

EXECUTIVE ORDERS ON DE&I: INTERPRETATION, CHALLENGES, AND COMPLIANCE

Presented by:



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Clare Gallagher, a partner at Eckert Seamans for over 15 years, is a distinguished labor and employment law practitioner. As a member of the firm's Executive Committee, Board of Directors, and Co-Chair of its Labor and Employment Practice Group, Clare brings over three decades of diverse experience to her clients. With a career spanning both private practice and in-house roles, Clare offers a unique perspective on traditional labor law, employment law, and litigation. Her expertise encompasses managing complex legal matters, including class action litigation, overseeing corporate acquisitions, finance, and governance, and handling employment-related legal issues across various industries.



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Shannon Spence is an associate in the Labor & Employment Practice Group. She joined Eckert Seamans as an associate following her experience serving the firm as a summer associate in 2022. While in law school, Shannon was an Executive Editor of the University of Pittsburgh Law Review and served as a Board Member for If/ When/ How: Lawyering for Reproductive Justice. Shannon also served as a judicial intern to The Honorable Lisa Lenihan in the U.S. District Court for the Western District of Pennsylvania.

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What We Will Cover:



Executive Orders, *introduction and explanation.*



Agency Guidance, *what does enforcement look like?*



Legal Challenges, *how have the courts modified the EOs?*



Practical Guidance, *how to comply moving forward.*

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The DEI Executive Orders

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Executive Orders – *DEI in the Trump Administration*

- January 20, 2025
 - Initial Recissions of Harmful Executive Orders (EO 14148)
 - Ending Radical and Wasteful Government DEI Programs and Preferencing (EO 14151)
 - Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (EO 14168)
- January 21, 2025
 - Ending Illegal Discrimination and Restoring Merit-based Opportunity (EO 14173)
- April 23, 2025
 - Restoring Equality of Opportunity and Meritocracy (EO Executive Order 14281)

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Agency Guidance

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Agency Guidance

- **OFCCP**

- Affirmative Action and Executive Order 11246
- Section 503 of the Rehabilitation Act
- Vietnam Era Veterans' Readjustment Assistance Act
- Voluntary submissions on efforts to wind down compliance with EO 11246

- **DOJ, Civil Rights Division**

*“[W]ill investigate, eliminate, and penalize illegal DEI and DEIA preferences, mandates, policies, programs, and activities **in the private sector** and in educational institutions that receive federal funds.”*

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Agency Guidance Examples of FCC Investigations And Enforcement



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Brendan Carr
Chairman

February 27, 2025

Mr. Hans Vestberg
Chairman and Chief Executive Officer
Verizon
1095 Avenue of the Americas
New York, NY 10036, USA

RE: Verizon's Promotion of DEI

Dear Mr. Vestberg,

I am writing you regarding Verizon's continued promotion of DEI.

As you know, President Trump took quick and decisive action to root out the scourge of invidious forms of DEI discrimination. In his first week in office, President Trump issued an Executive Order that will end the radical and wasteful DEI programs that have spread across the federal government.¹ Likewise, President Trump issued an Executive Order to end illegal discrimination and restore merit-based opportunity across the private sector.²

Following President Trump's actions, I announced that the FCC will be ending its Biden-era decision to promote DEI.³ In my announcement, I made clear that the FCC is ending its DEI group and task force as well as eliminating the promotion of DEI from our strategic plan, budget, performance plan, economic reports, and all other components of the agency's work.



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Brendan Carr
Chairman

March 27, 2025

Mr. Robert A. Iger
Chief Executive Officer
The Walt Disney Company

RE: Investigation into Disney/ABC's DEI Programs

Dear Mr. Iger,

I am writing to inform you that I have asked the FCC's Enforcement Bureau to open an investigation into Disney and ABC. In particular, I want to ensure that Disney and ABC have not been violating FCC equal employment opportunity regulations by promoting invidious forms of DEI discrimination. While I have seen reports that Disney recently walked back some of its DEI programs, significant concerns remain.

For one, I want to ensure that Disney ends any and all discriminatory initiatives in substance, not just name. For another, I want to determine whether Disney's actions—whether ongoing or recently ended—complied at all times with applicable FCC regulations.

As you know, Disney started out a century ago as an iconic American company. For decades, Disney focused on churning out box office and programming successes. But then something changed. Disney has now been embroiled in rounds of controversy surrounding its DEI policies.

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Agency Guidance

EEOC Action

- Deprioritizing investigation discrimination charges based upon gender identity
- Requested dismissal of at least 7 federal court cases
 - *Alleging transgender bias that were pending at the time the EO was issued*
- Will still issue a Right to Sue Letter upon request

WHAT TO DO IF YOU EXPERIENCE DEI AT WORK DISCRIMINATION RELATED TO



Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on protected characteristics such as race and sex. Different treatment based on race, sex, or another protected characteristic can be unlawful discrimination, no matter which employees are harmed. Title VII's protections apply equally to all racial, ethnic, and national origin groups, as well as both sexes.

Before you can sue in federal court, you first must file a charge of discrimination with the EEOC. The U.S. Equal Employment Opportunity Commission (EEOC) investigates charges of discrimination and can file a lawsuit under Title VII against businesses and other private sector employers. The Department of Justice can file a lawsuit under Title VII against state and local government employees based on an EEOC charge, following an EEOC investigation.

What can DEI-related discrimination look like?

Diversity, Equity, and Inclusion (DEI) is a broad term that is not defined in the statute. Under Title VII, DEI policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee's race, sex, or another protected characteristic. In addition to unlawfully using quotas or otherwise "balancing" a workforce by race, sex, or other protected traits, DEI-related discrimination in your workplace might include the following:

Disparate Treatment

DEI-related discrimination can include an employer taking an employment action motivated (in whole or in part) by race, sex, or another protected characteristic. Title VII bars discrimination against applicants or employees in the terms, conditions, or privileges of employment, including:

- Hiring
- Firing
- Promotion
- Demotion
- Compensation
- Fringe benefits
- Exclusion from training or sponsorship programs
- Exclusion from mentoring or sponsorship programs
- Exclusion from fellowships
- Selection for interviews (including placement on candidate slates)

Limiting, Segregating, and Classifying

Title VII also prohibits employers from limiting, segregating, or classifying employees based on race, sex, or other protected characteristics in a way that affects their status or deprives them of employment opportunities. Prohibited conduct may include:

- Limiting membership in workplace groups, such as Employee Resource Groups (ERGs) or other employee affinity groups, to certain protected groups
- Separating employees into groups based on race, sex, or another protected characteristic when administering DEI or other trainings; or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources

Harassment

Title VII prohibits workplace harassment, which may occur when an employee is subjected to unwelcome remarks or conduct based on race, sex, or other protected characteristics. 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.

Retaliation

Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, such as objecting to or opposing employment discrimination related to DEI, participating in employer or EEOC investigations, or filing an EEOC charge. Reasonable opposition to a DEI training may constitute protected activity if the employee provides a fact-specific basis for his or her belief that the training violates Title VII.

Who can be affected by DEI-related discrimination?

Title VII protects employees, potential and actual applicants, interns, and training program participants.

What should I do if I encounter discrimination related to DEI at work?

If you suspect you have experienced DEI-related discrimination, contact the EEOC promptly because there are strict time limits for filing a charge. The EEOC office nearest to you can be reached by phone at 1-800-669-4000 or by ASL videophone at 1-866-234-5122.



www.EEOC.gov

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Memorandum for All Federal Agencies: *Attorney General, July 29, 2025*

- Unlawful Discriminatory Policies and Practices
 - No preferential treatment, hiring, and segregation.
 - No unlawful use of “proxies”:
 - “Cultural Competence” Requirements
 - “Geographic or Institutional Targeting”
 - “Overcoming Obstacles” and “Diversity Statements”
 - Unlawful training programs:
 - Guidance highlights importance of thorough review of training materials
 - Must not include statements stereotyping based on protected characteristics-such as “all white people are inherently privileged,” “toxic masculinity,” etc.

Memorandum for All Federal Agencies: *Attorney General, July 29, 2025 (cont.)*

- Recommendations and Best Practices, *focus on:*
 - Inclusive Access
 - Skills and Qualifications
 - Prohibit Demographic-Driven Criteria
 - Document Legitimate Rationales
 - Scrutinize Neutral Criteria for Proxy Effects
 - Eliminate Diversity Quotas
 - Avoid Exclusionary Training Programs
 - Include Non-Discrimination Clauses in Contracts to Third Parties
 - Establish Clear Anti-Retaliation Procedures and Safe Reporting Mechanisms

In the Courts . . .

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Initial Legal Challenges to DEI Executive Orders (examples)

- ***National Association of Diversity Officers in Higher Education, et al. v. Trump, et al.***
 - District of Maryland issued preliminary injunction on DEI EOs (14151 & 14173) provisions requiring recipients of federal funds to:
 - certify that they do not operate any programs promoting DEI
 - immediately terminate DEI mandates, requirements, programs, and activities
 - Fourth Circuit stayed preliminary injunction
- ***Chicago Women in Trades v. Trump et al.***
 - Northern District of Illinois issued:
 - a nationwide preliminary injunction on the certification provision
 - a limited preliminary injunction on the termination provision

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Related Recent Developments in Discrimination Cases

- ***Muldrow v. St. Louis, 601 U.S. 346 (2024)***
 - To make out a *prima facie* case of discrimination under Title VII, an adverse employment action need only cause “**some harm.**”
- ***Ames v. Ohio Dept. of Youth Services, No. 23-1039 (2025)***
 - Under Title VII, minority group plaintiffs or those making a “reverse-discrimination” claim have the same pleading/ evidentiary standard as claims of discrimination by minority group plaintiffs.

Pre-EO Challenges to DEI Trainings

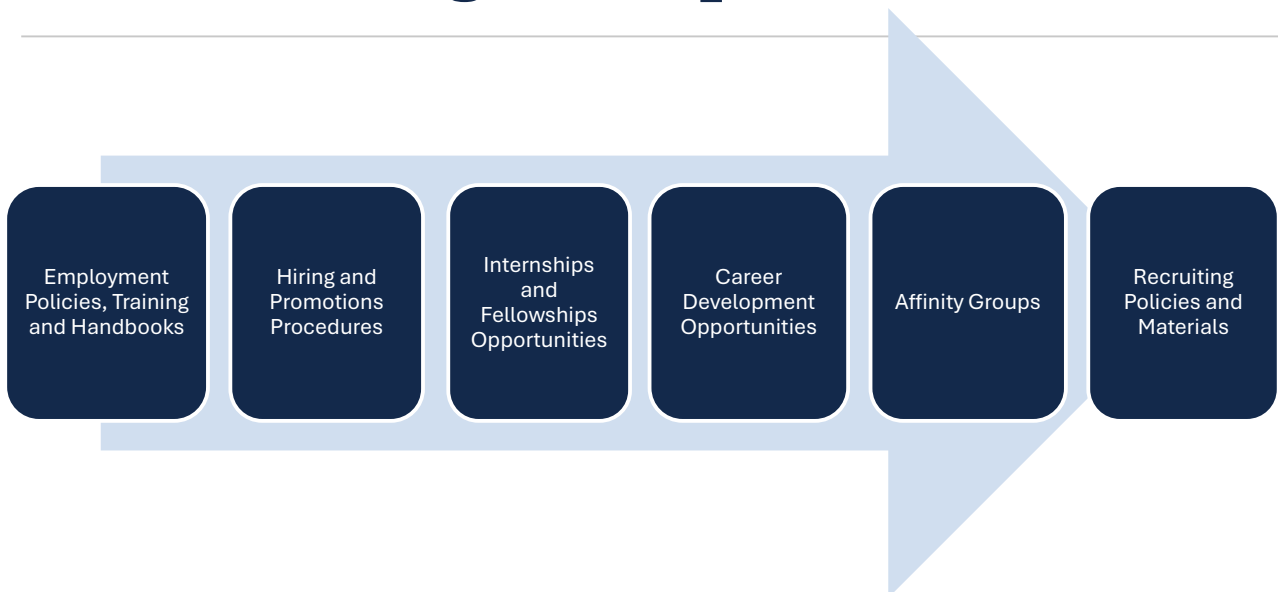
- ***Vavra v. Honeywell International, Inc. (7th Cir. 2024)***
 - A former employee alleged that he was fired after complaining that an implicit bias training was racist toward white people. Since employee had not reviewed the training materials and his supervisor specifically advised him that the training did not discriminate against white individuals, there was no reasonable basis for his complaint and therefore no protected-retaliatory activity.
- ***De Piero v. Pennsylvania State Univ. (E.D. Pa. 2025)***
 - A white male writing professor, alleged University workshops and training sessions required him to acknowledge “white privilege” and “white supremacy.” Specifics included a video titled, in part, “White Teachers Are a Problem.” An assistant vice provost also commented that “it’s a challenge for all of us today, and especially for white and non-black people of color, ... to hold our breath just a little longer to not give into our privilege” and asked white individuals to “feel terrible” during a Juneteenth recognition. These incidents, occurring over a three-year period, were found not to be severe and pervasive so as to constitute a hostile work environment.
- ***Diemert v. City of Seattle (W.D. Wash. 2025)***
 - A white employee alleged the City’s Race and Social Justice Initiative created a hostile work environment by “infusing race.” The plaintiff attended three required DEI classes involving presentations and discussions on “white privilege” and collective responsibility for racism. Plaintiff claimed training sessions required him to acknowledge complicity in racism, he felt pressured to join racial affinity groups, and he heard a trainer state, “racism is in white people’s DNA.” The court concluded that exposure to material that discusses race does not create a hostile work environment, and the employee did not prove personal harassment based on race.

Would there be a different result now?

Practically Speaking . . .

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Review for Legal Compliance -



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Thank you & Questions

Key Takeaways

- Review Company policies, websites, training, and inclusion efforts for legal compliance
- Bolster reporting procedures and anti-retaliation provisions
- Monitor landscape for continuing changes in this area

Let's stay connected

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