

Federal Contractors Advised to Make Changes to Their DEI Programs

Description

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Federal contractors need to take note of two Executive Orders impacting their employee Diversity Equity and Inclusion (“DEI”) programs. Unlike the recent EEO and DOJ guidance regarding employer DEI initiatives applying to all employers, these two Executive Orders require changes to existing previously lawful federal contractor DEI initiatives.

[Executive Order 14173](#), entitled *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (January 21, 2025), rescinded the affirmative action mandate for covered federal contractors under Executive Order 11246 (relating to race, ethnicity, and sex). The Executive Order allowed for continuation of practices for 90 days, which has just now expired. The effect of this order is that federal contractors should (a) stop gathering information regarding applicant race, sex, and ethnicity and (b) rescind affirmative action plans relating to those characteristics. Continuation of affirmative action plans as to those characteristics is illegal in certain states. For example, in Rhode Island, the Fair Employment Practices Act makes it illegal for an employer to “[e]licit, or attempt to elicit, any information directly or indirectly pertaining to [an applicant’s] color, . . . sex, . . . or country of ancestral origin” unless there is “a bona fide occupational qualification certified by the commission or where necessary to comply with any federal mandated affirmative action programs.” R.I. Gen. Laws § 28-5-7(4). Given that Executive Order 11246, which previously required the solicitation of such information for mandated affirmative action plans, has now been rescinded, federal contractors must cease to ask for such information at the pre-employment phase.

For the time being, EEO-1 obligations applicable to federal contractors and larger employers requiring collection and reporting of certain current employee (not applicant) protected class status continue. In addition, the affirmative action obligations remain for federal contractors under Section 503/VEVRAA (relating to disability and veteran status). Thus, federal contractors should continue their affirmative action and applicant tracking concerning disability and veteran status for the time being.

In a second [Executive Order 14168](#), entitled *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, agencies have been directed to “assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology,” further stating that “federal funds shall not be used to promote gender ideology.” The Executive Order further directs agencies to report to the administration on “agency-imposed requirements on federally funded entities, including contractors, to achieve the policy of this order.” To mitigate the risk of losing federal funding or contracts, federal contractors should limit the messaging regarding gender issues to simply prohibit discrimination versus giving the appearance of promoting any particular view on gender.

Federal contractors will soon be required to certify in their federal contracts that they are not “operating any programs promoting DEI that violate any applicable Federal anti-discrimination laws.” Contractors are strongly encouraged to consult with legal counsel to review their existing DEI programs so they are in a position to truthfully certify their compliance with these new requirements and avoid potentially exposing themselves to penalties under the False Claims Act.

For more insight on these Executive Orders, please engage the members of our [Employment & Labor](#) law team.

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