

CHAPTER 53
EQUAL EMPLOYMENT AND BUSINESS
OPPORTUNITY

Authority

N.J.S.A. 5:12-63, 69, 75, 134 and 135.

Source and Effective Date

R.1993 d.406, effective August 16, 1993.
 See: 25 N.J.R. 1675(a), 25 N.J.R. 3843(b).

Executive Order No. 66(1978) Expiration Date

Chapter 53, Equal Employment and Business Opportunity, expires on December 15, 1995.

Chapter Historical Note

Chapter 53, originally Equal Employment Opportunity, became effective 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). 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). 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). Amended by R.1989 d.414, effective August 7, 1989. See: 21 N.J.R. 1507(a), 21 N.J.R. 2301(a). Amended by R.1989 d.528, effective October 16, 1989. See: 21 N.J.R. 1823(a), 21 N.J.R. 3314(c). Amended by R.1990 d.213, effective April 16, 1990. See: 22 N.J.R. 332(a), 22 N.J.R. 1272(a). Amended 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Chapter 53 was repealed and new rules were adopted as R.1993 d.406. 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 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 and minorities. Finally, these rules establish affirmative action requirements for casino licensees with regard to the purchase of goods and services from certified and provisionally certified minority and women business enterprises.

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.

“Provisionally certified MBE” or “provisionally certified WBE” means an enterprise which has attested to its status as an MBE or WBE, respectively, pursuant to the provisions of N.J.A.C. 19:53-5.4.

“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.

"Successor business" means a business enterprise which satisfies the definition of MBE or WBE set forth in N.J.A.C. 19:53-5.4 but, within the past two years, either was acquired as an ongoing business or more than 50 percent of the assets of the business, as valued in accordance with generally accepted accounting principles, were acquired, other than by inheritance, from a person or persons in whose ownership or control the business enterprise would not qualify as an MBE or WBE.

"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).

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. Unless otherwise specified in an approved EEBOP, 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 and cashiers.

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 workers 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).

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 and minorities for positions in which the licensee or applicant is below the applicable employment goals, that the casino licensee makes affirmative efforts to achieve the applicable participation goals for business with certified and provisionally certified MBEs and WBEs, that a policy advocating the employment and advancement of persons with disabilities is promulgated and enforced, 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 endorsed as such.

(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 persons with disabilities and rehabilitated offenders;
 - 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 and provisionally 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 and Division 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 equal opportunity officer designated by the casino licensee or applicant shall have a minimum of three years experience in equal employment and business opportunity plan implementation or affirmative action enforcement, which experience may not be waived, and either:

- i. Two years of related experience drawn from any of the following areas: employment, recruitment, training, labor relations, employee relations, employee development, compensation and benefits administration, law, or statistics; or
- ii. A bachelor's degree from an accredited institution.

2. 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.

3. 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.

4. 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.

5. 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.

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, disabled persons, 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 and provisionally 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 the Disabled to consider issues affecting disabled persons and the casino industry. This advisory board shall consist of members of the regional disabled community, representatives of organizations which advance the interests of the disabled 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 disabled persons 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 disabled persons 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).

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. sec. 2000(e), or any other law 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. Ensure that all contractors and subcontractors are notified of their obligation to submit a Project Labor Report pursuant to N.J.A.C. 19:53-2.8 and to confirm that such reports are in fact submitted by comparison of the contractors and subcontractors identified on these reports with those listed on the Project Status Report required pursuant to N.J.A.C. 19:53-2.4;

2. Require the evaluation of the information contained in the Project Labor Reports to ensure their complete, accurate and timely submission, and compliance by all contractors and subcontractors with their obligations under this subchapter;

3. 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;

4. 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;

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

6. Encourage contractors and subcontractors to employ women and minorities at all levels of the work force;

7. Ensure the documentation of the activities and efforts of contractors and subcontractors to obtain minority and female participation in the construction work force as required by N.J.A.C. 19:53-2.8 and 2.9 when the construction work force of the contractor or subcontractor does not satisfy the women and minority employment goals established by N.J.A.C. 19:53-2.3;

8. Ensure that certified and provisionally certified MBEs and WBEs are afforded equal opportunity to compete in the bidding for construction contracts and subcontracts; and

9. Track the participation of certified and provisionally certified MBEs and WBEs in construction projects.

19:53-2.3 Women and minority employment goals for the construction work force of casino licensees and applicants

(a) Unless otherwise specified in an approved EEBOP pursuant to N.J.A.C. 19:53-6, the women and minority employment goals for the construction work force of a casino licensee or applicant and its individual contractors and subcontractors shall be five percent for women journeyworkers and apprentices and 14 percent for minority journeyworkers and apprentices.

(b) Subject to the availability of comparable occupational data for Atlantic County concerning levels of employment of women and minorities in the skilled building or construction trades, the Commission may promulgate employment goals for women and minorities in individual skilled building or construction trades. If individual skill or trade goals are promulgated, each specific skill or trade goal shall be used by a casino licensee or applicant, contractor or subcontractor instead of the goals specified in (a) above.

Amended by R.1993 d.538, effective November 1, 1993.
See: 25 N.J.R. 3690(a), 25 N.J.R. 4929(b).

19:53-2.4 Reporting obligations of casino licensees and applicants concerning the construction work force

(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 file each of the following monthly reports or submissions regarding its construction work force with the Commission and Division:

1. A Project Labor Report Summary, which shall include all required information contained on each Project Labor Report received by the casino licensee or applicant from contractors or subcontractors pursuant to N.J.A.C. 19:53-2.8 during the preceding month. The Summary shall be submitted in a format prescribed by the Commission and shall be filed by the 15th day of the month.

2. A Project Status Report, which shall describe all construction projects involving contractors or subcontractors which have started or are scheduled to start prior to the filing of the next Project Status Report and shall include: the name and project number for each project; a listing of all contractors and subcontractors working or scheduled to work on each project; the name of any certified or provisionally certified MBE or WBE working or scheduled to work on each project, and the scheduled or actual start date and anticipated finish date of construction. The Project Status Report shall be submitted in a format prescribed by the Commission and shall be filed in accordance with a schedule proposed by the casino licensee or applicant and approved by the Commission; and

3. Copies of all documentation prepared by contractors or subcontractors of activities and efforts to improve minority and female representation, required pursuant to N.J.A.C. 19:53-2.8 or 2.9, and submitted to the casino licensee or applicant during the preceding month. The documentation shall be submitted to the Commission and Division by the casino licensee or applicant by the 15th day of the month.

(b) 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 file an Annual Summary of Construction Activity with the Commission and Division at least four months prior to the scheduled date of the EEBOP assessment hearing, initial casino license hearing or casino license renewal hearing. The Annual Summary of Construction Activity shall include a summary of all construction projects started by the casino licensee or applicant during the four calendar quarters immediately preceding the filing deadline for the Annual Summary of Construction Activity. The summary shall, without limitation, describe:

1. The start and actual or anticipated finish date for each construction project;
2. The project number or numbers assigned to each construction project;
3. All contractors and subcontractors providing services on each construction project; and
4. The total dollar amount of construction expenditures made with certified or provisionally certified MBE or WBE construction firms.

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 and N.J.A.C. 19:53-2.6 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 affirmative action survey form and 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 their consonance with the rules on pre-employment inquiries and procedures, revise both documents as guided by the review and comments of DCR, and file a copy of the final version of each 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 the race, gender and job title of those employees who underwent skill enrichment training prior to opening;

6. A summary of the strategies and actual techniques used to hire women and minorities 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 colleges, executive search firms or organizations, and advertisements in minority-oriented and female-oriented media;

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.

19:53-2.6 Special reporting obligations applicable to a casino license applicant building a casino hotel facility

(a) In addition to complying with all of the reporting requirements of N.J.A.C. 19:53-2.4 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 reporting requirements imposed by this section. These reports shall be filed with the Commission in accordance with a format to be prescribed by the Commission.

(b) An Applicant Flow Report shall identify by gender and race the number of persons who have applied for each job title of the casino license applicant. The report shall include all persons who have applied for a position from the first day the casino license applicant began accepting applications through the date on which the report is prepared. The report shall be submitted in the following two formats:

1. The data shall be sorted by each of the 12 EEOC job categories and subclasses in descending order as defined in N.J.A.C. 19:53-1.3 and, within each job category or subclass, by job title in alphabetical order. Subtotals by EEOC job category or subclass and a total for all 12 EEOC job categories and subclasses shall also be provided.

2. The data shall be sorted by department in alphabetical order and, within each department, by job title in alphabetical order, with the EEOC job category or subclass of each job title indicated adjacent to it. Totals for each department shall also be provided.

(c) A Hired and Pending Report shall identify by gender and race the number of employees who have been hired and the number of applicants to whom an offer to hire was made conditioned upon the opening of the casino hotel. The report shall be submitted in the two formats described in (b)1 and 2 above.

(d) An Employee Information Report shall identify by gender and race the number of employees who are hired and on the payroll of the casino license applicant. After the filing of the initial Employee Information Report, the report shall be submitted by the 15th day of the month following the reporting period.

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."

(c) In addition to the contract or subcontract language required by (a) or (b) above, every construction contractor or subcontractor shall also include the following language in every contract or subcontract which concerns the construction of a casino hotel, casino, casino simulcasting facility or any related facility:

"The contractor (or subcontractor) agrees to attempt in good faith to employ women and minority workers in each construction skill or trade consistent with the applicable employment goals established pursuant to N.J.A.C. 19:53-2.3 and to file in a complete, accurate and timely manner all reports and documentation required by the rules of the New Jersey Casino Control Commission."

19:53-2.8 Reporting obligations of construction contractors and subcontractors

(a) Unless otherwise specified in the construction section of an approved EEBOP of a casino licensee or applicant pursuant to N.J.A.C. 19:53-6, each contractor or subcontractor involved in the construction of a casino hotel, casino, casino simulcasting facility or any related facility for that casino licensee or applicant shall be required to file or maintain the following reports or records:

1. A Project Labor Report (PLR) shall be prepared on a weekly basis and shall describe the unionized work force used by the contractor or subcontractor on all construction projects of the casino licensee or applicant during the week. The PLR shall indicate the number of apprentices and journeyworkers employed by the contractor or subcontractor in each skilled building and construction trade and the number of hours each worker, listed by race and gender, was employed during the week. The PLR shall be completed on a form prescribed by the Commission and supplied to the contractor or subcontractor by the casino licensee or applicant. The PLR shall be submitted by the contractor or subcontractor to the equal opportunity officer of the casino licensee or applicant on a schedule established by the casino licensee or applicant which allows inclusion of all PLRs on its Project Labor Report Summary.

i. If a contractor or subcontractor is performing on a construction project where the total cost of the project to the casino licensee or applicant is estimated to be at least two million dollars, the contractor or subcontractor shall be required to submit a PLR which relates solely to that project; all other construction employment by the contractor or subcontractor on projects for that casino licensee or applicant may be reported on a single PLR.

ii. Each casino licensee or applicant shall be required to notify a contractor or subcontractor when a separate PLR is required pursuant to (a)1i above.

2. Documentation shall be maintained of all requests by the contractor or subcontractor to labor unions or other worker representatives to supply qualified women and minorities for employment at casino licensee or applicant construction sites. Copies of this documentation shall be applied to the equal opportunity officer of the casino licensee or applicant.

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

(a) The Commission shall, on a quarterly basis, review and assess the monthly Project Labor Report Summaries submitted by casino licensees or applicants pursuant to N.J.A.C. 19:53-2.4 and any other available documentation concerning the efforts of contractors and subcontractors to meet the applicable employment goals for women and minorities established by N.J.A.C. 19:53-2.3.

(b) Any contractor or subcontractor which fails to meet the applicable employment goals for women and minorities during a calendar quarter, as measured by the hours of employment reported on the Project Labor Report Summaries of the contractor or subcontractor, shall be notified by the Commission that the contractor or subcontractor shall have two additional calendar quarters in which to comply with the goals or document its good faith efforts to do so.

(c) If a contractor or subcontractor which has been notified pursuant to (b) above fails, by the end of the six month compliance review period, to meet the employment goals for women and minorities or to submit documentation of its good faith efforts to meet the goals, the issue of compliance shall be referred to the Division for investigation as to whether a violation of the Act or these rules has occurred. If, upon the filing of a complaint by the Division against a contractor or subcontractor, the Commission finds that a violation has occurred, the contractor or subcontractor may be subject to any of the sanctions enumerated in N.J.S.A. 5:12-129 and N.J.A.C. 19:53-3.5.

19:53-2.10 Annual report on construction contractor and subcontractor work force of casino licensee or applicant; relation to annual EEBOP assessment

(a) The Commission shall, based on the information derived from the reports required by N.J.A.C. 19:53-2.4(a)1, supply each casino licensee or applicant and the Division with an annual construction contractor and subcontractor work force report for the casino licensee or applicant four months prior to the scheduled date of the EEBOP assessment hearing, initial casino license hearing or casino license renewal hearing of the casino licensee or applicant. The annual construction contractor and subcontractor work force report shall indicate, based on percentages derived from the hours of employment reported, the number of apprentices and journeyworkers, listed by race and by gender, employed by the contractors and subcontractors of the casino licensee or applicant in each building skill or construction trade as of the end of the calendar quarter immediately preceding the release date of the annual work force report. Each casino licensee or applicant shall have 30 days from the release date of the report to challenge the information contained therein.

(b) Each casino licensee or applicant whose annual construction contractor and subcontractor work force report does not demonstrate that the casino licensee or applicant achieved the applicable employment goals established by N.J.A.C. 19:53-2.3 for the year shall be required to document its efforts to implement and comply with the construction section of its EEBOP in accordance with the provisions of N.J.A.C. 19:53-6.

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 licensure, 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 women and minorities are recruited and employed at all levels of its work force and treated during employment without regard to their female or minority status. 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 organizations which serve the interest of promoting equal employment opportunity for women and minorities;

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 women and minority candidates for employment; 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.

19:53-3.4 Report by casino service industry enterprise licensees and applicants on the composition of their New Jersey work force

(a) Each casino service industry enterprise license applicant shall submit a statistical report on the composition of its work force in New Jersey at the time of filing of its application for initial licensure.

(b) Each casino service industry enterprise licensee shall submit a statistical report on the composition of its work force in New Jersey with its application for license renewal.

(c) The reports required by (a) and (b) above shall be submitted on forms provided by the Commission and shall indicate the number of employees by race and by gender working in each EEOC job category and subclass.

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 Obligations of casino licensees and applicants concerning persons with disabilities; reasonable accommodation

(a) Each casino licensee and applicant shall include in the operations work force section of its EEBOP provisions which address the efforts of the casino licensee or applicant to employ and advance persons with disabilities. Each casino licensee or applicant required to file an EEBOP evaluation with the Commission pursuant to N.J.A.C. 19:53-6 shall include an assessment of the efforts of the casino licensee or applicant concerning persons with disabilities.

(b) Reasonable accommodation in employment to persons with disabilities required of casino licensees or applicants shall be afforded 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.

19:53-4.3 Affirmative action obligations of casino licensees and applicants concerning the operations work force

(a) Each casino licensee and applicant shall be required to undertake affirmative measures to ensure that women and minorities are recruited and employed at all levels of the operations work force and treated during employment without regard to their female or minority status. 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;
5. Selection for training programs; and
6. Grievance procedures for, and disposition of, complaints related to equal employment opportunity.

(b) Each casino licensee and applicant shall:

1. Post or advertise all personnel transactions which result in a promotion, title change/reclassification or a new hire prior to the selection of a candidate;

2. Undertake efforts to improve the representation of women and minorities in job titles within EEOC job categories in which the casino licensee is below the applicable employment goals established by N.J.A.C. 19:53-4.4;

3. Undertake special recruitment and advancement efforts beyond posting and advertising positions in newspapers of general circulation to improve the representation of women and minorities in positions with salaries equal to or greater than \$35,000, such as the use of search firms, advertisements in women-oriented and minority-oriented media, and notices to organizations which serve the interests of women and minorities;

4. Maintain and submit statistics on the applicant flow and disposition of women and minority candidates for employment who are interviewed or referred, and provide documentation of postings, classified advertisements, and other media used to seek candidates;

5. Develop and implement upward mobility training programs, approved by the Commission, which are designed to increase women and minority representation in EEOC job categories, including subclasses of Officials and Managers, in which the casino licensee or applicant is below the applicable employment goal for the category;

6. Improve the representation of women and minorities in positions covered by collective bargaining agreements in which the casino licensee or applicant is below the applicable employment goal for the category by complying with the provisions of (c) below.

(c) If a casino licensee or applicant is below the applicable employment goal for women or minorities established by N.J.A.C. 19:53-4.4 for a position covered by a collective bargaining agreement, the casino licensee or applicant shall, without limitation:

1. Request in writing that the union or workers representative refer qualified female or minority candidates, as appropriate, for the position in question; and

2. If the union or workers representative is unable to refer an appropriate woman or minority candidate, the casino licensee or applicant shall advertise the position on the open market and document its efforts to hire a qualified female or minority candidate for the position. This documentation shall include, without limitation, statistics on applicant flow, details on referrals received, disposition of candidates interviewed, letters of request to the union or workers representative, and copies of postings and advertisements.

19:53-4.4 Women and minority employment goals for the operations work force of casino licensees and applicants

Unless otherwise specified in an approved EEBOP pursuant to N.J.A.C. 19:53-6, the women and minority employment goals for the operations work force of a casino licensee or applicant, by EEOC job category, shall be as follows:

EEOC Job Category	Minority Goal (Percentage)	Female Goal (Percentage)
Officials and Managers	25	46
Professionals	25	46
Technicians	25	46
Salesworkers	25	46
Office and Clerical	25	46
Craftpersons	14	5
Operatives	25	30
Laborers	25	14
Serviceworkers	25	46

Amended by R.1993 d.538, effective November 1, 1993.
See: 25 N.J.R. 3690(a), 25 N.J.R. 4929(b).

19:53-4.5 Quarterly report on the affirmative action efforts of casino licensees concerning the operations work force

(a) Beginning with the first calendar quarter after the opening of its casino, each casino licensee shall be required to file a quarterly report with the Commission and the Division on its affirmative action efforts concerning its operations work force. The quarterly report shall be presented in a format approved by the Commission and shall be filed by the fifteenth day of the month following the end of the quarter.

(b) The quarterly report shall provide data concerning the composition of the operations work force of the casino licensee and shall list by race and by gender the number of workers employed by the casino licensee in each EEOC job category and subclass.

(c) The quarterly report shall include the following information concerning new hires and promotions by the casino licensee in positions with a salary of \$35,000 or more:

1. The number of new hires and promotions by job title, race and gender; and
2. If the casino licensee is below the applicable women or minority employment goal established by N.J.A.C. 19:53-4.4 for a job category in which a position with a salary of \$35,000 or more is filled by someone other than a woman or minority, the casino licensee shall document its efforts to hire or promote a woman or minority to the position. Such documentation shall include a completed and signed Affirmative Action Impact Statement and copies of any posting, advertisement, and letters to search firms, unions, and other organizations which were prepared during the hiring or promotion process.

(d) The quarterly report shall also include:

1. A summary of new hires, promotions, involuntary and voluntary terminations and layoffs by EEOC job category;
2. A copy of all grievance reports related to equal employment opportunity filed with the casino licensee's equal opportunity officer; and
3. A report on the implementation of all upward mobility training programs and the status of participants.

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

(a) Each casino license applicant shall submit a statistical report on the composition of its operations work force at the time of filing its application for initial casino licensure. Thereafter, the applicant shall file the report four months prior to the scheduled date of its EEBOP assessment hearing or its initial casino license hearing.

(b) Each casino licensee which, pursuant to the provisions of N.J.A.C. 19:53-6.12, was not required to file a quarterly report for the last calendar quarter which ended at least four months prior to the scheduled date of its EEBOP assessment hearing or casino license renewal hearing, shall submit a statistical report on the composition of its operations work force at least four months prior to the scheduled date of such hearing.

(c) The reports required by (a) and (b) above shall be submitted in a form prescribed by the Commission and shall indicate the number of employees by race and by gender working in each EEOC job category as of, except for the initial report submitted by a casino license applicant, the end of the calendar quarter immediately preceding the filing deadline for submission of the report.

(d) Each casino licensee or applicant whose annual operations work force composition report does not demonstrate

that the casino licensee or applicant achieved the applicable employment goals established by N.J.A.C. 19:53-4.4 for the year shall be required to document its efforts to implement and comply with the operations work force section of its EEBOP in accordance with the provisions of N.J.A.C. 19:53-6.

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

19:53-5.1 Background and general purposes

(a) As described more fully in subsection 1b of the Act, N.J.S.A. 5:12-1b, the central underlying purpose of the Act is to channel the economic and social impact from the legalization of casino operations in Atlantic City into the rebuilding and growth of the economy of the local area. More specifically, the Act is designed to: generate resources that permit the redevelopment of blighted areas of Atlantic City, including stabilizing residential neighborhoods; create job opportunities for city residents and others in both casino hotels and casino-related service companies; and encourage the development of visitor, convention and tourism facilities in Atlantic City that will provide employment and business opportunities for local residents.

(b) The Act is further designed to permit and encourage as many businesses as possible to service the casino industry, both for the purpose of expanding investment and job opportunities in the area and in order to encourage competition and a plentiful supply of available goods and services to the industry, so as to insulate it from risks of economic instability and undue economic concentrations.

(c) At the time of enactment of the Act a significant portion of the population of Atlantic City was comprised of minorities, as defined in this chapter. In recognition of this fact, the Act provides specific guidelines and policies designed to assure that the aforementioned public policies would be administered so as to direct the attention and resources of the Commission to addressing the needs of the minority community. N.J.S.A. 5:12-134 and 135. The clear purpose of the Act is to guarantee the opportunity for all, without disadvantage by reason of race, gender or ethnicity, to participate fully in the economic and social benefits that are generated by the development of the casino industry. According to the most recent census data, a large majority of the residents of Atlantic City are minorities. Therefore, the premise of the statute remains a compelling reality, and any program designed to provide or improve opportunities for the residents of Atlantic City must of necessity address the need to prevent or eliminate any disadvantage incurred by reason of race or ethnicity.

(d) The Act makes clear that casino licensure is a revocable, and in many ways unique, privilege, and that such a license is held conditioned upon compliance with all regulations that are designed to further the purposes of the Act. Indeed, in recognition of this obligation, and in keeping with the manifest design of the Act, the casino licensees collectively entered into a voluntary agreement in 1981, under the terms of which they undertook to guarantee that 15 percent of their spending for goods and services would enure to the benefit of minority business enterprises. Notwithstanding the generalized good faith attempts by the casino industry over the years, this goal has not yet been realized, due largely, according to evidence presented to the Commission, to the many problems associated with new and developing minority enterprises, including, without limitation, racial discrimination; difficulties in attracting equity or other capital funds; inability to secure bonding or meet other job requirements as a result of insufficient ability to document prior satisfactory job completions; relative lack of experienced minority managerial personnel, and the existence of extensive commercial relationships of long standing which many casino licensees are reluctant to endanger.

(e) The comparative success of the casino industry in meeting employment goals for minorities and women suggests that a targeted program that establishes specific goals for business opportunities for minority and woman business enterprises, but affords significant flexibility to the casino licensees in determining new and innovative methods for assisting such enterprises to compete effectively, is an appropriate means to assure the realization of the purposes of the Act and the goals of the voluntary agreement of 1981, and the achievement of both the fact and the appearance of equal opportunity for all people.

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 and provisionally 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 and provisionally 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 and provisionally 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:

1. Certified and provisionally certified MBEs; and
2. Certified and provisionally certified WBEs.

19:53-5.4 Provisional certification of minority and women businesses

(a) An enterprise may qualify for provisional certification as an MBE, a WBE, or both. A successor business is not eligible for provisional certification as an MBE or WBE pursuant to this section but may apply for DCED certification as an MBE or WBE by complying with the requirements of N.J.A.C. 12A:11.

(b) In order to qualify for provisional certification as an MBE or WBE, an enterprise must be independently owned, operated and controlled. An enterprise shall be deemed to be independently owned, operated or controlled if its management is responsible for both its daily and long term operation and owns at least 51 percent of the enterprise.

(c) In order to qualify for provisional certification as an MBE, an enterprise must be:

1. A sole proprietorship owned and controlled by a minority; or
2. A partnership or joint venture owned and controlled by minorities in which at least 51 percent of the ownership interest is held by minorities and the management and daily business operations are controlled by one or more of the minorities who own it; or
3. A corporation or other business entity authorized under the laws of the United States whose management and daily business operations are controlled by one or more minorities who own it, and which is at least 51 percent owned by one or more minorities or, if stock is issued, at least 51 percent of the stock is owned by one or more minorities.

(d) In order to qualify for provisional certification as a WBE, an enterprise must be:

1. A sole proprietorship owned and controlled by a woman; or

2. A partnership or joint venture owned and controlled by women in which at least 51 percent of the ownership interest is held by women and the management and daily business operations are controlled by one or more of the women who own it; or

3. A corporation or other business entity authorized under the laws of the United States whose management and daily business operations are controlled by one or more women who own it, and which is at least 51 percent owned by one or more women or, if stock is issued, at least 51 percent of the stock is owned by one or more women.

(e) Any enterprise which meets the requirements in (b) and either (c) or (d) above shall be provisionally certified by the Commission if the enterprise files an affidavit with the Commission, in a form provided by the Commission, attesting that it is a bona fide MBE or WBE. The affidavit shall be accompanied by a written acknowledgement of the penalties which may be imposed on the enterprise and the persons associated therewith pursuant to (i) below if the enterprise makes any material misrepresentation of fact in its application for certification or provisional certification.

(f) Upon filing of the documents required in (e) above, the enterprise shall be notified that it has been provisionally certified and shall be listed in the Commission's directory of certified and provisionally certified MBEs and WBEs (Commission MBE/WBE Directory).

(g) A provisionally certified MBE or WBE shall be required to complete and submit to the Commission or the DCED an application for DCED certification in accordance with the provisions of N.J.A.C. 12A:11 within 60 days from the date of notice of its provisional certification. The Commission shall provide assistance to MBEs and WBEs in applying for certification by the DCED. In the event that a completed application for DCED certification is not filed within 60 days, the MBE or WBE shall lose its provisional certification and shall be removed from the Commission MBE/WBE Directory.

(h) Any provisional certification of an enterprise granted by the Commission pursuant to this section shall automatically terminate upon a final decision by the DCED on the certification application of the enterprise pursuant to N.J.A.C. 12A:11. The revised status of the enterprise shall be reflected in the Commission MBE/WBE Directory.

(i) 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 on the affidavit required pursuant to (e) above or 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.

(j) Certification or provisional 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).

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 and provisionally 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; 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 and provisionally certified MBEs and WBEs, to the extent that dollars are actually spent with certified and provisionally 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 and provisionally certified MBEs and WBEs in excess of this 70 percent limitation. Any casino licensee seeking credit for subcontracts awarded to certified or provisionally 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 or provisionally 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 and provisionally 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 or provisionally certified MBEs or WBEs pursuant to (e) above and the contractor itself is a certified or provisionally certified MBE or WBE, a casino licensee shall not claim credit for any disbursement to the certified or provisionally certified MBE or WBE subcontractor if a corresponding credit is claimed for the casino contract.

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 and provisionally 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 or provisionally 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 and provisionally-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 and provisionally-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.

19:53-5.8 Annual report by casino licensees on disbursements to WBEs and MBEs; relation to annual EEOP 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 EEOP 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 EEOP 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 or provisionally 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 EEOP 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 or provisionally 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 or 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 all phases of the development of the project including planning and feasibility studies in preparation for initial construction.

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, orientation or training sessions for staff as well as management, placement and supervisory personnel; the availability of the EEBOP to staff for review; and 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).

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 reporting and documentation 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 goal, documentation or reporting requirements.

(b) If a casino licensee or applicant has failed to achieve the contractor and subcontractor employment goals for women and minorities established pursuant to N.J.A.C. 19:53-2.3, topics appropriate for inclusion in the construction section of an EEBOP may also include, without limitation, the following:

1. Innovative strategies for increasing the participation of women and minorities in the construction work force and the utilization of certified and provisionally certified MBEs and WBEs as contractors and subcontractors, assuming that forecasted capital expenditures remain level; and

2. Specific objectives and timetables for the implementation of the strategies described pursuant to (b)1 above.

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 and reasonable accommodation in employment to persons with disabilities in accordance with the requirements of N.J.A.C. 19:53-4.2; and

3. The means by which the casino licensee or applicant will insure that all required reports are completed and filed when due.

(b) If a casino licensee or applicant has failed to achieve the employment goals for women and minorities in the operations work force established pursuant to N.J.A.C. 19:53-4.4, topics appropriate for inclusion in the operations work force section of an EEBOP may also include, without limitation, the following:

1. Strategies and measurable objectives for improving the employment of women and minorities in each EEOC job category in which they are underrepresented including, without limitation, proactive initiatives in the following areas:

- i. Recruitment, advertising, posting, use of referral agencies and search firms;
- ii. Employment;
- iii. Training, development or promotion;
- iv. Retention; and
- v. Lay off, discipline or terminations;

2. Timetables for achievement of the EEBOP objectives;

3. Strategies to improve the representation of women and minorities in positions with salaries of \$35,000 or more;

4. Recruitment resources, including agencies, publications, and groups which serve the interests of women and minorities;

5. Procedures for handling complaints concerning equal employment opportunity or sexual harassment and the means by which employees are advised of the procedures;

6. Efforts to eliminate racial or gender disparities in turnover rates among employees;

7. The use of exit interviews or other means to assess why employees leave on a voluntary basis;

8. Efforts to improve employee retention; and

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

19:53-6.5 Business section of an EEBOP

(a) The business section of an EEBOP prepared by a casino licensee shall describe in detail the means by which the licensee intends to comply with the equal business opportunity and regulatory obligations imposed by N.J.A.C. 19:53-5. Topics appropriate for inclusion in the business section of an EEBOP shall include, without limitation, the following:

1. Coordination and communication in the purchasing practices of the casino licensee by the equal opportunity officer, the executive office, the purchasing department and any other appropriate department; and

2. The means by which the casino licensee will insure that all of its disbursements are recorded in accordance with the requirements of N.J.A.C. 19:53-5.5 and 5.6 and reported in a timely manner.

(b) If a casino licensee has failed to achieve the participation goals for goods and services to be purchased from certified or provisionally certified minority and women businesses established pursuant to N.J.A.C. 19:53-5.3, topics appropriate for inclusion in the business section of an EEBOP may also include, without limitation, the following:

1. An analysis of the goods and services which are anticipated to be purchased by the casino licensee and the types of goods and services which might be purchased from certified and provisionally certified MBEs and WBEs based on availability;

2. Strategies and initiatives to be undertaken by the casino licensee to assist certified and provisionally certified MBEs and WBEs to compete, survive and grow in casino contracting and purchasing, which may include, without limitation, any efforts by the casino licensee to:

- i. Assist MBEs and WBEs to apply for certification;
- ii. Assist MBEs and WBEs to qualify for appropriate contracts;
- iii. Provide assistance to MBEs and WBEs in seeking out financial sources for expansion, renovation or upgrading of products or services;
- iv. Provide technical or financial assistance to MBEs and WBEs in seeking out bonding services, underwriting a bond, or waiving a bonding requirement to enable them to qualify for appropriate contracts;

3. Mentoring and other appropriate business development activities which may, without limitation, include:

- i. Loaned executive programs;
- ii. Provision of on-the-job trainers for specific functional areas of business, such as computers or personnel administration; and
- iii. The loaning of equipment or services, such as computers, secretarial or data processing services;

4. The means by which the casino licensee will provide notice to certified and provisionally certified MBEs and WBEs of its intent to purchase goods or services;

5. Procedures which the casino licensee will use to document its good faith efforts to utilize the services of certified and provisionally certified MBEs and WBEs, such as documentation of affirmative efforts by the licensee to:

- i. Increase financial assistance to certified and provisionally certified MBEs and WBEs through the use of low-cost loans;
- ii. Develop special payment terms for certified and provisionally certified MBEs and WBEs;
- iii. Contribute to local or regional Minority Enterprise Small Business Investment Corporations (MES-ICs);
- iv. Encourage joint ventures between certified and provisionally certified MBEs and WBEs and majority-owned businesses or joint ventures with other certified and provisionally certified MBEs and WBEs;
- v. Provide technical assistance and mentoring; and

vi. Develop incentives for majority contractors to subcontract to certified and provisionally certified MBEs and WBEs, and to retain and sustain certified and provisionally certified MBEs and WBEs vendors through encouragement and development activities; and

6. Programs, consistent with N.J.A.C. 19:53-5.5, which require contractors to subcontract a portion of their contracts to certified or provisionally certified MBEs and WBEs.

19:53-6.6 Atlantic City small businesses

(a) In order to further the statutory goal of revitalizing Atlantic City as set forth in section 1 of the Act, each casino licensee and applicant shall be encouraged to include in its EEBOP strategies and objectives which are intended to foster the development of Atlantic City small businesses. For the purposes of this section, an "Atlantic City small business" shall be defined as a sole proprietorship, partnership or corporation:

1. Whose management owns at least 51 percent of the business and is responsible for its daily and long-term operation;
2. Which either has 50 or fewer full-time employees or is a firm with full-time employees at least 80 percent of whom are permanent residents of Atlantic City; and
3. Which has its principal place of business (the location where the majority of its employees are located or based) in Atlantic City.

(b) Casino licensees and applicants are encouraged to assist Atlantic City small businesses by using the same kinds of techniques described in N.J.A.C. 19:53-6.5 or any other means deemed appropriate by the licensee or applicant.

(c) Any enterprise which meets the requirements in (a) above may be certified by the Commission as an Atlantic City small business if it files an application and affidavit with the Commission, in a form provided by the Commission, attesting that it is a bona fide Atlantic City small business. The affidavit shall be accompanied by a written acknowledgement of the penalties which may be imposed on the enterprise and the persons associated therewith if the enterprise makes any material misrepresentation of fact in its affidavit or application for certification. Any enterprise which misrepresents its status as an Atlantic City small business shall be subject to the same penalties set forth in N.J.A.C. 19:53-5.4(i).

(d) The Commission shall maintain a section in its directory of certified and provisionally certified MBEs and WBEs which lists all certified Atlantic City small businesses. An enterprise may be certified as both an MBE and WBE and an Atlantic City small business.

Amended by R.1993 d.538, effective November 1, 1993.
See: 25 N.J.R. 3690(a), 25 N.J.R. 4929(b).

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

(a) Any entity which is an applicant for or holds a casino license as of August 16, 1993 shall file its initial EEBOP with the Commission and Division by December 14, 1993. All other casino license applicants shall file an EEBOP 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 annual 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.

19:53-6.8 Annual EEBOP assessment hearing; statistical demonstration of compliance with obligations; 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 through an annual assessment of its performance under its approved EEBOP.

(b) The annual EEBOP assessment of a casino licensee shall be scheduled either as part of its casino license renewal hearing or on the anniversary date of the license renewal, if the casino licensee is operating under a two year casino license.

(c) The annual EEBOP assessment of 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 either the initial licensure hearing of the applicant or, if a

casino hotel is being built or renovated, the opening of the casino.

(d) Four months prior to the scheduled date of the casino license hearing or the annual EEBOP assessment hearing, the casino licensee or applicant shall submit the annual statistical report required pursuant to N.J.A.C. 19:53-4.6 and, in the case of a casino licensee, N.J.A.C. 19:53-5.8. The Commission shall review these reports and the report prepared pursuant to N.J.A.C. 19:53-2.10 and shall advise the casino licensee or applicant of its findings within 30 days.

(e) If the Commission finds, based on these reports, that the casino licensee or applicant has satisfied all of the performance goals set forth in N.J.A.C. 19:53-2.3, 4.4 and, if applicable, 5.3, the casino licensee or applicant shall be entitled to a determination that it has complied with the equal opportunity and affirmative action obligations imposed by the Act and this chapter and, except as otherwise provided in (g) below, no further annual EEBOP assessment proceedings shall be required.

(f) If the Commission finds that the casino licensee or applicant has failed to reach some or all of the performance goals set forth in N.J.A.C. 19:53-2.3, 4.4 and, if applicable, 5.3, the casino licensee or applicant shall be required to establish its good faith efforts to achieve such goals. The good faith of the casino licensee or applicant shall be demonstrated by its documentation, to the satisfaction of the Commission, of its implementation and compliance with those portions of its approved EEBOP which relate to the achievement of the performance goals as to which the casino licensee or applicant was deficient.

(g) Notwithstanding any other provision of this section, the Commission may direct any casino licensee or applicant to document its implementation and compliance with any programmatic portion of its approved EEBOP during the annual assessment period if such review is considered necessary to the achievement of the purposes of the Act and this chapter.

(h) Any documentation required by (f) or (g) above shall be submitted to the Commission and Division at least two months prior to the scheduled date of the annual EEBOP assessment hearing and shall include, as applicable and without limitation, the following:

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

2. An analysis by the casino licensee or applicant as to why the particular performance goals were not achieved, addressing such issues as the availability of workers or vendors, the performance of workers or vendors, or any other information which the casino licensee or applicant considers relevant to its failure to attain the particular performance goals;

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

(i) Upon completion of an annual EEBOP assessment hearing for a casino licensee or applicant which has failed to achieve some or all of the participation goals set forth in N.J.A.C. 19:53-2.3, 4.4 and, if applicable, 5.3, the Commission may find that the casino licensee or applicant has in fact exerted good faith efforts to comply 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 failure of the casino licensee or applicant to comply with its approved EEBOP and, as a consequence, to achieve its performance goals was based on occurrences which were beyond the control of the casino licensee or applicant.

(j) If, upon completion of an annual 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.

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 Waiver of reporting requirements for casino licensees

(a) If the contractor and subcontractor work force of a casino licensee meets all of the employment goals for women or minorities set forth in N.J.A.C. 19:53-2.3 for four consecutive quarters, the monthly reports required by N.J.A.C. 19:53-2.4(a)1 and 2 shall be waived.

(b) If the operations work force of a casino licensee meets all or any of the employment goals for women or minorities set forth in N.J.A.C. 19:53-4.4 for four consecutive quarters, the quarterly report required by N.J.A.C. 19:53-4.5 shall be waived as to any EEOC job categories for which compliance has been attained.

(c) If a casino licensee meets the applicable goals specified in N.J.A.C. 19:53-5.3 for goods and services purchased from certified and provisionally certified MBEs and WBEs for four consecutive quarters, the quarterly disbursement report required by N.J.A.C. 19:53-5.7 shall be waived.

(d) A waiver of the obligation to file certain reports as provided in this section shall not alter the obligation of a

casino licensee to prepare and maintain such information and records on-site. In addition, the Commission reserves the right to seek and obtain from a casino licensee at any time any information that may be pertinent to determining the compliance of the casino licensee with the Act, this chapter and its approved EEBOP.