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DEI Task Force / Labor & Employment Update

January 22, 2025

President Trump Revokes Affirmative Action Requirements for Government Contractors and Directs Agencies to Identify Nine Large Targets for Investigations of Private Sector DEI Practices

Gibson Dunn's DEI Task Force is available to help clients understand what these and other expected policy changes will mean for them and how to comply with new requirements.

On January 21, 2025, President Trump [rescinded](#) Executive Order 11246, which had imposed affirmative action obligations on federal contractors in addition to non-discrimination requirements. E.O. 11246—adopted in 1965 by President Lyndon Johnson—was enforced by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). Contractors may continue to comply with the prior requirements for up to 90 days. The Order directs the OFCCP to "immediately cease" "[h]olding Federal contractors and subcontractors responsible for taking "affirmative action." The Order will presumably have the effect of terminating ongoing and future compliance investigations based upon the now-rescinded E.O. 11246, although the status of those proceedings is not addressed directly.

In place of the prior affirmative action requirements, federal contracts and grants now will be required to include a clause requiring the contractor or grant recipient to agree that compliance "with applicable Federal anti-discrimination laws" is a term "material to the government's payment decisions" for purposes of the False Claims Act, 31 U.S.C. § 3729 *et seq.*, as well as certify that that the contractor or grant recipient "does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws." This requirement does not appear to impose any substantive obligation beyond those contained in federal statutes such as Title VII and the Americans with Disabilities Act. These additions appear calculated to strengthen the ability of the

government—and of individual whistleblowers, or “relators”— to use the False Claims Act to enforce non-discrimination requirements. President Trump’s executive order does not indicate that OFCCP will have a role in enforcing the new non-discrimination clause.

President Trump also directed agency heads within 120 days to submit to the White House proposed “strategic enforcement plan[s]” “containing recommendations for enforcing Federal civil-rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI.” Agency submissions are instructed to include, among other things, “up to nine” large companies or non-profits for “potential civil compliance investigations,” as well as “[l]itigation that would be potentially appropriate for Federal lawsuits, intervention, or statements of interest.”

President Trump also directed the Attorney General and Education Secretary to issue joint guidance “regarding the measures and practices required to comply with *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).”

Gibson Dunn continues to monitor developments in this area. Government contractors, federal grant recipients, and other private sector employers should consider reviewing their diversity programs and training to ensure compliance with evolving legal requirements. Our DEI Task Force is available to help clients understand what these and other expected policy changes will mean for them and how to comply with new requirements.

The following Gibson Dunn lawyers assisted in preparing this update: Jason Schwartz, Katherine Smith, Mylan Denerstein, Dhananjay Manthripragada, Lindsay Paulin, Zakiyyah Salim-Williams, Zoë Klein, Cate McCaffrey, Kelley Pettus, and McKenzie Deutsch.

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm’s DEI Task Force, [Labor and Employment](#), or [Government Contracts](#) practice groups, or the following authors and practice leaders:

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