

Trump Administration Provides Some Guidance on DEI Programs

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Following up on the Trump Administration's series of [executive orders](#) and statements regarding [diversity, equity, inclusion, and accessibility \(DEI or DEIA\) programs](#), on February 5, 2025, both the Office of Personnel Management (OPM) and the United States Attorney General Office issued memoranda reflecting additional guidance as to what may constitute an "illegal" DEI or DEIA program and directing enforcement action.

Specifically, the OPM [memo](#) instructs federal agencies to terminate "all illegal DEIA initiatives" and requires the elimination of DEIA offices, policies, and practices. It explains the administration's view that any DEI program that encourages action based on a protected characteristic is illegal, even if it is not the sole reason for the action. The memo clarifies that it is not targeting agency departments that exist to counsel employees allegedly subject to discrimination or receive and respond to such discrimination complaints (such as the Equal Employment Opportunity Commission (EEOC)).

The memo further addresses Employee Resource Groups (ERG) and states that federal agencies must eliminate any ERG that promotes unlawful DEIA initiatives or otherwise involves programs designed to retain/train/develop their employees based on protected characteristics. It states that affinity and mentor programs are potentially permissible if attendance at and participation in such programs are not restricted by protected characteristics and participants are not segregated by such protected characteristics during events.

While the OPM memo only applies to federal employees, its contents offer insight as to how the administration views and seeks to define "illegal" DEIA initiatives. At its base, it is taking any action, promoting any action, or permitting any action (including participation or the denial of participation) that is premised upon (even partially) a protected characteristic.

The Attorney General [memo](#) announces that the Department of Justice will investigate, eliminate and penalize "illegal" DEI and DEIA programs, preferences, mandates, policies, and activities in the private sector and in educational institutions that receive federal funds.

The memo instructs the Civil Rights Division and the Office of Legal Policy to jointly submit a report to the Associate Attorney General by March 1, 2025, containing recommendations for enforcing federal civil rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination, including DEI and DEIA programs. The report is to include a list of the companies that are the most “egregious” offenders as well as a plan to enforce the requirement to eliminate such programs.

In a clarifying footnote, the memo states that the aim is to end **illegal** discrimination stemming from diversity initiatives and not to eliminate observances based on history (using Black History Month and Holocaust Remembrance Day as examples of such observances).

Since January 20, 2025, according to various news reports, private sector companies’ reactions have encompassed a wide spectrum, ranging from withdrawal of DEIA programs, doubling down and re-committing to such initiatives, and a more middle-of-the-road approach aimed at reviewing and modifying existing programs and initiatives.

We will continue to monitor what consequences such decisions may have. We again recommend that employers consult DEI experts and labor and employment counsel to assess whether their DEI/DEIA policies and practices may be construed to be out of compliance with existing federal antidiscrimination laws under a Trump-era lens and what changes (if any) in their policies and practices are necessary to ensure compliance or mitigate risk.

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