

Utah Legislature Enacts Comprehensive Prohibition on the Use of DEI in Public Education and in State Government

by Matthew M. Durham and Cloe Nixon

Utah has joined a growing coalition of state legislatures that have passed sweeping prohibitions on diversity, equity, and inclusion (“DEI”) initiatives in public education (including public institutions of higher education) and in state government. On January 29, 2024, the Utah state legislature passed [HB 261](#)—entitled Equal Opportunity Initiatives—and sent the bill for enrollment, where it is expected to be signed by Utah Governor Spencer Cox.

The law, which takes effect later this year on July 1, broadly prohibits any institution of higher education, the public education system, and government employers in Utah from engaging in “prohibited discriminatory practices.” The statute defines “prohibited discriminatory practices” broadly, with the term encompassing any policy, procedure, practice, initiative, or required training that, based on an individual’s personal identity characteristics, promotes differential treatment without an important government interest, influences employment decisions in a non-neutral manner regarding personal identity characteristics, influences educational admission and advancement decisions, or influences participation in public education system-sponsored programming.

Among other things, the bill:

- Bans covered institutions from requiring individuals before, during, or after admission or employment from providing submissions, statements, or documents related to a broad swath of prohibited discriminatory practices that relate to anti-racism, bias, critical race theory, implicit bias, intersectionality, prohibited discriminatory practice, and racial privilege, unless that submission relates to a bona fide occupational qualification for the position;
- Prohibits covered institutions from requiring information about an individual’s personal identity characteristics before acting regarding employment (including hiring, terms of employment, benefits, compensation, seniority status, tenure, promotion, and more); admission to, advancement in, or graduation from an institution or an academic program; participation in an institution-sponsored program; or qualification for or receipt of state financial aid or other state financial assistance;
- Bars mandatory training and instructional programs by covered institutions that

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promote DEI initiatives;

- Requires covered institutions to create “student success and support” offices that replace DEI offices or initiatives, which must offer support and services to all students, regardless of their personal identity characteristics;
- Requires robust new reporting by institutions and the Utah Board of Higher Education, including where an educational institution utilizes a submission that would otherwise be prohibited under the new law; and
- Authorizes the withholding of state appropriations to any covered institution that fails to cure a violation of these requirements.

The law contains two important exceptions. First, covered institutions may still implement policies necessary to comply with state or federal law, including those related to prohibited discrimination and harassment, such as under Title IX and Title VII. Second, state senators inserted a provision protecting an agreement between the University of Utah and the Ute Tribe to allow continued support services to its students and parents.

Utah is just the latest example of state legislatures acting to curb DEI efforts. According to the New York Times, in 2023, over 20 states considered or approved new laws taking aim at DEI in public education and government. This trend is likely to continue in 2024, an election year. Besides directly affecting public institutions in states like Utah, these laws may indirectly affect companies that work with or contract with public-educational institutions and state governments, including if that work relates to any “prohibited discriminatory practices” as defined by the Utah law.

Separately from HB 261, the Utah legislature is also actively considering HB 111, which would prevent private companies from requiring DEI initiatives. Dorsey will continue to monitor this bill and other state and federal DEI reforms.