

New EEOC Guidance Creates DEI Compliance Considerations for Employers

Article By:

Lindsay Colvin Stone

On March 19, 2025, the U.S. Equal Employment Opportunity Commission (“EEOC”), together with the U.S. Department of Justice (“DOJ”), issued a [press release](#) cautioning employers against discrimination arising from diversity, equity and inclusion (“DEI”) programs. More specifically, the EEOC and DOJ warned that such initiatives “may be unlawful if they involve an employer or other covered entity taking an employment action motivated – in whole or in part – by an employee’s or applicant’s race, sex, or another characteristic.” The press release incorporated new guidance from the EEOC regarding DEI-related discrimination in the workplace: (i) a one-page [technical assistance document](#) titled “What To Do If You Experience Discrimination Related to DEI at Work” (the “Guidance”); and (ii) a longer set of [frequently asked questions](#) titled “What You Should Know About DEI-Related Discrimination at Work” (the “FAQs”). Both documents demonstrate the Trump Administration’s commitment to cracking down on corporate DEI initiatives, and represent a sea change from Biden-era EEOC’s enforcement priorities. This article outlines the Guidance and the FAQs, and suggests compliance measures for employers to consider in light of their content.

The Guidance

The Guidance outlines the EEOC’s perspective on employer DEI programs and ways in which they may run afoul of Title VII of the Civil Rights Act of 1964 (“Title VII”), which protects “employees, potential and actual applicants, interns, and training program participants.” While the Guidance acknowledges that the term “DEI” is undefined, it cautions that DEI initiatives “may be unlawful if they involve an employer or other covered entity taking an employment action motivated – in whole or in part – by an employee’s race, sex, or other protected characteristic.” The Guidance then provides a non-exhaustive list of actions that may constitute “DEI-related discrimination,” including, but not limited to:

- Implementing “quotas” or “otherwise ‘balancing’ a workforce by race, sex, or other protected traits;”
- Excluding individuals from training, fellowships, mentoring or sponsorship programs on the basis of their protected characteristics;
- Selecting candidates for interviews, including placement on candidate slates, based on their protected characteristics;
- Limiting membership in workplace groups, such as employee resource groups (“ERGs”) to

certain protected groups; and

- Separating employees into groups based on protected characteristics when “administering DEI or other trainings, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources.”

The Guidance further states that “DEI training” may constitute “a colorable hostile work environment claim,” and advises employers that “[r]easonable opposition to a DEI training” may constitute protected activity giving rise to a retaliation claim so long as “the employee provides a fact-specific basis for his or her belief that the training violates Title VII.”

The FAQs

Like the Guidance, the FAQs are aimed at shedding light on what may constitute “DEI-related discrimination” in the workforce. Initially, the FAQs confirm that Title VII protects all workers, not just those who are “part of a minority group,” and instructs readers on how they may file a charge of discrimination to oppose DEI-related discrimination. The FAQs further clarify that the EEOC will not require a higher showing of proof for so-called “reverse discrimination” claims, or claims that an employer has discriminated against a majority group; indeed, the FAQs go on to state that, in the EEOC’s view, “there is no such thing as ‘reverse’ discrimination, there is only discrimination.”

The FAQs, like the Guidance, fail to define “DEI,” but provide examples of “DEI initiatives, policies, programs or practices” that may be unlawful under Title VII. Such actions include disparate treatment in: (i) hiring, firing, promotion, demotion, compensation, fringe benefits, job duties, and/or work assignments; (ii) access to or exclusion from training, including training characterized as leadership development programs; (iii) access to mentoring, sponsorship, or workplace networking; (iv) internships, including those labeled as “fellowships” or “summer associate” programs; and (v) selection for interviews, including placement or exclusion from a candidate “slate” or pool. According to the FAQs, actions that limit, segregate or classify employees based on their protected characteristics – such as limiting membership in ERGs, business resource groups, or employee affinity groups to certain protected groups – may also violate Title VII. The FAQs state that employers may not legally justify any of the foregoing actions (or other forms of DEI-related discrimination) based on business necessity, “an interest in diversity,” or client, customer, or co-worker preference.

Last, the FAQs address employer DEI training, which the EEOC states may constitute workplace harassment when it is “discriminatory in content, application, or context.” To the extent that such training is discriminatory in “design, content, or execution,” it may give rise to a hostile work environment claim. While the FAQs do not provide concrete examples of DEI training content that may violate Title VII, they state in a footnote that “unconscious bias training” may be problematic. Finally, the FAQs echo the Guidance’s confirmation that opposing unlawful DEI training (or other DEI-related discrimination) may constitute protected activity that gives rise to a claim for retaliation.

What Should Employers Do Now?

The Guidance and FAQs represent a dramatic shift from past EEOC priorities, and create new compliance concerns for employers. While both documents leave many questions unanswered (such as the meaning of “DEI” and precise actions that may violate Title VII), their meaning is clear: the EEOC will no longer tolerate most employer efforts to promote DEI in the workplace. Employers who wish to comply with the EEOC’s new approach should thoroughly examine their current programs, trainings, and employee group policies and make necessary changes to ensure that they do not run afoul of the EEOC’s directives. Such efforts may include, but not be limited to: (i) opening programs,

fellowships, mentorship arrangements, and/or networks to all employees or applicants, without regard to their protected characteristics; (ii) eliminating diversity requirements for interview slates or roles; (iii) ensuring that ERGs or similar groups are open to all workers; and/or (iv) ensuring that DEI training does not contain “unconscious bias” principles. We will continue to monitor the EEOC’s enforcement priorities and scrutiny of DEI-related initiatives as they develop.

Copyright © 2025, Sheppard Mullin Richter & Hampton LLP.

National Law Review, Volume XV, Number 93

Source URL: <https://natlawreview.com/article/new-eeoc-guidance-creates-dei-compliance-considerations-employers>