

CHAPTER 53

EQUAL EMPLOYMENT AND BUSINESS OPPORTUNITY

Authority

N.J.S.A. 5:12-63, 69, 134, 135 and 184 through 190.

Source and Effective Date

R.1996 d.33, effective December 15, 1995.
See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Executive Order No. 66(1978) Expiration Date

Chapter 53, Equal Employment and Business Opportunity, expires on December 15, 2000.

Chapter Historical Note

Chapter 53, Equal Employment Opportunity, became effective January 23, 1978, with Subchapter 1, General Provisions, adopted as R.1978 d.16. See: 9 N.J.R. 603(c), 10 N.J.R. 83(a). Chapter 53 was amended by R.1978 d.172, effective May 25, 1978. See: 10 N.J.R. 211(a), 10 N.J.R. 305(d).

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

Chapter 53 was amended by R.1989 d.168, effective March 20, 1989. See: 21 N.J.R. 18(b), 21 N.J.R. 781(a). Further amendments were made by R.1989 d.414, effective August 7, 1989. See: 21 N.J.R. 1507(a), 21 N.J.R. 2301(a). Further amendments were made by R.1989 d.528, effective October 16, 1989. See: 21 N.J.R. 1823(a), 21 N.J.R. 3314(c). Further amendments were made by R.1990 d.213, effective April 16, 1990. See: 22 N.J.R. 332(a), 22 N.J.R. 1272(a). Further amendments were made by R.1993 d.37, effective January 19, 1993. See: 24 N.J.R. 3695(a), 25 N.J.R. 348(b). Pursuant to Executive Order No. 66(1978), Chapter 53 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).

Chapter 53, Equal Employment Opportunity, was repealed and Chapter 53, Equal Employment and Business Opportunity, was adopted as new rules by R.1993 d.406, effective August 16, 1993.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 was readopted as R.1996 d.33, effective December 15, 1995. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 19:53-1.1 Scope, policy and purpose
- 19:53-1.2 Definitions
- 19:53-1.3 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
- 19:53-1.5 Advisory boards
- 19:53-1.6 Powers of the Commission; effect of rules

- 19:53-1.7 Enforcement and compliance; role of the Division
- 19:53-1.8 Severability

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
- 19:53-2.2 Obligation of casino licensee or applicant to monitor all construction activity
- 19:53-2.3 Women and minority employment goals for the construction work force of casino licensees and applicants
- 19:53-2.4 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
- 19:53-2.6 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
- 19:53-2.8 Reporting obligations of construction contractors and subcontractors
- 19:53-2.9 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 Annual report on construction contractor and subcontractor work force of casino licensee or applicant; relation to annual EEBOP 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
- 19:53-3.2 Equal employment and business opportunity obligations of all casino service industry enterprise licensees and applicants
- 19:53-3.3 Affirmative action obligations of casino service industry enterprise licensees and applicants which have 50 or more employees in New Jersey
- 19:53-3.4 Report by casino service industry enterprise licensees and applicants on the composition of their New Jersey work force
- 19:53-3.5 Sanctions

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
- 19:53-4.2 Reasonable accommodation in employment for persons with disabilities
- 19:53-4.3 Affirmative action obligations of casino licensees and applicants concerning the operations work force
- 19:53-4.4 Women and minority employment goals for the operations work force of casino licensees and applicants
- 19:53-4.5 Quarterly report on the affirmative action efforts of casino licensees concerning the operations work force

- 19:53-4.6 Annual report by casino licensee or applicant on the composition of its operations work force; relation to annual EEBOP assessment

SUBCHAPTER 5. EQUAL BUSINESS OPPORTUNITY AND AFFIRMATIVE ACTION OBLIGATIONS OF CASINO LICENSEES AND APPLICANTS

- 19:53-5.1 Background and general purposes
 19:53-5.2 Equal business opportunity obligation of all casino licensees and applicants
 19:53-5.3 Participation goals for casino licensee purchases of goods and services from minority and women businesses
 19:53-5.4 Commission directory of certified minority and women business enterprises; removal from directory; obligation to obtain registration or license
 19:53-5.5 Determination of casino licensee net disbursements for goods and services and disbursements to MBEs and WBEs
 19:53-5.6 Valuation of casino licensee disbursements for bus business
 19:53-5.7 Quarterly casino licensee disbursement reports
 19:53-5.8 Annual report by casino licensees on disbursements to WBEs and MBEs; relation to annual EEBOP assessment
 19:53-5.9 Required reporting adjustments for enterprises removed from the Commission MBE/WBE Directory

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
 19:53-6.2 General regulatory section of an EEBOP
 19:53-6.3 Construction section of an EEBOP
 19:53-6.4 Operations work force section of an EEBOP
 19:53-6.5 Business section of an EEBOP
 19:53-6.6 Atlantic City small businesses
 19:53-6.7 EEBOP filing requirements; review and approval; revisions
 19:53-6.8 Annual EEBOP assessment hearing; statistical demonstration of compliance with obligations; demonstration of compliance through documentation of EEBOP implementation
 19:53-6.9 Special EEBOP reviews and hearings
 19:53-6.10 On-site monitoring and inspections
 19:53-6.11 Sanctions
 19:53-6.12 Waiver of reporting requirements for casino licensees

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 and by encouraging businesses to achieve a balanced representation of employees at all levels of the work force and to contract with and purchase goods and services from all persons. Consistent with this public policy, the Act and the rules of the Commission empower the Commission to monitor and evaluate the good faith efforts of all licensees and applicants to achieve these goals.

(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 women, minorities and persons with disabilities. Finally, these rules establish affirmative action requirements for casino licensees with regard to the purchase of goods and services from certified minority and women business enterprises.

Amended by R.1995 d.910, 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.

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.

"Adjusted gross disbursements" means gross disbursements minus allowable administrative costs and allowable direct labor costs as defined in N.J.A.C. 19:53-5.5.

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

"Apprentice" means a worker who is classified by a union or other party acceptable to the Commission as having experience and skills used in a particular construction craft or occupation, but lacking the skills to be qualified as a journeyworker.

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

"Bus" means any "autobus" as defined in N.J.S.A. 48:4-1; provided, however, that for purposes of this chapter such term shall include any autobus engaged in intrastate or interstate commerce.

"Certified MBE" or "certified WBE" means any business enterprise which has been certified by the Department of Commerce and Economic Development pursuant to N.J.A.C. 12A:11 as a minority business enterprise or a women business enterprise, respectively.

"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.

“DCED” means the New Jersey Department of Commerce and Economic Development.

“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.

“EEOC job categories” is defined in N.J.A.C. 19:53-1.3.

“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 (EE-BOP)” 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.

“Gross disbursements” means the total amount of money spent for any purpose whatsoever by a casino licensee.

“Journeyworker” means a worker who has been certified by a union or other party acceptable to the Commission as having mastered a craft or trade.

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

“MBE” means a minority business enterprise.

“Minority” means a person who is:

1. African American, who is a person having origins in any of the black racial groups in Africa;
2. Hispanic, who is a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean Island, regardless of race; or
3. Asian American, who is a person having origins in any of the original peoples of the Far East, Southeast Asia, Indian Subcontinent, Hawaii, or the Pacific Islands.

“Minority business” is defined in N.J.A.C. 19:53-5.4.

“Net disbursement” is defined in N.J.A.C. 19:53-5.5.

“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.

“Project” means the objective of a construction contract or subcontract. The same project may involve more than one contract or subcontract.

“Project Labor Report” is defined in N.J.A.C. 19:53-2.8.

“Project Labor Report Summary” is defined in N.J.A.C. 19:53-2.4.

“Project Status Report” is defined in N.J.A.C. 19:53-2.4.

"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.

"WBE" means women business enterprise.

"Women business enterprise" is defined in N.J.A.C. 19:53-5.4.

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".

19:53-1.3 Classification of employees; use of EEOC job categories

(a) Whenever the rules in this chapter require a licensee or applicant to classify employees or job titles by job category, the licensee or applicant shall use the nine broad occupational classifications developed by the U.S. Equal Employment Opportunity Commission (EEOC), as adapted or modified by the rules of the Commission in (b) below. When required, the licensee or applicant shall also provide data concerning the three subclasses of Officials and Managers as described in (b) below.

(b) The EEOC job category classifications and subclassifications to be used by licensees and applicants are, in order, as follows:

1. "Officials and Managers" are occupations in which employees set broad policies, exercise overall responsibility for implementation of these policies, direct individual departments or special phases of the organization's operations, provide specialized consultations on a regional, district or area basis, or supervise or assist in the supervision of specific work units. This category shall include, without limitation, occupations such as chief executive officer, president, vice president, director, assistant director, equal opportunity officer, manager, assistant manager, pit boss, shift supervisor, floorperson and boxperson. This category shall consist of three subclassifications defined by compensation range as follows:

i. "Subclass I" are positions whose actual salaries are \$75,000 and above.

ii. "Subclass II" are positions whose actual salaries are from \$35,000 to \$74,999.

iii. "Subclass III" are positions whose actual salaries are less than \$35,000.

2. "Professionals" are occupations which require specialized knowledge which is usually acquired through college training, work experience or other training which provides comparable knowledge. Examples include human resources or labor relations personnel and dealers.

3. "Technicians" are occupations which require a combination of basic scientific or technical knowledge and manual skills which can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Examples include computer programmers and operators, stage and sound technicians and slot mechanics.

4. "Salesworkers" are occupations engaging wholly or primarily in selling goods or services, such as sales clerks, cashiers, player development representatives, marketing representatives and hosts.

5. "Office and Clerical" are occupations in which workers are responsible for internal and external communications and the recording and retrieval of data or information and other paperwork required in an office. Examples include secretaries, bookkeepers and telephone operators.

6. "Craftpersons" are occupations in which workers perform jobs generic to the building and construction trades and which are covered by collective bargaining agreements. Such jobs require special manual skills and a detailed and comprehensive knowledge of the processes involved in the work, which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Examples include journeymen in the building trades.

7. "Operatives" are occupations in which there is an intermediate skill level which can be mastered in a few weeks and requires only limited training, such as auto services and parking attendants, seamstress, butchers and carvers, chauffeurs, laundry and drycleaning workers and boiler room operators.

8. "Laborers" are occupations which require the performance of elementary duties which may be learned in a few days and require the application of little or no independent judgment, such as car washers, groundskeepers, and laborers performing lifting, digging, mixing, and loading.

9. "Serviceworkers" are occupations in which workers perform duties which result in or contribute to the comfort and convenience of the general public such as cleaners, cooks, porters, and food and cocktail servers.

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).

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 women, minorities and persons with disabilities, that the casino licensee makes affirmative efforts to achieve the applicable participation goals for business with certified MBEs and WBEs, 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 or affirmative action; 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 meet any applicable employment goals;
 - 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;

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;

3. Act as a liaison and to provide assistance to the Commission and the Division in the enforcement 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 activities of the licensee or applicant with certified MBEs and WBEs in contracting and purchasing; and

4. Act as a liaison and provide assistance to the Department of Commerce and Economic Development with respect to its responsibilities to certify MBEs and WBEs.

(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 or affirmative action;

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 including, without limitation, information concerning:

- i. Work force composition;
- ii. Good faith efforts to meet any applicable employment goals;
- iii. Employment, promotion, demotion or transfer of skilled construction worker;
- iv. Recruitment, recruitment advertising and union referral efforts;
- v. Layoff, recall or termination of construction workers;
- vi. Rates of pay or other forms of compensation;
- vii. Selection for training programs; and
- viii. Grievance procedures for, and disposition of, complaints related to equal employment opportunity.

(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 and affirmative action 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 and affirmative action goals.

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 29, 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).

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 opportunity for all persons and the participation of certified MBEs and WBEs in purchasing and contracting 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.

19:53-5.2 Equal business opportunity obligation of all casino licensees and applicants

Each casino licensee and applicant shall afford equal business opportunity to all persons who do or wish to do business with the licensee or applicant in connection with its casino hotel, casino, casino simulcasting facility or any related facility.

19:53-5.3 Participation goals for casino licensee purchases of goods and services from minority and women businesses

(a) Beginning on the date of receipt of its casino license, every casino licensee shall make a good faith effort to spend each year at least five percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-5.5, with certified MBEs and WBEs.

(b) Effective January 1, 1991, or three years after the receipt of its casino license, whichever is later, every casino licensee shall make a good faith effort to spend each year at least 10 percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-5.5, with certified MBEs and WBEs.

(c) Effective January 1, 1994, or six years after the receipt of its casino license, whichever is later, every casino licensee shall make a good faith effort to spend each year at least 15 percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-5.5, with certified MBEs and WBEs.

(d) Every casino licensee shall make a good faith effort, considering the availability of both groups, to distribute the dollar value of its contracts for goods and services equitably between certified MBEs and certified WBEs.

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.

19:53-5.4 Commission directory of certified minority and women business enterprises; removal from directory; obligation to obtain registration or license

(a) Any enterprise that is currently certified by the Department of Commerce and Economic Development as an MBE or WBE shall be listed in the Commission's directory of certified MBEs and WBEs (Commission MBE/WBE Directory). Any enterprise that has its MBE or WBE certification revoked by DCED or that fails to maintain its DCED certification shall be removed immediately from the Commission MBE/WBE Directory. The Commission shall provide assistance to MBEs and WBEs in applying for certification by the DCED.

(b) If it is determined by the Commission or the DCED, upon the denial of certification by the DCED, or at any

time before or after such decision, that an enterprise has intentionally misrepresented material facts in its application for DCED certification, the Commission, after an appropriate hearing pursuant to N.J.A.C. 19:42, shall remove the enterprise from the Commission MBE/WBE directory. In addition, the Commission may prohibit any such enterprise from transacting further business with any casino licensee or applicant for a period of five years. Such prohibition may be applied to all owners, principals, officers and employees of the enterprise.

(c) Certification of an enterprise as an MBE or WBE does not in any way relieve that enterprise or any casino licensee of its obligation to comply with any requirement of the Act or the Commission's rules concerning registration or licensure of enterprises doing business with casino licensees.

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).

Rewrote section; formerly "Provisional certification of minority and women businesses".

19:53-5.5 Determination of casino licensee net disbursements for goods and services and disbursements to MBEs and WBEs

(a) In determining the net disbursements for goods and services made by a casino licensee during any period and the percentage thereof made with certified MBEs and WBEs, a casino licensee shall first record the amount of its gross disbursements during the period, including bus business, and then determine its adjusted gross disbursements by deducting its allowable administrative costs and allowable direct labor costs for the period.

(b) Allowable administrative costs are defined as follows:

1. Fees paid to governmental and quasi-government organizations such as fees paid to the Commission, the Athletic Control Board, the Securities and Exchange Commission, the Department of Motor Vehicles, and the Alcoholic Beverage Control Board; payments made to the United States Post Office for the cost of postage; court costs; and Department of Community Affairs permit and license fees;

2. Refunds paid to customers; cash awards and settlements; room deposit refunds; and casino licensee donations to charities recognized by the Internal Revenue Service;

3. Dues and fees for professional associations, trade publications and journals; and

4. Reimbursements for employee travel, food and lodging. This deduction shall not include the cost of conferences, expositions and seminars.

(c) Allowable direct labor costs are defined as follows:

1. Net payroll, which is the cost of salaries, wages, overtime, cash bonuses, director's fees and incentive pay; and

2. Payments related to: workman's compensation claims; payments for employee benefits packages such as 401k contributions and other withholdings such as credit union deductions and employee charitable deductions; payments made to employee wage garnishment agencies pursuant to a court order; any employee payroll deductions requested by the employee; and union fees and dues including membership dues, health and welfare, pension, severance, education, legal and annuity fund payments.

(d) The total cost of the following disbursements shall then be deducted from adjusted gross disbursements to determine net disbursements for the period:

1. Utilities and taxes;
2. Financing costs, such as mortgages, loans or any other type of debt;
3. Medical insurance paid directly by the casino licensee on behalf of its employees which, for the purposes of determining net disbursements, shall not include any other insurance such as general or property liability insurance aviation, auto or crime insurance;
4. Dues and fees to the Casino Association of New Jersey and Central Credit of New Jersey, Inc.;
5. Fees and payments to a parent or affiliated company of the casino licensee other than those that represent fees and payments for goods and services supplied by non-affiliated persons through an affiliated company for the use or benefit of the casino licensee; and
6. Rents paid for real property and any payments constituting the price of an interest in real property as a result of a real estate transaction which, for the purposes of determining net disbursements, shall not include fees paid incidental to the real estate transaction, such as fees for brokers who represent the casino licensee, finder's fees, title insurance or other insurance.

(e) A casino licensee may fulfill up to 70 percent of the MBE and WBE participation goals established by N.J.A.C. 19:53-5.3, or any part thereof, by requiring contractors to award portions of their contracts to certified MBEs and WBEs, to the extent that dollars are actually spent with certified MBEs and WBEs. In determining the good faith efforts of a casino licensee to meet its MBE and WBE participation goals, no consideration shall be given to dollars spent by casino contractors with certified MBEs and WBEs in excess of this 70 percent limitation. Any casino licensee seeking credit for subcontracts awarded to certified MBEs or WBEs by a casino contractor shall provide proof of the amount of the disbursements to the Commission. Such proof shall include:

1. Executed copies of the contract and subcontract;
2. Copies of any payment orders and checks made payable to the certified MBE or WBE subcontractor or copies of computer generated records which indicate that such payments were made; and
3. Any other information the Commission may require concerning the circumstances of a particular contract or subcontract.

(f) The percentage of disbursements awarded to certified MBEs and WBEs by a casino licensee during any period shall be determined by dividing the total amount of such disbursements made during the period by the casino licensee and by any contractor pursuant to an agreement authorized under (e) above, by the net disbursements of the casino licensee for the period as determined in (a) and (d) above.

(g) When recording or reporting the dollar value of its disbursements for goods or services with MBEs and WBEs, a casino licensee shall record or report a disbursement with an enterprise that has been certified as both an MBE and WBE only once. If a casino licensee has an agreement with a contractor in which the contractor agrees to award a portion of its contract to certified MBEs or WBEs pursuant to (e) above and the contractor itself is a certified MBE or WBE, a casino licensee shall not claim credit for any disbursement to the certified MBE or WBE subcontractor if a corresponding credit is claimed for the casino contract.

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.

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

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

19:53-5.6 Valuation of casino licensee disbursements for bus business

(a) When determining the amount of gross disbursements or net disbursements made by a casino licensee during any period, the total dollar value of the bus business to be reported by the casino licensee during the period, for the purposes of this subchapter, shall be determined by totalling all direct and indirect payments made to bus owners or operators by the casino licensee during the period.

(b) The amount of bus business to be reported pursuant to this section shall be equal to the value of the direct or indirect compensation provided to the bus owner or operator by the casino licensee. Examples of compensated bus business which must be reported pursuant to this section shall include, without limitation, arrangements whereby:

1. The casino licensee directly charters and pays for the use of the bus;
2. The casino licensee indirectly pays for the use of the bus by reimbursing the user of the bus specifically for the cost of transportation;

3. The casino licensee reimburses a third party for providing the bus for the use of other persons; or

4. The casino licensee pays for the cost of advertising or other goods and services which directly benefit the owner or operator of the bus.

(c) The amount of bus business to be reported pursuant to this section shall not include arrangements whereby a casino licensee agrees to provide complimentary goods or services to the passengers of a bus owner or operator in exchange for the promise of the bus owner or operator to bring its passengers to the casino hotel facility of the casino licensee.

(d) When recording or reporting the dollar value of its bus business, a casino licensee may record or report monies spent with an enterprise that has been certified as both an MBE and a WBE only once.

19:53-5.7 Quarterly casino licensee disbursement reports

(a) Each casino licensee shall submit to the Commission and the Division, in a format prescribed by the Commission, a quarterly report on its purchases of goods and services, including bus business, which shall consist of the following information recorded in accordance with the requirements of N.J.A.C. 19:53-5.5:

1. The total dollar value of gross disbursements;
2. The total dollar value of allowable administrative costs, as defined in N.J.A.C. 19:53-5.5, deducted from gross disbursements;
3. The total dollar value of allowable direct labor costs, as defined in N.J.A.C. 19:53-5.5, deducted from gross disbursements;
4. The total dollar value of adjusted gross disbursements for goods and services made by the casino licensee during the quarter;
5. The total dollar value of net disbursements for goods and services made by the casino licensee during the quarter;
6. The name and vendor identification number of each certified MBE or WBE with whom the casino licensee did business during the quarter, as well as:
 - i. The certification status of the enterprise (MBE or WBE);
 - ii. The total dollars disbursed to the enterprise; and
 - iii. The total amount of dollars, if any, which were disbursed to the certified MBE or WBE by a contractor pursuant to an agreement as described in N.J.A.C. 19:53-5.5(e);

7. The total dollar amount of disbursements made to certified MBEs and WBEs during the quarter by either the casino licensee or its contractors, listed by MBEs,

WBEs and combined total, and the percentage of the net disbursements reported pursuant to (a)5 above that each listed amount represents; and

8. The total dollar amount of disbursements made during the quarter to certified MBEs and WBEs by contractors pursuant to agreements as described in N.J.A.C. 19:53-5.5(e).

(b) The quarterly reports required by this section shall be based on calendar quarters and shall be filed with the Commission and the Division by the last business day of the month following the expiration of the calendar quarter. The initial quarterly report of any casino licensee which receives its casino license on a date other than the beginning of the calendar quarter shall be based on the partial calendar quarter.

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.

19:53-5.8 Annual report by casino licensees on disbursements to WBEs and MBEs; relation to annual EEBOP assessment

(a) Each casino licensee shall file an annual MBE/WBE disbursement report with the Commission and Division at least four months prior to the scheduled date of its EEBOP assessment hearing or casino license renewal hearing. The annual MBE/WBE disbursement report shall contain a yearly summary of the information required by N.J.A.C. 19:53-5.7(a)1 through 5, 7 and 8 for the four calendar quarters immediately preceding the filing deadline for the annual MBE/WBE disbursement report.

(b) Each casino licensee whose annual MBE/WBE disbursement report does not demonstrate that the casino licensee achieved the applicable participation goals specified in N.J.A.C. 19:53-5.3 shall be required to document its good faith efforts to implement and comply with the business section of its EEBOP in accordance with the provisions of N.J.A.C. 19:53-6.

19:53-5.9 Required reporting adjustments for enterprises removed from the Commission MBE/WBE Directory

(a) A casino licensee shall be required to report separately in the MBE or WBE disbursement sections of its current quarterly disbursement report, required pursuant to N.J.A.C. 19:53-5.7, or its current annual disbursement report, required pursuant to N.J.A.C. 19:53-5.8, any disbursement made to a certified MBE or WBE which is removed from the Commission MBE/WBE Directory prior to the submission of the report to the Commission and the Division.

(b) In determining the good faith efforts of a casino licensee to implement and comply with the provisions of its

approved EEBOP pursuant to N.J.A.C. 19:53-6.8, a casino licensee may receive credit for any disbursement made to an MBE or WBE which was certified at the time of the disbursement even if such enterprise is subsequently removed from the Commission MBE/WBE Directory unless the casino licensee knew or should have known at the time of the disbursement that the MBE or WBE did not qualify for certification.

(c) Any disbursement to an MBE or WBE which is removed from the Commission MBE/WBE Directory during the current reporting period shall not be included in any report prepared by the Commission or any casino licensee concerning actual disbursements made to certified MBEs and WBEs.

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.

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, equal business opportunity and affirmative action objectives and goals 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 license applicant shall include Sections, at a minimum, addressing the first three basic subject matter areas listed below, and every EEBOP prepared by a casino licensee shall contain sections addressing each of the following areas:

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

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 and affirmative action 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