

Insights: Alert

Appeals Court Overturns Nationwide Injunction on DEI Executive Order, Plus New DEI Guidance from EEOC

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As we reported on [January 22, 2025](#), and [January 29, 2025](#), the Trump Administration issued Executive Orders targeting diversity, equity, and inclusion (“DEI”) initiatives in the federal government and private sector, namely Executive Order 14151 (Ending Radical and Wasteful Government DEI Programs) and Executive Order 14173 (Ending Illegal Discrimination and Restoring Merit-Based Opportunity).

On [February 27, 2025](#), we reported on how the federal court issued a nationwide injunction blocking key parts of President Trump’s Executive Orders related to DEI initiatives. Our prior alert discussed the federal district court in Maryland granting a nationwide injunction on three key portions of Executive Orders 14151 and 14173 because the provisions were unconstitutionally vague and violated free speech protections. Unsurprisingly, the government appealed the injunction.

A three-judge panel of the Fourth Circuit granted the government’s request to stay the preliminary injunction pending appeal. This means that the government can enforce the three provisions from the Executive Order that were at issue:

- Federal agencies can implement the “Termination Provision” of Executive Order 14151 that directs them to terminate all equity related grants or contracts within 60 days.
- Federal agencies can resume presenting certifications requiring federal contractors to certify that they do not operate programs promoting DEI or violate any federal anti-discrimination laws.
- Federal agencies may bring enforcement actions against private sector organizations under Executive Order 14173, which directs federal agencies to end illegal DEI in the private sector.

Parallel with this development, on Wednesday, March 19, 2025, the EEOC and the Justice Department issued multiple guidance documents on what constitutes illegal DEI. First, the EEOC issued a one-page summary entitled “[What To Do If You Experience Discrimination Related to DEI at Work](#).” The document recognizes that DEI is a “broad term” that is not defined by Title VII. In addition, the EEOC issued a much longer [Frequently Asked Questions document](#), which expounds on the topics discussed in the one-page summary. The FAQs address a variety of topics, including the application of Title VII’s protections to all workers and that “reverse discrimination” is not a recognized concept. Notably, a case about the standard of proof for what has been

known as “reverse discrimination” cases is before the U.S. Supreme Court this term (*Ames v. Ohio Department of Youth Services*, 23-1039).

There are still gaps in the guidance but the general gist so far is that it is illegal DEI when employers consider protected characteristics in any term or condition or privilege of employment including access to leadership, mentoring and development selections; it is illegal to limit, segregate or classify employees based on protected characteristics such as employee resource groups that limit membership; and that the business necessity case that there is an interest in diversity, client, or customer preference will not justify employment actions based on protected characteristics.

In light of these recent developments, it is important for employers to review their current DEI initiatives and programs, especially for federal contractors and grant recipients. In particular, contractors will need to carefully assess the certifications being requested and evaluate them against potentially conflicting obligations that other entities such as states and local government may be imposing. We will continue to monitor the DEI landscape as new developments arise.

For more information or assistance related to this Legal Alert, please contact one of the authors or a member of Kilpatrick's Labor and Employment Team.

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