



MN NEWS

SPECIAL REPORT

DEI Executive Order Update

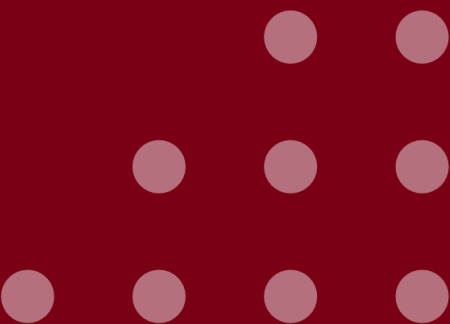
This is a fictional scenario that is entirely imagined and intended only to provide a context for discussions of current legal issues and potential workplace interactions. Any resemblance to actual persons, names, events or circumstances is entirely coincidental and not intentional. In addition, the information and related discussion is not intended as legal advice, and is for general informational and educational purposes only. While we hope it is informative, it also does not fully address the complexity of the issues or steps employers must take under applicable laws—which are also subject to change, even frequently, with or without prior notice. You should not act upon any information provided without seeking professional legal counsel tailored to your specific situation. For legal advice on these or related issues, please consult qualified legal counsel directly.

***Overview of Federal Actions
Related to DEI***

Presidential Actions Regarding DEI

BREAKING NEWS

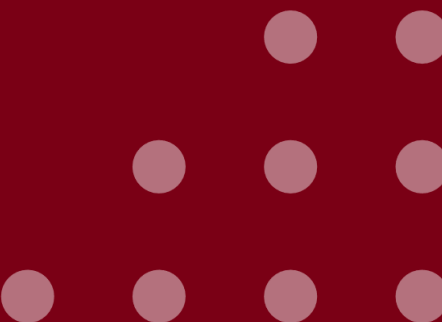
- Since taking office, President Trump has issued numerous EOs and taken other measures designed to dismantle DEI programs and initiatives across the federal government.
- The Trump Administration, through its federal agencies, has also targeted DEI programs in the private sector (including nonprofits) and educational community.



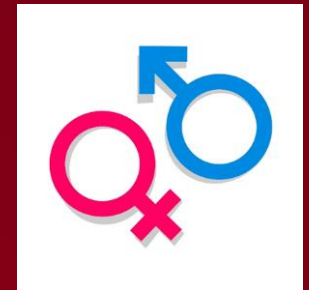
What Is an Executive Order?

BREAKING NEWS

- A presidential order about how the federal government should be operated or managed
- Does not require approval of Congress
- Has the force of law
- Valid until expires or revoked



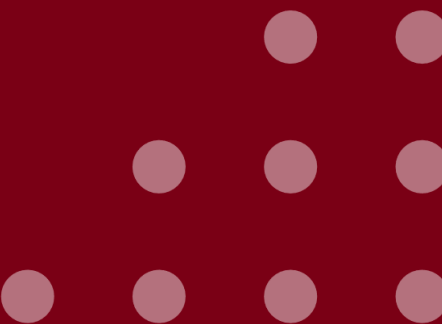
EO 14168: “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”



- Defines “sex” as an “individual’s immutable biological classification as either male or female”
- Calls for various actions to remove “gender identity” protections across the government and in the private sector (including nonprofits)
- Seeks legislation to overturn the U.S. Supreme Court’s decision in *Bostock v. Clayton County*, finding gender identity discrimination is prohibited by Title VII

Note:

This EO does not directly target non-federal government employers, but the EO could impact federal funding sources and reflects the federal government’s policy interpretations of federal discrimination law.

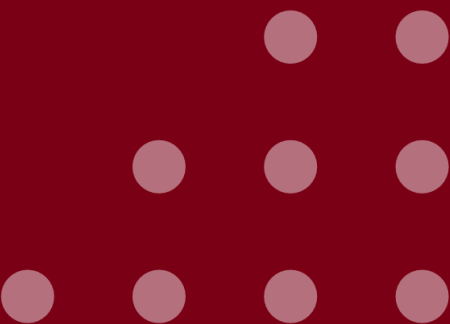


EO 14151: “Ending Radical and Wasteful Government DEI Programs and Preferencing”

- Seeks to end DEI programs and offices across the federal government
- Directs the identification of and removal of DEI-related programs and staff
- Agencies were directed to shut down equity action plans, offices of diversity, and environmental justice programs
- Over 100 terms were flagged for federal staff to avoid (like “disparities, diversity, equity, and race”)

Note:

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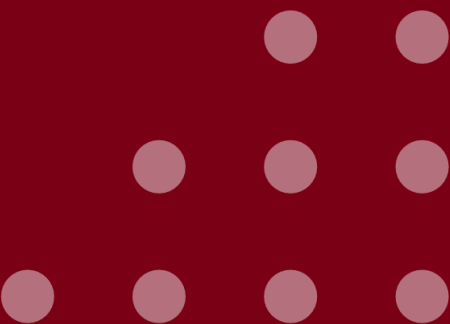
EO 14173: “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”

BREAKING NEWS

- Rescinds former EO (signed in 1965) related to affirmative action and nondiscrimination requirements in federal contracting
- Applies to all companies subject to civil rights laws and has additional implications and requirements for federal contractors and grantees
- Requires federal contractors and grantees to certify that they do not operate any “illegal” DEI programs
- Requires the U.S. Attorney General to create a strategic enforcement plan identifying specific enforcement targets for types of entities specified in the EO in the private sector for DEI programs the administration believes violate federal antidiscrimination laws

Note:

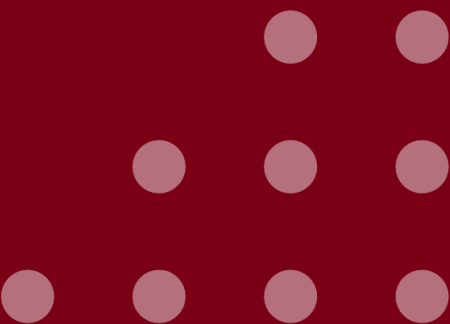
This EO applies broadly to employers and has additional impacts to employers who are federal contractors and grantees.



Federal Agency Actions Implementing DEI EOs (Sampling)

- U.S. Attorney General issued a memo (2/5/25) which asks the Department of Justice (DOJ) Civil Rights Division and Office of Legal Policy for a report on how to enforce civil rights laws to end “illegal” DEI programs in the private sector, including criminal investigations of corporate DEI programs

The memo also provides that the DOJ’s Civil Rights Division will “investigate, eliminate, and penalize illegal DEI and DEIA preferences, mandates, policies, programs, and activities in the private sector.”



Federal Agency Actions Implementing DEI EOs (Sampling)

- EEOC Chair Lucas issued a statement that the EEOC's priorities include
“rooting out unlawful DEI-motivated race and sex discrimination; protecting American workers from anti-American national origin discrimination; defending the biological and binary reality of sex and related rights, including women's rights to single-sex spaces at work; protecting workers from religious bias and harassment, including antisemitism; and remedying other areas of recent under-enforcement”

In March, Lucas sent letters to 20 prominent law firms requesting details on their DEI-related practices—four of which have already reached settlement agreements with the EEOC and agreed to drop the term DEI

July 29, 2025 Attorney General Memorandum— Five Unlawful Practices

LIVE ●

1. Practices that grant preferential treatment based on protected characteristics, including:

- Race-based scholarships or programs, including without limitation, race-inclusive opportunities, such as internships, mentorship programs, or leadership initiatives, that are available only to, or reserve spots for, students/employees of a specific racial group
- Hiring or promotion practices that prioritize candidates from “underrepresented groups” for admission, hiring, or promotion if the underrepresented groups are determined based on a protected characteristic like race
- Access to facilities or resources based on race or ethnicity such as “safe spaces” accessible exclusively to people that belong to a specific racial or ethnic group

July 29, 2025 Attorney General Memorandum— Five Unlawful Practices

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2. Practices that use facially neutral proxies for protected characteristics, including:

- Requiring applicants to describe their “cultural competence,” “lived experience,” or “cross cultural skills” if used to evaluate candidates’ racial or ethnic backgrounds rather than objective qualifications
- Recruitment strategies targeting specific geographic areas, institutions, or organizations for their racial or ethnic composition rather than other legitimate factors
- Requiring applicants to describe “obstacles overcome” or a “diversity statement” if used as a proxy to provide advantages based on protected characteristics

July 29, 2025 Attorney General Memorandum— Five Unlawful Practices

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3. Programs that segregate participants based on protected characteristics, including:
- Training sessions that separate participants into race-based groups (for example, a “Black Faculty Caucus” or “White Ally Group”)
 - Segregation in facilities and resources, including study spaces, computer labs, or event venues, based on protected characteristics (for example, a “BIPOC-only lounge”)

Note:

The DOJ Guidance expressly states that its prohibitions do not apply to “facilities that are single-sex based on biological sex to protect privacy or safety, such as restrooms, showers, locker rooms, or lodging” and women’s athletic competitions.

- A DEI-focused program or workshop series that requires participants to identify with a specific racial or ethnic group (for example, “for underrepresented minorities only”)

July 29, 2025 Attorney General Memorandum— Five Unlawful Practices

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4. Use of protected characteristics in candidate selection, contract awards, or program participation, including:

- “Diverse slate” policies that require a certain percentage or minimum number candidates be from an underrepresented group or of diverse backgrounds (e.g. requirements for at least two “underrepresented minority” candidates)

Note:

This prohibition extends to any policy that sets racial benchmarks or mandates geographic representation in candidate pools

- Implementing a policy that prioritizes in any way, including a tiebreaker policy, awarding contracts to women-owned or minority-owned businesses over equally qualified businesses owned by men or white individuals
- Race- or sex-based program participation, such as a leadership initiative or internship program or mentorship or leadership development program, requiring a certain percentage of selected participants be from underrepresented racial groups or be female and rejecting equally or more qualified men and majority group applicants

July 29, 2025 Attorney General Memorandum— Five Unlawful Practices

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5. Training programs that through their content, structure, or implementation stereotype, exclude, or disadvantage individuals based on protected characteristics or create a hostile environment, including:
- Trainings or statements that stereotype individuals based on protected characteristics, or create a hostile environment through severe or pervasive use of materials that single out, demean, or stereotype individuals based on protected characteristics (for example, “all white people are inherently privileged,” “toxic masculinity,” etc.)

Note:

Guidance notes that “[f]ederal law allows for workplace harassment trainings that are focused on preventing unlawful workplace discrimination and that do not single out particular groups as inherently racist or sexist.”

July 29, 2025 Attorney General Memorandum— Recommended Best Practices

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- Ensure inclusive access to all workplace programs, activities, and resources, but also ensure separation where necessary to respect “biological differences” (e.g. women’s restrooms and locker rooms).
- Focus on skills and qualifications when selecting candidates and base selection decisions on specific, measurable skills and qualifications.
- Avoid using proxies like socioeconomic status, first-generation status, or geographic diversity to in effect prioritize individuals based on racial, sex-based, or other protected characteristics.

July 29, 2025 Attorney General Memorandum— Recommended Best Practices

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- Prohibit and discontinue demographic-driven criteria. For example, a scholarship program must not target “underserved geographic areas” or “first-generation students” if the criteria are intended or actually used to increase participation by specific racial or sex-based groups. Instead, entities should use universally applicable criteria, such as academic merit or financial hardship, applied without regard to protected characteristics or demographic goals.
- Document legitimate rationales to demonstrate that decisions are unrelated to protected characteristics.

July 29, 2025 Attorney General Memorandum— Recommended Best Practices

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- Scrutinize neutral criteria for proxy effects.
- Eliminate diversity quotas and focus solely on nondiscriminatory performance metrics, such as program participation rates or outcomes, without reference to race, sex, or other protected characteristics.
- Discontinue policies that require representation of specific racial, sex-based, or other protected groups in candidate pools, hiring panels, or final selections.

July 29, 2025 Attorney General Memorandum— Recommended Best Practices

LIVE ●

- Avoid the following: (1) excluding qualified participants from training programs; (2) segregating participants into groups based on protected characteristics; and (3) requiring participants to affirm specific ideological positions or “confess” to personal biases or privileges based on protected characteristics.
- Establish clear anti-retaliation procedures and create safe reporting mechanisms and include these policies in employee handbooks, student codes, and program guidelines.

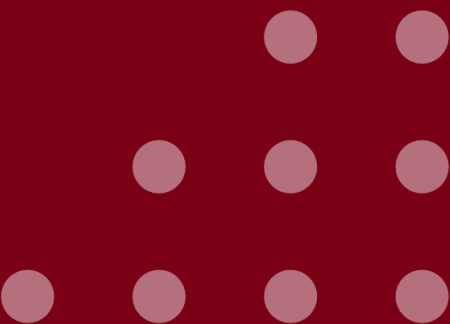
Impacts of the Federal Orders

Impacts of the EOs

- The EOs do not change Title VI protections, which continue to prohibit discrimination based on race, color, or national origin in any program or activity that receives federal financial assistance.
- The EOs do not change Title VII protections, which continue to prohibit discrimination in employment based on race, color, religion, sex, and national origin (including the interpretation to include gender identity in *Bostock*).
- The EOs primarily target preferential treatment, which was already prohibited under Title VI and Title VII.
- The EOs do not require organizations to stop lawful DEI programs and services. Many DEI programs and services remain lawful under existing federal antidiscrimination laws.
- Programs and services that have a DEI purpose but that do not exclude or limit participation on the basis of protected characteristics are lawful DEI programs.

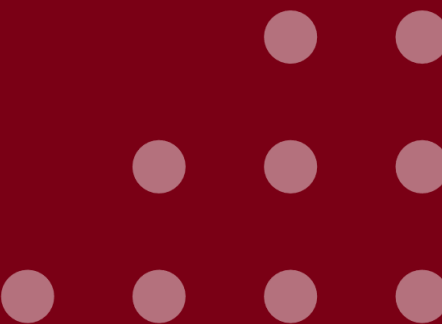
What Are Some Examples of Programs or Practices That Could Raise Red Flags?

- Diverse slate/quotas hiring or promotion practices (i.e., “Rooney Rule”)
- Internships, leadership development opportunities, coaching services, etc. made available only to members from historically marginalized communities
- Affinity groups or spaces that exclude employees who do not belong to that particular affinity group
- Tying director, officer, or manager compensation or performance reviews to achieving certain DEI objectives or goals



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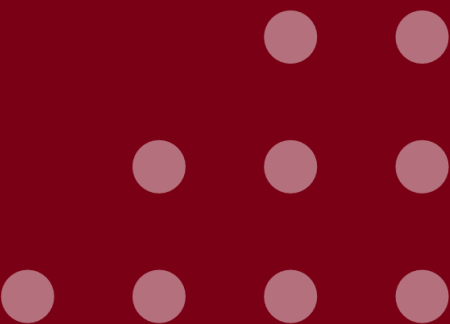
- Using race or another protected class as a proxy for assuming qualifications in hiring decisions (assuming that only someone who is of Asian background can understand and deliver competent services to the Asian community) as opposed to permissible job competencies (i.e., language requirements)
- DEI trainings that mention “white privilege” or calls out white people for past discrimination or use prohibited words (“White supremacy,” “unconscious bias,” “implicit bias,” “BIPOC,” “systemic racism or bias,” “critical race theory,” “race relations,” and more)



What Is Not “Illegal DEI”?*

- Programs and services that are open to everyone
- Non-discriminatory employment practices
- Language requirements or other skill-based competencies
- Programs and services expressly allowed by federal law
- Veterans’ preference requirements under state and federal law
- ADA and religious accommodations
- Narrow exception in employment for “bona fide occupational qualifications”

** Should not be considered “illegal DEI”*



Takeaways for Employers

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1. Review language used in organizational mission and values, hiring practices, EEO, and affirmative action statements for practices or language that violates the EOs or DOJ Guidance.
 - **TIP:** Tie mission and values to objective of compliance with existing laws and values of equal access and equal treatment (i.e., fulfilling civil rights obligations, ensuring no group is left behind).
 - **TIP:** Reframe goals of “equity” to “equal access” or “fairness to all” (the new federal policy explicitly talks about serving “every person with equal dignity and respect”).
 - **TIP:** Emphasize outcomes and data-driven principles.
2. Review all written policies, procedures, and employee handbooks for practices or language that violates the Executive Orders or DOJ Guidance.

Takeaways for Employers

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3. Ensure all employee hiring and other programming is open to all who wish to participate (recruitment, hiring, employee promotion and retention, employee mentorship, leadership development, and support groups).
4. Investigate all complaints of discrimination even if it may be called “positive discrimination” by some people.
5. Include gender-specific bathroom/locker facilities plus a separate neutral option if an employee needs one.

Takeaways for Employers

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6. Review any federal agreements for certification language that may be problematic. Federal funding agreements are being modified:

- Programs previously funded that the government now considers to be “illegal” DEI programs are being cancelled/suspended
- Grantees are being asked to certify that federal funds will not be used to run “illegal” DEI programs
- Grantees are being asked to certify that it does not run “illegal” DEI programs (regardless of source of funds)

Note:

Falsely certifying a federal grant application could subject an individual and organization to civil and criminal penalties.

Takeaways for Employers

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7. Review other funding agreements to look for conflicts with federal funding requirements.
8. Ensure contracts with vendors and subcontractors comply with the EOs and do not discriminate (negatively or positively).

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