

Navigating DEI in a Shifting Legal Landscape

WRITTEN BY

Tracey E. Diamond | Emily E. Schifter

Workplace diversity, equity, and inclusion (DEI) programs face more scrutiny than ever in light of President Trump's recent executive orders regarding DEI policies and programs across the public and private sectors, recent Supreme Court decisions, Equal Employment Opportunity Commission guidance on DEI initiatives, and the rise of "reverse" discrimination claims. Here are some key takeaways from the current legal landscape and what employers should be thinking about regarding their DEI programs.

Q. How have employers changed their approach to DEI over the last few years?

A. For many years, a large number of employers have increased their DEI efforts and commitments — adopting new DEI initiatives, making public-facing statements, and creating DEI departments. But the momentum has shifted over time, beginning with the Supreme Court's 2023 decisions holding that the use of race as a plus factor in the college admissions process is a violation of the Equal Protection Clause of the 14th Amendment to the Constitution and Title VI of the Civil Rights Act. Even though these rulings did not apply to private employers directly, they contributed to increased awareness of the legal issues involved with workplace DEI initiatives and added to the conversation about DEI in corporate America.

Q. What changes have occurred under the new administration?

A. More recently, the Trump administration issued several executive orders and government memoranda rolling back DEI mandates, including [Executive Order 14173](#), "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," [Executive Order 14151](#), "Ending Radical and Wasteful Government DEI Programs," [Executive Order 14168](#), "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," and an [attorney general memorandum](#), dated February 5, 2025, titled "Ending Illegal DEI and DEIA Discrimination and Preferences." Among other things, these orders directed federal agencies to combat "illegal" corporate DEI programs in the private sector. As a result, many organizations have begun to scale back their DEI programs.

In early March, President Trump issued several executive orders targeting large law firms specifically and calling for a broader review of DEI policies and practices of "representative large, influential, or industry leading law firms" by the Equal Employment Opportunity Commission (EEOC) and federal and state attorneys general. Subsequently, on March 17, the EEOC Acting Chair sent letters to 20 major law firms requesting a broad range of information about their DEI-related employment practices. Two days later, on March 19, the EEOC issued a joint technical assistance document with the DOJ, "[What To Do If You Experience Discrimination Related to DEI at Work](#)," and a longer question-and-answer technical assistance document, "[What You Should Know About DEI-Related Discrimination at Work](#)." Between the executive orders and EEOC initiatives, the President has begun to

push hard to dismantle DEI programs.

On the other hand, some states are stepping in to try to “fill the gap.” For example, [in a recently issued joint guidance](#), 16 state attorneys general reaffirmed their commitment to DEI programs. This makes staying on top of current guidance and laws particularly challenging for multistate employers.

Q. I’ve heard that some executive orders have been challenged. What is the status of these new orders and initiatives?

A. On February 21, portions of Executive Orders 14151 and 14173 were enjoined by the U.S. District Court for the District of Maryland in [National Association of Diversity Officers in Higher Education v. Trump](#). On March 14, however, the U.S. Court of Appeals for the Fourth Circuit granted the federal government’s request to stay, pending appeal, the preliminary injunction issued by the District Court. As a result of the stay, the government may enforce Executive Orders 14173 and 14151 while the appeal proceeds on an expedited basis.

Similarly, while certain law firms entered into agreements with the government to rescind executive orders issued against them and federal courts enjoined portions of executive orders targeting other law firms, the President’s Executive Orders and the EEOC’s recent letters to law firms and technical assistance documents have made it clear that, regardless of the fate of any given executive order, many arms of the federal government are scrutinizing and taking action regarding public and private DEI programs.

Q. What about “reverse” discrimination?

A. The Supreme Court recently heard oral arguments in [Ames v. Ohio Department of Youth Services](#), involving the standard for reverse discrimination claims. The issue before the Court is whether — in addition to the usual showings that must be made to establish a *prima-facie* case of discrimination under Title VII — the plaintiff in a “reverse” discrimination matter must show “background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority.” Currently, the United States Courts of Appeals for the 6th, 7th, 8th, 10th, and D.C. Circuits require this showing. If the Court rules that additional background circumstances are not required, it will become easier for employees to assert reverse discrimination claims in those five circuits, leading to increased litigation. The availability of these claims may, in turn, prompt employers to reassess and potentially scale back their DEI initiatives.

Q. In light of all of this uncertainty, what should employers do?

A. Employers should consider auditing their existing DEI programs, identifying what initiatives are in place, assessing potential legal risks, and aligning efforts with business objectives and current legal guidance, while maintaining awareness of the fast-changing nature of the legal landscape in this area. At a minimum, it is advisable to eliminate quotas, preferences, exclusionary practices, and aspirational goals and instead focus on inclusion and belonging, and ensuring that all employees have equal employment opportunities.

Tracey Diamond and Emily Schifter co-host the *Hiring to Firing* podcast, using TV shows and movies to kick off discussions about hot-button labor and employment law issues. Episodes of *Hiring to Firing* can be found on the [Troutman Pepper Locke website](#) or any major podcast streaming service.

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