

Section 2 Equal Employment Opportunity

Section 2 Equal Employment Opportunity

8-201 General

This section presents the guidelines for administration of the nondiscrimination and equal employment opportunity (EEO) provisions of the contract. The total EEO program is complex and involves functional units outside of construction. The guidelines in this section apply primarily to activities and responsibilities resulting from contractual requirements and are not necessarily complete insofar as the total responsibilities and activities for either Caltrans or the contractor.

8-201 General

8-202 Laws, Regulations, and Specifications

California requirements for public works contractors on the subjects of nondiscrimination and EEO are located in the Government Code, Sections 12990 and following, and in the regulations of the Fair Employment and Housing Commission in Title 2, California Code of Regulations, Sections 8100, “Contractor Nondiscrimination and Compliance,” and following. Section 7-1.01A(4), “Labor Nondiscrimination,” of the *Standard Specifications*, and the “Labor Nondiscrimination” section of the contract special provisions call the contractor’s attention to these and other requirements. Federal requirements applicable to federal-aid projects are located in the required federal contract provisions under “Section II. Nondiscrimination.” Under the terms of the contract, the contractor has responsibility for compliance by its subcontractors.

8-202 Laws, Regulations, and Specifications

Caltrans also complies with the nondiscrimination laws and regulations set forth in Title 6 and Title 7 of the Civil Rights Act of 1964. Title 6 is a federal law that prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. Title 7 is a federal law that protects individuals from discrimination in employment practices on the basis of race, color, religion, sex, or national origin.

8-203 Preconstruction Conference

The resident engineer or district labor compliance officer must discuss the EEO and fair practices provisions of the contract at the preconstruction meeting and advise the contractor of requirements as stated in Title 6 of the Civil Rights Act of 1964. See Section 5-0, “Conduct of the Work,” of the *Construction Manual* for details on preconstruction conferences.

8-203 Preconstruction Conference

8-204 Reports to Other Agencies

Terms of the contract require contractors and certain subcontractors to submit information and reports directly to the United States Department of Labor’s director, Office of Federal Contract Compliance Programs, and to the administrator, Office of Compliance Programs, California Department of Fair Employment and Housing. Normally, no copies of these reports are sent to Caltrans. The law also requires contractors to send notices of their status as EEO employers to the labor unions or other worker organizations with which they have agreements.

8-204 Reports to Other Agencies

**8-205
Onsite Interviews**

8-205 Onsite Interviews

District labor compliance officers or project personnel conduct onsite interviews with employees of the contractor and subcontractors. Conduct employee interviews for labor compliance and EEO at the rate of at least two per month per contract until all the contractor’s employees have been interviewed at least once during the life of the contract. Record interviews on Form CEM-2504, “Employee Interview: Labor Compliance/EEO,” or Form CEM-2504 (Spanish), “Entrevista de Empleado: Labor Compliance/EEO,” if applicable. EEO interviews are done in conjunction with the labor compliance interviews as a means of verifying that the contractors and subcontractors are in compliance with the EEO and the labor nondiscrimination contract provisions as mandated by state and federal statutes and regulations.

When an employee’s responses to the EEO questions in Form CEM-2504 indicate possible irregularities, the district labor compliance officer must forward a copy of that interview to the Division of Construction labor compliance unit for further action.

**8-206
Federal-Aid Project
Equal Employment
Opportunity
Posters**

8-206 Federal-Aid Project Equal Employment Opportunity Posters

Check to see that the contractor has posted the company’s EEO policy and the “Equal Employment is the Law” poster at each construction location as required by the contract specifications. The resident engineer must ensure the EEO policy and poster is posted in a prominent location for all employees on the project to review for the duration of the contract.

The district labor compliance officer verifies that these posters are displayed at offsite locations during source document reviews. If the contractor is found to be in noncompliance, the district labor compliance officer provides additional posters to effect compliance. The district labor compliance officer will then write a memo to the resident engineer for inclusion in the project file, advising the resident engineer of the contractor’s compliance status.

The “Equal Employment Opportunity is the Law” poster must also be posted in the resident engineer’s office.

**8-207
Employee
Complaints—
Discrimination
Complaint
Processing**

8-207 Employee Complaints—Discrimination Complaint Processing

Any complaint that implicates the contractor’s employment practice is generally a Title 7 EEO complaint. EEO complaints may originate from contractor’s employees either because of a direct complaint or as a result of a contractor employee interview. The resident engineer documents all EEO complaints in a diary, a letter to the project files, or on Form CEM-2504, “Employee Interview: Labor Compliance/EEO.” The public, contractors, suppliers, vendors, or employees may present these complaints. Complaints regarding EEO are directed to the resident engineer, who files the original complaint in the project records and directs a copy of the complaint to the district labor compliance officer.

The district labor compliance officer sends the complainant a letter notifying them of their rights under the Civil Rights Act of 1964. The letter also provides a complete list of resolution options. Those options include:

- Use of the employer’s internal EEO program for investigation and resolution.
- Filing a complaint directly with the California Department of Fair Employment and Housing (DFEH).



- Filing a complaint directly with the United States Equal Employment Opportunity Commission (EEOC).

A copy of the following items should be included in the letter:

- Form DFEH-159 “Guide for Complainants and Respondents,” a DFEH brochure, available on the internet:

<http://www.dfeh.ca.gov>

- Instructions on “Filing a Charge of Employment Discrimination,” an EEOC informational guide is available on the internet:

http://www.eeoc.gov/charge/overview_charge_filing.html

For a sample letter to the complainant, see Example 8-2.1 at the end of this section.

In addition, the district labor compliance officer sends a notification letter to the prime contractor that an employee has alleged discrimination and that the employee was given notice of available recourse. The labor compliance officer shall not divulge the employee’s name. The letter reminds the contractor of its obligation to conduct an investigation pursuant to contract requirements. For a sample letter to the contractor, see Example 8-2.2 at the end of this section.

The district labor compliance officer refers the issue to the Division of Construction. The referral includes copies of the letter to the complainant, the letter to the contractor, and the employee interview form. Further district construction actions should be taken only on the advice and guidance of the Division of Construction.

8-208 Equal Opportunity Complaints and Contract Administration

Any complaint implicating that the practices of Caltrans have the effect of discrimination is considered a Title 6 complaint. Title 6 complaints may originate from a direct complaint made by the public or by a contractor. Title 6 complaints that occur during construction should be referred to the district labor compliance officer. The district labor compliance officer refers the issue to the Division of Construction. The Division of Construction ensures that proper evaluation or investigation is conducted and refers the complaint to Civil Rights. Civil Rights, Discrimination Complaint Investigations Unit conducts investigations of Title 6 complaints.

During construction, amendments to the contract may occur by contract change orders. Some contract change orders may invoke Title 6 complaints or violate the principles of environmental justice. Environmental justice is the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. Examples include new traffic detours, changes in the length or limits of the project, mitigation measure changes, materials changes, changes in contract-mandated material borrow or disposal sites, or setup of portable hot asphalt concrete or concrete plants.

The resident engineer administers significant contract changes and takes affirmative measures to ensure nondiscrimination and preservation of environmental justice. Since most Title 6 mitigation measures are associated with complex projects in urban areas, the resident engineer may conduct community meetings, prepare press

8-208 EEO Complaints and Contract Administration

releases, or hire public relations consultants to keep communities informed and advised on project scope and schedule. The design project engineer and the project manager evaluate the impacts of any significant change including compliance with Title 6 requirements. The project manager coordinates functional support units to mitigate Title 6 compliance deficiencies that result from significant contract amendments. The design project engineer should concur with significant contract amendments that have a Title 6 impact. The Division of Construction Program Area Administrator analyzes the facts and findings and suggests corrective actions to remedy Title 6 violations.

**8-209
Contracts
Containing “Federal
Requirements
Training Special
Provision”**

8-209 Contracts Containing “Federal Requirements Training Special Provision”

The training special provision is used on federal-aid projects when it is determined that the project is of sufficient size and duration to support full training periods. The intent of the training special provision is to enhance contractors’ EEO programs through on-the-job training. Training and upgrading of minorities and women is the primary objective of the training special provision. However, the contractor may not use the training program to discriminate against any applicants for training. The TSP states the number of apprentices or trainees the contractor is required to use on the project and provides guidance on actions the contractor must take to meet the training provision. In addition, the special provision provides for reimbursement to the contractor at 80 cents per hour for each apprentice or trainee used on the project.

Before the work involving the apprentices or trainees begins, the resident engineer requests that the contractor submit training plan with the number of apprentices or trainees in each classification, the training program to be used, and the start date for training in each classification. Apprentices and trainees must be employed under programs currently approved by the United States Department of Labor, Bureau of Apprenticeship Training (DOL). Contractors must submit to the resident engineer evidence of apprentice or trainee registration in an approved training program. Contractors may use trainees only when the trainee wage schedule for the specific classification is listed in the federal wage determination applicable to the contract.

Training programs not currently approved by DOL may be accepted as long as the program meets the EEO requirements of the federal contract special provisions. Contractors must submit a request for approval for these programs from the resident engineer before their use on the project. The resident engineer must submit the contractor’s request to the district labor compliance officer who must forward the request to the Division of Construction for verification of conformance with United States Code, Chapter 1, Part 230, Subpart A, Section 230.111 (d). If the training program meets the requirements, the Division of Construction will submit the program to the Federal Highway Administration with a recommendation for approval. Upon approval from the Federal Highway Administration, the Division of Construction will notify the district labor compliance officer and resident engineer. The resident engineer will notify the contractor of approval of the training program.

The resident engineer must write a contract change order, as specified in the special provisions, to provide the appropriate compensation for the apprentices or trainees. The total amount of this contract change order should reflect the contractor’s plan for use of apprentices or trainees. No markup will be applied to the specified hourly rate.



During construction progress, the resident engineer requires periodic reports from the contractor demonstrating the contractor's performance with the requirements of the TSP. Reporting periods should be tailored to the duration of the project. For example, a year-long project should require at least quarterly reports. The resident engineer reviews the reports for conformance with the contractor's training plan prior to approving reimbursement for training hours. The resident engineer must not reimburse the contractor unless the reports have been provided. The resident engineer may reimburse the contractor for training in excess of the required number of apprentices or trainees as long as evidence of registration in a DOL program is provided. When an apprentice or trainee quits the project, the contractor must provide the resident engineer with the reason. A contractor will have fulfilled the TSP requirements if applicable training has been provided to the specified number of apprentices or trainees.

8-210 Contractor's Annual Equal Employment Opportunity Report—Form FHWA-1391, Federal-Aid Highway Construction Contractors Annual EEO Report

The United States Code of Federal Regulations, Title 23, Section 230.121 requires all prime contractors and subcontractors, regardless of tier, to submit the FHWA Form-1391. The form shows the composition of the contractor's workforce by race and gender for each job category. The requirement is applicable to all prime contractors and subcontractors, regardless of tier, who have Federal-aid contracts that exceed \$10,000 and that worked all or any part of the last full week of July. Contractors are subject to a progress pay deduction for failure to submit a satisfactory form. The applicable procedures and amounts are listed in Sections 8-211, "Deducting Payment for Failure to Submit Reports," of the *Construction Manual*.

8-211 Deducting Payment for Failure to Submit Reports

The authority for initiating a deduction is contained in the special provisions, Section 14, "Federal Requirements for Federal-Aid Construction Projects," of federal-aid construction contracts. EEO deductions should be made in those situations when the contractor or subcontractor fails to submit the required training plans, fails to post the necessary EEO information, or when the contractor or subcontractor fails to provide the FHWA Form-1391, "Federal-Aid Highway Construction Contractors Annual EEO Report."

Contractors found in noncompliance are to be advised, in writing, of the specific deficiencies prior to making a deduction. Refer to Section 5-103F (1c) Deductions of the *Construction Manual* for instructions on taking the deduction.

8-210 Contractor's Annual Equal Employment Opportunity Report FHWA Form-1391

8-211 Deducting Payment for Failure to Submit Reports

Example 8-2.1 Sample Letter to the Complainant (Employee)

DEPARTMENT OF TRANSPORTATION

DIVISION OF CONSTRUCTION
1120 N STREET
P. O. BOX 942874
SACRAMENTO, CA 94273-0001
PHONE (916) 654-2157
FAX (916) 654-6345
TTY 711



*Flex your power!
Be energy efficient!*

[The telephone and fax numbers must be those of the signature block regardless of who signs the letter. REMOVE THIS NOTE BEFORE PREPARING THE LETTER.]

[Date]

[Employee's Name]
[Address]
[City, State, Zip]

Re: [Caltrans Contract Number, Federal ID Number, and Project Description]

Dear [Employee's Name]:

This letter confirms our discussion on [Date] where you informed us that you believe you have experienced discrimination and allege [Company Name] discriminated against you based on (race, color, national origin, sex, age or disability).

The district labor compliance officer reviewed the allegations and notified [Company Name] in writing, that you have been provided a complete list of resolution options, including the use of the employer's internal equal employment opportunity program for investigation and resolution.

The California Department of Transportation (Department) monitors discrimination complaints against sub-recipients of state or federal financial assistance. However, the Department has no statutory or regulatory authority to conduct an investigation of alleged discrimination complaints between the contractor and the contractor's employee. The Department has no authority to gather evidence, subpoena documents, depose witnesses, or file equal employment opportunity cases on behalf of a contractor's employee. The Department ensures that the contractor conducts an equal employment opportunity investigation, and documents oversight activities in the project records.

You are advised that filing a complaint with the California Department of Fair Employment and Housing or the United States Equal Employment Opportunity Commission must be filed within specific statutory deadlines from the date of the alleged discriminatory act.

If you have questions relating to the information referenced above, please contact [Labor Compliance Officer's Name] at [Labor Compliance Officer's Telephone Number].

Sincerely,

[District Labor Compliance Officer's Name]
District Labor Compliance Officer
District [Number] Construction

Enclosures Form DFEH-159, "Guide for Complainants and Respondents"
"Filing a Charge of Employment Discrimination," available online at:
http://www.eeoc.gov/charge/overview_charge_filing.html

c: Division of Construction



Example 8-2.2 Sample Letter to the Contractor

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION

DIVISION OF CONSTRUCTION
1120 N STREET
P. O. BOX 942874
SACRAMENTO, CA 94273-0001
PHONE (916) 654-2157
FAX (916) 654-6345
TTY 711



*Flex your power!
Be energy efficient!*

[The telephone and fax numbers must be those of the signature block regardless of who signs the letter. REMOVE THIS NOTE BEFORE PREPARING THE LETTER.]

[Date]

[Contractor's Name]

[Address]

[City, State, Zip]

Re: [Caltrans Contract Number, Federal ID Number, and Project Description]

Dear [Contractor's Name]:

The California Department of Transportation (Department) has been notified that a current or former employee of [Company Name] filed (or) plans to file a formal complaint of discrimination. The current or former employee is alleging discrimination based on (race, color, national origin, sex, age, or disability).

The district labor compliance officer reviewed the allegations and provided the complainant a complete list of resolution options, including the use of the employer's internal equal employment opportunity program for investigation and resolution.

The Department complies with nondiscrimination laws and regulations, including Title 7 of the Civil Rights Act of 1964. Title 7 of the Civil Rights Act of 1964 states, "It shall be an unlawful employment practice for an employer: (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to their compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin or (2) to limit, segregate, or classify their employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect their status as an employee, because of such individual's race, color, religion, sex, or national origin." The Department ensures that its activities or programs are nondiscriminatory.

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the nondiscrimination statutes. Any individual alleging such harassment, retaliation, or intimidation may file a complaint with the California Department of Fair Employment and Housing or with the United States Equal Employment Opportunity Commission.

If you have any questions, relating to the information referenced above, please contact the Office of Civil Rights at (916) 324-1700.

Sincerely,

[District Labor Compliance Officer's Name]

District Labor Compliance Officer

District [Number] Construction

c: Division of Construction
Office of Civil Rights
Subcontractors (if applicable)