

Court of Appeals Order Will Allow DEI Executive Orders To Take Effect, Pending Further Review

Description

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In a decision on Friday, March 14, 2025, a panel of the Fourth Circuit Court of Appeals issued a [stay pending appeal](#) in a legal challenge to a pair of President Trump's executive orders which promulgated new policy directives regarding (among other things) diversity, equity, and inclusion (DEI) programs, including in federal employment practices, contracting, and grant programs.^[1] A federal district court in Maryland had previously [halted all nationwide enforcement](#) of certain provisions of these orders with a preliminary injunction; the Fourth Circuit's stay now allows the executive orders to take full effect while that court considers the legal challenges to them on appeal.

The three-judge panel issued its stay in a brief order, finding that the Government had satisfied its legal burden for this relief without a more detailed discussion of the legal challenges. All three judges also authored brief opinions concurring in the stay.

Going forward, the Fourth Circuit will now proceed to a full (albeit expedited) appellate review of the lower court's preliminary injunction. Friday's stay order controls the *status quo* while that review is pending, but neither the order itself nor the judges' concurring opinions will have a binding effect on the Court's further consideration.

As discussed in PSH's [previous client alert](#) on this litigation, the case challenges three distinct provisions of President Trump's executive orders:

- the "Termination Provision," directing agencies to "terminate, to the maximum extent allowed by law, all ... 'equity-related' grants or contracts," EO 14,151 § 2(b)(i);
- the "Certification Provision," directing agencies to include terms in every contract or grant award that the contractor or grant recipient agrees "that its compliance in all respects with all applicable Federal anti-discrimination law is material to the government's payment decisions" for purposes of the False Claims Act, and "that it does not operate any programs promoting DEI that violate any applicable Federal antidiscrimination laws," EO 14,173 § 3(b)(iv); and
- the "Enforcement Threat" (or "Report") Provision, directing the Attorney General to prepare a report with recommendations to inform civil rights policy, including "proposed strategic enforcement plan" to "deter DEI programs or principles ... that constitute illegal discrimination or preferences," § 4(b)(iii).

Parties affected by the executive orders should continue to monitor this litigation for further development, and engage PSH attorneys [Elizabeth O. Manchester](#), [James P. McGlone](#), or [Kelley J. O'Donnell](#) should they have any questions or concerns regarding compliance.

[1] Exec. Order No. 14,151, 90 Fed. Reg. 8339 (Jan. 20, 2025) ("Ending Radical and Wasteful Government DEI Programs and Preferencing") ([Link](#)); Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 21, 2025) ("Ending Illegal Discrimination and Restoring Merit-Based Opportunity") ([Link](#)).

Date Created

March 18, 2025