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Recent DEI Updates: Making Sense of the Latest Surrounding the Administration's DEI Executive Orders

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Over the past year, significant changes, both political and legal, have emerged regarding federal enforcement of Diversity, Equity, and Inclusion ("DEI") programs, particularly in the context of the False Claims Act ("FCA"). The Trump Administration began its focus on heightened scrutiny of DEI programs in January 2025 with the imposition of three Executive Orders targeted at addressing what the Administration referred to as "illegal DEI." The January 2025 Executive Orders were followed by updated Guidance from both the Equal Employment Opportunity Commission ("EEOC") and the Department of Justice ("DOJ").[1] Now, on March 26, 2026, President Trump has issued a new Executive Order targeting DEI programs and federal contractors.

This legal alert will provide a comprehensive update on the recent March 2026 Executive order, additional clarity provided by the DOJ on enforcement priorities, and recent enforcement and legal actions taken by DOJ highlighting the Administration's priorities for targeting alleged violations of federal anti-discrimination laws.

Imposition of New DEI Executive Order Aimed at Federal Contractors

President Trump has issued another executive order targeting DEI practices, this time requiring government contractors to agree that they will not engage in "racially discriminatory DEI activities" or risk penalties including contract termination, ineligibility for future contracts, and possible FCA enforcement. Notably, this Order expands upon the previously enacted DEI measures from January 2025 by specifically defining prohibited activities and directing expedited review of FCA actions, increasing enforcement visibility and exposure for contractors.

The Order instructs federal departments and agencies to include a clause in their contracts requiring such certification from contractors and their subcontractors, further mandating that contracting entities provide access to "books, records, and accounts." Under the clause, contractors must also recognize that compliance with its provisions is material to government payment decisions. Failure to abide by the order's clause can lead to penalties including contract termination, future contract ineligibility, and even an action from the attorney general under the FCA.

The recently issued Order defines "racially discriminatory DEI activities" as disparate treatment based on race or ethnicity across areas like recruitment, hiring and "program participation," such as involvement in leadership development programs, clubs or associations. The new Order expands prior

anti-DEI measures implemented in January 2025 by also including a reporting requirement which provides that a contractor must report (1) any subcontractor's "known or reasonably knowable conduct" violating the clause and (2) any lawsuit by a subcontractor against the contractor putting the validity of the Order's certification clause at issue "in any way."

Moving forward, contractors should carefully review compliance certifications or payment requests and ensure that no prohibited DEI practices are occurring prior to submitting the relevant certifications as each submission could constitute a separate false claim under the FCA.

DOJ Provides Greater Clarity on False Claims Act Enforcement Impacting Diversity, Equity, and Inclusion Programs

Over the past year, there has been considerable uncertainty regarding the Trump Administration's Executive Orders concerning DEI programs and the practical effects those Orders have had on private employers and any entities receiving federal funds. The language used in the relevant Executive Orders has caused a great deal of confusion on how the Administration would define what it meant to have "unlawful DEI" programs and to what extent the Administration would follow through with its previously stated intentions to investigate organizations with such programs pursuant to the FCA. At the recent Federal Bar Association's 2026 Qui Tam Conference, a DOJ official clarified that the Trump administration is not broadly investigating federal contractors and grant recipients for having DEI programs, but rather for potential discrimination (such as making employment decisions based on race or sex) in violation of federal antidiscrimination laws. The DOJ official additionally explained that DOJ enforcement under the FCA is focused on programs or practices that pressure management to hire or promote based on protected characteristics, especially where demographic goals are tied to compensation or advancement, or where participation in training and mentoring is limited by race or sex.

DOJ's comments generally align with previous guidance published by the DOJ in July 2025. Kilpatrick's in-depth legal alert discussing the July 2025 guidance can be found here. Briefly, however, these guidelines, titled "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" (the "July 2025 Guidance") outlined employment practices the current administration views as discriminatory. Until its recent comments though, the DOJ has been reticent to provide any commentary, beyond the statements in the July 2025 Guidance, on how the government plans to use the FCA to achieve their policy goals, which makes Jenny's explanations hold greater emphasis.

Actions in Minnesota Provide Greater Insight into DOJ Enforcement

The most recent enforcement actions in this sector involve DOJ allegations of racial discrimination and affirmative action against the State of Minnesota and, separately, Minneapolis Public Schools ("MPS"). The lawsuit against the State of Minnesota, filed December 9, 2025, alleges that its requirement for all state agencies to implement sex- and race-based affirmative action plans, and to consider affirmative action goals in all staffing decisions, violates Title VII of the Civil Rights Act of 1964 ("Title VII"). The

lawsuit claims that Minnesota's policy, which directs agencies to balance workforce demographics with the broader civilian labor force, unlawfully discriminates against employees and job applicants based on race and sex. DOJ officials, citing recent Supreme Court decisions and federal law, argue that making employment decisions on the basis of immutable characteristics constitutes discrimination, regardless of affirmative action justifications.

DOJ has also challenged MPS's collective bargaining agreement with the teachers' union, alleging that it unlawfully gives preference to teachers from "underrepresented populations" and prioritizes "Black Men Teach Fellows" for certain employment benefits, in violation of Title VII. That lawsuit asserts that MPS employed impermissibly discriminatory employment practices, including its stated goals for increasing Black, Indigenous, and People of Color ("BIPOC") staff and awarding specific employment advantages based on race and sex.

Both Minnesota lawsuits are still in early stages. We will continue to monitor for any developments in these enforcement actions.

Recent Appellate Decision Confirms Some Changes to DEI Here to Stay

Additionally, the Trump administration has also scored a recent victory in court regarding two executive orders issued early in 2025 that targeted DEI initiatives of federal contractors and grant recipients. The first order, Executive Order 14151, titled "Ending Radical and Wasteful Government DEI Programs and Preferencing," required federal agencies to terminate equity-related contracts and grants as allowed by law. The second, Executive Order Executive Order 14173, titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," mandated certification of compliance with federal antidiscrimination laws and preparation of enforcement plans for organizations found to discriminate illegally through their DEI programs. Legal challenges quickly followed, and although a district court granted a preliminary injunction against certain provisions, the Fourth Circuit ultimately lifted that injunction finding the orders neither unconstitutionally vague nor infringing on free speech, and holding that plaintiffs lacked standing to challenge the enforcement threat provision.

While DEI programs are not prohibited, this decision means that the certification provision is now especially relevant for private entities receiving federal funds. Federal contractors and grant recipients face significant risk if they inaccurately certify compliance with civil rights laws.

Conclusion

Taking these recent events together, contractors and recipients of federal funds are highly encouraged to consult EEOC and DOJ guidance and to assess their own risk tolerance in designing compliant DEI policies. This is especially true for any entity asked to certify compliance with civil rights laws in order to receive federal funding under the latest Executive Order issued by the Trump Administration.

Kilpatrick will keep you updated should new developments in the realm of FCA anti-discrimination

enforcement arise. In the meantime, for further guidance on Title VII compliance, anti-discrimination policies, training, or the impact of these Orders on your organization, please contact one of the authors or the attorney(s) in our firm with whom you are regularly in contact.

Footnotes

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[1] Kilpatrick's contemporaneous reporting on the January 2025 Executive Orders, the EEOC's Guidance , and the DOJ's Guidance can be found here.