

# Insights

## Navigating DEI Initiatives Amidst Evolving Legal and Political Landscapes

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Diversity, equity, and inclusion (DEI) initiatives are a foundational element of the workplace for many employers. As such initiatives face heightened scrutiny, organizations must respond to shifting legal, political, and enforcement trends with precision and care. Federal agencies have ramped up civil rights enforcement, while recent Executive Orders (EOs) and regulatory developments have introduced new compliance challenges to DEI efforts.

Since January 2025, there have been a flurry of executive branch activities aimed at curbing illegal DEI-related activities while also communicating a broader criticism of DEI initiatives in general. Some of these activities have altered the compliance landscape with respect to federal government agencies, departments, contractors, and grantees; others are not binding but indicate a sharply evolving political and enforcement environment.

### Overview of Executive Branch Activities

#### *1. Recent Executive Orders on DEI*

In January 2025, President Trump issued a series of Executive Orders aimed at dismantling race or gender conscious DEI efforts, especially among federal contractors and grant recipients. Key EOs include:

A. EO 14151—*Ending Radical and Wasteful Government DEI Programs*: Requires the federal government and its agencies to eliminate DEI programs deemed discriminatory and establishes reporting on federal agencies, departments, contractors, and grantees that have participated in DEI-related activities.

B. EO 14173—*Ending Illegal Based Discrimination and Restoring Merit-Based Opportunity*: Eliminates affirmative action requirements for federal contractors; prohibits private organizations from conducting DEI employment programs for jobs created by federal contracts; and rescinds EO 11246 issued in 1965, which authorized the Office of Federal Contract Compliance Programs (OFCCP) to initiate investigations and bring enforcement actions in relation to alleged discrimination on the basis of “race, creed, color, or national origin” by federal government contractors.

Broadly speaking, these EOs prohibit the use of federal funds for DEI programs deemed by the executive branch to create unlawful preferences and eliminate affirmative action mandates for federal contractors. EOs do not, however, carry the force of law and do not supersede or invalidate current statutes or regulations, including Title VII of the Civil Rights Act of 1964 (“Title VII”), or binding legal precedent. Additionally, the directives set forth in such

EOs generally apply to federal agencies and their employees, although they can strongly influence policy and enforcement activities that impact private entities, particularly those that receive federal funds.

## *2. The Evolving Enforcement Stance on DEI and Title VII Compliance*

In March 2025, the Equal Employment Opportunity Commission (EEOC) and U.S. Department of Justice (DOJ) jointly issued technical assistance documents detailing their updated enforcement stance with respect to DEI initiatives and compliance with Title VII. Title VII prohibits discrimination based on race, sex, and other protected traits.

### **Notable takeaways from the joint press release:**

- A. Title VII Applies Broadly: It covers all employees, applicants, trainees, and interns. Title VII does not exclude from protection those individuals who are members of majority groups.
- B. Motivation Matters: Even if DEI efforts are well-intended, they may violate Title VII if they are partly motivated by race, sex, or other protected characteristics in hiring, promotions, or training.
- C. Hostile Work Environment: DEI trainings perceived as discriminatory in “content, application, or context” may create a hostile work environment.
- D. Retaliation Prohibited: Employers may not retaliate against employees who engage in protected activity under Title VII to oppose any alleged illegal DEI initiatives, including participating in the EEOC charge process or opposing alleged unlawful discrimination practices.

The EEOC continues to encourage employers to collect demographic data for compliance purposes (e.g., EEO-1 reports) but cautions against using that data to implement quotas or preferential treatment.

## *3. The DOJ's Civil Rights Fraud Initiative*

In May 2025, the DOJ published a memo announcing its launch of a new Civil Rights Fraud Initiative to address what the DOJ views as unlawful discrimination by federal contractors or other recipients of federal funds. The memo emphasizes leveraging the False Claims Act, 31 U.S.C. § 3729 et seq., to pursue recipients of federal funds who knowingly violate civil rights laws through implementing DEI programs that discriminate based on race, sex, or national origin.

Citing the Supreme Court's decision in *Students for Fair Admissions, Inc. v. Fellows of Harv. Coll.*, 600 U.S. 181 (2023), the DOJ frames race-conscious DEI policies as unlawful if they assign benefits or burdens based on certain protected characteristics. The memo calls for coordinated enforcement by the DOJ's Civil Rights and Civil Fraud Sections, state attorneys general, and federal agencies such as the Department of Education, Labor, and Health & Human Services.

## *4. State or Local Challenges to DEI*

In addition to federal government actions, several states or localities, including Indiana, have sought to curtail certain DEI-related activities. For example, in January 2025 Indiana Governor Mike Braun implemented state-level EOs designed to eliminate DEI-related activities in a number of areas of state government, resulting in elimination of a reported 350 DEI-related initiatives in Indiana state government. Private organizations, although not falling

directly within the purview of such EOs, may nonetheless see bottom-line impacts from such efforts and should remain vigilant for increased scrutiny.

### **Best Practices to Mitigate Risk**

1. *Evaluate Risk:* Conduct an audit of DEI-related activities to understand current scope and ensure alignment with Title VII and other applicable laws. Note that DEI initiatives, when properly executed, remain fully lawful.
2. *Train Your Leaders:* Provide practical guidance on compliance, risks, and anti-retaliation protections.
3. *Coordinate Across Departments:* Ensure a broad focus on compliance and risk management, not just in Legal or Human Resources.
4. *Develop a Response Plan:* Be prepared to navigate internal and external complaints or regulatory enforcement. Evaluate and update response protocols and points of contact.

### **Takeaways**

DEI initiatives remain legally viable and strategically important and now demand sharper attention to compliance. While federal scrutiny and political rhetoric have increased, organizations that frame DEI around fairness, opportunity, and business needs can continue to build diverse, equitable, and inclusive workplace cultures while minimizing legal risks.

For assistance in navigating employment-related risks and compliance, including in relation to DEI initiatives, contact Shelley M. Jackson, Marsha Jean-Baptiste, or another member of the Krieg DeVault LLP Labor and Employment team.

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