

EEOC and DOJ Issue Joint Press Release and Technical Assistance Documents on “Unlawful DEI-Related Discrimination”

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On March 19, 2025, the U.S. Equal Employment Opportunity Commission (“EEOC”) and the U.S. Department of Justice (“DOJ”) issued a joint press release announcing the release of two technical assistance documents designed to educate the public on “unlawful discrimination” issues related to diversity, equity, and inclusion (“DEI”) in the workplace.^[1] The press release asserts that DEI initiatives, policies, programs, and practices may be unlawful if they involve an employer or other entity covered by Title VII taking an employment action that is motivated in part or in full by an employee’s protected characteristic.^[2]

As part of the press release, the EEOC and DOJ released a one-page infographic titled “What to Do if You Experience Discrimination Related to DEI Work”^[3] along with a longer question-and-answer document titled “What You Should Know About DEI-Related Discrimination at Work.”^[4] These materials state that they are based on Title VII of the Civil Rights Act of 1964, EEOC guidance, and Supreme Court precedent. Despite this, the press release acknowledges that DEI is a broad term that is not defined under Title VII.

The technical assistance documents note that the EEOC investigates charges of discrimination and can file a lawsuit under Title VII against businesses and other private sector employers. DOJ can file a lawsuit under Title VII against state and local government employers based on an EEOC charge, following an EEOC investigation.

The EEOC and DOJ Provide Examples of DEI-Related Discrimination in the Workplace

The technical assistance documents released by the EEOC and DOJ outline what the agencies consider DEI-related discrimination, including:

- **Disparate Treatment:** Employment actions motivated either in part or wholly by race, sex, or another protected characteristic are prohibited under Title VII. This includes discrimination against applicants or employees in hiring, firing, promotions,

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demotions, compensation, benefits, training, mentoring, fellowships, and interview selection.

- **Harassment:** Unwelcome remarks or conduct based on race, sex, or other protected characteristics may constitute harassment. Harassment is illegal when it results in an adverse change to a term, condition or privilege of employment, or it is so frequent or severe that a reasonable person would consider it intimidating, hostile, or abusive. Depending on the facts, DEI training may give rise to a colorable hostile work environment claim.
- **Limiting, Segregating, and Classifying Employees:** Employer-sponsored employee resource groups (ERGs) and affinity groups restricted to certain protected groups may be unlawful. Separating employees for DEI-related trainings or other programs, even if the content and resources provided are identical, may constitute discrimination.
- **Retaliation:** Anti-retaliation protections will extend to employees objecting to or opposing employment discrimination related to DEI, participating in employer or EEOC investigations, or filing an EEOC charge. The guidance clarifies that an employee's reasonable opposition to DEI training may constitute protected activity if the employee provides a fact-specific basis for their belief that the training violates Title VII.

Increased Scrutiny on Employers' DEI Practices

In a statement from EEOC Acting Chair Andrea Lucas, the EEOC asserts that employers often defend race or sex preferences as acceptable when they are tied to business interests in promoting diversity, equity, or inclusion. However, the agency takes the position that no form of race or sex discrimination is justifiable. Consistent with Trump administration executive orders and other directives from DOJ and the Department of Education, the guidance indicates that the EEOC and DOJ will be placing greater scrutiny on employers who engage in DEI-related practices at least to the extent such practices may constitute illegal discrimination.^[5]

The new technical assistance documents indicate that discrimination claims may now be brought against employers who are attempting to balance their workforce demographics. The documents assert that "[n]o general business interests in diversity and equity (including perceived operational benefits or customer/client preference) have ever been found by the Supreme Court or the EEOC to be sufficient to allow race-motivated employment actions." The documents further indicate that the federal government may be encouraging individuals to file EEOC claims so that employer DEI-related practices can be investigated. The federal government now intends to pursue legal action against employers for DEI-related employment decisions. Employees who feel they were treated differently than others in their organization, even if they believe the treatment was merely unfair rather than explicitly discriminatory, may now have grounds for complaints and litigation.

EEOC Rejects "Reverse Discrimination" Label

The technical assistance documents emphasize that claims traditionally referred to as "reverse discrimination" will be treated no differently from other claims, with the EEOC stating that there is no such thing as "reverse discrimination"—only discrimination. The

agency affirms that the same standard of proof applies to all race discrimination claims, regardless of the victim's race.

The documents expand the scope of potential claims, stating that protections apply to employees, applicants, and training or apprenticeship program participants. Interns may also be covered, depending on whether they qualify as employees, applicants, or training program participants. Additionally, the documents confirm that charges may be filed not only by affected individuals but also by third parties, such as organizations, and that an EEOC Commissioner may bring a charge independently.

DEI-Related Employment Decisions Will Face Heightened Legal Risk

Employers will not be able to defend DEI-related employment decisions by arguing that race, sex, or another protected characteristic was not the sole or deciding factor in the action. The EEOC states that an employment action is still unlawful if a protected characteristic was even one contributing factor among others. This suggests that employers may not consider race, sex, or other protected characteristics in any employment decision, including efforts to balance workforce demographics.

The technical assistance documents also make clear that employers cannot justify employment decisions based on business necessity or customer preferences. The EEOC explicitly rejects the idea that diversity-related business interests, including those aimed at improving customer satisfaction, can be used as a defense. It states that Title VII does not provide any exception for diversity-related employment decisions and that neither the Supreme Court nor the EEOC has ever recognized such an exception. The only allowable exceptions under Title VII, such as bona fide occupational qualifications, are very limited and do not include race or color.

DEI Training Could Lead to Hostile Work Environment Claims

Lastly, the technical assistance documents state that DEI training may contribute to a hostile work environment if the training itself is found to be discriminatory in its application, content, or context. The documents outline what evidence may be needed for an individual to bring a successful claim of discrimination in court.

As we have previously recommended, employers may wish to consider proactively conducting an independent and comprehensive privileged internal DEI review to evaluate policies, practices, programs, initiatives, and communications and to assess reputational, business, and legal risk. While there is room to comply with the new directives and maintain some programming and policies consistent with an employer's mission and values, careful attention must be given to determine which policies or programming can remain.

[1] Office of Public Affairs | EEOC and Justice Department Warn Against Unlawful DEI-

[Related Discrimination | United States Department of Justice.](#)

[2] The documents provide that an entity covered under Title VII includes employers with 15 or more employees; employment agencies (including staffing agencies); entities which operate training programs (including on-the-job training programs); and labor organizations (like unions).

[3] [What To Do If You Experience Discrimination Related to DEI at Work | U.S. Equal Employment Opportunity Commission.](#)

[4] [What You Should Know About DEI-Related Discrimination at Work | U.S. Equal Employment Opportunity Commission.](#)

[5] For guidance regarding these prior directives, see [Goodbye Affirmative Action Plan? President Trump Revokes Long-Standing Federal Contractor and Grantee Practices and Targets Private Sector DEI Initiatives with New Enforcement Initiative | News & Resources | Dorsey](#); [What Companies and Higher Education Institutions Need to Know Regarding DOJ's New Memoranda to Enforce the Administration's Directive to "End Illegal DEI" Practices and for the "Total Elimination of Cartels and Transnational Criminal Organizations" | News & Resources | Dorsey](#); [U.S. Department of Education To Step Up Scrutiny of Any Educational Institution's Programs Deemed "DEI" | News & Resources | Dorsey](#); [U.S. Department of Education's Guidance Clarifies Discriminatory Activities Subject to Investigation and Funding Consequences | News & Resources | Dorsey](#). For the latest on executive orders and other actions by the Trump administration, visit Dorsey's executive action tracker at [Executive Actions Tracker | Industries & Practices | Dorsey.](#)