

# TRUMP ORDERS FEDS TO COMBAT “ILLEGAL” CORPORATE DEI PROGRAMS: 5 TAKEAWAYS FOR PRIVATE-SECTOR EMPLOYERS + WHAT YOU SHOULD DO NOW

Insights  
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President Trump just issued a far-reaching executive order related to 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.

## 5 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](#).)

### 1. 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.

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## 2. 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](#).

## 3. 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



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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.

#### **4. 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.

#### **5. 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.