

President Trump's Recent Executive Orders and Their Potential Impact on Social Initiatives

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President Trump started his second term by signing executive orders that covered a number of environmental, social, and governance (ESG)-related issues, such as [eliminating](#) diversity, equity, and inclusion (DEI) programs in departments and agencies in the executive branch, [repealing](#) DEI directives from the Biden administration, [requiring](#) enhanced vetting and screening processes for individuals seeking U.S. citizenship, [limiting](#) the enforcement of federal civil rights law and labor law, among others. The effects of President Trump's executive orders have already begun as an [United States Office of Personnel Management \(OPM\) memo](#) placed DEI officers on immediate leave and set a January 31, 2025, deadline for agencies to submit plans to dismiss the employees that were put on leave.

This article focuses on executive order [Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#), as it is the order most likely to have a significant impact on the private sector's human capital management initiatives. That executive order noted that major companies, as well as other entities, are engaging in "race- and sex-based preferences under the guise of" DEI programs that may be in violation of federal civil rights laws. The order further encouraged federal agencies and the Attorney General to take the necessary steps to promote "individual initiative, excellence, and hard work." The order also tasked the Attorney General and Director of the Office of Management and Budget to prepare a report that outlines (a) ways to leverage federal laws and "other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI," (b) key areas of concern, (c) "[t]he most egregious and discriminatory DEI practitioners in each" area of concern, (d) plans and strategies "to deter DEI programs or principles . . . that constitute illegal discrimination or preferences," and (e) litigation and potential regulatory action that can be taken. Of note, the order instructs executive departments and agencies to identify at least nine civil investigations that may be taken of public companies, "large non-profit corporations, . . . foundations with" more than 500 million in assets, medication associations, and other entities.

With respect to the federal government, the order, among other things, requires "executive departments and agencies" to cease "discriminatory and illegal" initiatives and enforcement proceedings and mandates that these departments and agencies "combat illegal private-sector DEI preferences, mandates, policies, programs, and activities." There were also a host of items in the

order directed to federal contractors or grant recipients, including a requirement to certify that they do not have DEI programs in violation of federal law.

Impact on the Private Sector

Before the recent executive orders, several Fortune 500 companies ended or reduced their DEI initiatives. The recent executive orders, particularly the order on Ending Illegal Discrimination and Restoring Merit-Based Opportunity, will likely drive more companies to pare back their DEI programming (or expedite their prior plans to reduce those initiatives). That said, as was the case before the executive orders, there will continue to be some companies that maintain their DEI initiatives until a court decision or law compels a different approach. Further clarity on the scope of what may be considered illegal discrimination beyond existing case law may be elucidated by the Attorney General's report, which need not be submitted until May 21st. During the time that the report is being prepared, government officials will be identifying candidates for potential investigations. Further, we expect litigation to test the bounds of what constitutes illegal discrimination.

Adding to the complexity of the situation, on the state level, attorney generals are taking action in the DEI arena. For example, after Costco rejected a shareholder proposal to analyze the risks of its DEI policies, 19 Republican attorney generals [demanded](#) that within 30 days the company announce that it has repealed its DEI policies or explain why not. Conversely, a group of 13 attorneys general [publicly noted](#) their concerns with attempts to paint DEI initiatives as illegal. That group of attorneys general cited to a statement from the Equal Employment Opportunity Commission that confirmed that DEI programs remain legal. Put simply, companies may find themselves pulled in opposite directions by federal and state regulators while simultaneously confronting litigation in this area from private actors. Public companies may also see increased shareholder action with respect to DEI initiatives.

Next Steps

The DEI-related executive orders are poised to have a significant impact on the private sector at this time (and in the foreseeable future) as companies grapple with identifying the contours of what is permitted and safe from legal challenge (or at least defensible in the event of a lawsuit or governmental inquiry). In this rapidly evolving DEI landscape (which will almost certainly evolve yet again once the Attorney General's report is issued), it is important that companies evaluate their contracts, internal and external policies and procedures, and messaging. Companies should also train their personnel on any changes to their DEI initiatives. Because this area is rapidly developing, it will also be crucial for companies to ensure they have reliable methods to track developments in the sector.

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