

LEGAL UPDATE



HIGHLIGHTS & IMPORTANT DATES

- On **Jan. 20, 2025**, and **Jan. 21, 2025**, Trump issued EOs seeking to terminate all illegal DEI programs in the public and private sectors.
- On **March 19, 2025**, the EEOC and DOJ issued guidance to clarify what employee actions may constitute “illegal DEI.”

EEOC and DOJ Issue Guidance on DEI-related Discrimination

On **March 19, 2025**, the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (DOJ) issued joint [guidance](#) on illegal and discriminatory diversity, equity and inclusion (DEI) practices. The EEOC also issued [frequently asked questions \(FAQs\)](#) regarding DEI-related discrimination. The guidance provides some clarity as to the agencies’ position on what may constitute illegal DEI and offers steps employees may take to report violations.

Background

On Jan. 20, 2025, and Jan. 21, 2025, President Donald Trump issued executive orders (EOs) [14151](#) and [14173](#), respectively, which seek to terminate all illegal DEI mandates, policies, programs, preferences and activities. However, neither EO defines what practices or programs may constitute illegal DEI. The EEOC and DOJ guidance provides some clarity as to the agencies’ positions on illegal DEI.

Overview of DEI-related Discrimination Guidance

Under Title VII of the Civil Rights Act (Title VII), employers with **15 or more employees** may not discriminate on the basis of an individual’s protected trait (e.g., race, color, religion, sex or national origin). The EEOC FAQs and the EEOC and DOJ joint guidance state that DEI programs may be unlawful under Title VII if they are motivated, in whole or in part, by an employee’s protected trait. The guidance identifies specific instances of potential DEI-related discrimination in the workplace, including:

- **Disparate treatment** in employment actions (e.g., hiring; firing; compensation; access to training, mentoring or workplace networking; and selection for interviews, including inclusion in a candidate pool) that is motivated by a protected trait;
- **Limiting, segregating or classifying** employees based on a protected trait in a way that deprives them of employment opportunities (e.g., limiting membership in workplace groups, such as employee resource groups or affinity groups, to members of a particular protected class);
- Engaging in workplace **harassment** based on a protected trait (e.g., DEI training may constitute illegal harassment if it is so severe or frequent as to be intimidating, hostile or abusive); and
- **Retaliating** against employees who engage in protected activity (e.g., objecting to DEI-related discrimination, participating in an investigation or filing a charge).

The guidance further clarifies that unlawful discrimination occurs even if a protected trait is just one factor among several rather than the sole factor. Additionally, employers may not justify taking an employment action on the basis of a protected trait because they have a business interest in diversity, including a client or customer preference. Finally, the guidance provides steps employees may take to file a claim of discrimination with the EEOC.



Employer Takeaways

Although the EEOC and DOJ guidance does not alter existing law (which has always banned consideration of an individual's protected trait in employment decisions), it provides insight into how such agencies will evaluate claims of DEI-related discrimination and how employers may prevent such claims. In light of the guidance, employers may consider reviewing existing DEI practices to ensure they do not discriminate on the basis of a federally protected trait. For example, employers may wish to review existing hiring and interview selection practices, employee resource and affinity group or training program membership guidelines, and workplace trainings to confirm they do not have a disparate impact on any protected class.