

PROPERTY & CASUALTY

Balancing Act

The Benefits and Challenges of DEI in the Workplace

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Diversity, equity and inclusion (“DEI”) in the workplace has become a complex and nuanced subject. Recent executive orders issued by the Trump Administration have emphasized the illegality of making employment decisions based on protected classes. While implementing DEI initiatives is not prohibited, it can present significant risks for companies. Organizations are increasingly facing repercussions for either adopting or discontinuing their DEI programs. In this whitepaper, we will examine the current legal landscape, explore how DEI initiatives are being implemented and provide guidance for companies to consider how to effectively navigate these evolving challenges.

Current Legal Landscape

In January 2025, President Trump issued Executive Order 14173, directing federal agencies to investigate and “combat illegal private sector” discrimination based on DEI initiatives.¹ The Department of Justice (DOJ) and Equal Employment Opportunity Commission (EEOC) also issued guidance to potential plaintiffs on how to address DEI-related discrimination in the workplace.²

In their guidance, the DOJ and EEOC outlined scenarios where potential plaintiffs might identify possible DEI-related discrimination. They define DEI-related discrimination as “taking an employment action motivated (in whole or in part) by race, sex, or another protected characteristic.”² Examples of such actions include:

- 1 Using quotas or balancing a workforce by race, sex or other protected traits;
- 2 Limiting membership in affinity groups to certain protected groups; and
- 3 Separating employees into groups based on protected characteristics to administer DEI or other trainings, which could be considered illegal discrimination.

The guidance finally states employers cannot retaliate against employees who “object to or oppose DEI-related discrimination.” While the practical implications of this are not entirely clear, it likely includes actions such as firing employees for making complaints about DEI policies, hindering opportunities for employees who oppose DEI or deliberately excluding them.

Application of the Law

Since the issuance of Executive Order 14173, there has been a concerted effort to discourage DEI initiatives across all workplaces. EEOC Chair Andrea Lucas issued letters to 20 of the largest law firms in the United States, requesting information about their “DEI-related employment practices.”³ Some firms have managed to stave off investigations by reaching agreements with the Trump administration, including commitments “not to engage in illegal DEI discrimination, and provide [a collective] \$940 million” worth of pro bono legal services to the Administration.⁴ However, avoiding government scrutiny does not necessarily mean these companies are free from challenges. Hundreds of employees from the law firms that settled have expressed their dissatisfaction, while others have resigned.⁵

1. Federal Register :: Ending Illegal Discrimination and Restoring Merit-Based Opportunity

2. What To Do If You Experience Discrimination Related to DEI at Work | U.S. Equal Employment Opportunity Commission

3. EEOC Acting Chair Andrea Lucas Sends Letters to 20 Law Firms Requesting Information About DEI-Related Employment Practices | U.S. Equal Employment Opportunity Commission

4. Law firms' deals with Trump roil their staff, deepen industry rifts | Reuters

5. An Uprising at a Big Law Firm Targeted by Trump

Other law firms have faced more severe consequences, such as being named in executive orders that revoked their access to government buildings and suspended government contracts.⁶ These firms have responded by suing the Administration, “arguing [the orders] violate protections for free speech and due process.”⁷ This illustrates how regulatory agencies can be particularly stringent with companies that have significant government contract revenue streams.

Large public companies, not reliant on government contracts, are also feeling the pressure. Shortly after Executive Order 14173 was issued, Target announced it would be “scaling back [their DEI] initiatives.”⁸ Nevertheless, investors recently filed a lawsuit against the company for its 2023 “LGBT-Pride Campaign,” claiming that “Target

defrauded investors by issuing ‘false and misleading’ statements” concerning reasons for upholding their DEI initiatives at the time.⁹ While Target faces legal action for its former DEI policies, customers who oppose their recent removal of DEI programs are boycotting it. Shareholders are also weighing in on DEI programs. Initiatives have been put to proxy vote, as was the case with Apple, where shareholders upheld their DEI program.¹⁰

Navigating DEI Challenges

So, what should companies do? Whether companies decide to maintain, eliminate or implement DEI initiatives, they may face significant risks from regulators, other agencies, shareholders, customers/vendors and employees.



Here are a few considerations to balance:

- **Legal Compliance:** DEI initiatives are not inherently illegal. Affirmative action and hiring based on protected characteristics are distinct from DEI. Employment decisions based on race and other protected characteristics have always been against the law, but celebrating and promoting diversity is permissible.
- **Corporate Governance:** Companies should ensure their corporate governance practices are robust. Public companies are likely to encounter derivative suits challenging the removal or affirmation of DEI policies, as well as employment “reverse discrimination” lawsuits. They can mitigate risk by ensuring their disclosures in their 10-K filings are accurate and that

their documentation is detailed and precise. In response to DEI policy challengers, companies should clearly describe their policies, demonstrate legal compliance and attempt to quantify the results of their initiatives. While setting employment quotas based on protected characteristics is illegal, other metrics of DEI initiative results can effectively show their purpose and function to shareholders.

- **Internal Protocols:** Companies should establish appropriate internal protocols. There should be streamlined processes for employees to address their concerns, whether they involve backlash against DEI policies or reporting discrimination based on protected characteristics.

The DEI conundrum is likely to persist for some time. As a major D&O underwriter noted, determining the best course of action is challenging. Therefore, it is advisable to disclose what is being done with clear and concise statements and prepare for inevitable responses from both sides of the issue.

6. Two major law firms urge judges to permanently block Trump's executive orders

7. Law firms' deals with Trump roil their staff, deepen industry rifts | Reuters

8. Target says it is ending its DEI goals and programs, citing an 'evolving external landscape' | PBS News

9. Target Hit With Shareholder Lawsuit, Claiming Investors Were Defrauded About DEI Risks

10. Apple shareholders reject proposal to scrap company's diversity programs | AP News



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