



# New Lawsuit Takes on Trump's Anti-DEI Actions: What Employers Need to Know

Insights

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A new lawsuit is challenging the Trump administration's executive orders that take aim at DEI efforts in the private sector and in the federal government, calling them a "crusade to erase diversity, equity, inclusion, and accessibility from our country." A group of plaintiffs – including chief diversity officers, professors, a restaurant group, and the city of Baltimore – filed a complaint in a Maryland federal court on Monday that claims that recent executive actions taken by President Trump and his administration are unconstitutional and that Trump "cannot...silence those who disagree with him by threatening them with the loss of federal funds and other enforcement actions." We'll explain everything employers need to know about the lawsuit and what to expect next.

## Quick Background

The new Trump administration has taken aim at DEI initiatives within both the federal government and the private sector and took a series of dramatic steps related to DEI programs in the first weeks after assuming power. Here are a few key examples:

- Trump issued an executive order directing federal agencies to combat "illegal" corporate DEI programs and dismantling key affirmative action and DEI standards for federal contractors.
- Trump installed Andrea Lucas – an avowed opponent of DEI – as Acting Chair of the Equal Employment Opportunity Commission (EEOC) and ousted two Democratic Commissioners. These moves have set the stage for the agency to soon be in a position to take further action with respect to DEI programs at private organizations.

The administration has not provided a clear definition of "illegal DEI" and has indicated that its objectives go beyond reinforcing existing federal anti-discrimination laws.

## New Lawsuit Challenges Trump Administration's Actions Against DEI

### *Who's Suing Who?*

A group of plaintiffs – including the National Association of Diversity Officers in Higher Education, the American Association of University Professors, Restaurant Opportunities Centers United, and the Mayor and City Council of Baltimore, Maryland – filed suit against President Trump and a long list of

federal agencies and government officials, including the Department of Labor and the Department of Education and each one's Acting Secretary.

### ***What's Under Challenge?***

The Feb. 3 complaint, which was filed in a federal court in Maryland, challenges two executive orders issued by President Trump within his first 48 hours back in the White House, including:

- a January 20 order (Executive Order 14151) titled “Ending Radical Government DEI Programs and Preferencing;” and
- a January 21 order (Executive Order 14173) titled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” which we previously covered [here](#) (private sector impact) and [here](#) (impact on federal contractors and subcontractors).

### ***What Are the Specific Arguments?***

The plaintiffs claim that DEIA principles are critical to their missions, programs, and work in service of students, research and academic inquiry, restaurant workers, and everyday citizens, and that, “to Defendants, DEI is an ideology that they do not define but nonetheless want to crush, whether it manifests itself through lawful speech and actions or through actual violations of law.” They claim that both executive orders (listed above) violate the Constitution.

Regarding Executive Order 14173, the complaint alleges that:

- the sections impacting the private sector (Section 4) and federal contractors and subcontractors (Section 3) **violate the First Amendment**, because, among other reasons, the threat of civil compliance investigations impermissibly restricts the exercise of constitutionally protected speech based on its content and viewpoint;
- **Section 4 is unconstitutionally vague in violation of due process rights**, because it fails to define material terms (such as “illegal DEIA and DEIA policies”) that determine whether certain plaintiffs “will be subject to civil investigation, civil enforcement, claw back of funding, or other enforcement actions by the federal government;” and
- **Section 3 violates the separation of powers**, because the “President and the executive branch have no authority to dictate government spending or place conditions on the spending power that is vested in the legislative branch.”

The plaintiffs ultimately claim that, without court intervention, the executive orders and their implementation will cause them to suffer irreparable harm. They've asked the court to declare both orders as unconstitutional and to temporarily and permanently block the federal government, other than the President, from enforcing the orders.

### ***What Does This Mean for Employers?***

You should stay tuned for updates as this lawsuit plays out in court. It's possible that a judge could ultimately halt Executive Orders 14151 and 14173. In the meantime, you should consider taking the action steps we laid out [here](#) (private sector) and [here](#) (federal contractors and subcontractors).

And remember, correctly designed DEI programs have never been inherently illegal and remain viable even in the face of recent events – but they must comply with anti-discrimination laws such as Title VII. In this time of uncertainty, you should consider reaching out to your attorney to develop a game plan to comply with evolving requirements.

## Conclusion

We will continue to monitor developments that impact your workplace and provide updates when warranted. If you have any questions about these developments or how they may affect your business, please contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Affirmative Action and Federal Contract Compliance Practice Group](#). 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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