

LAW AND PUBLIC SAFETY

OFFICE OF THE ATTORNEY GENERAL

DIVISION OF GAMING ENFORCEMENT

Equal Employment and Business Opportunity

General Provisions

Equal Opportunity and Affirmative Action Obligations of Contractors,
Subcontractors and Casino Licensees and Applicants Concerning
Construction

Equal Employment and Affirmative Action Obligations of Casino Service
Industry Enterprises

Equal Employment Opportunity and Affirmative Action Obligations of
Casino Service Industry Enterprises

Equal Employment Opportunity and Affirmative Action Obligations of
Casino Licensees and Applicants Concerning the Operations Work Force
Compliance by Casino Licensees and Applicants - Preparations,
Implementation and Review of Equal Employment and Business
Opportunity Plan (EEBOP)

Proposed Repeal: N.J.A.C. 19:53

Proposed New Rules: N.J.A.C. 13:69K

Authorized By: David Rebuck, Acting Director, Division of Gaming
Enforcement.

Authority: N.J.S.A. 5:12-17, 69, 70, 134, and 135.

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN 2011-203.

Submit written comments by November 18, 2011 to:

Lon E. Mamolen, Deputy Attorney General

Division of Gaming Enforcement

1300 Atlantic Avenue

Atlantic City, NJ 08401

The agency proposal follows:

Summary

Effective February 1, 2011, the Casino Control Act (Act) was amended. See P.L. 2011, c. 19 (N.J.S.A. 5:12-1 et seq.). Under the amendatory scheme, the Division of Gaming Enforcement (Division) is authorized to assume many regulatory responsibilities formerly held by the Casino Control Commission (Commission). One such responsibility is to promulgate rules relating to equal employment opportunity by casino licensees. See N.J.S.A. 5:12-134 and 135. In accordance with that statutory authorization the Division proposes new rules N.J.A.C. 13:69K. With the exception of minor technical changes reflecting the recently enacted amendments to the Act and several substantive changes noted below, the new rules recodify the previous rules promulgated by the Commission.

The rules in Chapter 69K affirm the public policy of the State of New Jersey to promote equal employment and business opportunity by prohibiting discrimination. The Equal Employment and Business Opportunity Plan, required under the rules, remains the primary regulatory vehicle used to monitor the equal opportunity efforts of casino licensees and applicants. The failure to adopt these rules would impede the employment and business benefits that they have provided for area residents, ancillary casino industries and the

region. Adoption of the rules assures continuation of employment and business opportunities for all persons protected by the provisions of N.J.S.A. 5:12-134 and the Law Against Discrimination. Further, failure to readopt would violate the Commission's statutory mandate to promote equal employment opportunity within the casino industry.

The first substantive change in the proposed new rules occurs within N.J.A.C. 13:69K-1.5(b). The previous version of that rule promulgated by the Commission stated that the Commission "shall" establish an advisory board to consider issues affecting persons with disabilities and the casino industry. The new rule has been changed to state that the Division "may" establish such an advisory board. This change is being made because despite the mandatory language in the rule, the board was never actually established under the Commission's jurisdiction. By making this change the Division recognizes the fact that the advisory board was never formed, yet retains the ability to establish one to consider issues affecting persons with disabilities and the casino industry should the need arise.

Next, N.J.A.C. 19:53-1.6 which is proposed for repeal is not being continued in the new rules as it is unnecessary to state that that the rules promulgated under the authority of the Act do not supersede the Act, the Law Against Discrimination, the Civil Rights act of 1964, the Americans with Disabilities Act of 1990 or any other law regarding equal employment opportunity.

Finally N.J.A.C. 13:69K-2.5(c) has been amended to remove the requirement that a casino licensee shall submit for prior approval all

hiring criteria and procedures used to determine whether to hire an applicant or to transfer, upgrade or promote an existing employee. As amended, the new rule requires that a casino licensee must file such information with the Division; however, the prior approval of that submission is no longer required. This change has been made in order to make the rules consistent with the Act as amended.

This notice of proposal is not required to be referenced in a rulemaking calendar since a public comment period of 60 days is being provided. See N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for adoption should make it clear that the Act and rules of the Division only require casino licensees and applicants to act affirmatively to afford equal employment opportunity to all persons who wish to participate in the benefits provided by the casino gaming industry. The proposed rules will implement the public policy of the State pursuant to which equal employment and business opportunity is guaranteed to all persons.

Economic Impact

Casino licensees and applicants will incur costs in complying with the requirements of the rules proposed for adoption. Although casino licensees and applicants and various contractors and enterprises will continue to be required to provide affirmative equal opportunity by engaging in such practices as posting and advertising job openings, the extent of these costs will vary by licensee, applicant or enterprise. The regulatory agencies will also expend time

and money in monitoring and enforcing the rules. These costs are unavoidable, however, if the Division is to enforce its statutory mandate to promote equal opportunity in the casino industry.

Licensees and applicants will continue to incur costs in complying with those provisions of the rules proposed for adoption that require them to undertake affirmative action measures such as special recruitment and training programs on behalf of persons with disabilities. Since many casino licensees have historically participated in such programs on a voluntary basis, the amount of costs that a licensee may incur as a result of the rules will vary based on their current level of participation. Once again, the Division will also incur some costs in overseeing the implementation and enforcement of these rules, but these costs will be difficult to isolate from current expenditures related to the enforcement of Chapter 69K.

Federal Standards Statement

A Federal standards analysis is not required because the proposed repeal and new rules are authorized by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Jobs Impact

The proposed repeal and new rules are not anticipated to create new jobs in the gaming industry or elsewhere except to the extent they may enable more efficient and cost-effective casino operations in carrying out equal employment and business opportunity obligations. If the industry is able to realize these efficiencies and savings,

casino operators may be inclined to increase their workforces. However, any attempt to predict the impact of the proposed repeal and new rules upon the number of jobs in the gaming industry would be speculative at this time. No job loss is anticipated as a result of the proposed repeal and new rules.

Agriculture Industry Impact

The proposed repeal and new rules will have no impact on agriculture in New Jersey.

Regulatory Flexibility Analysis

The proposed repeal and new rules may impact on several hundred small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These primarily include construction company contractors and subcontractors but would also include any gaming-related casinos service industry enterprises. Construction contractors and subcontractors which qualify as small businesses would be required to include language in all casino-related contracts stating that the Division will enforce equal employment opportunity regulations. Other requirements include providing and posting notices that the Division's equal employment opportunity regulations are applicable. The Division estimates compliance with these requirements to be minimal, no more than a few hundred dollars to print and post notices. Actual compliance requires compliance with other New Jersey laws such as the Law Against Discrimination. The only professional services needed to comply would be a printing company to produce notices, although it is reasonable to assume that construction contractors could print the required notices themselves. The proposed

new rules use only performance standards. Small businesses are not exempted from the proposed rules, but the overall compliance costs are minimal.

With regard to the additional requirements on casinos service industry enterprises, the Division is not aware of any small businesses who are so licensed. However, the proposed new rules would be applicable to any company with more than 50 employees. The principal compliance cost is the requirement that each company make special recruitment efforts to ensure equal employment opportunities and post certain notices. The Division estimates overall compliance costs to be minimal and, as indicated, the Division is not aware of any small business who would be required to comply at this time. Casino service industry enterprises are required to designate a staff member as the equal opportunity officer responsible for compliance, but this does not require the hiring of a new employee, the proposal assumes these duties will be assigned to an existing employee.

Smart Growth Impact

The proposed repeal and new rules will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact Analysis

The proposed repeal and new rules will have no impact on the affordability of housing in the State of New Jersey because they affect the regulation of casino service industry enterprises.

Smart Growth Development Impact Analysis

The proposed repeal and new rules will have no impact on housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan, because they affect the regulation of casino service industry enterprises.

Full text of the rules proposed for repeal can be found in the New Jersey Administrative Code at N.J.A.C. 19:53.

Full text of the proposed new rules follows:

CHAPTER 69K

EQUAL EMPLOYMENT AND BUSINESS OPPORTUNITY

SUBCHAPTER 1. GENERAL PROVISIONS

13:69K-1.1 Scope, policy and purpose

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

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

contractors and subcontractors with regard to the employment of persons with disabilities.

13:69K-1.2 Definitions

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

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

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

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

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

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

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

"Disability" means a physical or mental impairment which is included in the definition of "handicapped" contained in the Law Against Discrimination, N.J.S.A. 10:5-5, or in the definition of "disability" contained in the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., and attendant regulations.

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

"Equal Employment and Business Opportunity Plan (EEBOP)" is defined in N.J.A.C. 13:69K-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. 13:69K-1.4 or 3.1, to assure its compliance with this chapter and any Federal or State laws regarding equal employment and business opportunity.

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

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

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

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

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

included in a contract or subcontract.

13:69K-1.3 (Reserved)

13:69K-1.4 Designation of equal opportunity officer by casino

licensee or applicant; responsibility of chief executive officer and equal opportunity officer

(a) Each casino licensee or applicant shall designate a principal member of its organization to serve as an equal opportunity officer. A casino license applicant shall designate its equal opportunity officer prior to the start of actual construction by the applicant or by any affiliated entity of any structure or facility to be used as an approved casino hotel, or prior to the recruitment and employment of personnel necessary to undertake the business of the hotel or casino, whichever first occurs. The chief executive officer shall be ultimately responsible for insuring that equal employment opportunity is afforded to all prospective and actual employees, that equal business opportunity is afforded to all persons, that affirmative efforts are made to recruit and employ persons with disabilities, and that the licensee or applicant achieves full implementation of its approved EEBOP. The equal opportunity officer shall be directly responsible for the organization and effective and continuing implementation of its approved EEBOP. The position of equal opportunity officer shall require a casino key employee license.

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

1. Monitor and review all aspects of the personnel procedures and decisions of the casino licensee or applicant;

2. Recommend in writing to the chief executive officer the suspension of any personnel procedure, decision or transaction which is not consonant with the approved EEBOP of the casino license or applicant or with any Federal or state law regarding equal employment opportunity; and

3. Act as a liaison and to provide assistance to the Commission and the Division in the enforcement of section 134 of the Act and this chapter, which responsibility shall include, without limitation, the obligation to prepare and submit such reports, documentation and statistical information as the Division shall require concerning the licensee's or applicant's:

- i. Work force composition;
- ii. Efforts to assure that equal employment opportunity is being afforded to all persons protected by N.J.S.A. 5:12-134;
- iii. Good faith efforts to implement its EEBOP;
- iv. Employment, promotion, demotion or transfer decisions;
- v. Recruitment, recruitment advertising and union referral efforts;
- vi. Rates of pay or other forms of compensation;
- vii. Training programs and selection procedures;
- viii. Layoff, recall or termination decisions; and
- ix. Grievance procedures for, and disposition of, complaints related to equal employment opportunity.

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

1. Monitor and review all aspects of the contracting and purchasing procedures and decisions of the licensee or applicant; and

2. Recommend in writing to the chief executive officer the suspension of any contracting or purchasing procedure, decision, or transaction which is not consonant with its approved EEBOP or with any Federal or State law regarding equal business opportunity.

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

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

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

3. Accompany the Division, if requested, during on-site inspections authorized pursuant to N.J.A.C. 13:69K-2.7; and

4. Prepare and submit to the Division such reports, documentation and statistical information as the Division shall require concerning any contractor or subcontractor used by the

licensee or applicant in connection with the construction, renovation or reconstruction of any structure or facility to be used as an approved hotel, casino, casino simulcasting facility or any related facility.

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

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

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

applicant.

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

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

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

13:69K-1.5 Advisory boards

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

(b) The Division may establish an Advisory Board on Persons with Disabilities to consider issues affecting persons with disabilities and the casino industry. This advisory board shall consist of persons

with disabilities residing in the regional community, representatives of organizations which advance the interests of persons with disabilities and representatives of the casino industry. The purpose of the advisory board shall be to identify, investigate, and make recommendations to the Division concerning issues which affect the ability of persons with disabilities to obtain employment and business opportunities with the casino industry. Such recommendations may include, at the discretion of the advisory board or upon request by the Division, suggestions for the promulgation of specific regulations. The advisory board may also develop and recommend to the Division a program which will permit the accurate identification and reporting of persons with disabilities who are employed by or doing business with the casino industry.

13:69K-1.6 and 1.7 (Reserved)

13:69K-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

13:69K-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 Division, 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. 13:69K-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 Division that, as of (the effective date of these regulations), equal employment opportunity has been afforded, prior to the submission of architectural plans or site plans to the Division, 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. 13:69K-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. 13:69K-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.

13:69K-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. 13:69K-6, each casino licensee or applicant shall be required to develop and implement a monitoring system which allows the casino licensee or applicant to oversee all construction activity performed for the licensee or applicant at the casino hotel, casino, casino simulcasting facility or any related facility.

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

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

2. Ensure that the mandatory construction contract and subcontract language required by N.J.A.C. 13:69K-2.7 is actually included in all construction contracts and subcontracts;

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

4. Encourage contractors and subcontractors to employ

persons with disabilities at all levels of the work force.

13:69K-2.3 and 2.4(Reserved)

13:69K-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. 13:69K-2.2 which are applicable to a casino license applicant, any casino license applicant which is planning to build or substantially renovate a casino hotel facility prior to licensure shall comply with the requirements of this section in accordance with a schedule to be set by the Division based on the projected opening date of the casino hotel facility and the hearing schedule of the Division.

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

(c) Notwithstanding the provisions of N.J.A.C. 13:69K-4.1, the casino license applicant shall file with the Division 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. 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;

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

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

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

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

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

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

8. 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.

13:69K-2.6 (Reserved)

13:69K-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 Division of Gaming Enforcement, N.J.A.C. 13:69K.

The contractor (or subcontractor) agrees that it will provide equal employment opportunity, as defined

in N.J.A.C. 13:69K-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 Division of Gaming Enforcement.

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 Division of Gaming Enforcement, 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. 13:69K-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 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 Division. The contractor (or subcontractor) agrees that 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 Division of Gaming Enforcement at N.J.A.C. 13:69K-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. 13:69K."

SUBCHAPTER 3. EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION OBLIGATIONS OF
CASINO SERVICE INDUSTRY ENTERPRISES

13:69K-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.

13:69K-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 Division an acknowledgement of the obligations imposed by this section and, if applicable, N.J.A.C. 13:69K-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.

13:69K-3.3 Affirmative action obligations of casino service industry enterprise licensees and applicants which have 50 or more employees in New Jersey

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

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

and

5. Selection for training programs.

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

1. Post all employment openings for response by qualified in-house employees or, when appropriate, advertise such openings in newspapers of general circulation and other media which reach a cross-section of the population in the area from which the work force will be drawn;

2. Send notices of employment openings to and solicit the referral of qualified candidates for employment from:

- i. Organizations which serve the interest of promoting equal employment opportunity for persons with disabilities; and

- ii. Regional job banks or job fairs that are maintained or conducted in order to assist qualified persons with disabilities in

obtaining employment;

3. Send to each labor union or representative of workers with which it has a collective bargaining agreement a notice of the obligations of the licensee or applicant under the Act and rules of the Division;

4. Send to each labor union or representative of workers with which it has a collective bargaining agreement a request for referral of qualified candidates for employment who are voluntarily self-identified persons with disabilities; and

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

13:69K-3.4 (Reserved)

13:69K-3.5 Sanctions

(a) If the Division determines that a casino service industry enterprise licensee, registrant or applicant is in violation of the Act or this subchapter, in addition to any action taken by the Division to suspend or revoke the casino service industry enterprise license, or registration, the Division 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, registrant or applicant from entering into any future contracts with any casino licensee or applicant for a period of time to be determined by the Division; and

3. Take any other action authorized by the Act or the rules of the Division.

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

13:69K-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 Division, 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 Division 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 Division 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 Division. 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.

13:69K-4.2 Reasonable accommodation in employment for persons with
disabilities

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

SUBCHAPTER 5. (RESERVED)

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

13:69K-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 Division for its approval. The EEBOP of each casino licensee or applicant shall address in specific terms the strategies, procedures and internal requirements which the casino licensee or applicant intends to implement so that the equal employment opportunity and equal business opportunity objectives of the Act and this chapter are achieved, both on a current and continuing basis.

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

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

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

1. All phases of the development of the project including planning and feasibility studies in preparation for initial construction; and
2. The qualifications of the Equal Opportunity Officer to

perform the duties set forth in N.J.A.C. 13:69K-1.4.

13:69K-6.2 General regulatory section of an EEBOP

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

1. A statement by the chief executive officer of the casino licensee or applicant setting forth the equal employment and business opportunity policies of the organization;

2. An acknowledgement by the chief executive officer of the obligations imposed by section 134 of the Act and this chapter; and

3. A description of the means by which the policies of the casino licensee or applicant concerning equal opportunity shall be disseminated and enforced including, without limitation, the following:

i. Orientation, sensitivity and ADA compliance training sessions for staff, including executives, managers, supervisors and placement personnel;

ii. The availability of the EEBOP to staff for review; and

iii. The inclusion of accountability for achieving the objectives of this chapter and the EEBOP of the casino licensee or applicant in the performance evaluations of executives, managers and supervisors.

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

1. A delineation of the role and responsibilities of the equal opportunity officer and his or her staff;
2. A description of the lines of communication and reporting within the organization as they relate to the objectives of this chapter;
3. A description of the resources which the casino licensee or applicant will make available to the advisory boards organized pursuant to the provisions of N.J.A.C. 13:69K-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.

13:69K-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. 13:69K-2. Topics appropriate for inclusion in the construction section of an EEBOP shall include, without limitation, the following:

1. Coordination and communication in the implementation of construction plans by the equal opportunity officer, the executive office, the facilities department, the purchasing department, and any other appropriate department;
2. Implementation of a monitoring system which will enable

the casino licensee or applicant to evaluate the performance of contractors and subcontractors and the performance of the licensee's or applicant's own organization in fulfilling the equal employment and equal business opportunity requirements imposed by this chapter; and

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

13:69K-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. 13:69K-4. Topics appropriate for inclusion in the operations work force section of an EEBOP shall include, without limitation, the following:

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

2. The means by which the casino licensee or applicant shall address its obligation to provide equal employment opportunity to all persons protected by the provisions of N.J.S.A. 5:12-134; and

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

(b) The operations work force section of an EEBOP shall also describe in detail the manner in which a casino licensee or applicant

shall undertake to satisfy its obligation to recruit and employ persons with disabilities. Topics appropriate for inclusion in this section of an EEBOP may include, without limitation, the following:

1. Strategies and measurable objectives for improving the employment of persons with disabilities at all levels of the work force including, without limitation, proactive initiatives in the following areas:

i. The use of recruitment programs, advertising, postings, referral agencies, search firms, job fairs and job banks;

ii. Employment processing, including specialized application and interview procedures for applicants who are voluntarily self-identified as persons with a disability;

iii. Specialized training, development or promotion programs, such as supported employment programs, school-to-work programs, mentoring programs and, where feasible, work-at-home programs; and

iv. Retention programs, such as continuing support, training and counseling programs;

2. Timetables for achievement of the EEBOP objectives;

3. Procedures for handling complaints concerning reasonable accommodation in employment or harassment of persons with disabilities, and the means by which employees are advised of the procedures;

4. The use of exit interviews or other means to assess why employees who are self-identified persons with a disability leave on a voluntary basis; and

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

13:69K-6.5 and 6.6(Reserved)

13:69K-6.7 EEBOP filing requirements; review and approval; revisions

(a) Any entity which is an applicant for or holds a casino license shall file its initial EEBOP with the Division 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 Division, 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 Division directs that the EEBOP be revised as a result of an EEBOP assessment hearing pursuant to N.J.A.C. 13:69K-6.8; or

3. The Division directs that the EEBOP be revised as a result of a special review of the EEBOP ordered pursuant to N.J.A.C. 13:69K-6.9.

(c) A casino licensee or applicant may request the approval of the Division 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 Division. 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.

13:69K-6.8 EEBOP assessment; 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 by participating in periodic assessment hearings concerning its performance under its approved EEBOP.

- (b) An EEBOP assessment for a casino licensee shall be scheduled as part of each casino license resubmission. A casino licensee operating under a renewed casino license shall also be required to participate in an interim EEBOP assessment.

- (c) EEBOP assessment hearings for a casino license applicant shall occur on a schedule to be set by the Division, which schedule

shall be based on the anticipated date of the initial casino licensure hearing of the applicant or, if a casino hotel is being built or renovated, the opening of the casino.

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

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

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

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

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

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

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

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

(f) If, upon completion of an EEBOP assessment, the Division determines that a casino licensee or applicant has failed to comply with the requirements of the Act, this chapter or its approved EEBOP, the Division may impose one or more of the sanctions authorized by N.J.A.C. 13:69K-6.11.

13:69K-6.9 Special EEBOP reviews and hearings

(a) Notwithstanding any other provision of this chapter, the Division may require a casino licensee or applicant to conduct a self assessment of all or any part of its approved EEBOP whenever the Division 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 Division. A special hearing on the EEBOP of the casino licensee or applicant may be ordered by the Division at any time and shall be conducted under such terms and conditions as the Division 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.

13:69K-6.10 On-site monitoring and inspections

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 Division shall be entitled to inspect or copy any relevant books or records.

13:69K-6.11 Sanctions

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

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