

STATES TAKE STAND AGAINST TRUMP'S ANTI-DEI ACTIONS: WHAT EMPLOYERS NEED TO KNOW

Insights
Feb 17, 2025

Sixteen Democratic state attorneys general just issued joint guidance reaffirming their position that workplace diversity, equity, inclusion (DEI) initiatives remain legal – and important to the modern workplace. The February 13 guidance, signed by AGs from traditionally “blue” states such as Massachusetts, Illinois, California, and New York, directly responds to the Trump administration’s recent executive orders and other actions taking aim at corporate DEI programs. The AGs’ message is clear: Well-structured DEI programs remain lawful and play a crucial role in fostering fair, compliant, and productive workplaces. This article breaks down the guidance, its implications for employers, and recommended next steps.

What the AGs Letter Says

The letter, issued by Andrea Joy Campbell (Mass.) and Kwame Raoul (Ill.), serves as both a legal clarification and a practical guide for employers. [You can read the guidance here](#), but key points include:

- **DEI Programs Are Legal:** The AGs reiterate that DEI initiatives designed to create inclusive work environments are consistent with Title VII of the Civil Rights Act and state-level anti-discrimination laws, and are therefore legal. Courts have long recognized that monitoring demographic trends and ensuring equal opportunity is not discriminatory – so long as it is done properly and carefully.

Related People



Sheila M. Abron

Partner

803.740.7676



Regina A. Petty

Partner and Chief Diversity Officer

213.330.4500

- **Clarifying Misconceptions:** The AGs argue that recent federal executive orders inaccurately portray all DEI programs as unlawful. They emphasize the difference between illegal actions – like quotas, preferences, workforce balancing – and lawful practices – such as broad outreach efforts, anti-bias training, and the use of data to identify potential disparities.
- **Business Benefits:** The letter highlights evidence that diverse, inclusive workplaces perform better, with lower turnover, stronger innovation, and greater market competitiveness. “Promoting a diverse and inclusive workforce isn’t just the right thing to do,” the letter says, “it’s also more profitable.”



Jennifer B. Sandberg
Regional Managing Partner
404.240.4152

Why the AGs Issued This Guidance

The AGs’ letter follows [recent White House executive orders](#) instructing federal agencies to investigate private-sector DEI practices for potential violations. While these orders have generated uncertainty, the AGs contend that they don’t change existing anti-discrimination laws.

The February 13 letter seeks to reassure employers that legal, well-structured DEI programs remain permissible. In fact, the AGs stress that businesses often have an affirmative duty to monitor workforce demographics to prevent discrimination – and that properly created DEI programs can mitigate legal risks in potential investigations.

State-Federal Tensions May Increase

While federal enforcement may rise, states with supportive AGs are likely to defend employers adhering to best practices. Meanwhile, we have already seen actions taken by conservative state attorneys general taking aim at private employers’ DEI programs, and last week’s letter from the Democratic AGs will not slow down those efforts. Multistate employers should track both federal developments and evolving state-level positions to navigate the fine line between these positions.

What Employers Should Expect

The AGs have pledged ongoing support for businesses maintaining lawful DEI programs. As federal scrutiny increases, you should expect:

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- **Increased State Agency Attention:** Particularly for companies with federal contracts.
- **Further State-Level Guidance:** Other states may follow the lead of these 16 AGs – while we can expect opposing states to issue their own contrary version in the near future.
- **Evolving Best Practices:** Regularly review policies to align with both developing federal requirements and state-level protections.

Recommended Next Steps for Employers

- **Audit and Adjust Policies:** Review your DEI programs to ensure compliance with federal and state law. If necessary, add language demonstrating that your company does not enforce quotas or identity-based preferences, as those have always been illegal under federal law and never should have existed in the first place.
- **Document Compliance Efforts:** Maintain records of DEI-related decisions and their business justifications. Track training participation and demographic monitoring practices.
- **Review Your DEI Training Programs:** If you offer training on unconscious bias, inclusive leadership, or legal DEI parameters, make sure your trainers explain DEI goals in clear, lawful terms – or consider using well trained professional trainers that know the legal landscape.
- **Communicate Consistently:** Update internal messaging to reflect a commitment to both fairness and legal compliance. Reassure employees that DEI efforts aim to create opportunity for all, not favoritism for any specific group or groups.
- **Stay Informed:** Read our [**What Businesses Need to Know About DEI in the Trump Era: FAQs for Employers**](#) Insight, and make sure you are subscribed to [**Fisher Phillips' Insight System**](#) to gather the most up-to-date information.
- **Utilize Attorney-Client Privilege:** Review your DEI and related programs with your experienced DEI attorney to receive the benefit of attorney-client privilege.

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 [DEI and EEO Compliance](#) Team. 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.