

Trump's January 2025 Executive Orders: Implications for Employers

Introduction

Shortly after his second inauguration, President Trump signed a series of executive orders addressing diversity, equity, and inclusion ("DEI") programs in the federal government and supplanting such initiatives with policies promoting "equality, dignity and respect," "hard work," and "merit." This includes policies repudiating "racial equity," "gender identity," and "climate extremism."

These executive orders, although directed at the federal government, also apply to federal contractors and grantees, including higher education, research institutions, and nonprofit service providers. Although these orders are not currently binding on the private sector, the Trump Administration has nonetheless signaled its objective for these orders to have a far-reaching impact on private sector employers, including not-for-profit organizations.

As we will explain in more detail below, the government intends to take swift action against DEI-related initiatives. We therefore encourage all our clients to immediately undertake a privileged review of any such policies and programs they may have to assess potential points of divergence from the executive orders.

It remains to be seen whether these orders will withstand judicial scrutiny.¹ Several courts have already blocked certain of President Trump's executive orders, one of which the administration subsequently rescinded, and additional legal challenges are expected to follow.

Background

Beginning on January 20, 2025, President Trump issued five executive orders pertaining to DEI-related programs in the federal government:

- (1) Ending Radical and Wasteful Government DEI Programs and Preferencing;
- (2) Reforming the Federal Hiring Process and Restoring Merit to Government Service;
- (3) Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;
- (4) Ending Illegal Discrimination and Restoring Merit-Based Opportunity; and
- (5) Initial Rescissions of Harmful Executive Orders and Actions.

These orders not only eliminate the use of DEI policies and practices by the federal government but also direct agencies to use their enforcement authority to encourage private sector and not-for-profit employers to follow suit.

¹ On February 3, 2025, [a lawsuit](#) was filed in federal court in Maryland challenging the constitutionality of two Executive Orders—"Ending Radical Government DEI Programs and Preferencing" and "Ending Illegal Discrimination and Restoring Merit-Based Opportunity."

A summary chart below offers a quick glance at these five orders and is followed by a more detailed analysis of each order.

Summary Chart

Executive Order	Summary	Implementation Timeline for Key Provisions
<u>Ending Radical and Wasteful Government DEI Programs and Preferencing</u>	Directs the federal Office of Personnel Management (“OPM”) to “coordinate the termination of all” “illegal” DEI programs in the federal government. Directs all federal agencies to eliminate all DEI and “environmental justice” positions and offices, all “equity”-related programs, and all DEI-related performance requirements.	Within 60 days of January 21, 2025, i.e., by March 22, 2025 .
<u>Reforming the Federal Hiring Process and Restoring Merit to Government Service</u>	Requires the creation of a Federal Hiring Plan that will, among other things, “prevent the hiring of individuals based on their race, sex, or religion, and prevent the hiring of individuals who are unwilling to defend the Constitution or to faithfully serve the Executive Branch.”	Within 120 days of January 21, 2025, i.e., by May 21, 2025 .
<u>Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government</u>	States that the federal government only recognizes two sexes, male and female, that sexes are not “changeable,” and that “sex” does not include “gender identity”—defined as “a fully internal and subjective sense of self, disconnected from biological reality and sex and existing on an infinite continuum, that does not provide a meaningful basis for identification.” Directs federal agencies to eradicate the use of “gender identity” and to implement regulations, guidance, forms, and communications to comply with this order. Directs agencies to rescind all guidance documents that are “inconsistent” with the order, including several listed documents from the Department of Education and the Equal Employment	Within 30 days of January 20, 2025, i.e., by February 19, 2025, the Secretary of the Department of Health and Human Services shall provide <u>guidance on the “sex-based definitions”</u> in this order. Within 30 days of January 20, 2025, by February 19, 2025, the Assistant to the President for Legislative Affairs must present to the President a proposed bill to codify the definitions in this order. Within 120 days of January 20, 2025, i.e., by May 20, 2025, each agency head shall provide an update on implementation of this order to the President. The update shall include, among other things, changes to

	Opportunity Commission (“EEOC”).	agency documents and agency-imposed requirements on federally funded entities. “Promptly” (undefined), agency heads shall “rescind all guidance documents” inconsistent with the order, including several Department of Education Title IX guidance documents.
Ending Illegal Discrimination and Restoring Merit-Based Opportunity	Seeks to eliminate DEI initiatives and views them as discriminatory and illegal, particularly those that might implement quotas or preferences based solely on race or gender. Directs federal enforcement against illegal DEI programs. Directs federal agencies to “encourage” the private sector to end illegal DEI discrimination and preferences. This includes naming “the most egregious and discriminatory DEI practitioners in each sector of concern.” Moreover, each agency is also directed to “identify up to nine potential civil compliance investigations of publicly traded corporations, large non-profit corporations or associations, foundations with assets of 500 million dollars or more, state and local bar and medical associations, and institutions of higher education with endowments over 1 billion dollars.” Requires federal agencies to review existing DEI programs to ensure compliance with this merit-based framework.	Within 120 days of January 21, 2025, i.e., by May 21, 2025, the Attorney General and the Secretary of Education will jointly issue guidance regarding the federal student loan assistance program under Title IV and compliance with the <i>Students for Fair Admissions, Inc. v. President and Fellows of Harvard College</i> Supreme Court ruling. Within 120 days of January 21, 2025, i.e., by May 21, 2025, the Attorney General must submit recommendations for enforcing federal civil-rights laws and adopting measures to encourage private sector employers to discontinue DEI preferences.

<u>Initial Rescissions of Harmful Executive Orders and Actions</u>	Revokes over 70 Biden-era executive orders and memoranda that are contrary to the values President Trump supported during his campaign, including DEI, education, climate change, COVID-19 response, immigration, healthcare, and national security.	Within 45 days of January 20, 2025, i.e., by March 6, 2025 , the Director of the Domestic Policy Council and the Director of the National Economic Council must submit a list of additional orders for rescission.
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Summary of [Ending Radical and Wasteful Government DEI Programs and Preferencing](#)

This order seeks to eliminate all federal DEI initiatives within 60 days from January 21, 2025 (i.e., by **March 22, 2025**), by mandating that federal agencies terminate all (1) “discriminatory and illegal” DEI and diversity, equity, inclusion, and accessibility (“DEIA”) mandates, policies, programs, preferences, and activities; (2) offices or positions related to DEI, DEIA, and “environmental justice,” for example, “Chief Diversity Officer” positions; (3) all equity-related programs, actions, initiatives, grants, and contracts; and (4) DEI or DEIA performance requirements for employees, contractors, or grantees.

To that end, this order further specifies that each federal agency has **60 days** (i.e., by **March 22, 2025**) to provide OPM with lists of additional information necessary to effectuate its goals, including (1) all federal contractors who provide DEI training to federal employees, and (2) all federal grantees who received federal funding to provide or advance DEI, DEIA, or environmental justice programs post January 20, 2021. This order also specifically directs OPM to ensure that all existing federal employment practices, union contracts, and training programs comply with its mandate.

Consistent with this order, OPM ordered that all federal employees in DEI roles were to be placed on paid administrative leave by 5:00 p.m. on January 22, 2025, in addition to requiring that all agencies direct their employees to report on any known attempts to “disguise” DEI programs or roles.

Implications

This order directly impacts federal grantees and contractors, including higher education and research institutions and nonprofit organizations. Such entities should therefore conduct an immediate privileged assessment of their DEI-related programs and policies to ascertain whether they are consistent with this order.

Summary of [Reforming the Federal Hiring Process and Restoring Merit to Government Service](#)

This order seeks to reform the recruitment and hiring processes of the federal workforce. To that end, it provides the Assistant to the President for Domestic Policy, in consultation with OPM, the Office of Management and Budget, and the Department of Government Efficiency, 120 days from January 21, 2025 (i.e., by **May 21, 2025**), to develop and send to agency heads a “Federal Hiring Plan” that, among other things, “prevent[s] the hiring of individuals based on their race, sex, or religion” and “provide[s] specific best practices for the human resources function in each agency.”

To implement the directives in this order, the Attorney General issued a memorandum on February 5, 2025 directing the Justice Department to submit a report by March 1, 2025 to

propose measures to deter the use of DEI and DEIA in the private sector, including criminal investigations.

Implications

In light of recent developments since the issuance of the executive order, all private employers should conduct a privileged assessment of their communications and hiring programs and policies to assess consistency with this order, to the extent it is informative of the view the government may take when evaluating the recruitment and hiring practices of federal contractors and grantees, including educational and research institutions and nonprofit organizations.

Summary of [Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government](#)

This order states that the United States government only recognizes two “binary” and “biological” sexes—male and female—and rejects “gender identity” as synonymous or inclusive of “sex” in all federal agencies’ interpretations of federal law, regulations, and policies. Agencies must remove the term “gender identity” from their policies, regulations, and any communications and stop promoting or funding “gender ideology,” which the order defines as “the idea that there is a vast spectrum of genders that are disconnected from one’s sex.”

Furthermore, the order explicitly rejects the application of the Supreme Court’s ruling in *Bostock v. Clayton County* to Title IX.² The order tasks the Attorney General with issuing guidance to protect the right to “express the binary nature of sex” and the right to “single-sex spaces in the workplace.” Lastly, the order calls for a proposed bill to codify the definitions in the order.

At least three agencies have already taken a public stance on this issue: [On January 23, 2025, the Department of Education announced](#) it had already taken steps to eliminate DEI initiatives, including removing or archiving hundreds of guidance documents, reports, and training materials that include mentions of DEI from its outward facing communication channels. [The CDC also removed](#) public health materials that mentions gender identity and DEI on January 31, 2025.

And on [January 28, 2025, the EEOC issued a press release](#) announcing Acting Chair Andrea Lucas’s intent to “defend the biological and binary reality of sex and related rights, including women’s rights to single-sex spaces at work” by rolling back protections based on “gender identity.” While the Acting Chair cannot unilaterally revise EEOC’s Guidance documents (the agency acts by majority vote when issuing certain documents), President Trump fired two of the three Democratic commissioners on January 27, 2025, leaving the agency with one Republican and one Democratic Commissioner and three vacancies to fill.

Implications

² In *Bostock*, the Supreme Court held that Title VII of the Civil Rights Act of 1964’s prohibition on discrimination “on the basis of sex” includes discrimination based on sexual orientation and gender identity. The application of *Bostock* to Title IX was a tool used by the previous administration to proscribe discrimination based on gender identity and sexual orientation. For more information on current agency enforcement of Title IX, see <https://www.pbwt.com/publications/u-s-department-of-education-confirms-it-will-enforce-2020-title-ix-rule-and-regulations-following-district-court-ruling-and-executive-order>.

Federal agencies are expected to pull back from enforcing laws and regulations previously used to eliminate gender identity-based discrimination. Many state and local laws, including in New York, prohibit discrimination based on gender identity and could be in conflict with the Executive Orders. Private employers may therefore find themselves in a catch-22 whereby they could face enforcement and litigation risks under state or local law if they follow the Trump Administration's Executive Orders and federal enforcement, and litigation risks if they do not. Nonetheless, state and local regulators and private litigants may face an uphill battle if they seek to challenge the breadth of the Executive Orders, as there is a risk that the Orders could be found to preempt state and local law on this issue.

This order may result in more litigation and enforcement actions against private employers who are not in compliance with the order's mandate. For example, federal regulators may initiate enforcement or litigation if employers do not provide "single-sex spaces" or if they take disciplinary action against employees for expressing the "binary nature of sex."

The order also may affect government grant recipients, as it directs agencies to ensure that "grant funds do not promote gender ideology." Lastly, educational institutions should expect to see guidance from the Department of Education on enforcement of Title IX with respect to discrimination based on sexual orientation and gender identity no later than May 20, 2025.

Summary of [Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)

This order seeks to eliminate DEI programs and policies and views them as discriminatory and illegal. The order directs federal agencies to enforce civil rights laws against "illegal" DEI policies and programs—such as "immoral race- and sex-based preferences," "affirmative action," and "workforce balancing"—and effectuate a shift toward "merit-based" hiring and promotion practices within federal employment and contracting. Agencies are also directed to "combat illegal private-sector DEI preferences, mandates, policies, programs, and activities."

By May 21, 2025, the Attorney General must submit a report providing recommendations for enforcing federal civil-rights laws and adopting measures to encourage private sector employers to discontinue DEI preferences. This report shall identify, among other things:

- i. Key sectors of concern within each agency's jurisdiction;
- ii. The most egregious and discriminatory DEI practitioners in each sector;
- iii. A plan of specific steps or measures to deter DEI programs;
- iv. Potential civil compliance investigations of publicly traded corporations, large non-profit corporations or associations, foundations with assets of \$500 million or more, state and local bar and medical associations, and institutions of higher education with endowments over \$1 billion;
- v. Litigation that would be potentially appropriate for federal lawsuits, intervention, or statements of interest; and
- vi. Potential regulatory action and sub-regulatory guidance.

The order contains a carveout that expressly protects "First Amendment-protected speech"—but the order does not expound on the carveout.

Implications

For private sector employers, this order signals a need for careful assessment of DEI practices to check alignment with civil rights laws and any relevant agency rules and regulations to avoid potential enforcement actions or other federal action (such as revocation of funding). Under the order, every federal contract or grant award must include the following:

- i. A certification that the contractor or recipient “does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws”; and
- ii. A term stating that compliance with federal anti-discrimination laws is “material” to the government’s payment decisions under the False Claims Act (“FCA”)—possibly laying the groundwork to pursue FCA claims, which can result in both civil and criminal penalties—against entities that engage in DEI programs that are deemed unlawful.

Many higher educational institutions and nonprofit grantees and service providers have grants and contracts with the federal government, including research contracts, and had created affirmative action programs under Executive Order 11246, which this order rescinded. Such employers should conduct a privileged review of their internal DEI and workplace policies and public-facing statements to assess consistency with the executive order and Title VII. Such employers should also update their websites to reflect any changes to their policies.

Summary of [Initial Rescissions of Harmful Executive Orders and Actions](#)

This Order revokes more than 70 executive orders and memoranda issued by the Biden Administration, covering a wide range of topics, including DEI, education, climate change, COVID-19 response, immigration, healthcare, and national security.

The rescissions include, but are not limited to:

- Executive Order 13985 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), which directed federal agencies to ensure their missions advance racial equity and support for underserved communities;
- Executive Order 14091 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), which directed federal agencies to undertake additional efforts to effectuate Executive Order 13985;
- Executive Order 13988 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation), relating to preventing and combating discrimination on the basis of gender identity or sexual orientation;
- Executive Order 14021 (Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity), which provided that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, sexual violence, and on the basis of sexual orientation or gender identity; and
- Executive Order 14075 (Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals), which promoted equality, dignity, and respect for LGBTQI+ individuals, including by ensuring their protection under U.S. law and addressing ongoing challenges such as discrimination and violence.

Implications

All employers, federal contractors, and grantees, including educational and research institutions and nonprofit grantees and service providers, should undertake a privileged review of their internal programs, policies, and practices to determine if any may have a connection to or originate from one of the rescinded Biden-era executive orders. Furthermore, employers and educational institutions should consider whether continuing such programs, policies, and practices would likely attract scrutiny from enforcement agencies or private litigation.

These now-revoked orders aimed to promote equal opportunity for individuals based on race, gender, gender identity, and sexual orientation. While these orders have been revoked, state, local, and other federal laws continue to prohibit discrimination on the basis of these characteristics. As noted above, however, federal law could be found to preempt in this area, and it therefore may be an uphill battle for state and local regulators to challenge the breadth of the Executive Orders.

Conclusion

The full contours of these executive orders will be clarified in the coming weeks and months. In any case, institutions that receive Federal funds should consider acting swiftly to bring their policies and practices into compliance with the new executive orders. Institutions that do not receive Federal funds may also wish to conduct a privileged review of their policies and practices, assess risk, and consider whether there are any necessary actions to be taken with respect to the executive orders. Please contact us for further guidance on these developing issues.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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