

Executive Briefing

Latest Updates on the Trump Administration

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Court Blocks Certain Key Provisions of DEI Executive Orders, but Employers Should Continue Reviewing Practices and Policies

On February 21, 2025, the U.S. District Court for the District of Maryland paused the enforcement of certain portions of the Trump administration's executive orders related to diversity, equity and inclusion (DEI) efforts.

Nonetheless, federal contractors, subcontractors and grant recipients, as well as other private employers, should continue to closely evaluate their DEI-related public statements, programs and practices to ensure they do not violate federal anti-discrimination law.

As we previously discussed, in January 2025, President Donald Trump issued Executive Order 14151, "Ending Radical and Wasteful Government DEI Programs and Preferencing," and Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" (collectively, the "Executive Orders"). These require, in relevant part, (i) termination of "equity-related grants or contracts," (the Termination Provision), (ii) certification by federal contractors or grantees of federal funding — which can be enforced under the False Claims Act — that they do not "operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws" (the Certification Provision), and (iii) creation by the attorney general and the heads of certain federal agencies of a "proposed strategic enforcement plan" to "deter DEI programs or principles ... that constitute illegal discrimination or preferences" in the private sector (the Enforcement Threat Provision).

On February 3, 2025, the city of Baltimore and its mayor, the National Association of Diversity Officers in Higher Education and others filed suit against the Trump administration seeking to enjoin enforcement of the executive orders. On February 21, 2025, Judge Adam B. Abelson of the District of Maryland issued a preliminary injunction blocking the enforcement of the Termination, Certification and Enforcement Threat Provisions, but leaving intact other provisions of the Executive Orders.¹

Notably, the preliminary injunction does not bar the provision that requires the attorney general to (i) prepare a report on what constitutes illegal DEI and how to discourage private employers from engaging in it and (ii) investigate employers.

In its decision, the district court held that the Termination, Certification and Enforcement Threat Provisions are unconstitutionally vague and violate the First Amendment. In particular, the court determined that the provisions at issue do not define what would constitute "illegal DEI" or what would make a federal contract "equity-related," which has had the effect of employers and contractors using an "overinclusive definition" to avoid risking liability and thereby limiting protected free speech.

¹ *National Association of Diversity Officers in Higher Education v. Trump*, 1:25-cv-00333-ABA, Dkt. No. 44 (D. Md. February 21, 2025).

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Additionally, the court held that the Executive Orders' direction that enforcement should pay particular attention to policies including unconscious bias, cultural sensitivity and inclusive leadership violates principles of free speech.

The decision is likely to be appealed, and President Trump may issue new executive orders addressing the specific issues the court identified. Importantly, the government could assert its ability to pursue False Claims Act cases against those federal

contractors and grant recipients engaged in certain DEI initiatives, even absent the Executive Orders.

The preliminary injunction also does not limit action by the Equal Employment Opportunity Commission (EEOC) or other federal agencies, which are expected to take strong anti-DEI actions. Employers should continue to review their public statements and DEI programs and practices in light of this shifting landscape.