

United States: A Roadmap to Trump's DEI Executive Orders for US Employers

In brief

In the first two days of his presidency, President Trump signed a series of executive orders aimed at dismantling diversity programs across the federal government, revoking longstanding DEI and affirmative action requirements for federal contractors, and directing public and private entities to end policies that constitute "illegal DEI discrimination."

Suffice it to say the orders have left federal contractors, corporations, nonprofits, and other employers in the private sector grappling with what to do next. While the EOs reverberations will be felt for some time and the DEI journey for federal agencies and the private sector is likely to be a circuitous one as challenges are raised in the courts, before Congress and in the court of public opinion, employers do need to gain some traction and start the trip. In this article, we present a roadmap to consider as employers work through the impacts of the EOs on their organizations.

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At the starting line: what the EOs do and don't do

Executive orders are a powerful tool through which the President issues formal directions to the executive branch, agencies and officials on how to carry out the work of the federal government. Historically, EOs mostly addressed administrative matters, but some sought to drive substantial policy changes. While congressional approval is not required for an EO to be effective, judicial review is commonplace and also, EOs can be reversed by later administrations.

President Trump's EOs addressing DEI do not change existing discrimination statutes, such as the bedrock prohibitions on discrimination in employment in Title VII of the Civil Rights Act of 1964. The orders do not ban or prohibit any or all private employer DEI programs. Rather, the orders direct federal agencies and deputized private citizens to root out (through investigations, enforcement actions, or False Claims Act litigation) "illegal discrimination and preferences" and, for government agencies, to take particular actions.

Similar to the situation following the US Supreme Court SFFA decision in June 2023, if your DEI programs were lawful before Trump's inauguration – they still are. What is "illegal" under federal law today is the same as it was before Trump's presidency. But what's clearly different is the ferocity of the federal government's intent and resources dedicated to scrutinizing alleged race- or sex-based preferences in the workplace, and the resulting level of scrutiny applied to DEI programs.

First stop: get under the hood and examine the language of the EOs

The following is a shortcut to understanding the key provisions, key dates and applicability of the three primary DEI EOs.

Order	Key Provisions	Key Dates	TL;DR
Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government	Defines "sex" as "an individual's immutable biological classification as either male or female" and directs federal agencies to "enforce laws	Signed 1.20.25. Within 30 days, the Assistant to the President for Legislative Affairs is to present the President proposed text to codify the definitions. Within 120	This applies to federal contractors and private employers. As a result, employers may see the EEOC, under the leadership of its newly-

	<p>governing sex-based rights, protections, opportunities, and accommodations to protect men and women as biologically distinct sexes." Directs the Attorney General to immediately issue guidance to agencies to correct the "misapplication" of the Supreme Court's decision in <i>Bostock v. Clayton County</i> (2020) to sex-based distinctions in agency activities. In addition, the AG is instructed to issue guidance and assist agencies in protecting sex-based distinctions.</p>	<p>days, each agency head must report on implementation of this order to the President, through the Director of the White House Office of Management and Budget (OMB).</p>	<p>designated Acting Chair Andrea Lucas, try to roll back enforcement of rights of transgender individuals under Title VII of the Civil Rights Act. By way of example, this could lead to enforcement actions against private employers if they do not provide "single-sex spaces" such as bathrooms or if they take disciplinary action against employees for "express[ing] the binary nature of sex."</p>
<p>Ending Illegal Discrimination and Restoring Merit-Based Opportunity This revokes several previous Executive Orders on diversity dating as far back as 1965. Significantly, Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity), is revoked. For 90 days (i.e., until April 21) from the date of this order, federal contractors may continue to comply with the regulatory scheme in effect on January 20, 2025.</p>	<p>Orders all executive departments and agencies to terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements. Further orders all agencies to enforce longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities. Directs the OFCCP to immediately cease:</p> <ol style="list-style-type: none"> 1. Promoting "diversity"; 2. Holding Federal contractors and subcontractors responsible for taking "affirmative action"; and 3. Allowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin. Requires every federal contract or grant award include: A term requiring the contractual counterparty or grant recipient to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of Title 31, United States Code (False Claims Act); and a term requiring such counterparty or recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws. Directs the heads of all agencies, with the assistance of the Attorney General, to take all appropriate action with respect to the operations of their agencies to advance in the private sector the end of "illegal DEI discrimination." * carves out preferences for veterans and the blind 	<p>Signed 1.20.25. After 90 days, Federal contractors may not continue to comply with the regulatory scheme set forth in now revoked EO 11246 (i.e., taking affirmative action). Within 120 days, AG is to subject a report to the Assistant to the President for Domestic Policy 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.</p>	<p>The EO instructs the OFFCP to stop promoting diversity, stop holding federal contractors and subcontractors responsible for taking "affirmative action," and allowing or encouraging Federal contractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin. Significantly, the EO reverses the federal contractor certification of compliance requirement, flipping it on its head. Now, a federal contractor must "certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws." The Attorney General has 120 days to identify "key sectors of concern," and compliance investigation targets from publicly traded corporations or large nonprofits with assets of \$500 million or more (or of state and local bar and medical associations or higher education institutions). Each agency will report to the AG up to 9 big companies that have taken a stance on DEI to target for investigations and litigations. The EO specifically calls out a few industries that may receive extra scrutiny: "major corporations, financial institutions, the medical industry, large commercial airlines, law enforcement agencies, and institutions of higher education." In this report (due by May 21), the plan must also identify: (1) key sectors of concern within each agency's jurisdiction and (2) the most egregious and discriminatory DEI practitioners in each sector. This conceivably opens the door for many more companies to be called out.</p>

<p>Ending Radical And Wasteful Government DEI Programs And Preferencing</p>	<p>This Order calls for the termination of "all discriminatory programs, including illegal DEI and 'diversity, equity, inclusion, and accessibility' (DEIA)" policies and programs across the federal government, including relevant training policies or programs. It also directs the OMB, assisted by the Attorney General and the Office of Personnel Management (OPM), to coordinate with agencies to terminate federal programs they deem discriminatory.</p>	<p>Signed 1.20.25; report for strategic plan due in 120 days On 1.21.25, OPM issued a memo to federal agencies to close offices focused on diversity, equity and inclusion initiatives by 1.22.25 and lay off staffers by Jan. 31.</p>	<p>The goal of this EO is to eliminate all federal DEI initiatives. It also directs agencies to give the OMB director lists of (1) federal contractors who provide DEI training or DEI training materials to federal agency or department employees (i.e., training vendors hired by government agencies to conduct DEI trainings); and (2) all federal grantees who received federal funding to provide or advance DEI or environmental justice programs. In that regard, it seems plausible that the OMB director could use this information to inform further investigations or enforcement actions.</p>
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Second stop: mapping the next leg of your company's journey

The time to act is now by following three immediate actions:

1. Review the actual text of the executive orders;
2. For federal contractors, update and review any contract or grant timing requirements for application deadlines, renewals and expiration dates given the new certification obligation; and
3. Review your company's DEI Health Check and reaffirm and socialize the company's previous decisions and risk assessments given the new level of scrutiny that will be applied to DEI. (If the company skipped the last occasion for a Health Check, now is a good time to pick that back up.)

Much of your company's next steps will depend on your specific DEI programs and the organization's risk tolerance. Conducting (or refreshing) a Health Check will provide a basis of common language and understanding within the company in order to focus discussion and action. While few organizations have unlawful programs, policies and practices, through the passage of time, programs that are lawful on their face may have changed in practice. As such, we recommend breaking Health Checks up into first reviewing those areas that tend to be higher risk before turning to medium and low risk areas. Generally, these reviews should be conducted under privilege.

In the current climate, the DEI Health Check areas to prioritize include:

- Gathering / reviewing government contracts and Affirmative Action plans
- Collecting all external and public-facing communications around DEI-related targets or aspirational goals
- Reviewing all DEI recruiting, hiring, representation or promotion goals and practices
- Reviewing any programs providing a benefit or tying compensation to DEI goals
- Reviewing ERGs (mission statements, programs, criteria for joining, etc.)
- Reviewing developmental programs
- Checking in with peers across the organization to understand where else DEI may come up (e.g. due diligence during corporate transactions, in SEC filings and more).

Navigating the next phase

This journey is just beginning for US employers. The EOs themselves set various checkpoints for action and reports at 90 and 120 days. Court challenges and legislative action is expected. Various organizations and private actors are preparing to bring actions against private companies and institutions. States are looking to join the fray. And, during all of this, companies must continue to meet the challenge of managing their workforces and culture.

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