DEI Another Day



4/16/2025

In January 2025, the new administration issued several executive orders and directives aimed at curtailing DEI initiatives, including:

1. The "Ending Radical and Wasteful Government DEI Programs and Preferencing" Exec. Order (January 20, 2025), which directed federal agencies to "terminate, to the maximum extent allowed by law, all … 'equity-related' grants or contracts";
2. The "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" Exec. Order (January 21, 2025), which required federal contractors to certify "that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws";
3. The revocation of Executive Order 11246, which had required, since 1965, equal opportunity in federal contracting; and
4. A directive instructing the Attorney General to develop a "strategic enforcement plan" identifying "potential civil compliance investigations" of organizations with DEI programs.

In response to the latter directive, the U.S. Department of Justice issued a Memorandum on February 5, 2025 to identify "potential civil compliance investigations" of certain organizations, particularly "publicly traded corporations, large non-profit corporations or associations, foundations with assets of 500 million dollars or more, State and local bar and medical associations, and institutions of higher education with endowments over 1 billion dollars." The memo also directs the Civil Rights Division to "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." It specifically calls for identifying "the most egregious and discriminatory DEI and DEIA practitioners in each sector" and developing proposals for "up to nine potential civil compliance investigations" targeting certain organizations.

The EEOC has also responded to the Executive Orders with various actions, including publishing on March 19, 2025 a primer "What You Should Know About DEI-Related Discrimination at Work" and formerly querying twenty of the largest law firms in the United States about their DEI programs.

All employers have had to assess (among other things) whether they have a program that might be considered a DEI program, whether their program falls within the ambit of the Executive Orders, whether the Executive Orders are enforceable, and whether having a DEI program will make them likely targets of the U.S. Dep't of Justice or the EEOC or of a plaintiff or class of plaintiffs alleging "reverse" discrimination.

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