specialized application and interview procedures for applicants who are voluntarily self-identified as persons with a disability;
  - iii. Specialized training, development or promotion programs, such as supported employment programs, school-to-work programs, mentoring programs and, where feasible, work-at-home programs; and
  - iv. Retention programs, such as continuing support, training and counseling programs;
2. Timetables for achievement of the EEBOP objectives;
3. Procedures for handling complaints concerning reasonable accommodation in employment or harassment of persons with disabilities, and the means by which employees are advised of the procedures;
4. The use of exit interviews or other means to assess why employees who are self-identified persons with a disability leave on a voluntary basis; and

5. Development and implementation of internal monitoring and analysis mechanisms to be used to review, evaluate and, if needed, correct plan progress.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Amended by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Deleted former (b); recodified former (c) as (b), deleted the N.J.A.C. reference in the introductory paragraph and substituted "at all levels of the work force" for "in each EEOC job category" in 1.

**19:53-6.5 (Reserved)**

Amended by R.1995 d.310, effective June 19, 1995.

See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted provisions governing provisionally certified MBEs and WBEs.

Repealed by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Section was "Business section of an EEBOP".

**19:53-6.6 (Reserved)**

Amended by R.1993 d.538, effective November 1, 1993.

See: 25 N.J.R. 3690(a), 25 N.J.R. 4929(b).

Amended by R.1995 d.310, effective June 19, 1995.

See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted a provision governing provisionally certified MBEs and WBEs.

Repealed by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Section was "Atlantic City small businesses".

**19:53-6.7 EEBOP filing requirements; review and approval; revisions**

(a) Any entity which is an applicant for or holds a casino license shall file its initial EEBOP with the Commission prior to the start of actual construction of a casino hotel facility, the recruitment and employment of personnel necessary to undertake the business of the casino or hotel, or the filing of an application for casino licensure, whichever first occurs.

(b) After initial approval by the Commission, a casino licensee or applicant shall not be required to resubmit all or any part of the EEBOP for review or approval unless:

1. The EEBOP is voluntarily revised by the licensee or applicant pursuant to (c) below;
2. The Commission directs that the EEBOP be revised as a result of an EEBOP assessment hearing pursuant to N.J.A.C. 19:53-6.8; or
3. The Commission directs that the EEBOP be revised as a result of a special review of the EEBOP ordered pursuant to N.J.A.C. 19:53-6.9.

(c) A casino licensee or applicant may request the approval of the Commission to revise its EEBOP at any time. No material modification of an EEBOP may be implemented by a casino licensee or applicant until it has been approved by the Commission. Any request to revise an EEBOP shall be submitted at least 60 days in advance of the requested effective date of the change and shall include, without limitation, the following:

1. A clear and concise summary of any revisions, deletions or additions; and

2. A detailed explanation of the changes being proposed and their anticipated effect on the compliance of the casino licensee or applicant with the requirements of the Act and this chapter, which explanation shall include supporting data or documentation when available.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Amended by R.1997 d.112, effective March 3, 1997.

See: 28 N.J.R. 5169(b), 29 N.J.R. 795(a).

In (b)2, deleted "annual" preceding "EEBOP assessment hearing".

#### **19:53-6.8 EEBOP assessment hearing; demonstration of compliance through documentation of EEBOP implementation**

(a) Each casino licensee or applicant shall be required to demonstrate its compliance with the requirements of the Act and this chapter by participating in periodic assessment hearings concerning its performance under its approved EEBOP.

(b) An EEBOP assessment hearing for a casino licensee shall be scheduled as part of each casino license renewal hearing. A casino licensee operating under a renewed casino license shall also be required to participate in an interim EEBOP assessment hearing at the mid-point of the casino license term.

(c) EEBOP assessment hearings for a casino license applicant shall occur on a schedule to be set by the Commission, which schedule shall be based on the anticipated date of the initial casino licensure hearing of the applicant or, if a casino hotel is being built or renovated, the opening of the casino.

(d) Sixty days prior to the scheduled date of a casino license hearing or an interim EEBOP assessment hearing, the casino licensee or applicant shall submit a self-assessment of its performance under its approved EEBOP during the assessment period, including, as applicable and without limitation, the following:

1. An internal review and evaluation of each of the areas of the EEBOP where objectives were not achieved, including documentation of specific transactions or programs which were included in the EEBOP as a means to attain these objectives;

2. An analysis by the casino licensee or applicant as to why the particular objectives were not achieved;

3. An internal review and evaluation of each programmatic portion of its approved EEBOP as to which the Commission has directed an assessment; and

4. Modifications to the approved EEBOP proposed by the casino licensee or applicant as a means to improve its performance in deficient areas during the next EEBOP assessment period.

(e) Upon completion of an EEBOP assessment hearing for a casino licensee or applicant, the Commission may find that the casino licensee or applicant has complied with the obligations of the Act and this chapter if:

1. The casino licensee or applicant did implement and comply with the terms of its approved EEBOP during the assessment period; or

2. The casino licensee or applicant has in fact made good faith efforts to comply with its approved EEBOP and its failure to do so was based on occurrences which were beyond the control of the casino licensee or applicant.

(f) If, upon completion of an EEBOP assessment hearing, the Commission determines that a casino licensee or applicant has failed to comply with the requirements of the Act, this chapter or its approved EEBOP, the Commission may impose one or more of the sanctions authorized by N.J.A.C. 19:53-6.11.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Amended by R.1997 d.112, effective March 3, 1997.

See: 28 N.J.R. 5169(b), 29 N.J.R. 795(a).

EEBOP hearings previously referenced as annual hearings; deadlines amended throughout; and added (b)1 and 2.

Amended by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Rewrote the section.

Amended by R.2009 d.268, effective September 8, 2009.

See: 41 N.J.R. 2227(a), 41 N.J.R. 3314(a).

In (b), substituted "A" for "If a" and "at the mid-point of the casino license term." for "as follows."; deleted "is" preceding "operating" and "that has a term of more than two years, the casino licensee" preceding the second occurrence of "shall"; and deleted (b)1 and (b)2.

#### **19:53-6.9 Special EEBOP reviews and hearings**

(a) Notwithstanding any other provision of this chapter, the Commission may require a casino licensee or applicant to conduct a self assessment of all or any part of its approved EEBOP whenever the Commission has cause to question whether the EEBOP or the implementation of the EEBOP by the casino licensee or applicant is likely to achieve compliance with the obligations imposed by the Act and this chapter.

(b) Any casino licensee or applicant which is notified that a special review of its EEBOP shall be conducted pursuant to this section shall supply whatever documentation or reports are requested by the Commission. A special hearing on the EEBOP of the casino licensee or applicant may be ordered by the Commission at any time and shall be conducted under such terms and conditions as the Commission may direct. The sole purpose of such hearing shall be to determine whether the casino licensee or applicant should be required to make immediate modifications to its EEBOP consistent with the purposes of the Act and this chapter.

**19:53-6.10 On-site monitoring and inspections**

A representative of the Commission and a representative of the Division shall be entitled to enter the casino hotel, casino, casino simulcasting facility or any related facilities of a casino licensee or applicant for the purposes of determining whether the licensee or applicant is complying with the Act, this chapter and its approved EEBOP. In making such a determination, the Commission or Division shall be entitled to inspect or copy any relevant books or records.

**19:53-6.11 Sanctions**

(a) If the Commission determines that a casino licensee or applicant is in violation of any applicable provision of the Act, this chapter or its approved EEBOP, the Commission, as appropriate, may:

1. Impose penalties in accordance with N.J.S.A. 5:12-129;
2. Deny, suspend or revoke or refuse to renew the casino license;
3. Enter a cease and desist order which specifies the practice or contract to be discounted or altered by the casino licensee or applicant;

4. Issue public letters of reprimand or censure to be made a permanent part of the file of the casino licensee or applicant;

5. Assess appropriate civil penalties as allowed by the Act;

6. Refer to the Attorney General or his or her designee circumstances which may constitute violation of the "Law Against Discrimination," N.J.S.A. 10:5-1 et seq.;

7. Enforce in a court of law the applicable provisions of the Act, or join in or assist any enforcement proceeding initiated by an aggrieved person;

8. Impose license conditions; and

9. Take any other action authorized or permitted by the Act.

**19:53-6.12 (Reserved)**

Amended by R.1995 d.310, effective June 19, 1995.

See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted a provision governing provisionally certified MBEs and WBES.

Repealed by R.2002 d.186, effective June 17, 2002.

See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

Section was "Waiver of reporting requirements for casino licensees".