

IBM'S \$17M SETTLEMENT OVER DEI PROGRAM OFFERS KEY LESSONS FOR FEDERAL CONTRACTORS

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Since the start of President Trump's second term, the administration has been focused on ending "illegal" workplace diversity, equity, and inclusion (DEI) programs. A recent \$17 million settlement with IBM illustrates the Justice Department's commitment to curbing programs it deems unlawful under federal anti-discrimination laws. IBM's settlement, announced on April 10, resolves allegations that the tech company violated anti-discrimination requirements in its federal contracts by discriminating against employees and job applicants based on protected characteristics. Notably, this is the first resolution reached under the DOJ's Civil Rights Fraud Initiative. Here's what federal contractors need to know about the settlement, as well as three compliance steps you can take now.

How We Got Here

Back in January 2025, President Trump [issued Executive Orders](#) barring "illegal" DEI programs and promoting "colorblind equality" and merit-based opportunities. Since then, the federal government has shed more light on what that means for federal contractors and private employers.

For example, the Equal Employment Opportunity Commission (EEOC) [issued guidance last March](#), for all employers – both private employers *and* federal contractors

Related People



Sheila M. Abron

Partner

[803.740.7676](tel:803.740.7676)



Jennifer B. Sandberg

Regional Managing Partner

[404.240.4152](tel:404.240.4152)

– stating that DEI practices may be unlawful under Title VII of the Civil Rights Act if they involve “an employment action **motivated** – in whole or in part – by an employee’s race, sex, or another protected characteristic.” According to the guidance, unlawful DEI-related discrimination might include:

- **Quotas and other “balancing” practices** based on race, sex, or other protected characteristics.
- **Disparate treatment**, which means taking an employment action that is motivated (in whole or in part) by a protected characteristic.
- **Limiting, segregating, and classifying** employees based on protected characteristics in a way that affects their status or deprives them of employment opportunities.
- **Harassment during DEI training**, which may lead to a hostile work environment claim, depending on the facts.
- **Retaliation** for objecting to or opposing employment discrimination related to DEI, participating in employer or EEOC investigations, or filing an EEOC charge.

Practical Pointer: It’s important to remember that covered employers were never allowed to make employment decisions based on protected characteristics based on myriad other state and federal laws that predate the Trump administration’s January 2025 actions. Federal contractors, and employers in general, are prohibited from taking race (as well as gender, color, national origin, and other protected characteristics) into account when making decisions related to hiring, promotions, terminations, and other terms and conditions of employment.

Focus on Federal Contractors

The Department of Justice (DOJ) **launched** a Civil Rights Fraud Initiative in May 2025, allowing the department to investigate and pursue claims under the False Claims Act (FCA) against recipients of federal funds that knowingly violate federal civil rights laws. The cost for noncompliance is significant: FCA violations can result in triple damages in addition to steep penalties. This initiative was, of course,

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built on the direction from the January 2025 Executive Orders.

Then, in July 2025, the DOJ warned that employers who receive federal funds may be at risk of losing federal funding if their DEI or similar programs violate anti-discrimination laws. The Department also suggested best practices for creating compliant programs, which [you can read more about here](#).

Just last month, the White House [released new rules](#) requiring federal contractors to affirmatively agree not to engage in racially discriminatory DEI activities and to take certain compliance steps. [President Trump's March 26 Executive Order](#) focused on "ensuring merit-based and efficient contracting and employment" and gave federal agencies 30 days to begin incorporating a related clause on DEI programs into covered contracts.

Now, Friday's \$17 million agreement with IBM is the first False Claims Act case resolved under the Civil Rights Fraud Initiative that the DOJ launched last May. We'll discuss the details of the settlement below.

Claims Against IBM

According to publicly available information, the DOJ alleged that IBM engaged in the following activities:

- **Took race, color, national origin, or sex into account** when making employment decisions, including by using a diversity modifier that tied bonus compensation to achieving demographic goals.
- **Altered interview criteria based on race or sex through "diverse interview slates" and by identifying "diverse" candidates** for hiring, transfer, or promotion.
- **Created race and sex demographic goals** for business units and took these demographics into account when making employment decisions.
- **Offered certain training and development opportunities to employees based on race or sex.**

Notably, IBM did not admit to any wrongdoing, and the DOJ said the company "took significant steps entitling it to credit for cooperating with the government in its investigation."

IBM also voluntarily ended or modified certain programs and practices that the government said were problematic.

3 Compliance Steps for Employers

As the federal government continues to focus on EEO and DEI compliance, you may want to take the following three steps to reduce your risk:

1. Review the DOJ's Compliance Roadmap for Employers. Prior guidance offered suggestions to help employers adhere to the administration's DEI policies:

- Ensure inclusive access to all workplace programs and resources.
- Focus on skills and qualifications that are directly related to job performance.
- Eliminate demographic-driven criteria from hiring practices if they are meant to increase the candidate pool only for certain racial or sex-based groups.
- Document legitimate rationales for selection criteria.
- Evaluate neutral criteria for proxy effects and eliminate diversity quotas for candidate pools, hiring panels, or final selection.
- Ensure trainings are open to all qualified participants regardless of protected characteristics.
- Include nondiscrimination clauses in contracts with third parties and monitor for compliance.
- Create clear anti-retaliation procedures and safe reporting mechanisms for employees who raise concerns, file complaints, or refuse to participate in potentially discriminatory programs.

2. Audit Your Programs and Practices. Conduct an attorney-client privileged review of your current programs, policies, and employment and vendor agreements to ensure they align with the federal government's recent guidance and to identify anything that may need to be updated.

3. Consult Your Attorney. Experienced legal counsel can help you review and potentially revise your employment, contracting, and related materials, policies, and procedures.

You may also want to work with counsel to determine best practices for documenting and showing compliance.

Conclusion

We will continue to monitor developments related to EEO and DEI compliance, so make sure you subscribe to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [DEI and EEO Compliance Team](#) or in our [Government Contracting, Compliance, and Reporting Practice Group](#).