

Trump Administration Revokes EO 11246, Prohibits ‘Illegal’ DEI: What the EO *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* Means for Employers

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Takeaways

- The EO does not change existing law, but it signals the Administration’s focus on targeting organizations that violate existing anti-discrimination laws in their employment practices.
- For federal contractors, it eliminates affirmative action plan obligations regarding race and gender (as had been required by EO 11246) and enforcement activity by the OFCCP regarding race or gender affirmative action plans.
- For all employers, the EO signals increased investigation and enforcement activities relating to DEI programs that utilize discriminatory preferences.

Related links

- [Ending Illegal Discrimination and Restoring Merit-Based Opportunity - Executive Order](#)
- [Fact Sheet: President Donald J. Trump Protects Civil Rights and Merit-Based Opportunity by Ending Illegal DEI – The White House](#)
- [New Presidential EO Says Federal Government Recognizes ‘Two Sexes’ Only](#)

Article

On Jan. 21, 2025, President Donald Trump issued an executive order titled [“Ending Illegal Discrimination and Restoring Merit-Based Opportunity”](#) (EO). Its stated purpose is to end illegal diversity, equity, and inclusion and diversity, equity, inclusion, and accessibility (together, DEI).

The EO comes a day after President Trump [signed the executive order on “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”](#) and a slew of Day 1 orders regarding DEI. The EO instructs federal agencies to take specific actions to end “illegal” DEI in federal contracting. It also directs agencies to encourage private employers to eradicate illegal DEI.

The EO states, “It is the policy of the United States to protect the civil rights of all Americans and to promote individual initiative, excellence, and hard work. I therefore order all executive departments and agencies to terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements.”



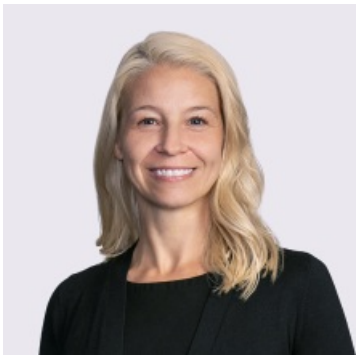
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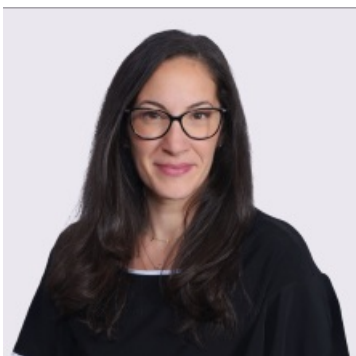
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The EO does not change existing law regarding discrimination in contracting, employment, or otherwise. Rather, it signals the Administration's focus on targeting organizations that violate existing anti-discrimination laws in their employment practices. The key message (which is not necessarily new): Employers should focus on ensuring their DEI practices comply with equal employment opportunity laws.

What Does the EO Say?

I. Federal Contracting and Revocation of EO 11246

Section 3 of the EO, entitled "Terminating Illegal Discrimination in the Federal Government," focuses on the federal contracting process and revokes a series of earlier executive orders and presidential memoranda, including EO 11246, the primary executive order on federal contractor affirmative action obligations.

EO 11246, "Equal Employment Opportunity," was issued in 1965 by President Lyndon Johnson. It prohibited employment discrimination by federal contractors and subcontractors and required contractors and subcontractors take affirmative action to ensure equal employment opportunity.

The new EO bars federal contractors from considering race, color, sex, sexual preference, religion, or national origin in their employment, procurement or contracting practices "in ways that violate the Nation's civil rights laws."

In addition, the EO orders the Office of Federal Contract Compliance Programs (OFCCP) to "immediately cease":

- promoting "diversity"
- holding contractors and subcontractors responsible for taking "affirmative action"
- allowing or encouraging workforce balancing based on race, color, sex, sexual preference, religion, or national origin.

The EO requires federal agencies to include specific terms in their contracts or grant awards that require contracting parties or grant recipients to comply with all applicable federal anti-discrimination laws and certify that they do not operate any illegal DEI programs. The order does not provide more detail on what this certification will entail.

In addition, the EO directs the director of the Office of Management and Budget to remove all references to DEI principles from federal acquisition, contracting, grants, and financial assistance procedures. The EO further prohibits mandates, requirements, programs, or activities that promote "affirmative action," "diversity," "equity," and related practice, but does not define those terms.

II. Encouraging Private Sector to End Illegal DEI Discrimination and Preferences

In addition to addressing federal contractors, the EO also addresses private employer DEI activities. Title VII of the Civil Rights Act and other state and federal anti-discrimination laws prohibit discrimination in employment and require equal employment opportunity. The EO does not change that. In Section 4 of the EO, entitled "Encouraging the Private Sector to End Illegal DEI Discrimination and Preferences," the Administration directs federal agencies, in coordination with the

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Affirmative Action, OFCCP and
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attorney general – newly appointed, yet to be confirmed Pamela Bondi – to take action to implement the principles of the EO.

Section 4 further requires the attorney general in consultation with the agency heads, to submit a report within 120 days identifying “key sectors of concern,” “egregious and discriminatory practitioners,” and a plan to deter DEI programs or principles that constitute illegal discrimination or preferences. As part of that plan, each agency is to identify “up to nine potential civil compliance investigations of publicly traded corporations, large non-profit corporations or associations, foundations with assets of \$500 million dollars or more, State and local bar and medical associations, and institutions of higher education with endowments over 1 billion dollars.” They also are to identify “other strategies” to encourage the private sector to end illegal DEI discrimination and preferences and appropriate potential litigation for the administration to pursue.

What the EO Means for Federal Contractors

For federal contractors, the EO’s main takeaways are as follows:

- The EO does not eliminate the OFCCP as an agency or take away any contractor non-discrimination obligations.
- The EO eliminates federal contractor affirmative action plan obligations regarding race and gender (as had been required by EO 11246) and enforcement activity by the OFCCP regarding race or gender affirmative action plans.
- The EO does not impact obligations under VEVRAA or Section 503 (which are both statutes, not executive orders). For now, OFCCP retains jurisdiction over ensuring contractors comply with these laws.
- Contractors should review any currently pending OFCCP audit requests to determine whether the information requested stems from Executive Order 11246.
- Contractors should continue to prepare VEVRAA and Section 503 Affirmative Action plans.
- Additionally, the EO calls for the development of a new contract term (presumably, a replacement for the current Equal Employment Opportunity clause) for inclusion in federal contracts, which will require contractors to agree that “compliance in all respects with all applicable Federal anti-discrimination laws is material to the government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code.”
- The EO requires contractors to certify that it does not operate any programs promoting DEI that violate any applicable federal anti-discrimination laws. [The White House Fact Sheet](#) accompanying the EO notes this certification will be an “unmistakable affirmation that contractors will not engage in illegal discrimination, including illegal DEI.”
- Review any new government contracts for new/relevant EEO/DEI terms.

What the EO Means for All – Contractor and Non-Contractor – Employers

For all employers, whether they are federal contractors, the EO does not change the law relating to employment discrimination. It does, however, signal increased investigation and enforcement activities relating to DEI programs that utilize discriminatory preferences.

Employers should consider taking the following actions:

- Review employment practices and DEI initiatives for compliance with nondiscrimination statutes, such as Title VII of the Civil Rights Act of 1964;
- Eliminate or revise policies or practices that likely are inconsistent with existing law;
- Review EEO policies and communications to assess the risk of enforcement agency investigations;
- Reassure employees of the employer's commitment to equal employment opportunity and nondiscrimination;
- Focus on employee psychological safety and wellness; and
- Stay tuned for challenges to the EO and more information about sectors, industries, and organizations the federal agencies identify for investigation and further scrutiny and guidance from the attorney general, secretary of education, and other federal agencies.

We will continue to monitor developments. Please reach out to your Jackson Lewis attorney if you have questions about federal contractor compliance during this transition period.

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