

The Trump Administration's Early DEI EOs:

What to Know Now

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This presentation and its accompanying materials should not be used as a substitute for legal advice on a particular matter. Any information provided herein (as well as responses to questions) are necessarily general in nature.

The Executive Orders were recently issued and this area is constantly evolving with new items emerging almost daily.

Key Provisions of Early DEI EOs

EO 14151: Ending Radical and Wasteful Government DEI Programs and Preferencing

- **Section 2.** Orders each agency, department, or commission head to terminate “equity-related” grants or contracts.

EO 14173: Ending Illegal Discrimination and Restoring Merit-Based Opportunities

- **Section 3.** Including “compliance in all respects with all applicable Federal anti-discrimination laws” as “material term” in federal contracts.
- **Section 4.** Requires agencies and Attorney General to submit report (by May 21) on most egregious and discriminatory DEI programs, including identifying nine private employers or higher education institutions for litigation.

EO 14173: Preliminary Injunction

February 21: Nationwide injunction of Key Provisions (D. Maryland).

- Prohibitions too vague to enforce (5th Amendment).
- Viewpoint discrimination, chilling effect on speech (1st Amendment).

March 7: Injunction overturned (4th Circuit).

March 27: Limited injunction on funding termination (N.D. Illinois).

- Preliminary injunction granted on April 14 (enjoins certification and grant termination provisions).

But don't rely on the injunctions. EEOC, DOJ, etc. can continue enforcement of underlying anti-discrimination laws even if EOs are enjoined.

Related Issues to Consider

Student for Fair Admissions, Inc. v. President & Fellows of Harvard College.

Overtaken precedent permitting race-conscious higher education admissions decisions.

Muldrow v. City of St. Louis. Supreme Court lowered standard for adverse employment action to "some harm."

Ames v. Ohio Dept. Of Youth Services. Supreme Court currently reviewing Circuit split over "background circumstances" showing plaintiff worked for "that unusual employer who discriminates against the majority."

EO 14281: Disparate Impact

- On April 23, 2025, signed an executive order 14281 titled “**Restoring Equality of Opportunity and Meritocracy**,” which targets the legal doctrine of disparate impact.
- The executive order aims to "eliminate the use of disparate-impact liability in all contexts to the maximum degree possible." It directs federal agencies to:
 - **Deprioritize enforcement** of anti-discrimination statutes and regulations that rely on disparate impact theory.
 - **Review and potentially rescind** existing regulations and guidance documents that incorporate disparate impact standards.
 - **Focus enforcement efforts** solely on instances of intentional discrimination, known as disparate treatment.

What is Illegal DEI?

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What is Illegal DEI?

What do other EOs tell us?

Section 3. Definitions. (a) A “**DEI office**” means an office, division, job, or other unit of an institution established for the purpose of:

- Influencing hiring or employment practices at the institution with respect to race, sex, color, or ethnicity, other than through the use of color-blind and neutral hiring processes; or
- Promoting differential treatment of or providing special benefits to individuals on the basis of race, sex, color, or ethnicity.

EO 14185: Restoring America's Fighting Force

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Section 2. Definitions. (b) **Discriminatory equity ideology** means an ideology that treats individuals as members of preferred or disfavored groups, rather than as individuals, and minimizes agency, merit, and capability in favor of immoral generalizations, including that:

- An individual, by virtue of race, color, sex, or national origin, is inherently racist, sexist, or oppressive (consciously or unconsciously);
- An individual's status as privileged, oppressing, or oppressed is primarily determined by their race, color, sex, or national origin;
- An individual, by virtue of race, color, sex, or national origin, bears responsibility for, should feel guilt, anguish, or other forms of psychological distress because of, should be discriminated against, blamed, or stereotyped for, or should receive adverse treatment because of actions committed in the past;
- Virtues such as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist or were created by members of a particular race, color, sex, or national origin to oppress members of another; or
- The United States is fundamentally racist, sexist, or otherwise discriminatory.

What is Illegal DEI?

DOJ Perspective

On January 21, 2025, President Trump Issued an Executive Order ... making it clear that policies relating to “diversity, equity, and inclusion” (DEI) and “diversity, equity, inclusion, and accessibility” (DEIA) “violate the text and spirit of our longstanding Federal civil-rights laws” and “undermine our national unity.”

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* * *

This memorandum is intended to encompass programs, initiatives or policies that discriminate, exclude or divide individuals based on race or sex. It does not prohibit educational, cultural, or historical observances—such as Black History Month, International Holocaust Remembrance Day, or similar events—that celebrate diversity, recognize historical contributions, and promote awareness without engaging in exclusion or discrimination.

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Trump Administration's EOs and Settlements Impacting Law Firms

EOs directed at six specific law firms (so far):

- Cancels or suspends security clearances for firm lawyers and staff
- Bars firm employees from entering federal facilities (courthouses or agency offices)
- Directs federal agencies to cancel existing contracts with the firm or prohibits new contracts
- Mandates investigations into DEI policies, alleging violations of civil rights laws
- Prohibits federal agencies from retaining the firm for legal services
- Enacts sweeping measures to hinder firm operations, such as encouraging private sector boycotts

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EEOC Letters Investigating Law Firm DEI Programs

1. Information on diversity fellowships.
2. Information on diverse slate policies in hiring, promotion, selection for management roles.
3. Connection between performance reviews and DEI efforts.
4. Practices on compensation impact due to DEI efforts.
5. Information on recruitment bonuses (especially if amount varied by protected characteristic).
6. Information on race-restricted programs.
7. Use of diversity scorecards or metrics in evaluating leaders.
8. Information on client requests on diversity representation.

What is Illegal DEI?

EEOC Guidance on DEI Programs

What To Do If You Experience Discrimination Related to DEI at Work

Diversity, Equity and Inclusion (DEI) is a broad term that is not defined Title VII.

DEI policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action **motivated**—in whole or in part—by an employee’s race, sex, or another protected characteristic. In addition to **unlawfully using quotas or otherwise “balancing” a workforce** by race, sex, or other protected traits, DEI-related discrimination in your workplace might include the following:

Disparate
Treatment

Limiting,
Segregating, and
Classifying

Harassment

Retaliation

Who Can Be
Affected By
DEI-Related
Discrimination?

What is Illegal DEI?

EEOC Guidance on DEI Programs

What You Should Know About DEI-Related Discrimination at Work

1. Title VII protections apply beyond racial or ethnic minorities, workers with non-American national origins, “diverse” employees, “historically under-represented groups,” and women.
2. Title VII protects employees, applicants, training or apprenticeship program participants, interns.
3. Title VII applies to employers, employment/staffing agencies, entities that operate training programs, and labor organizations (unions).
4. Title VII prohibits employment actions in which race, sex was “just one factor among other factors” contributing to the decision.

What is Illegal DEI?

EEOC Guidance on DEI Programs

7. When is a DEI initiative, policy, program, or practice unlawful under Title VII?

To allege a colorable claim of discrimination, workers only need to show “some injury” or “some harm” affecting their “terms, conditions, or privileges” of employment.

- Access to or exclusion from [training](#) (including training characterized as leadership development programs)
- Access to [mentoring](#), [sponsorship](#), or [workplace networking / networks](#)
- Internships (including [internships](#) labeled as “[fellowships](#)” or “[summer associate](#)” programs)
- Selection for [interviews](#), including placement or exclusion from a candidate “slate” or pool

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EEOC Guidance on DEI Programs

9. Can an employer justify taking an employment action based on race, sex, or another protected characteristic because the employer has a business necessity or interest in “diversity,” including preferences or requests by the employer’s clients or customers?

No. Employers violate Title VII if they take an employment action motivated—in whole or in part—by race, sex, or another protected characteristic. “[D]emonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination.”

Title VII does not provide any “diversity interest” exception to these rules. Nor has the Supreme Court ever adopted such an exception. No general business interests in diversity and equity (including perceived operational benefits or customer/client preference) have ever been found by the Supreme Court or the EEOC to be sufficient to allow race-motivated employment actions.

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OFCCP: New Director, New Direction

Catherine Eschbach appointed OFCCP Director on March 24, 2025

“The reality is, most of what OFCCP had been doing was out of step, if not flat out contradictory, to our country’s laws.”

Plans to “examine federal contractors’ previously submitted affirmative action plans” to identify “long-standing unlawful discrimination” to investigate or refer to other agencies.

Directed staff to “deter DEI programs” by identifying “potential civil compliance investigations” targeting large organizations (e.g., publicly traded firms, nonprofits with \$500M+ assets, universities with \$1B+ endowments, and state/local bar and medical associations)—**more than just contractors.**

Effecting Change, Mitigating Risk.

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Effecting Change, Mitigating Risk

1. Even compliant practices will be challenged.
2. Public facing materials present **extremely** high risk.
3. EEOC empowering employee complaints.
4. Empowering Human Resources Departments—and ensuring including Legal has a role.
5. Current enforcement focus is emerging:
 - ERGs, affinity groups
 - Training, development programs
 - Mentoring, networking opportunities
 - Diverse slate programs
 - Data collection, display (employees, applicants)
 - Third-party relationships (including supplier diversity)



Thank you.

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