

Court Order Enjoins Enforcement of Executive Order Limiting Diversity Training

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A federal district court has entered a nationwide preliminary injunction stopping the administration from enforcing [Executive Order \(EO\) 13950 - Combating Race and Sex Stereotyping](#). *Santa Cruz Lesbian and Gay Cmty. Ctr., et al. v. Trump* No. 5:20-cv-07741-BLF (N.D. Cal. Dec. 23, 2020).

EO 13950 prohibits federal contractors and subcontractors from using “any workplace training that inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating,” including a list of “divisive concepts.” The Office of Federal Contract Compliance Programs (OFCCP) had set up a [hotline to receive complaints](#) regarding training materials and issued an information request soliciting federal contractors to submit training materials for review. In addition, a clause implementing the requirements of EO 13950 was to be inserted into new federal contracts. The clause may have been inserted already into certain Department of Defense contracts.

The district court ruled that the EO violates the Free Speech Clause of the First Amendment “because it impermissibly chills the exercise of the Plaintiffs’ constitutionally protected speech, based on the content and viewpoint of their speech.” The court also ruled that parts of the EO are so vague that they violate the Fifth Amendment Due Process Clause because “it is impossible for Plaintiffs to determine what conduct is prohibited.”

A preliminary injunction is a court’s tentative conclusion that the plaintiff is likely to succeed on the merits of the case and otherwise meets the criteria for a preliminary injunction. Thus, the preliminary injunction may be rescinded as the case progresses or reversed on appeal. For now, the OFCCP and other federal government agencies may not enforce the EO.

While the OFCCP has said that training on “divisive concepts” also violates long-existing principles under EO 11246 requiring federal contractors to provide equal employment opportunities, it may be unlikely that the OFCCP will take any enforcement action under EO 11246 in light of the court’s order.

Please contact a Jackson Lewis attorney with any questions.

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