

**CHAPTER 53**

**EQUAL EMPLOYMENT AND BUSINESS OPPORTUNITY**

**Authority**

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

**Source and Effective Date**

R.2002 d.186, effective May 24, 2002.  
See: 34 N.J.R. 381(a), 34 N.J.R. 2145(a).

**Chapter Expiration Date**

Chapter 53, Equal Employment and Business Opportunity, expires on May 24, 2007.

**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Pursuant to Executive Order No. 66(1978), Chapter 53, Equal Employment Opportunity, was repealed by R.1988 d.392, effective August 15, 1988.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Pursuant to Executive Order No. 66(1978), Chapter 53, Equal Employment Opportunity, was repealed by R.1989 d.168, effective March 20, 1989.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Pursuant to Executive Order No. 66(1978), Chapter 53, Equal Employment Opportunity, was repealed and Chapter 53, Equal Employment and Business Opportunity, was adopted as new rules by R.1993 d.406, effective August 16, 1993.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: Source and Effective Date. See, also, section annotations.

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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.

"Chief executive officer" means:

1. As to casino licensees or applicants, the natural person located at a casino hotel facility who is ultimately responsible for the daily conduct of the hotel and gaming business of the casino licensee or applicant, regardless of the form of business association of the casino licensee or applicant or the particular title which the person holds.

2. As to casino service industry enterprise licensees or applicants, the natural person who bears ultimate responsibility for the organization and business activities of the enterprise.

"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".

### 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 employment 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).