

The Future of DEI in the Private Sector: Navigating a Changing Legal Landscape

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By Sarah Goodman



The private sector's Diversity, Equity, and Inclusion (DEI) landscape is undergoing significant transformation in response to evolving federal policies and legal challenges. Two executive orders from President Donald Trump in early 2025—Executive Order 14151, “Ending Radical and Wasteful Government DEI Programs and Preferencing,” and Executive Order 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”—mark a clear shift in the federal government’s stance on DEI initiatives. These orders eliminate DEI programs within federal agencies, revoke affirmative action requirements for federal contractors, and impose new compliance obligations. As a result, private employers—especially federal contractors and grant recipients—should reassess their DEI strategies, considering increased scrutiny and potential legal risks.

Executive Orders and Policy Shifts

The Trump administration has ramped up its scrutiny of DEI initiatives across both the federal government and the private sector, treating employment practices that take protected characteristics into account as potentially unlawful. While the Administration has not explicitly defined “illegal DEI,” public statements suggest that policies tying compensation to diversity targets, factoring protected characteristics into hiring, or requiring diverse interview slates are high-risk. However, initiatives such as open employee resource groups and broader candidate pools may face less scrutiny. Companies should align internal policies with disclosures and prepare for potential government investigations.

Executive Order 14151, issued on January 20, 2025, mandates the termination of all federal DEI-related offices, grants, and programs, asserting that such initiatives violate civil rights laws. The following day, Executive Order 14173 rescinded affirmative action requirements for federal contractors, directing the Office of Federal Contract Compliance Program to halt diversity-related enforcement. Contractors must now certify compliance with anti-discrimination laws, with noncompliance potentially leading to False Claims Act liability.

On February 5, 2025, the Department of Justice (DOJ) Civil Rights Division announced plans to investigate and penalize illegal DEI mandates in the private sector and federally funded institutions. Simultaneously, the Office of Personnel Management (OPM) instructed federal agencies to remove unlawful diversity requirements from hiring and selection processes, reinforcing a shift toward merit-based employment policies.

Expanded Enforcement Landscape: What Employers Must Do Now—and Why

Private businesses must take immediate and deliberate steps to evaluate their DEI policies and practices and craft a strategic response. That response may involve revising existing policies, reaffirming a commitment to DEI (whether amended or intact), or preparing to pause, pivot, or defend current practices. In today’s fast-moving and high-stakes enforcement environment, inaction is not a neutral stance. It is a strategic decision—one that could expose an organization to government scrutiny, private litigation, reputational backlash, internal tension, or all of the above.

Executive Order 14173 signals a dramatic expansion in the federal government's oversight of diversity-related initiatives, extending well beyond public institutions and federal contractors. The order explicitly instructs all agencies to investigate what it terms "illegal" DEI preferences in the private sector and to issue formal enforcement recommendations within 120 days. These directives apply not only to publicly traded corporations but also to large nonprofits, philanthropic foundations, professional associations, and major universities—broadening the scope of potential enforcement targets across virtually every major sector of the economy.

The Equal Employment Opportunity Commission (EEOC) is taking active steps to implement the administration's vision. EEOC Chair Andrea R. Lucas has publicly committed to rooting out what she describes as unlawful DEI-driven discrimination, particularly those policies based on race or sex. The agency has removed language related to gender identity from its internal and public-facing platforms and has emphasized a shift toward a strictly merit-based framework in alignment with the administration's priorities. In parallel, other federal agencies have been tasked with developing litigation strategies and potential regulatory actions to deter identity-based preferences, creating an increasingly complex legal landscape for employers.

What makes this moment particularly challenging is the legal ambiguity that now surrounds many DEI practices. Although Executive Order 14173 stops short of banning all DEI initiatives, it targets those that include quotas, demographic set-asides, or explicit preferences based on protected characteristics—practices the administration has signaled are incompatible with federal civil rights law. These categories of DEI programming now carry heightened legal risk, even if they were once considered industry best practices.

This presents a difficult paradox for private employers. Continuing with DEI programs may trigger reverse discrimination lawsuits, internal employee complaints, or direct federal investigation. At the same time, rolling back or eliminating those programs altogether may lead to claims of disparate impact, undermine employee morale, damage recruitment and retention efforts, and erode hard-won reputational goodwill.

In short, the stakes are high, and the risks exist on both sides of the equation. Employers cannot afford to take a passive or reactive posture. Whether your organization has a well-established DEI framework or is in the early stages of building one, now is the time to conduct a thorough review, understand your exposure, and make intentional decisions that balance legal compliance with business goals and organizational values. The key is to act—not out of fear but with clarity, strategy, and purpose.

Judicial Challenges and the Ongoing Legal Debate

These actions have triggered a wave of litigation, contributing to a rapidly evolving and uncertain legal landscape for private employers and institutions navigating DEI compliance. On February 3, 2025, several advocacy and academic organizations—including the National Association of Diversity Officers in Higher Education and the American Association of University Professors—filed suit in the U.S. District Court for the District of Maryland, seeking to block key provisions of Executive Orders 14151 and 14173. In *National Association of Diversity Officers in Higher Education et al. v. Trump et al.*, the plaintiffs argued that the orders violated the First and Fifth Amendments by imposing vague and overbroad restrictions on speech and association, and by chilling lawful DEI-related activities.

On February 21, 2025, Judge Adam B. Abelson issued a nationwide preliminary injunction enjoining federal agencies from enforcing the Termination, Certification, and Enforcement Threat Provisions of the executive orders. However, the court allowed federal investigations into alleged "illegal DEI discrimination" to proceed, emphasizing that while certain aspects of the orders could be constitutionally enforced, others lacked clarity and posed significant risks to protected constitutional rights.

Judge Abelson denied the Trump administration's motion for a stay of the injunction on March 3, 2025, finding that the plaintiffs had demonstrated a likelihood of irreparable harm and that the challenged provisions raised serious constitutional concerns. The court also declined to limit the relief to the named plaintiffs, citing the broad implications of the orders across multiple sectors and jurisdictions. On March 10, 2025, the court reaffirmed that the preliminary injunction applied nationwide to all federal executive agencies, departments, and officials—excluding only the President—underscoring that executive authority

must still operate within constitutional boundaries.

However, on March 14, 2025, the U.S. Court of Appeals for the Fourth Circuit granted the government's motion to stay the preliminary injunction, effectively restoring full enforcement of Executive Orders 14151 and 14173 pending appeal. The unanimous ruling by a three-judge panel was issued shortly after the district court addressed plaintiffs' concerns that the Department of Justice had failed to comply with the earlier injunction.

In a rare move, each judge on the Fourth Circuit panel issued a separate concurring opinion. Chief Judge Albert Diaz acknowledged the controversy surrounding DEI and expressed support for those working to advance such initiatives, while also noting that neither executive order defined the term "DEI" or its components. Judge Pamela Harris concurred in the stay based on the limited scope of the executive orders but cautioned that overbroad enforcement could still raise significant First Amendment and Due Process concerns. Judge Allison Jones Rushing, in her concurrence, questioned the breadth of the district court's injunction and emphasized judicial impartiality, pushing back on the normative statements in support of DEI expressed by her colleagues.

On March 17, 2025, the Fourth Circuit requested the parties to respond to a proposed briefing schedule by March 24, which could extend the briefing into late May. While the stay allows the executive orders to remain in effect during the appeal, the ultimate legality of the orders remains unresolved and may ultimately be determined by the U.S. Supreme Court.

For now, private employers and institutions should stay closely attuned to these legal developments as the balance between regulatory enforcement and constitutional protections continues to shift. The evolving litigation landscape may significantly impact compliance obligations, enforcement risks, and the future of DEI-related initiatives nationwide.

Business Consideration and Strategic Adjustments for Employers

Despite increased federal scrutiny, businesses must carefully balance compliance with broader DEI objectives, ensuring alignment with legal requirements and inclusivity goals. Actions to consider include:

- **Conducting a Comprehensive Legal and Risk Assessment** - Employers should evaluate their DEI programs for compliance with federal anti-discrimination laws. Initiatives involving quotas or preferential treatment based on protected characteristics should be reviewed and, if necessary, modified.
- **Refining DEI Messaging and Training Programs** - Businesses should reassess their public statements and training programs to emphasize equal opportunity principles while avoiding language that could be construed as endorsing unlawful preferences.
- **Monitoring Legislative and Judicial Developments** - Employers should stay informed about regulatory changes that may impact DEI initiatives. Consulting with legal counsel and industry groups can help businesses navigate this uncertain environment.
- **Adapting DEI Strategies to Align with Legal and Business Goals** - Companies should continue fostering inclusive workplaces through legally compliant initiatives, such as mentorship programs, leadership development efforts, and workplace culture assessments. Businesses can maintain their DEI commitments while minimizing legal by focusing on equity and opportunity rather than preferential treatment.

Conclusion

The private sector must navigate a complex and evolving DEI landscape shaped by federal policies, legal challenges and shifting public expectations. While government-mandated DEI programs face heightened scrutiny, corporate diversity initiatives remain a key business strategy. However, evolving executive actions introduce ambiguity in compliance obligations, requiring companies to balance federal court interpretations of Title VII, state and local anti-discrimination laws, and international regulations. By proactively adapting to these changes, businesses can continue to promote inclusivity while ensuring compliance and mitigating legal risks.

