

Memorandum

Implications of President Trump's Early Executive Orders on DEI

January 24, 2025

On the first day of President Trump's second term in office, he signed dozens of executive orders targeting a variety of topics such as immigration, energy production, and, notably, diversity, equity and inclusion ("DEI") programs. As described further below, the DEI-focused orders call for the shutdown of all offices of DEI programs within the federal government, direct executive agencies to eliminate all "discriminatory and illegal preferences, mandates, policies, programs and requirements," and purport to "encourage" the private sector to end all "illegal" DEI programs and preferences. As the implications of (and potential legal challenges to) these orders begin to play out, we offer observations and next steps below.

Executive Order: Ending Radical and Wasteful Government DEI Programs and Preferencing¹

This order, signed by President Trump on January 20, seeks to roll back former President Biden's Executive Order 13985 "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,"² which required that nearly every federal agency and entity submit equity action plans to detail ways that they have furthered DEI initiatives of the federal government. President Trump's Order calls for termination of all DEI, and diversity, equity, inclusion and accessibility ("DEIA") mandates, environmental justice offices and positions, all equity action plans, equity-related grants or contracts, and all DEI or DEIA performance requirements for employees, contractors or grantees. The action follows calls in Trump's inauguration speech for "a society that is colorblind and merit-based."³

By 5:00 p.m. on January 22, 2025, all federal employees in DEI roles were ordered to be placed on paid leave.⁴ A memorandum from the Office of Personnel Management also directed agencies to send agency-wide notices

¹ President Donald Trump, Executive Order, Ending Radical and Wasteful Government DEI Programs and Preferencing (Jan. 20, 2025), available [here](#).

² Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021)

³ Remarks on the Inaugural Address (Jan. 20, 2025), available [here](#).

⁴ Charles Ezell, Memorandum, Initial Guidance Regarding DEIA Executive Orders, U.S. Office of Personnel Management (Jan. 21, 2025), available [here](#). [Reporting](#) on the memorandum indicated that certain agencies communicated to employees that failure to so report "will result" in adverse consequences.

asking employees to report on any known attempts to “disguise” DEI programs, noting that failure to do so may result in “adverse consequences.”⁵

*Executive Order: Ending Illegal Discrimination and Restoring Merit-Based Opportunity*⁶

President Trump’s second major DEI-related executive order, signed on January 21, seeks to eliminate all DEI practices across executive departments and agencies. It also rescinds various executive orders put forth by prior presidential administrations. One such rescinded order, in place since 1965, aimed to provide equal opportunity in federal employment and required federal contractors to develop affirmative action plans and ensure equal opportunity for employees. The order also directs agencies to include in all grant awards and established contracts a provision requiring contractors to confirm that they do not operate any programs or initiatives promoting DEI that violate federal anti-discrimination laws and that to receive federal funds, the contractors must comply with federal anti-discrimination laws.

Importantly, and in addition to the direct implication on federal contractors, the Order requires the Attorney General to submit recommendations on how to “encourage the private sector to end illegal discrimination and preferences, including DEI.” It requires agency leaders to submit a report within 120 days containing recommendations for enforcing federal civil rights laws to end illegal discrimination and preferences. The reports must contain a proposed strategic enforcement plan highlighting (i) key sectors of concern within each agency’s jurisdiction, (ii) the most egregious and discriminatory DEI practitioners in each such sector, (iii) a plan of specific steps to deter DEI programs or principles that constitute illegal discrimination or preferences, (iv) other strategies to encourage the private sector to end illegal discrimination, (v) litigation that would be potentially appropriate for federal lawsuits, intervention and statements of interest and (vi) potential regulatory action. Under prong three, the executive order calls for each agency to identify up to nine potential civil compliance investigations of publicly traded corporations, large non-profit corporations, foundations with assets of \$500 million dollars or more, state and local bar and medical associations, or institutions of higher education with endowments over \$1 billion dollars.

Contextualizing the anti-DEI Executive Orders

The flurry of multiple, lengthy, executive orders reversing prior policies and issued in rapid succession can leave leaders of private companies feeling anxious and uncertain, but it is important to put the Executive Orders into context. The Executive Orders reflect the President’s instructions to federal agencies on how to conduct their business. They are not laws passed by Congress. They do not change existing anti-discrimination laws or how courts have interpreted those laws. They do not require private companies to abandon or alter their own voluntary

⁵ *Supra* note 4.

⁶ President Donald Trump, Executive Order, Ending Illegal Discrimination and Restoring Merit-Based Opportunity (Jan. 21, 2025), available [here](#). This executive order is limited in scope in that it does not apply to “lawful federal or private-sector employment and contracting preferences for veterans of the U.S. armed forces or persons protected by the Randolph-Sheppard Act,” an act authorizing a blind individual to benefit from business entrepreneurship and self-support through operation of vending facilities on public property.

DEI programs as long as those programs comply with federal anti-discrimination laws. For example, the Executive Orders dictate that federal private contractors will no longer be *required* to comply with prior orders mandating affirmative action plans and equal opportunities for employees; however, they can still *voluntarily* carry out those programs as long as they comply with federal anti-discrimination laws.

Even after the Executive Orders, the vast majority of ordinary course DEI work remains legal under our current laws and judicial reasoning. To protect against any inquiry or litigation, companies should assess now whether they have a proactive strategy in place to address legal questions about their DEI initiatives and programs. This includes conducting a privileged assessment of all DEI-related programs, a prudent examination (or re-examination) of the company's approach to diversity, equity and inclusion to ensure programs are tailored to the relevant circumstances and corporate strategy, and that both public and internal statements regarding the company's policies and programs are carefully drafted to accurately portray the company's approach.

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