

EO 11246 On Affirmative Action is Dead – But What Will Take Its Place?

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Tuesday evening, January 21, 2025, President Trump issued an executive order entitled, “[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#),” addressing the suspension of DEI staff in government positions. Within the Order, the President revokes a number of prior executive orders, including [Executive Order 11246](#) of September 24, 1965 (Equal Employment Opportunity).

The primary intent of the Order is to eliminate what it describes as “illegal preferences” based on race, sex, or other identity categories. It stresses the importance of enforcing civil rights laws that protect against discrimination and promoting merit-based hiring practices. The Order directs federal agencies to end policies or programs that prioritize DEI in hiring or contracting, as well as in other activities, and encourages the private sector to align with this approach.

Specifically, the Order reads:

“Federal contracting process shall be streamlined to enhance speed and efficiency, reduce costs, and require Federal contractors and subcontractors to comply with our civil-rights laws. Accordingly:

- Executive Order 11246...is hereby revoked. For 90 days from the date of this order, Federal contractors may continue to comply with the regulatory scheme in effect on January 20, 2025.
- The Office of Federal Contract Compliance Programs within the Department of Labor shall immediately cease:
 - Promoting “diversity;”
 - Holding Federal contractors and subcontractors responsible for taking “affirmative action;” and
 - Allowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.”

Federal contractors are still required to complete VETS and Disabled AAPs, as those are legislatively mandated. In his speech discussing executive orders to come, President Trump emphasized his administration’s commitment to merit-based hiring and non-discrimination in the workplace—a

sentiment that aligns with Title VII of the Civil Rights Act of 1965, as amended.

While it is unclear how this EO will impact ongoing audits initiated by the OFCCP, there is still a lack of clarity as to what, if anything, will replace EO 11246. Importantly, the EO did not disband the OFCCP. It is possible that the administration plans to use the OFCCP to fetter out DEI programs in the federal contractor community, keeping up with its promise on the campaign trail, and shift the agency's focus to ensuring merit-based hiring instead of a focus on compliance with affirmative action requirements.

As this Order takes effect, some states may choose to step in and mandate affirmative action plans, essentially adopting the existing federal affirmative action framework for state-level employment practices. This is more likely in states such as California, Illinois, New York, and New Jersey.

For federal contractors, this Order indicates a shift in compliance requirements and adjustments to workforce planning strategies. As the regulatory landscape evolves, reach out to legal counsel to understand how these changes affect your operations and policies moving forward.

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National Law Review, Volume XV, Number 22

Source URL: <https://natlawreview.com/article/eo-11246-affirmative-action-dead-what-will-take-its-place>