

CONCESSIONER PERSONNEL

A. LABOR RELATIONS AND STANDARDS

This part deals with laws and regulations applicable to concessioners covering safety in the work place, fair labor standards, minimum wage and union activities.

1. Law

29 U.S.C. Chapter 15 (Occupational Safety and Health)

This legislation deals with personal illnesses and injuries arising out of work situations that result in lost production and wages and high medical expenses and disability compensation payments. The legislation encourages joint labor/management efforts to reduce unnecessary health and financial burdens. The law applies to every private business in the country.

The Act permits States to promulgate standards under State law over any occupational safety or health issue with respect to which no Federal standard is in effect, augmenting the mandatory Federal standards.

29 U.S.C. 201 et.seq.

Establishes standards of labor including hours of work and minimum wages. The 1977 law specifically included concessioners respecting minimum wage.

29 U.S.C. 151 et seq.

Provides protection for workers who actively seek association with labor organizations, self organization, and unions etc., to represent them in negotiating the terms and conditions of their employment.

2. Regulation

29 CFR Part 1977

Provides interpretation of various provisions of section 11(c) of the Occupational Safety and Health Act (P.L. 91-596). In general the section prohibits the discharging of or discrimination against an employee because the employee exercised a right contained in the law that adversely effects his employer.

36 CFR Part 8

**PART 8—LABOR STANDARDS APPLICABLE TO EMPLOYEES OF NATIONAL PARK SERVICE CONCESSIONERS**

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Authority: Sec. 3, 26 Stat. 843, as amended, secs. 1-3, 39 Stat. 535, as amended, sec. 1, 2, 67 Stat. 495, 496; 16 U.S.C. 1, 1b, 1c, 2, 3, 9a, 363, 462(k).

SOURCE: 24 FR 11053, Dec. 1959, 51 FR 24655, unless otherwise noted.

§ 8.1 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior, the Under Secretary, an Assistant Secretary, or such other officer or employee of the Department of the Interior as the Secretary may designate.

(b) "Director" means the Director of the National Park Service.

(c) "Superintendent" includes a custodian, caretaker, manager, or other person in charge of a national park.

(d) "National park" includes a national monument or other area under the administrative jurisdiction of the National Park Service of the Department of the Interior.

(e) "Concessioner" includes any individual, partnership, corporation, or other business entity engaged in operating facilities within or without a national park for the accommodation of visitors to the park under a contract with or permit from the Secretary or the Director.

(f) "Employee" includes any individual employed by a concessioner in connection with operations covered by a contract with or permit from the Secretary or the Director.

(g) "Executive or department head" includes any employee whose primary duty is the management of the business of the concessioner, or a customarily recognized department thereof, and who customarily and regularly directs the work of other employees with authority to employ and discharge other employees, or whose suggestions and recommendations as to the employment, discharge, advancement or promotion of such employees will be given particular weight by the concessioner, and who customarily and regularly exercises discretionary powers.

(h) "State" means any State, Territory, possession, or the District of Columbia.

§ 8.2 Basis and purpose.

The public using the national parks is better served when the employees of the concessioners enjoy the benefits of fair labor standards and when, in this respect, they are treated at least as well as those employed in similar occupations outside such areas, but within the same State. This principle is the basis of the regulations in this part and their purpose is its implementation.

§ 8.3 Applicability.

This part shall not apply to:

(a) Concessioners providing and operating medical services.

(b) Personal servants.

(c) Employees engaged in agricultural activities, including the care, handling, and feeding of livestock.

(d) Detectives, watchmen, guards, and caretakers.

(e) Bona fide executives or department heads.

(f) Solicitors or outside salesmen whose compensation is chiefly on a commission basis.

(g) Professional sports instructors and entertainers.

(h) The following employees, when approved by the Director: Employees for whom relief is clearly impracticable because of peculiar conditions arising from the fact that operations are carried on in areas having no resident population or are located at long dis-

tances from a supply of available labor; employees whose employment requires special or technical training or skill, where no person capable of providing relief is available within a reasonable distance; employees in small units accessible only by trail or remote from centers of activity, or operating on a small volume of business primarily for the convenience of the public.

**§ 8.4 Federal and State labor laws.**

A concessioner shall comply with all standards established pursuant to Federal or State labor laws, such as those concerning minimum wages, child labor, hours of work, and safety, that apply in the State in which the concession facility is located. All concessioners shall comply with Federal child labor regulations regardless of their annual volume of business or any other exemptions provided by Federal law.

**§ 8.5 Access for investigators.**

Concessioners shall permit representatives of this Department and, when appropriate and authorized representatives of other Federal or State agencies, access to any of their places of employment for the purpose of examining pay rolls and other records and otherwise to ascertain the facts with respect to compliance with the regulations in this part and State labor laws. The report of any investigation concerning a violation of the regulations in this part shall be submitted to the superintendent of the national park involved.

**§ 8.6 Complaints: appeal.**

Any question pertaining to the interpretation or application of or compliance with this part which cannot be satisfactorily settled between a concessioner and his employee, employees, or employee representative may be referred for review by any of the parties

concerned to the Director, National Park Service. Any person adversely affected by the decision of the Director, National Park Service, may appeal to the Director, Office of Hearings and Appeals, in accordance with the general rules set forth in Department Hearings and Appeals Procedures, 43 CFR Part 4, Subpart B, and the special procedural rules in Subpart G of 43 CFR Part 4, applicable to proceedings in appeals cases which do not lie within the appellate jurisdiction of an established Appeals Board of the Office of Hearings and Appeals.

(36 FR 7184, Apr. 15, 1971)

**§ 8.7 Recordkeeping.**

Concessioners shall for a period of 3 years keep records of the name, age, address, and occupation of each of their employees, the rate of pay and the amount paid to each employee each pay day, the hours worked each day and each work week by each employee and such other information concerning employees as the Director may require.

**§ 8.8 Filing of labor agreements.**

Within 60 days after the effective date of the regulations in this part (January 1, 1949), concessioners shall file with the Director of the National Park Service a copy of each labor agreement in effect on the effective date of the regulations in this part, covering rates of pay, hours of work, and conditions of employment duly negotiated with their employees as a whole or by class, craft, or other appropriate unit. Thereafter, on July 1 of each year concessioners shall file copies of all such agreements then in effect with the Director of the National Park Service.

**§ 8.9 Posting of regulations.**

Concessioners shall post in a conspicuous place easily accessible to all employees copies of the regulations in this part in such form as the Director may approve.

3. Policy

See Regulations.

4. Procedures

Citations for OSHA violations are to be made only by authorized representatives of the Secretary of Labor. Service personnel may unofficially cite concessioners for violations of 36 CFR. The better procedure to follow however, would be to seek to have Department of Labor inspectors make all OSHA inspections in the park or area.

In situations where a concessioner or a union seek help or advice, park managers must maintain a posture of neutrality by doing nothing that would be construed as helping or hindering either the concessioner or the union.

The Superintendent is to provide the concessioner the regulations contained in 36 CFR Part 8 by reproducing the CFR or as the regulations are stated above. The concessioner is to post the regulations in a conspicuous place for the benefit of all employees.

B. EEO, NONDISCRIMINATION AND AFFIRMATIVE ACTION

1. Law

P.L. 88-352 (July 2, 1964) - Civil Rights Act of 1964

Title VII--Injunctive Relief Against Discrimination in Places of Public Accommodation

SEC.201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

Executive Order No. 11246 Dated September 24, 1965

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under

Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

**Executive Order 11375 AMENDING EXECUTIVE ORDER NO 11246,**

It is the policy of the United States Government to provide equal opportunity in Federal employment and in employment by Federal contractors on the basis of merit and without discrimination because of race, color, religion, sex or national origin.

(3) Paragraphs (1) and (2) of the quoted required contract provisions in section 202 of Part II, concerning nondiscrimination in employment by Government contractors and subcontractors, are revised to read as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin." (4) Section 203 (d) of Part II is revised to read as follows:

"(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require."

The amendments to Part I shall be effective 30 days after the date of this order. The amendments to Part II shall be effective one year after the date of this order.

Title V, of the Rehabilitation Act of September 26, 1973  
(P.L. 93-112 as amended in 1978)

Sec. 503. (a) Any contract in excess of \$2,500 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that, in employing persons to carry out such contract the party contracting with the United States shall take affirmative action to employ and advance in employment qualified handicapped individuals as defined in section 7(6). The provisions of this section shall apply to any subcontract in excess of \$2,500 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after the date of enactment of this section.

(b) If any handicapped individual believes any contractor has failed or refuses to comply with the provisions of his contract with the United States, relating to employment of handicapped individuals, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

(c) The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which he shall prescribe, when he determines that special circumstances in the national interest so require and states in writing his reasons for such determination.

**NONDISCRIMINATION UNDER FEDERAL GRANTS**

Sec. 504. No otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Age Discrimination in Employment Act of December 15, 1967  
29 U.S.C. 621 (P.L. 90-202)

**§ 621. Congressional statement of findings and purpose**

(a) The Congress hereby finds and declares that—

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

**§ 622. Prohibition of age discrimination**

(a) **Employer practices**

It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

**§ 630. Definitions**

For the purposes of this chapter—

(a) The term "person" means one or more individuals, partnerships, associations, labor organizations, corporations, business trust, legal representatives, or any organized groups of persons.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. *Provided*, That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, but such term does not include the United States, or a corporation wholly owned by the Government of the United States.

2. Regulations

29 CFR, PART 1625--Age Discrimination in Employment Act

**§ 1625.2 Discrimination between individuals protected by the Act.**

(a) It is unlawful in situations where this Act applies, for an employer to discriminate in hiring or in any other way by giving preference because of age between individuals within the 40-70 age bracket. Thus, if two people apply for the same position, and one is 42 and the other 52, the employer may not lawfully turn down either one on the basis of age, but must make such decision on the basis of some other factor.

(b) The extension of additional benefits, such as increased severance pay, to older employees within the protected age bracket may be lawful if an employer has a reasonable basis to conclude that those benefits will counteract problems related to age discrimination. The extension of those additional benefits may not be used as a means to accomplish practices otherwise prohibited by the Act.

**§ 1625.4 Help wanted notices or advertisements.**

(a) When help wanted notices or advertisements contain terms and phrases such as "age 25 to 35," "young," "college student," "recent college graduate," "boy," "girl," or others of a similar nature, such a term or phrase deters the employment of older persons and is a violation of the Act, unless one of the exceptions applies. Such phrases as "age 40 to 50," "age over 65," "retired person," or "supplement your pension" discriminate against others within the protected group and, therefore, are prohibited unless one of the exceptions applies.

(b) The use of the phrase "state age" in help wanted notices or advertisements is not, in itself, a violation of the Act. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate discrimination based on age, employment notices or advertisements which include the phrase "state age," or any similar term, will be closely scrutinized to assure that the request is for a lawful purpose.

41 CFR

**§ 60-1.40 Affirmative action programs.**

(a) *Requirements of programs.* Each nonconstruction contractor which has 50 or more employees and (1) has a contract of \$50,000 or more; or (2) has contracts (including Government bills of lading) which, in any 12-month period total \$50,000 or more, or reasonably may be expected to total \$50,000 or more; or (3) is a financial institution which serves as a depository for Government funds in any amount, acts as an issuing or redeeming agent for U.S. savings bonds and savings notes in any amount, or subscribes to Federal deposit or share insurance, shall develop a written affirmative action program for each of its establishments. Each nonconstruction contractor shall require each subcontractor which has 50 or more employees

and (i) has a subcontract of \$50,000 or more; or (ii) has subcontracts (including Government bills of lading) which, in any 12-month period total \$50,000 or more, or reasonably may be expected to total \$50,000 or more; or (iii) is a financial institution which serves as a depository for Government funds in any amount, acts as an issuing or redeeming agent for U.S. savings bonds and savings notes in any amount, or subscribes to Federal deposit or share insurance, to develop a written affirmative action program for each of its establishments. A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority and female employment and an evaluation of opportunities for utilization of minority group and female personnel. The contractor's program shall provide in

detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups and women, including, when there is underutilization or other deficiencies, the development of specific goals and timetables for the prompt achievement of full and equal employment opportunity.

**Subpart B—Required Contents of Affirmative Action Programs**

**§ 60-2.10 Purpose of affirmative action program.**

An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits itself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to achieve prompt and full utilization of minorities and women, at all levels and in all segments of its work force where deficiencies exist.

**§ 60-2.15 Compliance status.**

No contractor's compliance status shall be judged alone by whether or not it reaches its goals and meets its timetables. Rather, each contractor's compliance posture shall be reviewed and determined by reviewing the contents of its program, the extent of its adherence to this program, and its good faith efforts to make its program work toward the realization of the program's goals within the timetables set for completion. There follows an outline of examples of procedures that contractors and OFCCP should use as a guideline for establishing, implementing, and judging an acceptable affirmative action program.

3. Policy

Management Policies Book, Chapter VIII  
Employees And Nondiscrimination

Concessioners and their employees shall not discriminate against any individual because of race, creed, color, religion, sex, age, national origin, or physical or mental handicap.

Concessioners with 50 or more employees shall have approved affirmative action plans to assure equal employment opportunities and should adhere to the Department's labor standards and to applicable Federal and State laws.

#### 4. Responsibilities

Upon the execution of a concession contract or permit, and as a part of the annual review of the operation, the Superintendent should determine if the concessioner has an applicable approved affirmative action program plan. If not, one should be developed by the concessioner within 120 days of the commencement of the contract.

The Affirmative Action Program Plan is to be filed by the concessioner with the Office of Federal Contract Compliance Programs (OFCCP). The affirmative Action Plan will be deemed to have been accepted by the Government at the time the appropriate OFCCP field, area, regional, or national office has accepted such plan unless within 45 days thereafter the Director of OFCCP has disapproved such plan.

If additional copies of EEO posters are required, Regions and parks should contact their local Office of Federal Contract Compliance, Department of Labor, or they may contact the Office of Federal Contract Compliance in Washington, D.C. on (202) 523-8743.

#### C. TRAINING

##### 1. Law, Regulation and Policy

None.

##### 2. Responsibility

During peak visitor seasons, the size of the concessioner's staff may well exceed the number of Park Service employees. The great majority of the concessioner employees are in positions which involve frequent visitor contact. To the visitor, one employee is as likely a source of park information as another. It is highly desirable, therefore, that concessioner employees be well informed on at least the following:

- a. The nature and purpose of the National Park Service
- b. The resources of that particular park
- c. The "do's" and don'ts" expected of all park users
- d. Hours of operation and location of various services within the park.
- e. Knowledge of facilities outside of park, i.e., distance from park, types of services offered, etc.

Superintendents are urged to develop, in cooperation with the concessioner, an orientation program to accomplish these objectives. It is desirable that the mutual commitment to such a program be documented in the concessioner's Operating Plan.

Depending on the size of the work force and the amount of employee turnover, concessioners will often need to develop formal training programs to teach the basic job skills to their personnel, however, the content and extent of such a program is normally within the purview of the concessioner's responsibility. In some cases, however, and particularly where poor training has become a problem, the Superintendent may find it desirable to document the request for a concessioner's personnel training program in the Operating Plan.

D. EMPLOYMENT OF NPS PERSONNEL DEPENDENTS

1. Law

None.

2. Regulation

43 CFR, Part 20  
§20.735-23 Outside Work And Interests

(4) A regular employee shall not use his or her Government employment to influence or coerce, or give the appearance of influencing or coercing, a person to provide financial benefits to the employee or another person with whom he or she has family, business or financial ties.

The broad interpretation given to the regulations for our purposes, is that employees' behavior must be such that it does not result in or create the appearance of a conflict of interest or of hampering the employees' independence or impartiality in dealing with concessioners.

3. Policy

Management Policies Manual, Chapter VIII  
Employment of NPS Personnel Dependents

All instances of employment by a concessioner of the spouse or minor children of National Park Service employees shall have the prior approval of the official in charge of the organization entity in which they work (Superintendent, Manager, Regional Director, Director). It is a general policy of the Park Service to grant such approval except for the spouses or minor children of Superintendents, Assistant

Superintendents, Concessions Specialists and others who have official responsibilities for concession management, evaluations, rate approval or contract compliance concerning the concessioner for whom the dependent proposes to work.

Approval for employment by concessioners of dependents of the above categories can be granted only by the Director, National Park Service.

4. Procedures

All requests for approval of employment of dependents shall be in writing and shall indicate the nature of the duties of the NPS employee and the nature of the duties as well as the compensation proposed for the dependent. Requests which require approval of the Director, NPS, shall be submitted through channels. No employment of a dependent may begin until written approval is received from the appropriate official.

For purposes of this policy, a person is a minor until age 21 is attained.