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Ensuring Lawful DEI Practices: New EEOC and DOJ Guidelines for Employers

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On March 18, 2025, the Equal Employment Opportunity Commission (EEOC) and the US Department of Justice (DOJ) released two technical assistance documents to help inform what each agency views as "unlawful" discrimination related to diversity, equity, and inclusion (DEI) programs in the workplace.

In Depth

Much of the EEOC's and DOJ's guidance on what they view as unlawful DEI programming was addressed in the key takeaways section of our prior publication, *FAQs for Employers and Federal Contractors on Navigating the DEI Landscape*. However, the technical assistance documents tacitly suggest the DOJ and EEOC will focus on two important areas in carrying out US President Donald Trump's policy initiatives regarding DEI: (1) customer or client preferences and (2) anti-bias trainings.

CUSTOMER OR CLIENT PREFERENCES

In the document What You Should Know About DEI-Related Discrimination at Work, the EEOC stated, "client or customer preference is not a defense to race or color discrimination." This calls for employers to tread carefully when responding to customer requests for data regarding the demographics of those performing work on projects relating to the customers. And, of course, employers should not make work assignment decisions based on race, color, religion, sex, or national origin except in the rare circumstance that a bona fide occupational qualification (BFOQ)

relates to one of those innate characteristics.

ANTI-BIAS TRAININGS

The EEOC and DOJ documents suggest that DEI-related trainings, such as anti-bias trainings, can give rise to a viable hostile work environment claim. During his first term, President Trump issued an executive order banning anti-bias trainings, but that executive order was struck down as an unconstitutional infringement on First Amendment protections. It appears the EEOC and DOJ may revisit that issue but in a more tempered approach to mitigate against a constitutional challenge.

KEY TAKEAWAYS

The EEOC's and DOJ's technical assistance documents do not constitute binding authority because (1) the agencies did not issue the documents as part of the required rulemaking process and (2) the Supreme Court of the United States' decision in *Loper Bright Enterprises v. Raimondo* held that federal courts are not required to defer to federal agency guidelines when adjudicating civil and criminal cases. Nonetheless, the technical assistance documents provide a view into how federal agencies intend to define unlawful DEI programming, and employers should use them as a resource when working with their legal counsel to audit existing DEI programs and policies.

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