

U.S. ATTORNEY GENERAL ISSUES GUIDANCE ON UNLAWFUL DISCRIMINATION PRACTICES FOR FEDERAL FUNDING RECIPIENTS

The United States Department of Justice (“**DOJ**”) released new guidance on July 29, 2025, directed at federal fund recipients as to the legality of programs involving “discriminatory” practices, including Diversity, Equity, and Inclusion (“**DE&I**”) programs, under federal anti-discrimination laws. The memorandum provides practical guidance to entities receiving funding from the US government, including private employers, on the types of practices that may be considered “discriminatory” and unlawful under federal law regardless of “labels, objectives, or intentions.”

Significantly, the guidance also makes clear that federal fund recipients may be liable for knowingly supporting “discriminatory” programs operated by contractors, grantees, and other third parties. Recipients should thus take steps to ensure that federal funds are not being used to support these “discriminat[ory]” third-party programs.

The memorandum also clarifies that actions taken by employees, beneficiaries, or participants who object to DE&I programming or practices are protected from adverse actions, or “unlawful retaliation,” by employers.

GUIDANCE ON POTENTIALLY VIOLATIVE PRACTICES AND “BEST PRACTICES” FOR FEDERAL FUND RECIPIENTS

The guidance identifies a range of practices that may violate federal law, including:

- Preferential treatment in hiring, promotion, admissions, or resource allocation based on protected characteristics;
- Use of facially neutral criteria (such as “cultural competence” or “lived experience”) as proxies for race, sex, or other protected traits, where such criteria are intended to advantage or disadvantage individuals based on those traits;

- Segregation of programs, resources, or training sessions by race, sex, or other protected characteristics, including the creation of “safe spaces” or exclusive groups;
- Mandating demographic quotas or “diverse slate” requirements in candidate pools or contract awards; and
- Training programs that stereotype, exclude, or create a hostile environment for individuals based on protected characteristics.

The memorandum also lists out “best practices” for fund recipients to ensure legal compliance, including basing selection decisions on objective, job-related criteria rather than demographic goals; documenting nondiscriminatory rationales for any selection criteria that could correlate with protected characteristics; including explicit nondiscrimination clauses in contracts with third parties and monitoring compliance; and establishing anti-retaliation policies and reporting mechanisms for individuals raising concerns regarding potentially “discriminatory” practices.

WHAT’S NEXT FOR PRIVATE COMPANIES RECEIVING FEDERAL FUNDING AND POTENTIALLY BROADER APPLICATION?

The guidance provides further insight into the ongoing shift in federal enforcement priorities, with a clear warning that the government will no longer tolerate what it considers “discriminatory” practices—regardless of whether they are implemented under the banner of DE&I or similar initiatives. Entities receiving federal funds—including private employers, educational institutions, and state and local governments—are likely to face increased scrutiny going forward. While not explicit, it seems reasonable to believe that DOJ will apply the same lens to private companies outside of federal funding.

Companies should remain vigilant, monitor for updates, and be prepared to demonstrate compliance with all applicable federal anti-discrimination laws in connection with their workforce and programmatic initiatives. This may include conducting comprehensive reviews of any DE&I practices or programs as well as other employee training programs to ensure compliance with the applicable laws. Further, entities should review third-party contracts and grant agreements and establish monitoring protocols to ensure third-party compliance.

We will continue to monitor this evolving landscape and support our clients in navigating these significant changes.

CONTACTS



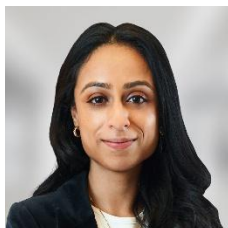
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