

ALERT

Fourth Circuit Stays Preliminary Injunction of DEI-Focused Executive Order Provisions

March 17, 2025

This alert was updated on June 20, 2025, to reflect that preliminary injunctions have been issued in the Northern District of California and Northern District of Illinois lawsuits that are referenced in the “Monitoring Litigation” section, affecting enforcement of certain DEI Executive Order provisions.

WHAT: The U.S. Court of Appeals panel has stayed a preliminary injunction that the U.S. District Court for the District of Maryland had issued covering parts of two Executive Orders: EO 14151, “Ending Radical and Wasteful Government DEI Programs and Preferencing,” and EO 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity.” The Executive Orders (collectively, the DEI EOs) seek to discourage and eliminate Diversity, Equity, and Inclusion (DEI) concepts, policies, and practices across the federal government and “encourage” the private sector to terminate DEI programs that constitute illegal discrimination and preferences.

The preliminary injunction had covered provisions in:

- EO 14151 requiring federal agencies to terminate “equity-related grants or contracts”;
- EO 14173 requiring federal contracts and grants to include certifications and other terms related to contractors’/grantees’ DEI and nondiscrimination practices; and
- EO 14173 directing the U.S. Attorney General to enforce civil rights laws against DEI programs in the private sector.

Wiley previously covered the DEI EOs [here](#) and [here](#), and the preliminary injunction [here](#). In addition, you can still register for Wiley’s Thursday, March 20 webinar, “Navigating DEI Executive

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Orders, Legal Challenges, and Corporate Risk Considerations,” by clicking [here](#).

WHEN: The Fourth Circuit panel issued its decision on March 14, 2025.

WHAT IT MEANS FOR INDUSTRY: The Fourth Circuit panel’s ruling itself is just over a page, with three separate short concurrences. Potential takeaways that may bear on litigation about these and other EOs include the following:

- Ripeness and standing were concerns in what judges framed as facial challenges to the DEI EO provisions;
- Another concern was the district court’s having applied the injunction to the Government as a whole, as opposed to applying just to the roughly dozen agencies named in the complaint;
- One judge indicated openness to revisiting an injunction as the DEI Order provisions’ implementation and application to contracts, grants, companies, and organizations progresses;
- Another judge indicated concern about keeping courts from becoming “continuing monitors” of the Executive branch.

Additionally, two judges provided early glimpses of their thinking as to the merits of the matter, expressly noting in their concurrences that the three DEI EO provisions subject to the injunction likely did not violate the First and Fifth Amendments on their face, as plaintiffs had argued.

Companies and organizations, both within the federal market and outside, should consider the following in response to the Fourth Circuit’s ruling:

Overall Compliance: Companies and organizations should continue their careful analysis of contract and grant terms and statements of work, along with their DEI activities company-/organization-wide for compliance with civil-rights and nondiscrimination laws. This stay of the preliminary injunction underscores that these analyses should be iterative because frequent litigation and administrative developments may continue to shift the compliance landscape for some time and thus warrant regular reassessment of company/organization compliance.

Certifications: Federal contractors and grantees should plan for federal agencies to resume adding terms to solicitations, contracts, grants, modifications, and other types of agreements requiring federal contractors and grantees to certify that they do not operate programs “promoting DEI” in contravention of nondiscrimination laws and to agree that their compliance with “all applicable Federal anti-discrimination laws” is material to the government’s payment decisions for purposes of the False Claims Act (FCA). Contractors should accordingly factor these terms, and the government’s corresponding remedies (e.g., FCA claims seeking treble damages, contract terminations for material breach, and suspension or debarment), in assessing risks and paths forward in their diversity and inclusion activities.

Terminations: Contractors and grantees should plan for termination of “equity-related grants or contracts” to resume to the extent consistent with temporary restraining orders and preliminary injunctions issued by courts in other challenges of EOs and similar administrative activity. Although the timing of any terminations may not be clear, contractors/grantees should be prepared to wind-down activities, minimize cost exposure, and submit termination settlement proposals promptly.

Communications: As companies and organizations progress through the compliance analysis noted above, they should ensure they communicate with employees and external stakeholders in clear, consistent terms about aspects of their DEI programs that are changing and those that are not. Clear and consistent communications help reduce the risk that internal or external stakeholders trigger investigations or other enforcement actions based on an incomplete understanding of how a company/organization has decided to address DEI going forward.

Monitoring Litigation: Companies and organizations should continue monitoring the litigation at the District Court of Maryland for developments such as a merits ruling on a more robust evidentiary record. Companies and organizations should also continue to monitor other lawsuits challenging aspects of the DEI EOs, including lawsuits in the Northern District of California (Case No. 4:25-cv-01824-JST) and Northern District of Illinois (Case No. 1:25-cv-02005). In both cases, the courts have issued preliminary injunctions barring termination of funding for certain DEI programs and enjoining agencies from enforcing the certification mandate in EO 14173.

Wiley has a team of skilled practitioners with knowledge and experience in relevant areas (including Employment & Labor, Litigation, Government Contracts, and White Collar Defense & Government Investigations) to help clients navigate changes to DEI and related federal policies. Please contact our DEI Counseling and Support Team with questions about the lawfulness of existing DEI-related programs, policies, or practices, or if you need assistance with civil compliance investigations, litigation defense, or other matters arising from these EOs.

To stay informed on all the directives and announcements from the Trump Administration, please visit our dedicated resource center below.

Wiley's Trump Administration Resource Center