

# Navigating Contractor Compliance



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# Contractor Compliance

- Ensures that contractors and subcontractors performing work on Federally assisted highway contracts comply with nondiscrimination and affirmative action requirements.
- MDT is responsible for ensuring contractors and subcontractors do not discriminate in their employment and contracting practices.
- A contractor's minimum EEO requirements are set forth in the contract provisions referenced in Form FHWA-1273 as "Section II, Nondiscrimination."

# EEO Requirements

Section II.1 The contractor is required to have an EEO policy that prohibits discrimination and provides for affirmative action in employment practices.

Examples of actions:

- ❖ Produce and distribute copies of policy statements to employees.
- ❖ EEO policy posted at all sites.
- ❖ Utilize MDT's Electronic EEO Submission.



# EEO Bulletin Board – The Good, the Bad and the Ugly!



# Your EEO Bulletin Board can be located..

There are several options:

- a. Outside tool trailer
- b. In a binder in a mailbox
- c. In a box at the staging area

*They must be available 24/7.*

Section II.2 The contractor is required to have a designated EEO Officer who has the responsibility and authority to administer the contractor's EEO program.

- ❖ As EEO Officer are you involved at the job site?
- ❖ Do they know who you are and feel comfortable coming to you?
- ❖ If an employee wished to file a sexual harassment complaint what is your process?

Should the EEO Officer be replaced MDT must be notified and your EEO Submission updated.



# Sexual Harassment

... occurs when one employee makes continued, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, to another employee, against his or her wishes. Gender Harassment is a form of sexual harassment and can include offensive remarks or actions towards a person's sex or gender.

“Cobra Pavers & Engineering, Inc. and Cobra Construction, Inc., will pay \$125,000 and provide other relief to settle a sexual harassment lawsuit.”

Section II.3. All of the contractor's employees who have an active role in the hiring, supervision, or advancement of employees are required to be aware of and to implement the contractor's EEO policy. In addition, it is required that employees, including applicants and potential employees, be informed of the contractor's EEO policy through posted notices, posters, handbooks, and employee meetings.



Section II.4. The contractor shall not discriminate in recruitment practices and should make an effort to identify sources of potential minority and women employees.

Examples of actions:

- ❖ Include state employment offices, Job Corps and other sources that could yield minority and female applicants.
- ❖ Maintain documentation of contacts made and their responses.
- ❖ Maintain applicant flow log.
- ❖ Utilize MDT's Referral List found at:

[http://www.mdt.mt.gov/other/civilrights/external/referral\\_source\\_list.pdf](http://www.mdt.mt.gov/other/civilrights/external/referral_source_list.pdf)



Section II.5. The contractor is required to periodically review project sites, wages, personnel actions, etc., for evidence of discriminatory treatment. The contractor is to promptly investigate all alleged discrimination complaints.



Section II.6. The contractor is required to advise employees and applicants of training programs available and to assist in the improvement of the skills of minorities, women, and applicants, through such programs.

Examples of actions:

- ❖ Maintain records of employees participating in these programs.
- ❖ Document participation in support of training and apprenticeship programs outside your organization.
- ❖ Notify organizations which may provide minority and female applicants of the contractors training programs.



Section II.7. The contractor is not, and cannot be, required to hire union employees; however, if the contractor relies on unions as a source of employees, the contractor is encouraged to obtain cooperation with the unions to increase opportunities for minorities and women. The contractor should use their best efforts to incorporate an EEO clause into union agreements.



Section II.8. The contractor's EEO policy also pertains to their selection of subcontractors, including material suppliers and equipment leasing companies. Contractors are required to exercise their best efforts to ensure that subcontractors comply with the EEO requirements.



Discrimination and harassment can happen not only in your organization but in your subcontractors. Invite subcontractors to attend your EEO meetings and document attendance.

# Workplace Harassment

...harassment is any unwelcome discriminatory conduct in the workplace, that no reasonable employee should have to endure.

...workplace harassment is a form of employment discrimination and must be based on race, color, religion, national origin, disability, genetics, age or sex. In Montana marital status and creed are also protected statuses.

“MMR Constructors, Inc., a worldwide labor contractor, has agreed to pay \$50,000 and provide other relief to settle a racial harassment lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC had charged that a black employee, who worked as a technician for MMR was subjected to racially offensive language, graffiti and death threats by white employees.”

# Discrimination

- ...is treating people differently through prejudice.

“TIN, Inc., a leader in corrugated packaging, will pay \$250,000 and furnish substantial remedial relief to settle an age discrimination lawsuit . In addition to paying \$250,000 to the three terminated employees, the EEOC settlement by consent decree requires the company to provide training and other relief aimed at educating its employees about age discrimination and their rights under the Age Discrimination in Employment Act of 1967 (ADEA). The ADEA protects people 40 years of age or older from employment discrimination based on age and from retaliation for complaining about it.”

In Montana there is no limit on age.

Section II.9. Records that document compliance with the EEO policy are to be prepared and retained by the contractor for a period of 3 years after project completion. These records should include the number of minority, women, and non-minority employees in each work classification on the project; and the progress and effort being made to increase the employment opportunities for minorities and women.

The contractor is required to submit an EEO report (FHWA 1391) to MDT for the last full week of each July. If the project contains on-the-job training (OJT), this information is also required to be collected and reported.

# Non-segregated Facilities

Ensure that all facilities are non-segregated except that separate or single-user toilets and necessary changing facilities designed to assure privacy between the sexes shall be provided.



# Executive Order 11246

- ...construction contractors are **not** required to develop written affirmative action programs but must take good faith steps in order to increase the utilization of minorities and women in the skilled trades.



These can be found in the Office of Federal Contract Compliance Programs (OFCCP) Technical Assistance Guide:

<http://www.dol.gov/ofccp/TAGuides/consttag.pdf>



# Compliance Reviews



The forms for Compliance Reviews have been updated for the 2014 construction season.

# Indian Preference

Projects eligible for Indian preference consideration are those projects which are on roads within or providing access to an Indian reservation or other Indian lands or are near the boundaries of reservations and other Indian lands.



# Indian Employment

The contractor must give full consideration to all qualified job applicants referred by the TERO (Tribal Employment Rights Office) or designated tribal council representative. The contractor is not required to employ any applicant who, in the contractor's opinion, is not qualified to perform the classification of work required.

When determining an applicant's qualifications, the contractor must document all decision making actions ensuring evidence of non-discrimination.

# Indian Preference Goal

All Indians are eligible for employment preference. However, recruiting efforts may be targeted toward those living on or near a reservation or Indian lands. Indian employment preference is to be applied without regard to tribal affiliation or place of enrollment.

\*Carefully read the Project Specific Agreement (PSA) attached to your specific contract.

# Certified Payroll – Labor Compliance

- Key things to remember:
  - Do NOT include full social security numbers on payrolls.
  - Electronic payrolls are not accepted.
  - Random Payroll Audits will be conducted.





- As the new process is rolled out there will be some changes affecting Certified Payrolls.
- When the first punch list is given, Certified Payroll Compliance will be on it and will need to be in compliance before it's accepted.

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