

TRUMP'S OFCCP PICK VOWS TO COMBAT ILLEGAL DEI BY REVIEWING PRIOR AFFIRMATIVE ACTION PLANS: HERE'S WHAT FEDERAL CONTRACTORS NEED TO KNOW

Insights
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Federal contractors have been grappling with big changes from the new administration – and you'll want to pay close attention as new leadership takes shape at the Office of Federal Contract Compliance Programs (OFCCP). On Monday, President Trump appointed Houston attorney Catherine Eschbach to lead the agency and "oversee its transition to its new scope of mission." The administration's new direction includes limiting affirmative action requirements to veterans and individuals with disabilities and combating illegal DEI programs – but the new OFCCP leader said she also wants to review mandatory affirmative action plans submitted prior to the new administration for potential longstanding discriminatory practices. "As director, I'm committed to carrying out President Trump's executive orders, which will restore a merit-based system to provide all workers with equal opportunity," Eschbach said. Here's what federal contractors need to know about her appointment and what you can expect next.

How Did We Get Here?

President Trump has made clear that his administration is focused on combating diversity, equity, and inclusion (DEI) practices that are illegal under federal employment laws. On his first day of the new term, the President issued a sweeping executive order ending certain affirmative action standards for federal contractors, barring the OFCCP from allowing or encouraging DEI programs, and directing federal

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agencies to combat “illegal” corporate DEI programs in the private sector. You can read more about the order [here](#).

Prior to the executive action, employers who are federal contractors had been required for sixty years to engage in affirmative action under Executive Order 11246, which covers women and minorities. In this context, “affirmative action” meant that federal contractors had to analyze their workforce data to determine whether goals for women and/or minorities should be set and to engage in good faith efforts to ensure they were providing equal employment opportunities for all.

President Trump eliminated this mandate while retaining affirmative action requirements related to veterans and individuals with disabilities. To comply, covered contractors have been preparing to wind down their gender- and race-related affirmative action plans within 90 days of the order.

How Will the New OFCCP Director Impact the Agency?

It’s no surprise that Eschbach is committed to carrying out President Trump’s executive orders. What’s surprising, however, is that she wants to review prior submissions to the agency required by Executive Order 11246 for potential discrimination. “The reality is, most of what OFCCP had been doing was out of step, if not flat out contradictory, to our country’s laws, and all reform options are on the table,” Eschbach said in an internal OFCCP email, according to [The Wall Street Journal](#) (paywall).

The director’s email said the OFCCP would be verifying whether contractors have actually “wound down” the use of affirmative action plans and would be reviewing prior plan submissions to assess whether they “indicate the presence of longstanding unlawful discrimination,” [according to Bloomberg Law](#) (paywall).

It is not yet clear if or how these reviews will be conducted, or which federal contractors or subcontractors will be affected. We will track additional guidance from the OFCCP and keep you updated. In the meantime, you will want to work with experienced legal counsel to prepare an action plan to comply with the agency’s new direction.

What Should Federal Contractors Do Now?



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- **Keep Informed:** We expect to receive more information from the OFCCP about how this new direction will impact federal contractors and subcontractors. We also expect more changes as the agency moves forward with plans to [reduce its workforce by up to 90%](#) while significantly narrowing its focus to veteran and disability discrimination. Sign up to receive [Fisher Phillips' Insights](#) to stay up to date on the latest developments.
- **Continue Other Compliance Efforts:** Federal contractors and subcontractors continue to have obligations related to federal and state laws, such as EEO-1 and VETS-4212 filings, and state pay data reporting requirements (including in California), as applicable. Continue to participate in these required compliance filings.
- **Be Aware of Court Decisions:** Although a federal judge in Maryland [temporarily blocked parts of Trump's DEI order](#) in February, an appeals court just lifted the ban on March 14, giving the administration the green light to proceed with its direction while the lawsuit plays out. The appeals court said Trump's orders "do not purport to establish the illegality of all efforts to advance diversity, equity or inclusion, and they should not be so understood." One judge noted, however, that he would "reserve judgment on how the administration enforces these executive orders."
- **Look for Guidance from EEOC and Other Agencies:** The OFCCP may refer discrimination matters to the Equal Employment Opportunity Commission, which has also recently shined a spotlight on DEI programs. The EEOC issued guidance on this topic last week, [which you can read about here](#).
- **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.

Conclusion

We will continue to monitor developments that impact your workplace and provide updates when warranted. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact the authors of this Insight, your Fisher Phillips attorney, or any attorney in our [Affirmative Action and Federal Contractor Compliance Practice Group](#).

