

LEGAL UPDATES

Now What? Navigating the DEI Executive Orders and Ongoing Legal Challenges to Their Enforcement

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Since taking office in January, President Trump has signed a flurry of Executive Orders (EOs) on a wide range of topics. Few EOs, however, have generated as much attention and uncertainty as Executive Order 14151 and Executive Order 14173 (collectively the "DEI EOs"), which, together, aim to dismantle diversity, equity and inclusion (DEI) programs and initiatives in the public and private sectors.

For employers, the DEI EOs raise critical legal and business concerns. This overview will examine how they may impact employers and what companies should consider while navigating associated legal and business risks.

Snapshot

- Executive Order 14151, titled "[Ending Radical and Wasteful Government DEI Programs and Preferencing](#)," purports to eliminate "all discriminatory programs," including DEI-related offices, policies and initiatives tied to the federal government. EO 14151 mandates that federal agencies terminate "equity-related grants or contracts" and DEIA positions, signaling a definitive end to government-backed diversity efforts.
- Executive Order 14173, titled "[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)," (1) rescinds Lyndon B. Johnson's 1965 Executive Order 11246, which compelled federal contractors to adopt affirmative action plans; (2) requires federal contractors to certify that they do not operate programs promoting DEI that conflict with federal anti-discrimination laws (or risk losing federal funding); and (3) calls for civil compliance investigations of private sector companies engaged in "illegal" DEI and DEIA (Diversity, Equity, Inclusion, and Accessibility) programs – all in an effort to deter what the Executive Order refers to as "illegal DEI discrimination and preferences."
- Multiple organizations have filed lawsuits challenging the DEI EOs on First, Fifth and Fourteenth Amendment grounds – specifically, that the EOs are unconstitutionally vague, chill free speech, violate the separation of powers doctrine and exceed the president's authority.

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- On February 21, 2025, a Maryland federal court, in *National Association of Diversity Officers in Higher Education (NADOHE), et al. v. Donald J. Trump, et al.*, enjoined the Trump administration on a nationwide basis from pausing or terminating federal funding pursuant to the DEI EOs, requiring federal grantees and contractors to make any “certifications” pursuant to the DEI EOs, and bringing False Claims Act or other enforcement actions under the DEI EOs, including enforcement actions premised on any certification requirement.

Double Click: The Legal Challenges

On February 3, 2025, NADHOE along with American Association of University Professors, Restaurant Opportunities Centers United, and the Mayor and City of Baltimore sued the Trump administration in Maryland federal court challenging the legality of the DEI EOs and seeking preliminary and permanent injunctive relief. Plaintiffs argued that the DEI EOs violated (1) the First Amendment by impermissibly chilling their free speech; (2) the Fifth Amendment because they are unconstitutionally vague; and (3) the Spending Clause and the separation of powers doctrine because, without authority from Congress, the DEI EOs dictate and place conditions on federal spending and receipt of federal funds, including funds already awarded.

On February 21, the court granted plaintiffs’ motion to enjoin defendants, other than the president, from pausing or terminating federal grants and awards, requiring grantees and contractors to make any “certification” pursuant to the DEI EOs or to bringing False Claims Act or other enforcement actions pursuant to the DEI EOs, including enforcement actions premised on any certification purportedly required under the DEI EOs.

While the Trump administration has appealed the February 21 injunction, at least three other cases were filed challenging the DEI EOs: (1) on February 19, the National Urban League, National Fair Housing Alliance, and AIDS Foundation of Chicago filed suit in federal court in Washington, DC; (2) on February 20, the San Francisco AIDS Foundation, along with eight other LGBTQ-rights nonprofits, filed suit in California federal court; (3) and, on February 26, Chicago Women in Trades filed suit in Illinois federal court.

Plaintiffs all raise similar First, Fifth and Fourteenth Amendment claims. The National Urban League and San Francisco AIDS Foundation lawsuits also argue that the DEI EOs (along with EO 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government) discriminate on the basis of race and/or sex, sexual orientation, gender identity and transgender status.

Navigating Legal and Business Risks

Although it is important for employers to take the administration’s enforcement agenda into account when assessing potential legal exposure and deciding on future steps, it is also important to remember that the Executive Orders do not require private employers to abandon their lawful DEIA programs. Responsible legal and business risk mitigation requires a comprehensive view of the legal landscape, including pending legal challenges to the DEI EOs and other pre-existing legal authority contrary to aspects of the orders, including state and local employment discrimination laws and prior rulings by the U.S. Supreme Court.

It is also important to recognize that some aspects of the DEI EOs target activities that carry legal risks that are not new to employers, though employers should be prepared for heightened scrutiny. Despite the recent injunction, certain provisions in the DEI EOs remain enforceable – specifically, the U.S. Attorney General’s ability to prepare a report “containing recommendations for enforcing Federal civil-rights laws and taking other appropriate measures to encourage the private sector to end ‘illegal discrimination and preferences,’ including DEI,” and potential investigations of private sector organizations that engage in DEI and DEIA programs and initiatives.

Conducting Compliance Audits

In light of the evolving DEI landscape, now is a good time to consider an audit of your organization’s internal and external DEI policies, programs and initiatives, as well as any federal funding that could be impacted by the Trump



administration's enforcement of the DEI EOs. We recommend engaging legal counsel to assist with DEI audits. A privileged audit can help companies tailor objectives, identify areas requiring immediate action, and develop a comprehensive strategy that mitigates legal, business and reputational risks.

If you have questions about the impact of the DEI EOs on your business and employment practices, please contact [Caitlin Gehlen](#), [Kiesha Mayes](#), or your regular Lathrop GPM attorney.