

Trump Orders Feds to Combat “Illegal” Corporate DEI Programs: 5 Takeaways for Private-Sector Employers + What You Should Do Now

A Practical Guidance® Article by Sheila M. Abron, Raymond W. Perez, Regina A. Petty, and Terri R. Stewart, Fisher & Phillips LLP



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President Trump just issued a far-reaching executive order targeting diversity, equity, and inclusion (DEI) initiatives in not only the federal government but also the private sector. The order directs federal agencies to “combat illegal private-sector DEI preferences, mandates, policies, programs, and activities” and to encourage private employers to

instead implement the Trump administration’s policy of “individual initiative, excellence, and hard work.” While the order creates many unanswered questions and will likely face legal challenges, this Insight will explain what private employers need to know about these new federal anti-DEI initiatives and what you should do now.

Five Takeaways for Private-Sector Employers

Here’s how Trump’s [January 21 executive order](#) impacts employers in the private sector. (To read about the order’s sweeping impact on federal contractors and subcontractors, click [here](#).)

One: Employers Are Under Federal Pressure to End Certain DEI Programs

The order directs all federal agencies to “combat illegal private-sector DEI preferences, mandates, policies, programs, and activities” and to take all appropriate action to advance the order’s policy of “individual initiative, excellence, and hard work” among private employers. It’s not yet clear how agencies might carry out this directive, but the order gives federal officials broad authority to do so.

Two: Uncertainty Over What Constitutes “Illegal DEI”

Questions remain as to what constitutes “illegal DEI”—an undefined phrase that is used throughout the executive order. Arguably, the order defines prohibited conduct as: (1) illegal discrimination and preferences; and (2) workforce balancing based on race, color, sex, sexual preference, religion, or national origin. This would be no different from

existing federal law, because quotas have always been unlawful under Title VII.

However, the Trump administration has indicated that its objectives go beyond reinforcing Title VII. For example, the executive order broadly paints all DEI policies as part of an “unlawful, corrosive, and pernicious identity-based spoils system,” and in the government context it even goes so far as to ban the Office of Federal Contractor Compliance Programs—the agency tasked with ensuring federal contractors comply with nondiscrimination rules—from promoting diversity at all.

Further, the new Acting Chair of the U.S. Equal Employment Opportunity Commission (EEOC), Commissioner Andrea Lucas, said in a [Jan. 21 press release](#) that her “priorities will include rooting out unlawful DEI-motivated race and sex discrimination.” This sharply contrasts with the stance taken by Charlotte Burrows, the former EEOC Chair and current Commissioner, who confirmed in a [2023 press release](#) that, despite the Supreme Court’s [ruling on college affirmative action programs](#), it “remains lawful for employers to implement diversity, equity, inclusion, and accessibility programs that seek to ensure workers of all backgrounds are afforded equal opportunity in the workplace.”

While it is generally lawful for employers to address biases and barriers to provide a level playing field for employees and job candidates, we expect to see the Trump administration aggressively pursue new ways of [challenging DEI efforts in the workplace](#).

Three: Federal Officials Must Submit Recommendations to End Illegal DEI Practices

The order also requires federal officials (including the attorney general and all agency heads) to, within 120 days, prepare and submit a report that the Trump administration will use to establish new “civil rights” policies against corporate DEI programs. The report must include recommended measures to encourage the private sector to “end illegal discrimination and preferences, including DEI,” as well as a proposed strategic enforcement plan.

The enforcement plan must identify various data points, such as key sectors of concern and the “most egregious and discriminatory DEI practitioners” in each of those sectors, as well as:

- A plan of specific steps or measures to deter DEI programs or principles, regardless of whether they are actually given a “DEI” label, that constitute illegal discrimination or preferences
- Other strategies to encourage the private sector to end illegal DEI discrimination and preferences and comply with all federal civil rights laws

- Litigation that would be potentially appropriate for federal lawsuits, intervention, or statements of interest –and–
- Potential regulatory action and sub-regulatory guidance.

Four: Some Private Businesses Could Face Civil Compliance Investigations

As part of the report described above, each federal agency will identify up to nine potential civil compliance investigations of publicly traded corporations, large non-profit corporations or associations, foundations with assets of \$500 million or more, state and local bar and medical associations, and institutions of higher education with endowments over \$1 billion.

Five: No Impact on Veteran and Disability Preferences

The order does not apply to private-sector employment and contracting preferences for military veterans and individuals with disabilities.

What Should Private Employers Do Now?

- **Review your DEI initiatives.** Well-designed DEI programs are not illegal. Review or assess your hiring, training, and promotion practices in light of Trump’s executive order. While the order sends a clear warning to private businesses whose workplace policies do not align with the administration’s anti-DEI initiatives, it merely “encourages” the private sector to end DEI efforts that do not fall in line—at least until a federal enforcement plan is released. Now is a good time to consider measuring the effectiveness of your DEI program and enhancing your organization’s awareness of DEI strategies (studies have shown the value of diversity in the workplace—including higher performing teams, better bottom lines, and stronger leadership). If your business could be subject to a civil investigation, you should weigh any potential exposure against any proven benefits of continuing your DEI program.
- **Stay tuned.** After May 2025, we expect to receive more meaningful information from the Trump administration about how its aim to end DEI programs will impact employers in the private sector. Sign up to receive [Fisher Phillips’ insights](#) to stay up to date on the latest developments.
- **Work with legal counsel.** In this time of uncertainty, you should consider reaching out to your attorney to develop a game plan to comply with evolving

requirements. We anticipate that once federal enforcement guidance is released, it will face court challenges. But these lawsuits could take considerable time to resolve, so you'll want to understand your real-time compliance obligations and work with counsel on any potential changes.

Conclusion

If you have any questions about these developments or how they may affect your business, please contact your Fisher Phillips attorney or the authors of this Insight. Visit our [New Administration Resource Center for Employers](#) to review all our thought leadership and practical resources, and make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.

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Practice Notes

- [Affirmative Action Programs and Diversity Initiatives: Key Considerations](#)

Templates

- [Diversity, Equity, and Inclusion \(DEI\) Policy \(with Acknowledgment\)](#)

Sheila M. Abron, Partner, Fisher & Phillips LLP

Sheila Abron is a Partner in the Columbia office and Co-Chair of the Firm's Affirmative Action and Federal Contract Compliance Practice Group. She is committed to finding practical, real world solutions to her clients' employment law needs. She represents companies—large and small—as they navigate employment issues related to hiring, discipline, investigations, employment discrimination, unemployment, and other related issues. Sheila provides guidance to higher education institutions on Title IX Compliance and investigations. She has extensive experience providing compliance advice to federal contractors on affirmative action and OFCCP regulations and audits. Sheila also has extensive experience working on collective actions under the Fair Labor Standards Act (FLSA) and class actions under wage and hour state laws. Sheila also provides training for supervisors and managers on harassment, Equal Employment Opportunity (EEO) compliance, the Family Medical Leave Act, diversity and inclusion, and many other areas.

Sheila is involved in various professional and community activities. She is a past president of both the South Carolina Women Lawyers' Association (SCWLA) and the South Carolina Bar Young Lawyers (SCYLD) Division. She also serves on the Board of Directors for Columbia – Society for Human Resource Management (SHRM) and the board of the National Conference of Women's Bar Associations. Sheila is active in the Richland County Bar, American Bar Association, and is a member of the Junior League of Columbia.

Prior to attending law school, Sheila was a member of store leadership for a Fortune 500 retail company, providing employee supervision and managing a variety of employee issues related to wage and hour, workers' compensation, discrimination issues, performance management, and other personnel issues.

Sheila is a 2019 recipient of the Silver Compleat lawyer Award from the University of South Carolina School of Law Alumni Association. This award recognizes alumni who have made significant contributions to the legal profession and who exemplify the highest standard of professional competence, ethics, and integrity.

She has also been named to the *Columbia Regional Business Report's* list of 2018 Women of Influence, *Columbia Business Monthly's* 2018 Best and Brightest 35 and Under, *Columbia Business Monthly's* Legal Elite of the Midlands in 2017 and the American Bar Association's On the Rise – Top 40 under 40 in 2018. She is also a 2018 South Carolina Super Lawyers – Rising Star and a 2019 recipient of the Leadership in the Law award. She was awarded the Johnathon Jasper Wright Award by The Honorable Matthew J. Perry Chapter of the Black Law Students Association at the University of South Carolina School of Law, is a three-time recipient of the President's Award and a four-time recipient of the Start of the Quarter award from the South Carolina Bar Young Lawyers' Division.

Raymond W. Perez, Of Counsel, Fisher & Phillips LLP

Raymond Perez is Of Counsel in the firm's Columbus and Washington DC offices and Chair of the Corporate Compliance and Governance Practice Group as well as Co-Chair of the Workplace Investigations Practice Group. He focuses his practice on advising employers on developing and implementing compliance and ethics programs, codes of conduct, and diversity, equity and inclusion initiatives. In connection with compliance programs, Ray also advises clients regarding all manner of workplace investigations, particularly investigations involving executives and significant reputational risks. Ray also advises clients on the interplay between antitrust laws and labor and employment issues and counsels clients on best practices to avoid potential liability. Ray assists clients with their diversity, equity, and inclusion efforts such as training, employee surveys, developing mentorship programs, and creating business resource groups.

Ray also works directly with boards of directors to establish compliance reporting systems and diversity and governance objectives and priorities. In addition, he works with clients when negotiating incentive packages as an integral part of the site selection process. Ray supports evaluating site priorities and negotiating local incentives to address tax, infrastructure, worker selection, and training needs.

Prior to joining Fisher Phillips, Ray worked in-house for nearly 30 years at American Honda in various legal and operational roles. In addition to managing day-to-day legal activities for Southeastern manufacturing operations, he served as a Compliance Officer, Division Manager of Government and Community Relations, North American Diversity Committee founding member, and North American 401(k) Fiduciary Committee member. He oversaw complex workplace investigations and negotiated incentive packages in support of new plant site selection and major expansions of existing facilities.

While serving as General Counsel for American Honda's Southeastern operations, Ray managed government and community relations. In this capacity, he regularly interacted with federal, state, and local officials on all significant regulatory matters impacting the organization. Ray also helped determine the company's position on pending legislation and communicated that information to legislators and regulators at all levels of government.

He developed antitrust training programs for purchasing and human resources personnel. Ray also served as the North American Chief Audit Executive for five years, overseeing all financial and operational auditing (e.g., HR, Safety, Compensation and Benefits, IT, Environmental, Ethics, Purchasing Sales, and Marketing) of the company's operations, including research and development, manufacturing, sales, and customer financing. He reported to the Board on the performance of over 30 U.S. affiliated companies and recommended enhancements in legal and business operations.

Regina A. Petty, Chief Diversity Officer & Partner, Fisher & Phillips LLP

Regina Petty is a partner in the San Diego and Los Angeles offices. She practices in state and federal courts at the trial and appellate levels and is experienced in multi-district and class action litigation.

Regina advises employers and public agency boards and handles litigation for private and public employers. She successfully argued *Jones v. The Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158 before the California Supreme Court, a case noted on Bender's *California Labor & Employment Bulletin's* top ten list of most significant cases and trends for the Fair Employment and Housing Act's fiftieth anniversary.

Regina is a past president of the San Diego County Bar Association and a former member of the board of directors of the Minority Corporate Counsel Association.

She is "AV" Peer Review Rated by Martindale-Hubbell and has been listed in *San Diego Super Lawyers* every year since its inaugural issue. She has been named one of the *Los Angeles Daily Journal's* Top 75 Women Litigators in California and one of the *San Diego Daily Transcript's* Top Ten attorneys in both the labor and employment and business litigation categories.

Regina is also a recipient of the *San Diego Business Journal's* Women Who Mean Business Award and she was honored by the Stanford University Black Community Services Center with its Legacy Award.

Terri R. Stewart, Regional Managing Partner, Fisher & Phillips LLP

Terri Stewart is a regional managing partner in the firm's Atlanta office. She represents management in all areas of labor and employment law in state and federal courts as well as before state and federal agencies.

Her practice focuses on the defense of employment related lawsuits in trial and appellate courts, encompassing a variety of issues, including claims arising under Title VII, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Family and Medical Leave Act (FMLA), and related state claims such as trade secret infringement, restrictive covenants, breach of contract and tort actions.

Terri also frequently advises employers on reductions in force, drafts employment agreements, personnel policies, separation agreements and releases, and conducts on-site training on topics such as employment law compliance and avoidance of harassment claims.

Terri is ranked by Chambers as one of the top employment attorneys in Atlanta. She also received the top "40 under 40" Award from the *Atlanta Business Chronicle*, the University of Georgia Alumni Association and *The Daily Report*. Terri was also recently awarded the Thought Leadership award by *Corporate Counsel Magazine* for law firm leaders nationwide. Terri is also a graduate of the L.E.A.D. Atlanta Class (a division of Leadership Atlanta), and she has been listed in *Georgia Super Lawyers - Rising Stars* since 2011.

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