

Section 2 Equal Employment Opportunity

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Section 2 Equal Employment Opportunity

8-201 General

This section presents the requirements 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.

Requirements in this section apply primarily to activities and responsibilities resulting from contractual requirements and are not necessarily complete for either Caltrans or the contractor insofar as the total responsibilities and activities.

8-202 Laws, Regulations, and Specifications

California requirements for public works contractors on the subjects of nondiscrimination and EEO are located in Title VI of the Civil Rights Act of 1964; California Government Code, Section 12990; Title 2 of the regulations of the Fair Employment and Housing Commission; and California Code of Regulations, Sections 8107 and 8203.

Sections 7-1.02I(2), "Nondiscrimination," and 7-1.11B, "FHWA-1273," of the *Standard Specifications* and in the required federal contract provisions of the specifications call the contractor's attention to these and other requirements. Under the terms of the contract, the contractor is responsible for its subcontractors' compliance.

8-203 Preconstruction Conference

The resident engineer or district Labor Compliance officer must discuss the nondiscrimination and EEO provisions of the contract at the preconstruction meeting and advise the contractor of the requirements in Title VI of the Civil Rights Act of 1964. Refer to Section 5-0, "Conduct of the Work," of this manual for details on preconstruction conferences.

8-204 Onsite Interviews

District Labor Compliance officers or project personnel conduct onsite interviews with employees of the contractor and subcontractors. Conduct employee interviews for nondiscrimination and EEO at the rate of at least two employees per contract, per month, including at least one interview from the prime contractor and each subcontractor until the contract is accepted or all employees on the project have been interviewed. Record interviews on Form DOT CEM-2504, "Employee Interview: Labor Compliance/Equal Employment Opportunity," or Form DOT CEM-2504SP, "Entrevista de Empleado: Cumplimiento Laboral/IOE," 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 mandated by state and federal statutes and regulations.

When an employee's responses to the EEO questions in Form DOT CEM-2504 indicate possible violations, the district Labor Compliance officer must forward a copy of that interview to the Division of Construction, Labor Compliance Unit, for further action. Refer to Section 8-102A (3), "Interviews With Contractor Personnel," of this manual for more information.

8-205 Federal-Aid Project Equal Employment Opportunity Posters

Check that the contractor's EEO policy and the "Equal Employment Is the Law" poster are posted in a prominent location on the project for all employees to review for the duration of the contract. Check to see that the contractor has these posted when visiting each construction location. The "Equal Employment Opportunity Is the Law" poster must also be posted in the resident engineer's and contractor's office.

The district Labor Compliance officer verifies that the policy and poster are displayed at offsite locations during a source document audit. If the contractor is noncompliant, the district Labor Compliance officer provides additional posters and writes a memo advising the resident engineer of the contractor's compliance status for inclusion in the project file.

A checklist of posters is available on the labor compliance website:

<https://dot.ca.gov/programs/construction/labor-compliance/labor-compliance-posters>

8-206 Contractor Employee Title VII Complaints—Discrimination Complaint Processing

A complaint that implicates the contractor's employment practice is considered an EEO complaint based on Title VII of the Civil Rights Act of 1964. EEO complaints may originate as a direct complaint from the contractor's employees or as a result of a contractor employee interview. When a complaint is received, document all EEO complaints in a daily report, a memo to the project files, or on Form DOT CEM-2504. The public, contractors, suppliers, and vendors may also present these complaints. File the original EEO complaint in the project records and send a copy of the complaint to the district Labor Compliance officer.

The district Labor Compliance officer sends complainants a letter notifying them of their rights under the Civil Rights Act of 1964. The letter also provides a complete list of resolution options, including:

- 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 U.S. Equal Employment Opportunity Commission.

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

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

<https://www.calaborlaw.com/wp-content/uploads/2009/09/DFEH-159-DFEH-Complaint-Process.pdf>

- Instructions on “Filing a Charge of Employment Discrimination,” are available on the internet:

<https://publicportal.eeoc.gov/portal/Login.aspx?ReturnUrl=%2fportal%2f>

For a sample letter to the complainant, refer to Example 8-2.1., “Sample Letter to the Complainant (Employee),” 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 must not divulge the employee's name. The letter reminds the contractor of the obligation to conduct an investigation pursuant to contract requirements. For a sample letter to the contractor, refer to Example 8-2.2., “Sample Letter to the Contractor,” at the end of this section.

The district Labor Compliance officer refers the issue to the Division of Construction, including copies of the letter to the complainant, the letter to the contractor, and the employee interview form. Take further district construction actions only on the advice and guidance of the Division of Construction.

8-207 Equal Employment Opportunity Title VI Complaints and Contract Administration

The Civil Rights Act of 1964, Title VI, Section 601, states in part, “No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

Any complaint indicating that the practices of Caltrans have the effect of discrimination is considered a Title VI complaint. It may originate from a direct complaint made by the public or by a contractor. Refer Title VI complaints that occur during construction to the district Labor Compliance officer, who refers the complaint to the Division of Construction. The division reviews the complaint, gathers relevant documents, and refers it to the Title VI Liaison for the district to process the complaint and refer the complaint to Office of Civil Rights for investigation.

During construction, amendments to the contract may occur by change order. Some change orders may invoke Title VI 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; and changes in contract-mandated material borrow, disposal sites, or setup of portable asphalt or concrete plants.

Take affirmative measures to assure nondiscrimination and preservation of environmental justice when administering changes. If a change requires Title VI mitigation measures, the resident engineer may conduct community meetings, prepare news releases, or hire public relations consultants to keep communities

informed on project scope and schedule changes. Consult with the Division of Construction's Labor Compliance Officer, the design project engineer, and the project manager as necessary to evaluate the effects of any significant change including compliance with Title VI requirements.

8-208 Contracts Containing “Federal Requirements Training Special Provision”

Federal-aid projects use the training special provision when a project is of sufficient size and duration to support full training periods. When the special provision provides a number of required trainees or apprentices, Section 7-1.11D, “Training,” of the *Standard Specifications* applies. The intent of the provision is to enhance contractors' EEO programs through on-the-job training. Training and upgrading skills of minorities and women toward journey person status are the primary objectives of the provision. However, the contractor must not use the training program to discriminate against an applicant for training. The provision states the number of apprentices or trainees the contractor must use on the project and provides guidance on actions the contractor must take. In addition, the provision provides for reimbursement to the contractor for each apprentice or trainee used on the project.

Before the work involving apprentices or trainees begins, the resident engineer requests that the contractor submit a 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. Review the training plan to confirm that it meets the requirements of the training specification. Subcontractors who will be using apprentices or trainees must provide a plan for them. Apprentices and trainees must be employed under programs currently approved by the U.S. Department of Labor, Office of Apprenticeship Training, Employer and Labor Services (DOL). Contractors must submit evidence of apprentice or trainee registration in an approved training program to the resident engineer or district Labor Compliance officer. 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.

The resident engineer may accept a training program not currently approved by DOL as long as the program meets the EEO requirements of the federal contract special provisions. Contractors must submit a request to the resident engineer for approval of such programs before their use on the project. Submit the contractor's request to the district Labor Compliance officer who forwards it to the Division of Construction for verification of conformance to federal requirements. If the training program meets the requirements, the Division of Construction will submit the program to the Federal Highway Administration (FHWA) with a recommendation for approval. Upon approval from the FHWA, the division will notify the district Labor Compliance officer and resident engineer. Notify the contractor of the training program approval.

Write a change order, as specified in the contract, to provide the appropriate compensation for the apprentices or trainees. The total amount of the 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, the contractor must give periodic reports demonstrating performance regarding training requirements. Tailor reporting periods to the duration of the project. For example, a year-long project should require at least quarterly reports. Review the reports for conformance with the contractor's training plan before approving reimbursement for training hours. Do not reimburse the contractor unless the reports have been provided. 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 reason. The contractor will have fulfilled contract requirements if applicable training has been provided to the specified number of apprentices or trainees.

8-209 Contractor's Annual Equal Employment Opportunity

The Code of Federal Regulations, Title 23, Section 230.121 requires prime contractors and subcontractors, regardless of tier, to submit the Form FHWA-1391, "Federal-Aid Highway Construction Contractors Annual EEO Report" to the resident engineer for review. The form shows the composition of the contractor's workforce by race and gender for each job category. The requirement applies to all contractors, regardless of tier, who have federal-aid contracts exceeding \$10,000 and who worked during all or any part of the last payroll period preceding the end of the month of July. Contractors are subject to a progress pay deduction for failure to submit a satisfactory form.

8-210 Deducting Payment for Failure to Submit Reports

Make EEO deductions in situations where the contractor or subcontractor fails to submit the required training plan, does not post the necessary EEO information, or fails to provide Form FHWA-1391, "Federal-Aid Highway Construction Contractors Annual EEO Report."

Before taking a deduction, notify contractors found to be noncompliant in writing, advising them of the specific deficiencies. Refer to Section 5-103F (1c), "Deductions," of this manual for instructions on taking the deduction.

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

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

DEPARTMENT OF TRANSPORTATION

DIVISION OF CONSTRUCTION

[Resident Engineer's Address]

[City, CA ZIP]

[PHONE (Area Code) xxx-xxxx]

[FAX (Area Code) xxx-xxxx]

TTY 711

www.dot.ca.gov

GAVIN NEWSOM, Governor



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a California Way of Life.

[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: Month dd, yyyy]

[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. Your name was not given to [company name].

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

You must file a complaint with the California Civil Rights Department or the United States Equal Employment Opportunity Commission within specific statutory deadlines from the date of the alleged discriminatory act. For more information, please refer to enclosed Form DFEH-159, "Guide for Complainants and Respondents."

If you have questions relating to the information in this letter, 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: DFEH-159, "Guide for Complainants and Respondents"

"Filing a Charge of Employment Discrimination," available online at:

https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2018/12/DFEH_WorkPlaceDiscriminationHarassmentPoster.pdf

c: Division of Construction

Office of Civil Rights

"Improving lives and communities through transportation"

Example 8-2.2. Sample Letter to the Contractor

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

GAVIN NEWSOM, Governor

DEPARTMENT OF TRANSPORTATION

DIVISION OF CONSTRUCTION

[Resident Engineer's Address]

[City, CA ZIP]

[PHONE (Area Code) xxx-xxxx]

[FAX (Area Code) xxx-xxxx]

TTY 711

www.dot.ca.gov



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a California Way of Life.

[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.]

[Month dd, yyyy]

[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 (Caltrans) 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 provided the complainant a complete list of resolution options, including (1) the use of the employer's internal equal employment opportunity program for investigation and resolution and (2) filing a complaint with the California Civil Rights Department or with the United States Equal Employment Opportunity Commission.

Caltrans complies with nondiscrimination laws and regulations, including Title VII of the Civil Rights Act of 1964. Title VII 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." Caltrans makes sure 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 Civil Rights Department or with the United States Equal Employment Opportunity Commission.

If you have questions relating to the information in this letter, please contact the Office of Civil Rights at (916) 324-0449.

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)

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