

FEDERAL CONTRACTORS FACE NEW DEI RULES: WHAT PRESIDENT TRUMP'S ORDER MEANS FOR YOUR BUSINESS

Insights
Mar 27, 2026

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The White House just released new rules yesterday requiring federal contractors to agree not to engage in racially discriminatory DEI activities and to take certain compliance steps. President Trump's March 26 executive order is focused on "ensuring merit-based and efficient contracting and employment." The order gives federal agencies 30 days to begin incorporating a related clause on diversity, equity, and inclusion programs into covered contracts. Here's what federal contractors and subcontractors can expect and five steps you should consider taking now.

DEI-Related Contract Clauses

The [executive order](#) directs federal agencies to include a new DEI-related clause in all contracts covered by the Federal Property and Administrative Services Act. The rules also apply to subcontractors and their lower-tier subcontractors. Here are the key aspects you should note:

- **Contract Terms:** Contractors will need to agree not to engage in discriminatory DEI activities based on race or ethnicity in recruiting, hiring, promotions, or vendor agreements – or for program participation or the allocation of company resources.

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- **Reporting Rules:** Contractors should be ready to provide access to books, records, and accounts to show compliance. You'll also be required to report known or reasonably knowable violations by subcontractors and take any appropriate remedial action.
- **Penalties:** The consequences for noncompliance are significant. Under the order, federal agencies are authorized to cancel, terminate, or suspend contracts for compliance violations, and contractors could ultimately be suspended or debarred.
- **Guidance and Enforcement:** The Office of Management and Budget (OMB) is expected to identify high-risk economic sectors and issue compliance guidance to contracting agencies. Additionally, the Attorney General will prioritize False Claims Act cases and promptly review civil actions against contractors and subcontractors that allegedly violate contract terms barring racially discriminatory DEI activities. In addition to potential False Claims Act enforcement, contractors could face cancellation, termination or suspension of their contracts and debarment from further federal contracts.
- **Steps for Federal Agencies:** Relevant agencies were directed to review (within 120 days of the executive order) their implementation of the contract clause and report their results to the Assistant to the President for Domestic Policy regarding compliance with that section. The FAR Council has 60 days to update to issue interim guidance on agency implementation.

What Actions Are Prohibited?

While prior executive orders focused on “unlawful” DEI practices, this new order shifts gears and addresses “racially discriminatory DEI activities,” which it defines as disparate treatment based on race or ethnicity in the employment and contracting activities listed above. Though, it does somewhat align with the EEOC’s pronouncements on employment actions that could be considered improper – which can include an employer taking an employment action motivated (in whole or in part) by race, sex, or another protected characteristic. Notably, however, the executive order only appears to address race and no other protected characteristics.

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DEI and EEO Compliance

Government Contracting,
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Covered federal contractors, and employers in general, have long been legally prohibited from making employment decisions based on protected characteristics, such as race and ethnicity, even before recent efforts focused on DEI programs. So, the executive order generally reinforces anti-discrimination obligations employers already have under the law.

What's new are the contract terms requiring federal contractors and subcontractors to:

- affirmatively agree not to engage in racially discriminatory DEI activities as defined by the executive order;
- produce supporting material to the government, if needed to demonstrate compliance;
- understand this new contract term implicates the False Claims Act
- report potential violations by subcontractors; and
- Recognize that the contract term is material to the government's payment decisions

The order also extends beyond employment actions to vendor agreements and certain resource allocation. Notably, however, the executive order focuses solely on discrimination based on race and ethnicity, rather than other protected characteristics, such as sex and gender.

What Should You Do Now? Your 5-Step Action Plan

1. **Audit Your Programs and Practices.** Conduct a privileged review of your current programs, policies, and employment and vendor agreements to ensure they align with the new order and identify anything that may need to be updated or discussed with your attorney.
2. **Review Your Subcontractor Agreements.** Assess whether your subcontracts should be updated to include related compliance language, reporting obligations, or other procedures to ensure compliance.
3. **Prepare for Contract Changes.** Agencies have 30 days to begin incorporating the new clause, so your contracts

and legal teams should be ready to review and respond when negotiating new and modified federal contracts.

4. **Watch for More Guidance.** The OMB has been directed to issue guidance and identify sectors at particular risk for violations. If your industry ends up on that list, you should be prepared for additional scrutiny and develop an action plan.
5. **Consult Your Attorney.** Consider reaching out to experienced legal counsel to review and potentially revise your employment, contracting, and related materials, policies, and procedures. Also, since the order includes potential reporting obligations, you may want to work with counsel to determine best practices for documenting and showing compliance.

Conclusion

If you have questions, reach out to your Fisher Phillips attorney, the authors of this Insight, or any member of our [DEI and EEO Compliance Team](#) or [Government Contracting, Compliance, and Reporting Practice Group](#). We will continue to monitor developments related to all aspects of workplace law. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.