

Client Alert

Global Human Capital & Compliance

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DEI Initiatives: Where Do They Stand After President Trump's Executive Orders?

Through a flurry of Executive Orders issued in the first days of his administration, President Trump has put a spotlight on the issue of diversity, equity, inclusion, and accessibility (known as "DEIA" or "DEI") in the federal government, in federal contracts, and in the enforcement priorities of various federal agencies.

In addition to the requirements of the administration's Executive Orders, all employers should be aware that they must still comply with federal anti-discrimination statutes such as Title VII of the Civil Rights Act and the Americans with Disabilities Act.

The Executive Orders significantly and directly impact federal contractors, and make clear to all employers the enforcement priorities of the new administration.

In response, employers should be prepared to navigate this new, uncertain regime, starting with review of existing federal contracting obligations and existing compliance efforts, as well as any policies and practices concerning diversity, equity, and inclusion.

THE EXECUTIVE ORDERS

Various federal laws (for example, the Vietnam Era Veterans' Readjustment Assistance Act ("VEVRAA") and Section 503 of the Rehabilitation Act ("Section 503")) require federal contractors and subcontractors to implement affirmative action plans to promote job opportunities for underrepresented minorities. Historically, various executive orders did so as well.

On January 20, 2025, President Trump issued an Executive Order entitled "Ending Radical and Wasteful Government DEI Programs and Preference" ("EO 14151"), which requires the termination of all DEIA or

DEI activities and programs in the federal government and requires that each federal agency, department, or commission provide a list of federal grantees who “provide or advance DEI, DEIA, or ‘environmental justice’ programs, services, or activities since January 20, 2021.”

The next day, President Trump signed an Executive Order entitled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” (“EO 14173”), which rescinded a prior Executive Order entitled “Equal Employment Opportunity” (“EO 11246”) which had governed federal contracting requirements since 1965. EO 14173 eliminates federal contractor affirmative action plan obligations regarding race and gender, and prohibits enforcement activity by the Office of Federal Contract Compliance Programs (the “OFCCP”) regarding such affirmative action plans. However, EO 14173 does not impact federal contractor obligations nor the OFCCP’s jurisdiction with respect to discrimination based on veteran-status or disability-status (which are both based in statutes, not executive orders).

EO 14173 also states that, moving forward, federal contracts and grants will require the contractor to certify that it does not operate any programs promoting “illegal discrimination, including DEI” and will include terms stating that the employer’s “compliance in all respects with all applicable Federal anti-discrimination laws is material” to the government’s payment decisions under the False Claims Act (“FCA”). At present, the administration has not specified the form that certification will take, nor whether this certification will be included in formal regulations as a condition of payment/grant.

It also remains to be seen how broadly the administration will sweep when targeting DEIA or DEI programs (for both federal contractors and otherwise). Indeed, neither these new Executive Orders nor the related pronouncements from federal agencies have expressly defined “DEI” or “DEIA.”

Both Executive Orders have already been challenged in court based on claims that they are unconstitutionally vague, that they chill protected speech, and that they violate separation of powers principles.

THE EXECUTIVE ORDERS AND FEDERAL AGENCY ENFORCEMENT PRIORITIES

In addition to the above modifications to federal contractor requirements, EO 14173 directs all federal agencies to identify “the most egregious and discriminatory DEI practitioners in each sector of concern” along with a plan of specific steps “to deter DEI programs or principles that constitute illegal discrimination or preferences.”

As part of this plan, EO 14173 requires that by May 2025, relevant federal agencies must prepare a report identifying potential targets for litigation and regulation. In addition, EO 14173 directs each agency to identify up to nine “potential civil compliance investigations” with a focus on publicly traded corporations, large nonprofits, state and local bar and medical associations, and higher education institutions with endowments of more than \$1 billion.

RESPONSE BY FEDERAL AGENCIES AND DEPARTMENTS

Some federal agencies and departments have already begun to implement aspects of these Executive Orders.

As King & Spalding has previously reported, newly appointed chairs of federal agencies, such as the Equal Employment Opportunity Commission, have already announced enforcement priorities focusing on DEI and DEIA programs.

On February 5, 2025, U.S. Attorney General Pam Bondi circulated an internal memo, entitled “Ending Illegal DEI and DEIA Discrimination and Preferences,” to Department of Justice (“DOJ”) staff. Specifically referencing EO 14173, the DOJ memo states that the department “will investigate, eliminate, and penalize illegal DEI and DEIA preferences, mandates, policies, programs, and activities in the private sector and in educational institutions that receive federal funds.” The memo directs the DOJ Civil Rights Division and the Office of Legal Policy to assemble a report by March 1, 2025 containing “recommendations . . . to encourage the private sector to end illegal discrimination and

preferences, including policies relating to DEI and DEIA.” The memo further directs that the report identify “the most egregious and discriminatory DEI and DEIA practitioners in each sector of concern [identified in EO 14173]” and to consider litigation in response.

RECOMMENDED NEXT STEPS

Employers should first determine their status as federal contractors and whether they are subject to the express requirements of these Executive Orders.

In addition, all employers should:

- Monitor challenges to the legality of the Executive Orders;
- Assess existing OFCCP compliance programs (and related policies and procedures) to ensure they are in keeping with the new Executive Orders;
- Review existing workplace policies, practices, and diversity, equity, and inclusion initiatives both for compliance with anti-discrimination statutes and to assess the risk of agency enforcement/investigations; and
- Consider communications to employees regarding the employer’s commitment to nondiscrimination and equal employment opportunities.

Federal contractors, specifically, should:

- Review existing OFCCP audit requests to determine whether information requested has been implicated by EO 14173, specifically whether the authority for the request is grounded in EO 11246; and
- Review any new government contracts for terms related to DEI or equal employment opportunities.

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