

FEDERAL COURTS CONSIDER PRESIDENT TRUMP'S ANTI-DEI EXECUTIVE ORDERS

Within weeks of taking office in his second term, President Trump issued a series of executive orders aimed at diversity, equity and inclusion (“DEI”) initiatives. The orders sought to eliminate “illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders and requirements.” The executive orders repeatedly use the phrase “illegal DEI” but do not explain which DEI programs or initiatives are illegal and which ones are lawful.

Two of the executive orders—[EO 14151](#) (“Ending Radical and Wasteful Government DEI Programs and Preferencing”) and [EO 14173](#) (“Ending Illegal Discrimination and Restoring Merit-Based Opportunity”)—contain controversial provisions that appeared to create new potential liability under the False Claims Act (“FCA”) as discussed [here](#). Briefly summarized:

- The “Termination Provision” required federal agencies to terminate equity-related grants or contracts with entities that maintain “illegal DEI” programs;
- The “Certification Provision” required federal contractors and grant recipients to certify in a manner enforceable through the FCA that they do not operate “illegal DEI” programs;
- The “Enforcement Threat Provision” directed the attorney general to deter DEI programs or principles in the private sector.

PRELIMINARY INJUNCTION AND ONGOING LITIGATION

On February 21, 2025, a federal district court in Maryland (“District Court”) issued a nationwide preliminary injunction pausing these provisions, as covered [here](#). However, on March 14, 2025, a three-judge panel of the Fourth Circuit Court of Appeals granted the Trump Administration’s motion to stay the District Court’s preliminary injunction, allowing the challenged provisions of the executive orders to take effect pending appeal.

The Fourth Circuit provided little formal analysis but clarified that its decision does not constitute a final ruling on the constitutionality of the provisions. Each of the three judges issued commentary referred to as a “concurring opinion,” offering insight into why they granted the government’s motion despite two of the three voicing support for DEI initiatives.

The judges appeared persuaded by the Trump Administration’s representation that the scope of the DEI-related executive orders was limited. Notably, one judge emphasized that the orders should not be interpreted “to establish the illegality of all” DEI efforts, as some had feared. She further clarified that the “Certification” and “Enforcement Threat” provisions apply only to conduct that violates existing federal anti-discrimination law. Another judge cautioned agencies against overzealous enforcement, noting that any “agency action that goes beyond the narrow scope set out in this motion would implicate Fifth Amendment vagueness concerns.”

As a result of the Fourth Circuit’s ruling, the challenged provisions—the Termination Provision, the Certification Provision, and the Enforcement Threat Provision—will remain in effect while the litigation proceeds. An expedited schedule has been set, with briefing on the merits of the injunction to be completed by May 29, 2025.

The Trump Administration filed its opening brief on April 8, 2025, asserting that the Fourth Circuit should vacate the injunction because the District Court misconstrued the Executive Order provisions. For example, it argued:

- **Termination Provision:** the District Court wrongly assumed private parties had to interpret “equity-related” terms, when the provision applies only to agency discretion.
- **Certification Provision:** the District Court erred by suggesting grantees must comply with an undefined interpretation of anti-discrimination laws, rather than the laws themselves.
- **Enforcement Threat Provision:** this provision merely instructs the Attorney General to draft a report; therefore, there is no basis for standing to challenge a provision that only contemplates an internal Executive Branch report.

The Trump Administration also argued that the District Court improperly extended the injunction beyond the parties to the case—including to the entire Executive Branch—in violation of constitutional limits. Even if some relief were appropriate, it should have been confined to the plaintiffs and defendants.

The plaintiffs' response brief is due by May 8, 2025. The Trump Administration will then have an opportunity to file a reply brief by May 29, 2025, at which point the issues will be fully briefed. The Fourth Circuit will then proceed with its review, with a decision expected in the coming months. Given the expedited nature of the proceedings, the case is expected to move quickly, with the possibility of ultimately reaching the U.S. Supreme Court

OTHER FEDERAL CASES CHALLENGE CONTROVERSIAL PROVISIONS IN DEI EXECUTIVE ORDERS

Civil rights groups have also successfully challenged the executive orders elsewhere. In a lawsuit filed by the Chicago Women of Trades, a federal district court in Illinois granted a preliminary injunction on April 14, 2025:

- The U.S. Department of Labor is restricted from implementing the Certification Provision nationwide;
- The Termination Provision is restricted only as to the plaintiffs.

As with the Maryland case, the Illinois decision is subject to appellate review.

EEOC AND DOJ PUBLISH GUIDANCE ON “DEI-RELATED DISCRIMINATION” IN THE WORKPLACE

While defending legal challenges to the controversial provisions of President Trump's executive orders, the government has been asked to explain the meaning of the phrase “illegal DEI.” The government's lawyers have repeatedly explained that their focus is on DEI initiatives that violate existing federal discrimination law. It is safe to conclude therefore that some DEI programs remain lawful. Recently, the government has published guidance that provides some clarity as to what it regards as “illegal DEI.”

On March 19, 2025, the U.S. Equal Employment Opportunity Commission (“EEOC”) and the U.S. Department of Justice (“DOJ”) jointly published two technical assistance guides regarding DEI-related discrimination in the workplace. One is a one-page “poster-style” document entitled: *What To Do If You Experience Discrimination Related to DEI at Work*. It is reminiscent of the “[Know Your Rights: Workplace Discrimination is Illegal](#)” guidance that EEOC maintains and makes available for employers to download and post.

The other is an “FAQ-style” document entitled *What You Should Know About DEI-Related Discrimination at Work*. There are 11 questions along with detailed answers with links to supporting citations. The initial questions and answers address who can be affected by DEI-related discrimination (i.e., employees, applicants, interns and training program participants) and how victims may report evidence of unlawful DEI activities to EEOC or DOJ. The remaining questions and answers provide some clarity and examples of what the government considers to be unlawful DEI-related discrimination.

DEI-RELATED DISCRIMINATION EXAMPLES

Although the technical assistance guides are primarily directed to victims of DEI-related discrimination, they also provide insights for employers about potential agency enforcement priorities in the wake of EO 14151 and EO 14173. The poster-style document states: “Under Title VII, DEI policies, programs or practices may be unlawful if they involve . . . taking an employment action motivated—in whole or in part—by an employee's race, sex or another protected characteristic.” It specifically cites the unlawful use of quotas and other forms of “workforce balancing” before listing specific examples of what the EEOC would view as unlawful DEI-related discrimination. The EEOC then elaborates on those examples in its “FAQ-style” document.

The government's examples of DEI-related discrimination are summarized below.

Disparate Treatment

- Taking employment actions—e.g., hiring, firing, promoting, demoting, compensation, fringe benefits—motivated in whole or in part on an individual's race, sex or other legally protected characteristic.
- Excluding individuals from training, internships, fellowships, leadership development/mentoring programs or selection for interviews motivated in whole or in part on their race, sex or other legally protected characteristic.
- Sponsoring activities or groups (“including by making available company time, facilities or premises and other forms of official or unofficial encouragement or participation”) that are limited to certain protected groups.

Limiting, Segregating, and Classifying Individuals Based on Race, Sex or Another Protected Characteristic

- Separating employees into such groups is unlawful if done in a way that affects an individual's status or deprives them of employment opportunities.
- Separating employees into such groups when administering DEI or other training is unlawful even if the separate groups receive the same programming content or amount of employer resources.
- Limiting participation or membership in employee resource groups (sometimes referred to as affinity groups) to individuals of a certain race, sex or other legally protected group.

Harassment

- Workplace harassment may occur if an employee is subjected to unwelcome remarks or conduct based on race, sex or another protected characteristic.
- DEI training may give rise to a colorable hostile work environment claim if an employee can establish that the training was "discriminatory in content, application or context."
- The employee would have to show that the alleged harassing behavior was "so frequent or severe that a reasonable person would consider it intimidating, hostile or abusive."

Retaliation

- Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute.
- This may include objecting to or opposing employment discrimination related to an employer's DEI-related policy or practice.
- It may also include reasonable opposition to DEI training if the employee provides a fact-specific basis for his or her belief that the training violates Title VII.

PRACTICAL TAKEAWAYS

With the publication of these technical assistance guides, the EEOC is clearly signaling that DEI-related discrimination will be one of its enforcement priorities going forward. Moreover, the EEOC is using the guides to remind both employers and employees that the protection provided by Title VII of the Civil Rights Act of 1964 is not limited to "minority groups" or "historically underrepresented groups."

Indeed, it is reasonable to view the publication of these technical assistance guides as the EEOC's active solicitation of non-minorities and men to be on the lookout for and report evidence of DEI-related discrimination. Employers that maintain DEI programs should be aware of this and consider taking steps to ensure their DEI-related activities can withstand EEOC scrutiny. Such steps may include:

- Carefully reviewing current DEI initiatives against each and every "DEI-related Discrimination" example provided by EEOC (and listed above);
- Consider adjusting the terminology around their DEI programs to something that is less politically charged and therefore less likely to result in EEOC or other government agency investigations;
- Consider changing any public-facing company statements regarding DEI that are likely to make them targets for enforcement agencies;
- Train managers and supervisors that those who oppose DEI policies, practices and training are likely protected from retaliation;
- Continue to check Hall Render's website for updates to litigation and agency action related to DEI.

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