

EEOC Sets Its Sights on DEI Programs: What Employers Need to Know

Labor & Employment Law Update

By Suzannah Wilson Overholt on March 27, 2025

The Equal Employment Opportunity Commission (EEOC) recently announced that it will be examining DEI programs for potential violations of Title VII following President Trump's executive orders regarding DEI programs and the federal court review that followed.

EEOC issued a one-page technical assistance document specifically directed at DEI programs, stating: "Under Title VII, DEI initiatives, policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee's or applicant's race, sex, or another protected characteristic."

EEOC's New DEI Guidance

The EEOC's guidance provides examples of what may be considered DEI-related discrimination in the workplace, specifically identifying the following:

- Using unlawful quotas or otherwise "balancing" a workforce by race, sex, or other protected traits;
- Taking an employment action motivated (in whole or in part) by race, sex, or another protected characteristic, including exclusion from training, mentoring or sponsorship programs, fellowships, and interviews (including placement on candidate slates);
- Limiting membership in workplace groups, such as Employee Resource Groups (ERG) or other employee affinity groups, to certain protected groups; and
- Separating employees into groups based on race, sex, or another protected characteristic when administering DEI or other trainings, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources.

The guidance specifically states that DEI training may give rise to a colorable hostile work environment claim. The EEOC also considers objecting to or opposing employment discrimination related to DEI to be protected activity under Title VII.

In addition, reasonable opposition to a DEI training may constitute protected activity if the employee provides a fact-specific basis for his or her belief that the training violates Title VII.

The EEOC issued FAQs that elaborate on some of the points in the guidance:

- Rather than create separate groups or trainings for employees, employers should provide the same training and mentoring for all employees;
- Employers should ensure that all employees have equal access to workplace networks;
- Employers may continue to consider religion, sex, or national origin as bona fide occupational qualifications if one of those characteristics is reasonably necessary to the normal operation of the employer, but race or color may not be considered; and
- With respect to DEI training, “an employee may be able to plausibly allege or prove that a diversity or other DEI-related training created a hostile work environment by pleading or showing that the training was discriminatory in content, application, or context.”

Key Takeaways for Employers

Based upon the EEOC’s position, all employers with any type of DEI program should evaluate the way they operate and the associated trainings to make any necessary changes to avoid potential claims by employees or action by the EEOC.

In addition, employers need to assess any employee affinity groups they have created and determine whether they need to be modified. Employers should work with their legal counsel to determine what steps they should take in response to the EEOC’s guidance.

Upcoming Webcast

BREAKFAST BRIEFINGS - BEYOND SWEAT EQUITY: MODERN COMPENSATION STRATEGIES FOR ENHANCED ENGAGEMENT & RETENTION

Wednesday, April 16, 2025 | 8:30 AM CT

In today’s competitive talent marketplace, traditional compensation models alone are no longer enough to attract and retain top performers. Join us for “Beyond Sweat Equity: Modern Compensation Strategies for Enhanced Engagement & Retention,” where we’ll explore innovative approaches to total rewards that can help drive measurable business outcomes and increase employee retention and engagement.

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This webcast will provide a high-level overview of traditional and non-traditional ways to structure bonus awards, equity compensation, and other benefits. Rebecca Bush & Kelly Haab-Tallitsch will cover practical considerations on how these structures can be executed in a way to minimize tax burdens as well as key compliance concerns to keep in mind during the design process.

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