

Insights

NEW EXECUTIVE ORDERS TARGET DEI AND FEDERAL CONTRACTOR AFFIRMATIVE ACTION OBLIGATIONS

Jan 24, 2025

SUMMARY

Monday's change in presidential administration has had an immediate impact on the diversity, equity, and inclusion ("DEI") space, with President Donald Trump issuing several new executive orders regarding DEI and federal contractors' affirmative action obligations. While the executive orders include much information regarding federal employees and federal contractors, they will have an impact on all private employers. It is vital that all employers understand these new actions, so below, we offer an overview of the new executive orders and what they mean for private employers.

TERMINATION OF MOST FEDERAL CONTRACTOR AFFIRMATIVE ACTION OBLIGATIONS

Late Tuesday night, President Trump signed the [Ending Illegal Discrimination and Restoring Merit-Based Opportunity Executive Order](#) ("Federal Contractor & DEI EO"), and on Wednesday, the White House published a [Fact Sheet](#) regarding the Federal Contractor & DEI EO. The Federal Contractor & DEI EO identifies ending illegal DEI programs as its purpose.

To achieve this purpose, the Federal Contractor & DEI EO revokes, among others, Executive Order 11246, which was signed in 1965 to establish certain equal employment opportunity obligations, as well as affirmative action obligations with respect to race and sex, for federal contractors and subcontractors. The Federal Contractor & DEI EO also revokes Executive Order 13672, which amended Executive Order 11246 to include equal employment opportunity protections based on sexual orientation and gender identity. Federal contractors are only permitted to continue to comply with Executive Order 11246 and its regulatory scheme for 90 days (i.e., until April 21, 2025).

In addition to rescinding prior executive orders, the Federal Contractor & DEI EO also does the following with respect to federal contractors:

- Prohibits the Office of Federal Contract Compliance Programs ("OFCCP"), the agency charged with enforcing Executive Order 11246 and other federal contractor laws, from:

- promoting “diversity,”
- holding federal contractors responsible for taking “affirmative action,” and
- “allowing or encouraging” federal contractors to “engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.”
- Requires federal agencies to include a new provision in government contracts noting that the contractor “agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government’s payment decisions.”
- Requires contractors to certify during the contracting process that they do not operate any DEI programs that violate federal anti-discrimination laws.

Importantly, the Federal Contractor & DEI EO does not modify federal contractors’ statutory equal employment opportunity and affirmative action obligations under the Vietnam Era Veterans’ Readjustment Assistance Act (“VEVRAA”), which outlines obligations related to qualified veterans, or Section 503 of the Rehabilitation Act, which outlines obligations related to qualified individuals with disabilities.

ENCOURAGING ELIMINATION OF ILLEGAL DEI PROGRAMS IN THE PRIVATE SECTOR

The Federal Contractor & DEI EO affects more than just federal contractors, however. All private sector employers – regardless of their federal contractor status – are impacted by the order’s directive to federal agencies to “encourage” the private sector to end “illegal DEI discrimination and preferences.” In order to accomplish this directive, the Federal Contractor & DEI EO requires all agencies to:

- With support from the Attorney General, advance the policy of “individual initiative, excellence, and hard work” in the private sector.
- Prepare a report within 120 days (i.e., May 21, 2025) that contains the agency’s recommendations for enforcing federal civil rights law in the private sector. The report must include, among other things, the identities of the “most egregious and discriminatory DEI practitioners” and up to nine potential civil compliance investigations of publicly traded corporations, large non-profit corporations or associations, foundations with assets of \$500 million or more, state and local bar and medical associations, and institutions of higher education with endowments over \$1 billion.

Importantly, the Federal Contractor & DEI EO does not change private employers’ long-standing obligations under federal anti-discrimination laws, including Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. It may, however, impact how the relevant enforcement agencies interpret those laws. For example, the

EEOC has historically taken the position that DEI programs seeking to ensure workers of all backgrounds are afforded equal opportunity in the workplace are lawful. However, it remains to be seen whether this position will remain as the makeup of Commissioners shifts over the next two years (when a Republican majority is expected).

ELIMINATION OF OTHER FEDERAL GOVERNMENT DEI PROGRAMS

On Monday, President Trump signed the [Ending Radical and Wasteful Government DEI Programs and Preferencing Executive Order](#) and the [Initial Rescissions of Harmful Executive Orders and Actions Executive Order](#) (collectively, “Federal Government DEI EOs”). The Federal Government DEI EOs rescind several of President Joseph Biden’s executive orders and eliminate DEI programs implemented under the Biden Administration. In doing this, the orders require that:

1. all federal employment practices, contracts, and training programs/policies be reviewed and revised as necessary (this includes identifying any federal contractors that have provided DEI trainings or materials to federal employees);
2. federal employee performance reviews will not “under any circumstances consider” DEI “factors, goals, policies, mandates, or requirements”; and
3. all DEI offices and positions, plans, actions, initiatives, programs, grants, and contracts be terminated.

While the Federal Government DEI EOs do not directly impact private employers, they do serve as a strong signal of the increased scrutiny that will likely be applied to private sector DEI programs under the Trump Administration.

CONCLUSION

Given these swift and significant updates, all employers – especially those who are federal contractors – should take this time to revisit their DEI, supplier diversity, and affirmative action programs. Legal challenges to the Federal Contractor & DEI EO may yet be coming; however, whether any such challenges would be successful remains to be seen. Also potentially forthcoming is guidance from the OFCCP and/or Department of Labor (under which the OFCCP is located) as to how the Federal Contractor & DEI EO is to be implemented.

BCLP has a team of knowledgeable employment lawyers and other professionals who can help with this process. 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.

RELATED CAPABILITIES

- Employment & Labor

MEET THE TEAM



Marilyn M. Fish

Partner, Atlanta

marilyn.fish@bclplaw.com

[+1 404 572 6632](tel:+14045726632)



Lily J. Kurland

Attorney, Washington

lily.kurland@bclplaw.com

[+1 202 508 6106](tel:+12025086106)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.