

Trump Second Term: Legal Tracker

EEOC WEIGHS IN ON DEI DISCRIMINATION AND PUBLISHES INFORMAL GUIDANCE

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Diversity, equity, and inclusion (“DEI”) programs, policies, and initiatives have received much attention from the Trump Administration over the last two months. Last week, the U.S. Equal Employment Opportunity Commission (“EEOC”) took additional steps to implement changes consistent with the Administration’s stated DEI policies.

LAW FIRM INVESTIGATION LETTERS

First, on March 17, 2025, the EEOC [announced](#) that Acting Chair Andrea Lucas had sent letters to 20 law firms requesting information about their DEI-related employment practices. The letters follow President Donald Trump signing [Executive Order 14230](#), which, among other things, directed the EEOC to initiate such investigations.

The letters include broad requests for information and documents based on the Acting Chair’s concerns that the firms’ practices “may entail unlawful disparate treatment in terms, conditions, and privileges of employment, or unlawful limiting, segregating, and classifying based on race, sex, or other protected characteristics, in violation of Title VII of the Civil Rights Act of 1964” (“Title VII”).

INFORMAL GUIDANCE

Second, following the announcement outlining the law firm investigations, the EEOC published two informal guidance documents regarding DEI-related discrimination in the workplace. The first guidance document is a [one-page summary](#) (the “Joint One-Pager”) titled, “What To Do If You Experience Discrimination Related to DEI at Work,” published jointly with the U.S. Department of Justice (“DOJ”). The Joint One-Pager begins by reinforcing that Title VII applies equally to all races, ethnicities, national origins, and sexes by prohibiting discrimination no matter which employees are harmed. It then includes several examples of what DEI-related discrimination looks like, including:

- *Disparate Treatment* – The Joint One-Pager describes this as employer action that is motivated by a protected characteristic, including (among other things) by excluding individuals from trainings/mentoring programs/sponsorship programs/fellowships and making interview selection decisions (including placement on candidate slates).

- *Limiting, Segregating, and Classifying* – The Joint One-Pager describes this as employer action that limits, segregates, or classifies employees based on protected characteristics in a way that “affects their status or deprives them of employment opportunities,” including limiting membership in employee resource and other workplace groups, as well as separating employees into groups when administering DEI or other trainings (even where the programming is the same).
- *Harassment* – The Joint One-Pager describes this as when employees are subject to unwelcome remarks or conduct based on protected characteristics, including potentially with respect to DEI trainings.
- *Retaliation* – The Joint One-Pager describes this as employer action based on employee engagement in protected activities, including potentially opposing DEI trainings.

The second guidance document is a set of [Frequently Asked Questions](#) (the “FAQs”) titled, “What You Should Know About DEI-Related Discrimination at Work.” The FAQs currently include 11 questions that cover a variety of topics, including:

- *Administrative Steps to Challenge Illegal DEI:* The FAQs address (among other things) employees’ need to file a charge of discrimination, as well as the role of the EEOC and DOJ in investigating non-federal employee charges.
- *“Reverse” Discrimination Claims:* Like the Joint One-Pager, the FAQs reinforce that Title VII protections extend to individuals regardless of whether they fall within a majority or minority subset of a protected characteristic. They also confirm that the EEOC does not apply a heightened standard when analyzing discrimination claims from majority group members (which is the subject of litigation currently pending before the Supreme Court). As such, the FAQs also note that the EEOC does not recognize a “reverse” discrimination claim theory.
- *Jurisdictional Scope of Title VII:* The FAQs address (among other things), application of the law’s protections to employees, applicants, interns, and training/apprenticeship program participants; what entities qualify as covered “employers” under the law; and that a protected characteristic need only be a motivating factor rather than the sole factor in an employment decision.
- *Types of Illegal DEI:* According to the FAQs, DEI is illegal when it involves an employer taking action motivated by a protected characteristic. In addition to this broad definition, the FAQs generally identify the same examples of illegal DEI that are included in the Joint One-Pager, but provide more detailed analysis of DEI trainings, which they note may qualify as a hostile work environment based on allegedly discriminatory content, application, or context.
- *Business Interest in or Necessity for Diversity:* The FAQs also state that engaging in activities based on a business interest in or necessity for diversity does not excuse illegal DEI, even

when the conduct is motivated by client or customer preference. In this discussion, the FAQs carve out bona fide occupational qualifications but note that this exception has limited application.

CONCLUSION

Both the investigation letters and the informal guidance provide helpful insight as to how the EEOC may analyze DEI-related discrimination claims, including the types of activities that may be problematic, as well as where the EEOC is likely to look for evidence of discrimination. As such, all employers should continue to evaluate their DEI and supplier diversity programs, policies, and communications and work with legal counsel to determine whether any potential changes are required or recommended.

BCLP has a team of knowledgeable employment lawyers and other professionals who are monitoring developments in this area and can help employers review their DEI activities. If you or your organization would like more information on this or any other employment issue, please contact any attorney in our Employment and Labor Practice Group.

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