

and vehicle maintenance personnel; planning and coordinating work schedules for all transportation personnel; the packaging of routes for bidding purposes; administering, monitoring, and overseeing the Federal and State requirements for student transportation in the school district; developing and implementing the school district's student transportation policies and training; regularly monitoring the safe transportation of the school district's students and the maintenance of vehicles; and preparation or submission of district board of education contracts, reports, and other documentation required by this chapter.

(b) A school district transportation supervisor who meets the criteria of (b)1 or 2 below shall be required, as a condition of employment, to provide evidence to the district board of education of satisfactory completion of the School Transportation Supervisors Certification Program offered by the Center for Government Services at Rutgers, the State University of New Jersey, or any other certification program designated by the Commissioner.

1. A school district transportation supervisor who was employed by a district board of education on January 31, 2019, and has less than 11 years of experience as a school district transportation supervisor shall complete the certification program no later than January 31, 2023.

2. A school district transportation supervisor who was hired by a district board of education after January 31, 2019, and has less than 11 years of experience as a school district transportation supervisor shall complete the certification program within four years of the date of hire.

(c) The school district transportation supervisor and district board of education shall determine who bears the cost of completing the certification program.

(d) A certified school business administrator employed as the district board of education's school business administrator shall not be required to meet the requirements set forth at (b) above, regardless of whether the individual performs the majority of the job functions at (a) above.

(e) Any school district transportation supervisor certification program designated by the Commissioner shall include courses focused on the statutes and regulations that govern school transportation operations.

SUBCHAPTER 13. GOVERNANCE AND ADMINISTRATION

6A:27-13.1 General authority

(a) (No change.)

(b) The Commissioner may withhold or adjust transportation aid for district boards of education that are noncompliant with the chapter's provisions [set forth in this chapter], such as, but not limited to, the improper award of contracts, use of unauthorized vehicles, or inaccurate data submitted for State aid.

6A:27-13.2 General school district procedures

District boards of education shall submit to the Department reports necessary for the calculation of State transportation aid and the analysis of the numerical values (cost factors) contained in the transportation aid formula in accordance with N.J.S.A. 18A:7F-57.

6A:27-13.3 Regulatory review

(a) (No change.)

(b) The Office of [Student Transportation field representative] School Finance shall conduct reviews of the executive county superintendent's administration of student transportation. The review shall include a sampling of records submitted to the executive county superintendent by district boards of education to determine compliance with the chapter's provisions [of this chapter].

(c) The Office of [Student Transportation field representative] School Finance shall conduct reviews of student transportation procedures, operations, and fiscal records of district boards of education as directed by the Commissioner[, and]. The Office of School Finance shall notify the district board of education and executive county superintendent of the findings.

(d) The Office of [Student Transportation] School Finance shall verify data submitted by district boards of education for State transportation aid.

6A:27-13.4 Corrective action plan

A district board of education found to be deficient as a result of the Office of [Student Transportation] School Finance review shall submit to the Office and the executive county superintendent a corrective action plan addressing the specific recommendations.

6A:27-13.5 Compliance investigation

(a) The Office of Fiscal Accountability and Compliance shall conduct a complete inspection of student transportation procedures, operations, and costs for any district board of education identified as deficient in the administration of student transportation as a result of the Office of [Student Transportation] School Finance review or Department monitoring process under any one of the following circumstances:

1. The Office of [Student Transportation] School Finance review indicates the existence of conditions that may prevent the successful implementation of [a] the corrective action plan required pursuant to N.J.A.C. 6A:27-13.4;

2. (No change.)

3. A district board of education fails to achieve [certification based upon deficiencies noted in student transportation and does not demonstrate reasonable progress pursuant to N.J.A.C. 6A:23A-4.1(a)] compliance as set forth in the corrective action plan.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF GAMING ENFORCEMENT

Equal Employment and Business Opportunity

Proposed Amendments: N.J.A.C. 13:69K-1.1, 1.2, 1.4, 2.1, 2.2, 2.5, 3.1, 3.2, 3.3, 3.5, 4.1, 4.2, 6.1, 6.2, 6.3, 6.4, 6.7, and 6.8

Proposed New Rules: N.J.A.C. 13:69K-5

Proposed Recodifications with Amendments: N.J.A.C. 13:69K-6.9, 6.10, and 6.11 as 13:69K-7.1, 7.2, and 7.3, Respectively

Authorized By: David L. Rebeck, 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 2020-088.

Submit written comments by November 20, 2020, to:

Sara Ben-David, Deputy Attorney General
 Division of Gaming Enforcement
 140 E. Front Street
 PO Box 047
 Trenton, New Jersey 08625
 or via email to: RuleComments@njdge.org.

The agency proposal follows:

Summary

The Casino Control Act (Act), N.J.S.A. 5:12-1 et seq., and the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 et seq., require all casino licensees and casino service industry enterprise licensees to afford an equal employment opportunity to all prospective and actual employees. The Division of Gaming Enforcement's (Division) rules regarding equal employment and business opportunity matters are found at N.J.A.C. 13:69K. While the Division maintains strong policies and procedures prohibiting discrimination and harassment, including sexual harassment, the Division nonetheless believes that the amendments and new rules in this rulemaking will further strengthen equal employment protections for all prospective and actual employees of casino licensees and casino

license applicants, including in the area of harassment, especially sexual harassment, which is of particular concern.

New rules are proposed at N.J.A.C. 13:69K-5, Compliance by Casino Licensees and Casino License Applicants—Preparation, Implementation, and Review of Plan Prohibiting Harassment and Discrimination (PPHD). N.J.A.C. 13:69K-5.1 would require each casino licensee and casino license applicant to prepare a Plan Prohibiting Harassment and Discrimination (PPHD) addressing the entity's policies, strategies, procedures, and internal requirements for preventing discrimination or harassment, including sexual harassment. N.J.A.C. 13:69K-5.2 would set forth seven basic components for a PPHD, which consist of: (1) a comprehensive written policy; (2) affirmative statements by the chief executive officer; (3) awareness and prevention training; (4) procedures and methods for reporting discrimination or harassment, including sexual harassment; (5) procedures for investigating such reports; (6) potential consequences for any person found to have committed an act of discrimination or harassment, including sexual harassment; and (7) methods for conducting an annual assessment of the PPHD. N.J.A.C. 13:69K-5.3 would authorize the Division, through Director action, to determine the minimum standards for each of the seven basic components set forth at N.J.A.C. 13:69K-5.2. N.J.A.C. 13:69K-5.3 also sets forth the initial minimum standards to be implemented, including that: (1) the written policy must provide an easy-to-understand description of examples of prohibited conduct; (2) the affirmative statements by the chief executive officer must include a provision that the PPHD applies to all employees in their interactions with each other and with vendors, providers, principals, officers, directors, and other persons with whom an employee comes into contact including customers and patrons, although the PPHD is not intended to increase or modify the scope of liability for a casino licensee or casino license applicant for harassment or discrimination as provided for in the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.; (3) training must include the in-person communication of all discrimination and harassment prevention policies and procedures and must be done at least once annually; (4) reporting methods must include multiple avenues for reporting discrimination or harassment; (5) investigations must be done promptly, thoroughly, and impartially, and confidentially; (6) potential consequences must be identified; and (7) an annual assessment must be conducted to ensure the effectiveness of policies and procedures and must include accountability for achieving PPHD objectives. N.J.A.C. 13:69K-5.4 would establish deadlines for submitting a PPHD to the Division for initial approval and for later seeking approval of material modifications. N.J.A.C. 13:69K-5.4 also would require a casino licensee or casino license applicant to submit on an annual basis certain information regarding discrimination or harassment complaints, including sexual harassment complaints. Finally, N.J.A.C. 13:69K-5.5 would require all casino licensees and casino license applicants to assess their PPHDs annually and authorizes the Division to review any and all records related to a PPHD or concerning discrimination or harassment.

The proposed amendments would add references to the PPHD at N.J.A.C. 13:69K-1.4, 2.1, 6.3, and 6.8 alongside existing references to the Equal Employment and Business Opportunity Plan (EEBOP). Where N.J.A.C. 13:69K-1.4 currently requires the chief executive officer and equal employment officer to be responsible for implementation of the EEBOP, the proposed amendments would make these individuals additionally responsible for implementation of the PPHD. Similarly, where N.J.A.C. 13:69K-1.4 requires the equal employment officer to provide certain documentation regarding an EEBOP, the proposed amendment would add that the equal employment officer also is responsible for producing such documentation regarding the PPHD. The amendment at N.J.A.C. 13:69K-2.1 would require a casino license applicant to submit not only an EEBOP but also a PPHD for Division approval. N.J.A.C. 13:69K-6.3 would be revised to require a casino licensee or casino license applicant to implement a monitoring system for evaluating implementation of the PPHD. The proposed amendments at N.J.A.C. 13:69K-6.8 would require periodic review of the PPHD alongside the EEBOP.

The proposed amendments and new rules would require casino licensees and casino license applicants to provide multiple avenues for reporting all forms of prohibited discrimination or harassment, and they

would require in-person training for employees regarding harassment and discrimination. Multiple avenues for reporting are specifically required in the proposed amendments at N.J.A.C. 13:69K-2.5 regarding casino license applicants building a casino hotel facility and at N.J.A.C. 13:69K-6.2 regarding other casino license applicants and casino licensees. As set forth above, multiple avenues for reporting also are required in proposed new N.J.A.C. 13:69K-5.3. All three rules would require casino licensees and casino license applicants to identify two or more persons to whom harassment or discrimination can be reported in order to ensure that no employee is in the position of having to report harassment or discrimination to the very person engaging in such harassing or discriminatory conduct. For example, a casino licensee or casino license applicant may not require an employee to report harassment or discrimination to their supervisor alone, but may instead permit an employee to report harassment or discrimination to the employee's supervisor, a human resources department supervisor, or the equal employment opportunity officer. In-person training is specifically required by the proposed amendments at N.J.A.C. 13:69K-1.4 and at proposed new N.J.A.C. 13:69K-5.3.

The proposed amendments would recodify with amendments the existing rules at N.J.A.C. 13:69K-6.9, 6.10, and 6.11 as 7.1, 7.2, and 7.3, respectively. More specifically, recodified N.J.A.C. 13:69K-7.1, which provides for special reviews and hearings regarding EEBOPs, would be revised to include PPHDs. Where recodified N.J.A.C. 13:69K-7.2 provides for the Division to conduct on-site monitoring and inspections related to the EEBOP, the proposed amendments would permit such monitoring and inspections with regard to the PPHD as well. At N.J.A.C. 13:69K-7.3, the proposed amendments would authorize the Division to impose the same sanctions for PPHD-related violations as it can for EEBOP-related violations.

Finally, the proposed amendments would revise two existing definitions at N.J.A.C. 13:69K-1.2 and would add two new definitions to that rule. The definitions of "equal business opportunity" and "equal employment opportunity" would be revised to clarify that such terms include freedom from harassment, including sexual harassment. They would be further revised to add the following protected classes: pregnancy or breastfeeding, sex, civil union status, and domestic partnership status. The category of "gender" would be changed to "gender identity or expression." The definition of "equal business opportunity" would be revised to include agents, business associates, or suppliers as protected persons. The definition of "equal employment opportunity" would be revised to prohibit discrimination based on genetic information and to protect persons who refuse to submit to a genetic test or make available the results of a genetic test to an employer. The proposed amendments would add two new definitions for "Plan Prohibiting Harassment and Discrimination (PPHD)" and for "sexual harassment."

The remaining changes would be non-substantive. The proposed amendments would add citations to the LAD at N.J.A.C. 13:69K-1.1, 1.2, 1.4, 3.1, and 4.1. In N.J.A.C. 13:69K-1.1, the amendment would cite the LAD as the basis for prohibitions against discrimination and harassment. In N.J.A.C. 13:69K-1.2, the amendment would clarify that the equal employment officer's obligations include ensuring compliance with the prohibitions against discrimination and harassment under the LAD. In N.J.A.C. 13:69K-1.4, the amendment would require the equal opportunity officer to recommend suspension of procedures, decisions, transactions, contracts, and payments where they are not consonant with the LAD. At N.J.A.C. 13:69K-3.1, the amendment would clarify that the equal employment officer for a casino service industry enterprise licensee is responsible for compliance with the prohibitions against sexual harassment and other unlawful harassment under the LAD. At N.J.A.C. 13:69K-4.1, the amendment would require a casino licensee or casino license applicant to be guided by the LAD when evaluating criteria, tests, interview procedures, or other employment procedures.

Additionally, references to "casino service industry enterprise licensees and applicants" would be revised to refer to "casino service industry enterprise licensees and casino service industry enterprise license applicants." These revisions would occur at N.J.A.C. 13:69K-1.1, 3.2, 3.3, and 3.5. References to casino service industry enterprise licensees at N.J.A.C. 13:69K-3.1 and 3.5 would be revised to include both casino

service industry enterprise licensees and casino service industry enterprise license applicants, as already set forth in the heading of Subchapter 3.

Finally, the proposed amendments would revise references to licensing “renewals” to refer instead to “resubmissions” at N.J.A.C. 13:69K-3.2 and 6.8. This revision is necessary to bring those two rules into conformance with the Act, as amended by P.L. 2011, c. 19.

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 proposed new rules, recodifications, and amendments implement the public policy of the State of New Jersey to afford equal employment and business opportunity for all persons, as expressed in the Casino Control Act and the Law Against Discrimination. In a report released in February 2020, the New Jersey Division on Civil Rights noted the prevalence of sexual harassment in certain industries, including accommodations and food service, and the particular vulnerability of hotel housekeeping staff. The proposed new rules, recodifications, and amendments will ensure that the gaming business is conducted in a manner that values workers and protects them, leading to a secure and diverse workforce that can perform duties with full equal employment opportunity and unfettered by harassment, including sexual harassment. Thus, the protections embodied in the proposed new rules, recodifications, and amendments will strengthen and enhance the industry’s work environment.

Economic Impact

Casino licensees and casino license applicants will incur costs in complying with the new requirement of a PPHD, annual reporting, and annual assessment. They will incur additional costs from establishing multiple avenues for reporting discrimination and harassment and implementing in-person training, if they do not have such practices in place already. The Division also will expend time and money in reviewing such PPHDs, annual reports, and assessment, and with monitoring compliance with requirements related to reporting avenues and in-person training. Such costs are necessary to effectuate the public policy for safeguarding employees’ rights to equal employment opportunity.

Federal Standards Statement

The proposed new rules and amendments would exceed Federal standards in certain respects. Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e et seq., prohibits discrimination in the compensation, terms, conditions, or privileges of employment on the basis of race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a). It is settled law that harassment on the basis of race, color, religion, or national origin is a violation of Title VII. See *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 66 (1986). Casino licensees and casino license applicants are subject to Title VII as they employ more than 15 employees. See 42 U.S.C. § 2000e(b) (defining “employer”).

The United States Equal Employment Opportunity Commission (EEOC) is the Federal agency charged with enforcing Title VII. 42 U.S.C. § 2000e-5. In 1980, the EEOC promulgated Guidelines on Sexual Harassment (EEOC Guidelines). The EEOC Guidelines advised employers: “Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under title VII, and developing methods to sensitize all concerned.” 29 CFR 1604.11(f). In a footnote, the EEOC Guidelines clarified that these principles apply not only to harassment on the basis of sex, but also harassment on the basis of the other statutorily protected categories of race, color, religion, or national origin. *Ibid*. More recently, the EEOC established a Select Task Force on the Study of Harassment in the Workplace, which published a report in June 2016 finding that: workplace harassment remains a persistent problem, there is a compelling business case for stopping and preventing harassment, leadership, and accountability are critical, and changes in training models are needed.

The proposed new rules at N.J.A.C. 13:69K-5 would exceed Federal standards under Title VII by requiring casino licensees and casino license

applicants to prepare a Plan Prohibiting Harassment and Discrimination, submit annual reports regarding harassment and discrimination complaints, establish multiple avenues for employees to make such complaints, and implement in-person training. Although the requirements exceed the explicit requirements of Title VII, they are consistent in general with the public policy expressed in the above-quoted EEOC regulation with respect to the prevention of harassment in the workplace. They also are consistent with EEOC’s best practices, which recommend that employers develop a comprehensive and effective harassment policy subject to evaluation and review of complaint data, that employers implement an effective and accessible harassment complaint system with multiple avenues for making complaints where possible, and that they implement effective harassment training with qualified, live, interactive trainers, if feasible. See Report of the Co-Chairs of EEOC Select Task Force on the Study of Harassment in the Workplace (June 2016), available at https://www.eeoc.gov/eeoc/task_force/harassment/task_force_report.cfm (last visited Aug. 3, 2020); EEOC Promising Practices for Preventing Harassment, <https://www1.eeoc.gov/eeoc/publications/promising-practices.cfm?renderforprint=1> (last visited Aug. 3, 2020). It is within the authority of the Division of Gaming Enforcement under the Casino Control Act, N.J.S.A. 5:12-1 et seq., to require such policies and practices within the regulated casino gaming industry. See N.J.S.A. 5:12-17, 69, 70, 134, and 135.

Certain proposed amendments at N.J.A.C. 13:69K-1.2 may further exceed Federal standards in Title VII with respect to the types of discrimination that are prohibited. The proposed amendments would add breastfeeding as a protected class in that rule’s definition of “equal employment opportunity.” This is not explicitly set forth as a statutorily protected group in Title VII. As amended by the Pregnancy Discrimination Act of 1978 (PDA), Title VII defines sex as including “pregnancy, childbirth or related medical conditions.” The Fifth and Eleventh Circuits have determined breastfeeding is a “related medical condition”; however, at least one Federal district court has concluded that Congress intended to limit “related medical conditions” to disabilities caused by pregnancy, which excludes breastfeeding. See *EEOC v. Houston Funding II, Ltd.*, 717 F.3d 425, 428 (5th Cir. 2013); *Hicks v. Tuscaloosa*, 870 F.3d 1253, 1259 (11th Cir. 2017); *Wallace v. Pyro Min. Co.*, 789 F.Supp. 867, 869 (W.D.Ky. 1990), *aff’d*, 951 F.2d 351 (6th Cir. 1991). The EEOC interprets “related medical condition” as including breastfeeding. See EEOC Enforcement Guidance: Pregnancy Discrimination and Related Issues (June 25, 2015), available at https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm (last visited Aug. 3, 2020). The proposed addition of breastfeeding to the definition of “equal employment opportunity” at N.J.A.C. 13:69K-1.2 is necessary for consistency with the LAD. See N.J.S.A. 10:5-12.

Other proposed amendments at N.J.A.C. 13:69K-1.2 are consistent with Federal standards as set forth in Title VII and its implementing regulations, as well as other Federal law. The proposed amendments would revise the definition of “equal employment opportunity” to add sex, civil union status, domestic partnership status, gender identity or expression, pregnancy, and genetic information as protected categories, and to include freedom from harassment. They also would add a new definition for sexual harassment. Title VII specifically prohibits discrimination based on sex. See 42 U.S.C. § 2000e-2. In 2020, the United States Supreme Court held discrimination based on sexual orientation or transgender identity is prohibited by Title VII as discrimination based on sex. See *Bostock v. Clayton Cnty.*, Georgia, No. 17-1618, 2020 WL 3146686, at *8 (U.S. June 15, 2020). As set forth above, Title VII as amended by the PDA specifically prohibits pregnancy discrimination as a form of sex discrimination. See 42 U.S.C. § 2000e(k); see also 29 CFR 1604.10. The Genetic Information Nondiscrimination Act of 2008 prohibits employment discrimination based on genetic information and makes it unlawful, with certain exceptions, for an employer to request genetic information with respect to an employee. 42 U.S.C. § 2000ff-1(a)-(b). Harassment is specifically prohibited by the EEOC Guidelines in 29 CFR 1604.11(a). The proposed definition for sexual harassment is identical to the Federal definition. 29 CFR 1604.11(a).

Other changes proposed in N.J.A.C. 13:69K-1.2 would exceed Federal standards set forth in Federal laws outside Title VII. Initially passed during the Reconstruction Era and later amended by the Civil Rights Act

of 1991, 42 U.S.C. § 1981 (Section 1981) provides, “All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts ... as is enjoyed by white citizens ...” Furthermore, 42 U.S.C. § 1982 (Section 1982) provides for all citizens to have the same right as white citizens “to inherit, purchase, lease, sell, hold, and convey real and personal property.” As stated above, N.J.A.C. 13:69K-1.2 includes a definition for “equal business opportunity,” which provides safeguards in circumstances similar to those protected under Sections 1981 and 1982. The proposed amendments would revise the definition of “equal business opportunity” to prohibit harassment, including sexual harassment and to add the following protected categories: civil union status, domestic partnership status, sex, pregnancy, breastfeeding, and gender identity or expression. The proposed amendments also would add agents, business associates, or suppliers as protected persons under that definition. These revisions exceed the Federal standards set forth in Sections 1981 and 1982 because Sections 1981 and 1982 prohibit discrimination in private contracts and property conveyances only on the basis of race. See *Rumyon v. McCrary*, 427 U.S. 160, 167 (1976). Sections 1981 and 1982 do not explicitly address harassment or identify particular individuals, such as the proposed categories of agents, business associates, or suppliers. The proposed changes are necessary for consistency with the LAD.

A Federal standards analysis is not required for the remaining changes in this rulemaking. As set forth above, the proposed amendments would add references to the PPHD at N.J.A.C. 13:69K-1.4, 2.1, 6.3, and 6.8, alongside existing references to the Equal Employment and Business Opportunity Plan and they would add a new definition for “Plan Prohibiting Harassment and Discrimination” at N.J.A.C. 13:69K-1.2. These changes are needed to properly implement the new requirements related to the PPHD set forth at proposed new N.J.A.C. 13:69K-5. Other changes are non-substantive.

Jobs Impact

The proposed new rules, recodifications, and amendments are not expected to have any impact on the number of jobs in the State of New Jersey.

Agriculture Industry Impact

The proposed new rules, recodifications, and amendments will have no impact on agriculture in New Jersey.

Regulatory Flexibility Analysis

The proposed new rules, recodifications, and amendments will only affect the operations of New Jersey casino applicants and licensees, none of which qualifies as a “small business” as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because they employ more than 100 persons full-time in the State of New Jersey. Accordingly, a regulatory flexibility analysis is not required. The same is generally true of casino service industry enterprise licensees and construction contractors. These groups are not required under the proposed new rules, recodifications, and amendments to develop and implement their own Plans Prohibiting Harassment and Discrimination, but are subject to requirements under this rulemaking, as discussed in the Summary above.

Housing Affordability Impact Analysis

The proposed new rules, recodifications, and amendments will have no impact on the affordability of housing in New Jersey and it is very unlikely that they would evoke a change in the average costs associated with housing because the proposed new rules, recodifications, and amendments concern equal employment protections within the casino gaming industry.

Smart Growth Development Impact Analysis

The proposed new rules, recodifications, and amendments will not have an impact on smart growth and it is extremely unlikely that they would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed new rules and amendments concern equal employment protections within the casino gaming industry.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed new rules, recodifications, and amendments will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State of New Jersey because the proposed new rules and amendments concern equal employment protections within the casino gaming industry.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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[.] **and other unlawful harassment prohibited by the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. This chapter serves to supplement all State of New Jersey and Federal laws and regulations of general applicability addressing equal employment, discrimination, and harassment.**

(b) [These rules are] **This chapter** is adopted in order to establish equal employment opportunity and equal business opportunity requirements for casino licensees and **casino license** applicants, casino service industry enterprise licensees, [and] **casino service industry enterprise license** applicants, and construction contractors and subcontractors engaged in construction projects for casino licensees and **casino license** applicants, **pursuant to N.J.S.A. 5:12-134 and 135.** [These rules] **This chapter** also establishes affirmative action requirements for casino licensees and **casino license** applicants[.] **pursuant to N.J.S.A. 5:12-134 and 135,** certain casino service industry enterprise licensees, [and] **casino service industry enterprise license** 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.

...
 “Change in ownership or management” means any change in the ownership or management of a **casino** licensee or **casino license** applicant, which could enable an involuntary change in the existing policy of the **casino** licensee or **casino license** applicant to occur, and shall include, without limitation, the sale of a controlling interest in the **casino** licensee or **casino license** applicant or a holding company thereof, or the replacement of the chief executive officer of the **casino** licensee or **casino license** applicant. **Such terms and words apply equally to casino service industry enterprise licensees and casino service industry enterprise license applicants.**

...
 “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 **free from harassment, including sexual harassment, and** without regard to the race, creed, color, national origin, ancestry, **age, pregnancy or breastfeeding, sex, gender identity or expression,** affectional or sexual orientation, [gender, age,] marital status, **civil union status, domestic partnership 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), **nationality,** or rehabilitated offender status of such person or such person’s partners, members, stockholders, directors, officers, managers, [or] **agents, employees business associates, or suppliers.**

...
 “Equal employment opportunity” means the opportunity of any person to apply for, obtain, and retain employment, transfer, promotion, pay raises, benefits, and training **free from harassment, including sexual harassment, and** without regard to the race, creed, color, national origin, ancestry, **age, marital status, civil union status, domestic partnership status,** affectional or sexual orientation, [gender, age, marital status,

nationality,] **genetic information, pregnancy or breastfeeding, sex, gender identity or expression, disability (where reasonable accommodation may be made to allow for such disability without causing an undue hardship on the employer),** atypical hereditary cellular or blood trait, liability for service in the armed forces of the United States, **the nationality of any individual,** [disability (where reasonable accommodation may be made to allow for such disability without causing an undue hardship on the person doing business)] **because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer,** or rehabilitated offender status of such person's partners, members, stockholders, directors, officers, managers, or employees.

"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 **including, but not limited to, the prohibitions against discrimination and harassment under the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.**

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

"**Plan Prohibiting Harassment and Discrimination (PPHD)**" means as defined at N.J.A.C. 13:69K-5.

"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.

"**Sexual harassment**" is a type of sex discrimination prohibited by the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and means **unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting that individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.**

13:69K-1.4 Designation of equal opportunity officer by casino licensee or **casino license** applicant; responsibility of chief executive officer and equal opportunity officer

(a) Each casino licensee or **casino license** 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 **casino license** 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] **ensuring** 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 **casino** licensee or **casino license** applicant achieves full implementation of its approved **EEBOP and PPHD**. The equal opportunity officer shall be directly responsible for the organization and effective and continuing implementation of its approved **EEBOP and PPHD**. 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 **casino license** applicant;
2. Recommend in writing to the chief executive officer the suspension of any personnel procedure, decision, or transaction [which] **that** is not consonant with the approved **EEBOP and PPHD** of the casino [licensee] **licensee** or **casino license** applicant or with any Federal or [state] **State**

law regarding equal employment opportunity **including, but not limited to, the prohibitions against discrimination and harassment under the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.;** 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 **casino** licensee's or **casino license** applicant's:

- i.-ii. (No change.)
- iii. Good faith efforts to implement its **EEBOP and PPHD**;
- iv.-viii. (No change.)

ix. Grievance procedures for, and disposition of, complaints related to equal employment opportunity, **including discrimination and harassment, including sexual harassment.**

(c) In addition to the responsibilities specified [in] **at** (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 **casino** licensee or **casino license** applicant; and

2. Recommend in writing to the chief executive officer the suspension of any contracting or purchasing procedure, decision, or transaction [which] **that** is not consonant with its approved **EEBOP or PPHD** or with any Federal or State law regarding equal business opportunity **including, but not limited to, the prohibitions against discrimination and harassment under the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.**

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

1. (No change.)
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] **that** 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 **including, but not limited to, the prohibitions against discrimination and harassment under the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.;**
3. (No change.)

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 **casino** licensee or **casino license** 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 **casino license** 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, **including the requirements regarding implementation of the EEBOP and PPHD.** These responsibilities may include, without limitation, the following functions: recruitment; equal employment opportunity **and in-person harassment** 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] **EEBOP and PPHD** approved by the Division, [and] with any Federal or State equal employment and business opportunity laws **including, but not limited to, the prohibitions against discrimination and harassment under the Law Against Discrimination, N.J.S.A. 10:5-12 et seq.;** monitoring and coordinating contracting, purchasing, and construction activities; and developing and maintaining the involvement of the **casino** licensee or **casino license** 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 **casino license** applicant.

3. The equal opportunity officer shall be provided with a staff sufficient to achieve full and timely implementation and enforcement of the EEBOP and the PPHD 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 **casino** licensee or **casino license** applicant or, in his or her absence, to the chief legal officer of the **casino** licensee or **casino license** applicant.

(f) Whenever the equal opportunity officer of a casino licensee or **casino license** 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 **casino license** applicant for inspection by the Division upon request.

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

13:69K-2.1 Equal employment and business opportunity obligations of casino licensees and **casino license** applicants concerning construction

(a) Each casino licensee and **casino license** 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 **casino license** 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.-2. (No change.)

(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 **casino license** applicant shall require the construction contractor or subcontractor to include the mandatory contract language set forth [in] at 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 December 19, 2011,] 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 **casino license** 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 a PPHD in accordance with the provisions of N.J.A.C. 13:69K-5 and 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 **casino license** applicant shall be required to develop and implement a monitoring system [which] **that** allows the casino licensee or **casino license** applicant to oversee all construction activity performed for the **casino** licensee or **casino license** 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 **casino license** applicant [which] **that** contract for construction work and the purchasing department. The monitoring system shall include, without limitation, procedures [which] **that**:

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

2. (No change.)

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

4. (No change.)

13:69K-2.5 Special compliance obligations applicable to a casino license applicant building a casino hotel facility

(a)-(b) (No change.)

(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.-6. (No change.)

7. An in-house complaint procedure for equal employment opportunity complaints to be addressed by the equal opportunity officer **or another designated individual if the equal opportunity officer is implicated in the complaint;** 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, **including sexual harassment;** the name, office location, and phone number of the equal opportunity officer **and at least one other individual to whom complaints of harassment or discrimination can be reported;** and instructions to contact the equal opportunity officer in the event of an allegation of discrimination or harassment, **including sexual harassment.**

SUBCHAPTER 3. EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION OBLIGATIONS OF CASINO SERVICE INDUSTRY ENTERPRISE[S] LICENSEES AND **CASINO SERVICE INDUSTRY ENTERPRISE LICENSE APPLICANTS**

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 **or casino service industry enterprise license applicant** 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] **ensuring** 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 **casino service industry enterprise** licensee **or casino service industry enterprise license applicant**, and that the **casino service industry enterprise** licensee **or casino service industry enterprise license applicant** complies with or makes good faith efforts to comply with any affirmative action obligations imposed on the **casino service industry enterprise** licensee **or casino service industry enterprise license**

applicant 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, **including, in particular, the prohibitions against sexual harassment and other unlawful harassment under the Law Against Discrimination, N.J.S.A. 10:5-12 et seq.**

13:69K-3.2 Equal employment and business opportunity obligations of all casino service industry enterprise licensees and **casino service industry enterprise license** applicants

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

(c) The chief executive officer of each casino service industry enterprise licensee or **casino service industry enterprise license** 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 **casino service industry enterprise license** [renewal] **resubmission**, and upon any change in the ownership or management of the casino service industry enterprise.

(d) Each casino service industry enterprise licensee or **casino service industry enterprise license** 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 **casino service industry enterprise license** applicant; and

2. (No change.)

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

(a) Each casino service industry enterprise licensee and **casino service industry enterprise license** applicant [which] **that** 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.-5. (No change.)

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

1.-2. (No change.)

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 **casino service industry enterprise** licensee or **casino service industry enterprise license** applicant under the Act and rules of the Division;

4.-5. (No change.)

13:69K-3.5 Sanctions

(a) If the Division determines that a casino service industry enterprise licensee, **casino service industry enterprise license applicant** or 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, **or deny the casino service industry enterprise license application**, the Division may:

1. Order any or all casino licensees and **casino license** applicants to terminate or suspend any business relationships or contracts with the casino service industry enterprise licensee [or], **casino service industry enterprise license applicant** or **registrant**;

2. Prohibit the casino service industry enterprise licensee, **casino service industry enterprise license applicant** or registrant or applicant

from entering into any future contracts with any casino licensee or **casino license** applicant for a period of time to be determined by the Division; and

3. (No change.)

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

13:69K-4.1 Equal employment opportunity obligations of casino licensees and **casino license** applicants concerning the operations work force

(a) Each casino licensee and **casino license** 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 **casino license** 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 **casino license** applicant;

2.-3. (No change.)

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 **casino license** applicant under the Act and this chapter;

5.-7. (No change.)

(c) In the event that any criteria, test, interview procedure, or other employment procedure used by a casino licensee or **casino license** applicant is shown to have a discriminatory impact, the casino licensee or **casino license** 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 **casino license** 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 **casino license** applicant shall discontinue the use of any criteria, tests, interview procedures, or other employment procedures [which] **that** have a discriminatory impact and [which] **that** 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 **casino license** applicant shall be guided by **the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.**, 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 **casino license** 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] **rules**, and Title I of the Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., and attendant regulations.

SUBCHAPTER 5. [(RESERVED)] **COMPLIANCE BY CASINO LICENSEES AND CASINO LICENSE APPLICANTS—PREPARATION, IMPLEMENTATION, AND REVIEW OF PLAN PROHIBITING HARASSMENT AND DISCRIMINATION (PPHD)**

13:69K-5.1 **Plan Prohibiting Harassment and Discrimination (PPHD); purpose and requirements**

(a) **In order to ensure compliance with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and in furtherance of the public policy of this State, each casino licensee and casino license applicant shall be required to submit a comprehensive Plan Prohibiting Harassment and Discrimination (PPHD) to the Division for its approval. The PPHD shall address in specific terms the policies,**

strategies, procedures, and internal requirements that the casino licensee or casino license applicant intends to implement to prevent discrimination or harassment, including sexual harassment, from occurring during the course of employment in any work-related setting, both on a current and a continuing basis, and shall apply to all qualifying entities of the casino licensee or casino license applicant.

(b) Each PPHD shall contain the basic components set forth at N.J.A.C. 13:69K-5.2 and shall meet the minimum standards established by the Director set forth at N.J.A.C. 13:69K-5.3.

13:69K-5.2 PPHD; basic components

(a) Although, in general, no particular format will be required, every PPHD shall include the following seven basic components:

1. A comprehensive written policy addressing the prevention of discrimination and harassment, including sexual harassment, in the workplace;

2. An affirmative statement from the chief executive officer regarding the persons to whom the PPHD applies and the type of conduct that is prohibited;

3. Detailed training for increased awareness and prevention of discrimination and harassment, including sexual harassment;

4. Detailed procedures and methods for reporting discrimination or harassment, including sexual harassment;

5. Detailed procedures to be followed when investigating a report of discrimination or harassment, including sexual harassment;

6. Potential consequences for any person found to have committed an act of discrimination or harassment, including sexual harassment; and

7. Methods for conducting an annual assessment of the PPHD.

13:69K-5.3 Minimum standards

(a) The Division, through Director action, shall determine the minimum standards regarding the basic components set forth at N.J.A.C. 13:69K-5.2(a), and such current minimum standards are set forth at (b) below.

(b) The Division's minimum standards recognize the paramount importance of creating and maintaining a work environment that is safe for all employees, one in which diversity, inclusion, and the dignity of each employee is respected, and which is free from any form of discrimination or harassment. Those standards further recognize that many of New Jersey's casino licensees, casino license applicants, and qualifying entities have long-standing policies, plans, procedures, and training in place to prevent discrimination and harassment, including, but not limited to, sexual harassment occurring in the course of employment, whether in the workplace or in any work-related setting outside of the workplace. The failure of a casino licensee, casino license applicant, or qualifying entity to adopt or effectively apply comprehensive written policies addressing the prevention of such discrimination or harassment may lead to the violation of Federal, State, or local laws, rules, and regulations that could reflect or tend to reflect discredit upon the State of New Jersey or its gaming industry. For each basic component at N.J.A.C. 13:69K-5.2, the following minimum standards shall apply:

1. The comprehensive written policy shall include:

i. An unequivocal statement that discrimination and harassment, including sexual harassment, will not be tolerated;

ii. An unequivocal statement that there is an organizational commitment to diversity, inclusion, respect, and the prohibition of discrimination and harassment with the goal to create and maintain a safe working environment for all employees;

iii. An unequivocal statement that all employees are prohibited from retaliating against an individual who has submitted a good faith report regarding discrimination or harassment or any witness who has provided information regarding such report;

iv. An easy-to-understand description of examples of prohibited conduct; and

v. A statement that examples of "sexual harassment" may include, but are not limited to, each of the following actions depending on the circumstances: sexually suggestive behavior; sexually suggestive staring or leering; sexual or sexually suggestive jokes; sexual propositions; sexual or physical contact, including touching, slapping,

kissing, or pinching; sexual comments, insults, or teasing; sexually offensive gestures; intrusive questions about sexual activity; and sexually explicit or offensive material that is displayed in a public place or put in an employee's work area or belongings;

2. The affirmative statement by the chief executive officer shall include a provision that the PPHD applies to:

i. All employees in their interactions with each other and with vendors, providers, principals, officers, directors, and other persons with whom an employee comes into contact in the course of employment, including customers or patrons, whether in the workplace or in any work-related setting outside the workplace, although the PPHD is not intended to increase or modify the scope of liability for a casino licensee or casino license applicant for harassment or discrimination as provided for in the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.;

ii. All conduct in the regular course of employment, whether in the workplace or in any work-related setting outside of the workplace, as well as all conduct in other employment practices, including, but not limited to, recruitment, interviewing, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, discharge, and determinations regarding compensation, benefits, working conditions, and career development; and

iii. Unwelcome harassment, including of a sexual nature, that is not directed at an individual but pervades the workplace and interferes with the ability of a reasonable individual to do his or her job;

3. Awareness and prevention training shall be addressed in the PPHD and shall set forth the following:

i. A requirement to communicate in person all discrimination and harassment prevention policies and procedures;

ii. A requirement to train all employees, including, but not limited to, managers, officers, directors, principals, partners, and owners; and

iii. A requirement to conduct training upon commencement of each person's employment or acquisition of interest and at least once annually in person thereafter;

4. Procedures and methods for reporting discrimination or harassment shall be set forth in the PPHD and shall include:

i. A reporting method or system for employees who experience or observe incidents or patterns of discrimination or harassment, including sexual harassment;

ii. Multiple avenues for making such reports, meaning that the procedures must identify two or more persons to whom an employee can report harassment or discrimination; and

iii. A requirement that any person who retaliates against an individual who submits a good faith report regarding discrimination or harassment or against any witness that provided information regarding such a report will be subject to appropriate disciplinary action;

5. The procedures for investigating a report of discrimination or harassment shall be addressed in the PPHD and shall set forth the following requirements:

i. The casino licensee or casino license applicant will promptly initiate an investigation into any report of discrimination or harassment;

ii. Such investigation will be conducted in a thorough and impartial manner;

iii. The identity of an individual who submits a report, a witness who provides information regarding a report, the target of the complaint, and any information gathered as part of the investigation will be kept confidential, except as reasonably necessary to comply with applicable laws, rules, and regulations, and only disclosed to the extent consistent with a thorough and impartial investigation;

iv. The casino licensee or casino license applicant will take prompt action if it is determined that an incident or pattern of discrimination or harassment, including sexual harassment, has occurred;

v. Reasonable efforts will be made within 30 days of the conclusion of an investigation to communicate the disposition of the matter to the person who filed the complaint of discrimination or harassment and to any person who has been or is subject to a credible risk of

retaliation relating to the complaint of discrimination or harassment, including, but not limited to, employment based retaliation; and

vi. All records relating to the PPHD and good faith claims will be retained for no less than 10 years and will be made available for inspection by the Division upon request;

6. The potential consequences for any person found to have committed an act of discrimination or harassment, including sexual harassment shall be identified in the PPHD; and

7. Methods for conducting an annual assessment of the PPHD shall include:

i. An annual assessment of the PPHD to ensure that the policies and procedures set forth therein are effectively educating employees, managers, officers, directors, principals, partners, and owners regarding prohibited conduct, how to report and otherwise deal with such conduct, and the consequences of engaging in such prohibited conduct; and

ii. A means of establishing and enforcing accountability for achieving the objectives of this chapter and the PPHD of the casino licensee or casino license applicant in the performance evaluations of executives, managers, and supervisors.

(c) The minimum standards set forth in this section do not relieve a casino licensee or a casino license applicant of its obligations to comply with all other applicable Federal and State laws relating to discrimination or harassment, including sexual harassment.

13:69K-5.4 PPHD filing requirements; review and approval; revisions

(a) Any entity that is an applicant for, or holds, a casino license shall file its initial PPHD with the Division for approval 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. The PPHD shall be accompanied by a written statement verifying compliance with the minimum standards and shall be submitted to the Division with the application for initial licensure and with each application for license resubmission.

(b) On an annual basis, by no later than January 1st of the following year, the casino licensee or casino license applicant must provide the number and a description of discrimination or harassment complaints, including sexual harassment complaints, filed against it and its qualifying entities, and such report shall include: the total number of complaints filed, the number of complaints filed that were found by the employer to be substantiated, the number of complaints filed that were found by the employer to be unsubstantiated, and the number of complaints filed where resolution is still pending. The information provided shall include the final disposition, whether through official channels, legal action, or otherwise. Such report shall delineate the number of complaints:

1. Submitted internally;

2. Filed with the United States Equal Employment Opportunity Commission, the DCR, other State or Federal agencies, or in State or Federal courts; and

3. Raised through other channels.

(c) A casino licensee or casino license applicant may request the approval of the Division to revise its PPHD at any time. No material modification of a PPHD may be implemented by a casino licensee or casino license applicant until it has been approved by the Division. Any request to revise a PPHD shall be submitted at least 60 days in advance of the requested effective date of the change, absent exceptional circumstances, 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 casino license applicant with the requirements of the Act and this chapter, which explanation shall include supporting data or documentation when available.

13:69K-5.5 Assessment and review

(a) All casino licensees and casino license applicants must assess their PPHD annually and, if necessary, make changes to ensure the effectiveness of the policies and procedures therein, including the frequency and effectiveness of employee education.

(b) The Division shall be entitled, at any time, to review any and all records of a casino licensee and a casino license applicant related to its PPHD, as well as those concerning all aspects of discrimination or harassment, including sexual harassment.

SUBCHAPTER 6. COMPLIANCE BY CASINO LICENSEES AND CASINO LICENSE 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] ensure compliance with the requirements of section 134 of the Act and this chapter, each casino licensee and casino license 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 casino license applicant shall address in specific terms the strategies, procedures, and internal requirements [which] that the casino licensee or casino license 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 casino license 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 casino license applicant shall contain sections addressing each of the following areas:

1.-3. (No change.)

(c) (No change.)

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

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

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

2. (No change.)

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

i. Orientation, sensitivity, and [ADA compliance] training sessions for staff related to compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., including executives, managers, supervisors, and placement personnel;

ii. (No change.)

iii. The inclusion of accountability for achieving the objectives of this chapter and the EEBOP of the casino licensee or casino license 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. (No change.)

2. A description of the lines of communication and multiple reporting avenues available within the organization as they relate to the objectives of this chapter, including the identification of two or more persons to whom an employee can report harassment or discrimination;

3. A description of the resources [which] that the casino licensee or casino license 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 casino license applicant to actively participate in and support the efforts of these advisory boards; and

4. A description of the procedures and techniques [which] that the casino licensee or casino license 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 **casino license** applicant shall describe in detail the means by which the **casino licensee** or **casino license** 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. (No change.)
2. Implementation of a monitoring system [which] **that** will enable the casino licensee or **casino license** applicant to evaluate the performance of contractors and subcontractors and the performance of the **casino licensee's** or **casino license** applicant's own organization in fulfilling the equal employment and equal business opportunity requirements, **including the requirements regarding the implementation of the PPHD**, imposed by this chapter; and
3. (No change.)

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 **casino license** applicant shall describe in detail the means by which the **casino licensee** or **casino license** applicant intends to comply with the equal opportunity and regulatory obligations imposed by N.J.A.C. 13:69K-4[.] **and 5**. 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 **casino license** 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 **casino license** 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 **casino license** applicant will [insure] **ensure** 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 **casino license** 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.-5. (No change.)

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

- (a) (No change.)

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

1. (No change.)
2. The Division directs that the EEBOP be revised as a result of an EEBOP assessment [hearing] **review** pursuant to N.J.A.C. 13:69K-6.8; or
3. (No change.)

(c) A casino licensee or **casino license** 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 **casino license** 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, **absent exceptional circumstances**, and shall include, without limitation, the following:

1. (No change.)
2. A detailed explanation of the changes being proposed and their anticipated effect on the compliance of the casino licensee or **casino license** 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 **and PPHD** assessment; statistical demonstration of compliance with obligations; demonstration of compliance through documentation of EEBOP implementation

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

(b) An EEBOP **and PPHD** assessment for a casino licensee shall be [scheduled] **held** as part of each casino license resubmission. A casino licensee operating under a [renewed] **resubmitted** casino license shall also be required to participate in an interim EEBOP **and PPHD** assessment.

(c) EEBOP **and PPHD** assessment [hearings] **reviews** 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, a **resubmission review**, or an interim EEBOP assessment, the casino licensee or **casino license** applicant shall submit a self-assessment of its performance under its approved EEBOP **and PPHD** 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] **that** were included in the EEBOP **and PPHD** as a means to attain these objectives;
2. An analysis by the casino licensee or **casino license** applicant as to why the particular objectives were not achieved;
3. An internal review and evaluation of each programmatic portion of its approved EEBOP **and PPHD** as to which the Division has directed an assessment; and
4. Modifications to the approved EEBOP proposed by the casino licensee or **casino license** applicant as a means to improve its performance in deficient areas during the next EEBOP assessment period.

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

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

(f) If, upon completion of an EEBOP **and PPHD** assessment, the Division determines that a casino licensee or **casino license** applicant has failed to comply with the requirements of the Act, this chapter, or its approved EEBOP **or PPHD**, the Division may impose one or more of the sanctions authorized by N.J.A.C. 13:69K-[6.11]7.3.

SUBCHAPTER 7. ACTIONS AND SANCTIONS REGARDING PLANS PROHIBITING HARASSMENT AND DISCRIMINATION AND PROMOTING EQUAL EMPLOYMENT BUSINESS OPPORTUNITY

13:69K-[6.9]7.1 Special EEBOP **and PPHD** reviews and hearings

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

(b) Any casino licensee or **casino license** applicant [which] **that** is notified that a special review of its EEBOP **or PPHD** shall be conducted pursuant to this section shall supply whatever documentation or reports are requested by the Division. A special **review** or hearing on the EEBOP **or PPHD** of the casino licensee or **casino license** 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

review or hearing shall be to determine whether the casino licensee or **casino license** applicant should be required to make immediate modifications to its EEBOP or **PPHD** consistent with the purposes of the Act and this chapter.

13:69K-[6.10]7.2 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 **casino license** applicant for the purposes of determining whether the **casino** licensee or **casino license** applicant is complying with the Act, this chapter, and its approved EEBOP **and PPHD**. In making such a determination, the Division shall be entitled to inspect or copy any relevant books or records.

13:69K-[6.11]7.3 Sanctions

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

1. (No change.)
2. [Deny] **Take action to deny**, suspend, or revoke the casino license;
3. Enter a cease and desist order [which] **that** specifies the practice or contract to be discontinued or altered by the casino licensee or **casino license** applicant;
4. Issue public letters of reprimand or censure to be made a permanent part of the file of the casino licensee or **casino license** applicant;
5. (No change.)
6. Refer to the Attorney General, or his or her designee, circumstances [which] **that** may constitute violation of the [“]Law Against Discrimination,[“] N.J.S.A. 10:5-1 et seq.;
7. (No change.)
8. [Impose] **Act to impose** license conditions; and
9. (No change.)
