CLIENT ALERTS & INSIGHTS

Trump's Anti-DEI Agenda Remains at Center Stage

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Since Trump's first day back in office, Diversity, Equity, and Inclusion ("DEI") has been at the forefront of political discourse. As we previously reported, Trump issued several Executive Orders targeting DEI efforts and affirmative action in the workplace. More recently, the Equal Employment Opportunity Commission and the Department of Justice-two federal agencies responsible for monitoring workplace discrimination-issued guidance targeting DEI, which is consistent with the Trump Administration's broader anti-DEI agenda. The DEI saga that has swept the nation will surely continue to take center stage for the foreseeable future. Below is an overview of two key recent DEI developments.

New OFCCP Director Signals Sweeping Changes to DEI Enforcement

On March 24, 2025, the newly appointed director of the U.S. Department of Labor's ("DOL") Office of Federal Contractor Compliance Programs ("OFCCP"), Catherine Eschbach, sent an introductory message to her staff outlining the OFCCP's new plans that align with Trump's anti-DEI efforts. Eschbach's introductory message highlighted several important changes to the OFCCP's operations:

- The OFCCP will enforce Trump's revocation of Executive Order 11246, which authorized the OFCCP to audit federal contractors' hiring and pay practices for potential discrimination and ensure compliance with affirmative action obligations. In fact, Eschbach questioned whether Executive Order 11246 was ever even "legally viable" given the Supreme Court's landmark decision to overturn the longstanding Chevron doctrine, which directed courts to completely defer to an agency's interpretation of ambiguous laws.
- Eschbach plans to significantly downsize the OFCCP, which would largely eliminate its enforcement work. Eschbach specifically stated that the OFCCP will have a "reduced scope of mission" and that the downsizing will be "consistent with the administration-wide DOGE agenda."
- Eschbach indicated that the OFCCP will "verify" that federal contractors have "wound down" their affirmative action programs within 90 days. In addition, the OFCCP may even review federal contractors' previously submitted affirmative action plans to determine whether there is a "presence of longstanding unlawful discrimination."
- The OFCCP will maintain its authority to monitor discrimination against disabled workers and veterans under Section 503 of the Rehabilitation Act and the Vietnam Era Veterans' Readjustment Assistance Act. However, this authority will likely be heavily scrutinized moving forward, as Eschbach noted that the OFCCP will closely examine the statutory authority for any future investigations.

- Eschbach denoted that the principles set forth in Students in Fair Admissions v. Harvard, which curbed race-based affirmative action in higher education, will now be applied to the OFCCP's work.

This introductory message highlights the significant changes we can expect to see with the OFCCP, along with the growing risk to federal contractors who implement any DEI-related efforts or affirmative action programs.

Illinois Federal Judge Temporarily Blocks Parts of Anti-DEI Executive Orders

On March 27, 2025, Judge Matthew Kennelly of the Northern District of Illinois issued a preliminary injunction barring the DOL from enforcing certain provisions of Trump's anti-DEI Executive Orders. Earlier this year, Chicago Women in Trades, a nonprofit organization that receives federal funds to train women for jobs, filed a lawsuit against the Trump Administration challenging the anti-DEI Executive Orders issued during his first week back in office.

Judge Kennelly granted a nationwide preliminary injunction blocking the provision of Executive Order 14173 entitled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" that requires federal contractors and grant recipients to certify that they do not operate unlawful DEI programs. While the Trump Administration argued that this provision only targets "illegal" DEI programs, Judge Kennelly determined that it is unclear what the Trump Administration means by "illegal" DEI programs. The *Harvard* case should provide guidelines regarding what would be an "illegal" DEI program. Nonetheless, Judge Kennelly's injunction and ruling did not address that.

Chicago Women in Trades also sought a nationwide ban on the DOL's enforcement of the provision of Executive Order 14151 entitled "Ending Radical and Wasteful Government DEI Programs and Preferencing" that requires federal agencies to terminate "equity-related grants or contracts." While Judge Kennelly refused to grant a nationwide preliminary injunction with respect to this provision, he issued a narrower order that bars enforcement of this provision only as it relates to Chicago Women in Trades.

In his Order, Judge Kennelly noted that Chicago Women in Trades was likely to succeed on the merits of its claims that the challenged provisions of Executive Orders 14173 and 14151 are unconstitutionally vague and violate First Amendment free speech rights. This decision comes shortly after the Fourth Circuit Court of Appeals lifted a nationwide preliminary injunction issued by Judge Adam Abelson of the District of Maryland with respect to certain provisions of these Executive Orders. Judge Abelson issued the now defunct preliminary injunction for the same constitutional reasons as Judge Kennelly, which means it similarly could be subject to reversal on appeal.

We will continue to closely monitor and report on DEI-related matters that will impact employers.

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