

Additional Information Released on ‘Combating Race and Sex Stereotyping’ Order; ‘Hotline’ Established

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Following the “Combating Race and Sex Stereotyping” Executive Order (EO), which requires the Office of Federal Contract Compliance Programs (OFCCP) to set up a hotline and investigate complaints of violations, OFCCP has issued a [press release](#) providing additional information and reporting the launch of the hotline.

The EO covers government contractors and certain grant recipients and seeks to severely limit and curtail the diversity and inclusion, sexual harassment, and related equal employment opportunity training contractors and recipients are allowed to provide their employees. (See our article, [White House ‘Combating Race and Sex Stereotyping’ Executive Order Limits Training](#).)

Significantly, the hotline is now active, despite the fact the EO contract clause requirements are effective only for new contracts entered into November 21, 2020, or thereafter. As discussed in the EO and further explained by OFCCP, any training that violates the EO also may violate EO 11246:

While the order is effective immediately, its specific requirements for Federal contractors apply only to those with Federal contracts entered into 60 days after the date of the order, or Nov. 21, 2020. *However, training programs prohibited by the new Executive Order may also violate a contractor’s obligations under the existing Executive Order 11246, which prohibits discrimination based on race, color, religion, sex, sexual orientation, gender identity, national origin, and for inquiring about, discussing, or disclosing your compensation or the compensation of others.*

The press release (and the hotline message) also provides information regarding how to file a complaint at OFCCP’s website, in addition to the hotline.

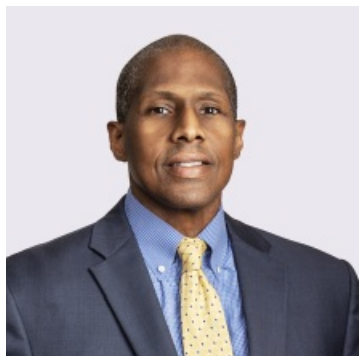
Thus, employers with current federal contracts should be aware that employees may file complaints at any time before, as well as after, November 21, based on training and related materials they may perceive as contrary to the EO.

In addition, the Director of the Office of Management and Budget (OMB) on September 28 issued a Memorandum to the heads of Executive agencies and departments ([M-20-37](#)) providing additional insights into the EO. Significantly, the Memorandum identifies seven “keywords” — including “unconscious bias” — that may trigger further review of agency training materials:

Reviews of specific training curriculum materials can be supplemented by a broader keyword search of agency financial data and procurements for terms including, but not limited to: “critical race theory,” “white privilege,” “intersectionality,” “systemic racism,” “positionality,” “racial humility,” and

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“unconscious bias.” When used in the context of diversity training, these terms may help to identify the type of training prohibited by the E.O. Searching for these key words without additional review does not satisfy the review requirements of the E.O.

While the foregoing keywords apply to searches of agency training materials, it is likely these will be the same keywords for which OFCCP will look when reviewing contractor training materials.

Moreover, the Memorandum asserts, “Federal contractors are to be required to represent that they will not conduct such trainings for their own employees, with potential sanctions for noncompliance.” This requirement of an affirmative representation does not appear in the EO.

The EO specifically states that it does not prevent diversity, inclusion, and bias training. However, given these developments (OFCCP’s activation of the complaint hotline and the identification of keywords in the OMB Memorandum), federal contractors should carefully review their training materials for any “divisive concepts,” including the keywords identified in the Memorandum, and consider whether any revisions to those materials may be advisable. Federal contractors also should consider retaining training PowerPoints, speaker outlines, and related materials should the need to defend these materials arise.

Please contact the Jackson Lewis attorney with whom you regularly work if you have questions or need assistance.