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Attorney General Issues Memorandum on Ending 'Illegal' DEI and DEIA Policies – Now What?

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On February 5, 2025, US Attorney General Pam Bondi issued a memorandum titled Ending Illegal DEI and DEIA Discrimination and Preferences (memo or directive). The memo came down as part of Bondi's 14 "first-day" directives – one of two directives that expressly address diversity, equity, inclusion and accessibility (DEI or DEIA). Both directives arise from two recent federal actions: the US Supreme Court decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 US 181, 206 (2023), and President Donald Trump's Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 90 Fed. Reg. 8633 (January 21, 2025). Consistent with other Trump Administration orders and directives, the memo takes the position that federal law prohibits DEI and DEIA policies and makes clear that the Department of Justice (DOJ) will use both civil and criminal enforcement tools to proscribe a wide range of companies and universities from utilizing so-called exclusionary DEI or DEIA policies.

The memo has two sections. The first directs the DOJ to prepare a report containing recommendations to the private sector to "end illegal discrimination and preferences," and the second provides guidance to federally funded institutions. The memo contains a single footnote, which states that its prohibitions are intended to encompass programs that are exclusionary in nature and not educational, cultural or historical observances, such as Black History Month, International Holocaust Remembrance Day or similar events, which "celebrate diversity, recognize historical contributions, and promote awareness without engaging in exclusion or discrimination."

DOJ report on DEI/DEIA

Both EO 14173 and the memo direct the DOJ (Civil Rights Division and Office of Legal Policy, jointly) to prepare a report with enforcement recommendations and "other appropriate measures to encourage the private sector to end illegal discrimination and preferences." The report should include:

- "Key sectors of concern" within the DOJ's jurisdiction and "the most egregious and discriminatory DEI and DEIA practitioners" within each sector
- A deterrence plan, including proposals for criminal investigations, and as many as nine civil compliance investigations of several types of organizations, such as:
    - Publicly traded corporations
    - Institutions of higher education with endowments of more than $1 billion
    - Large nonprofit corporations or associations
    - Foundations with assets of $500 million or more
    - State and local bar and medical associations
- Other potential litigation activities, including:
    - Interventions in pending cases
    - Statement of interest submissions
    - Amicus brief submissions
    - Regulatory actions and sub-regulatory guidance
- "Other strategies" as needed to comply with federal law

Potential loss of federal funding for educational institutions

The memo cites the concurrence of Justice Neil Gorsuch in the *Students for Fair Admissions* case, as applied to educational agencies, colleges and universities that receive federal funds. The DOJ is instructed to work with the Department of Education to "issue directions," while the DOJ's Civil Rights Division "will pursue actions regarding the measures and practices required to comply with *Students for Fair Admissions*."

Now what?

1. **Assess your company's or educational institution's DEI policies, programs and initiatives.** Take account of what policies, programs or initiatives do (or do not) exist at your organization as they relate to diversity, equity, inclusion, accessibility or related concepts and goals. Communicate with the appropriate people in your organization to identify relevant practices and analyze whether those policies, programs or initiatives may be susceptible to legal challenge.

2. **Consider whether this directive implicates your company or educational institution.** Review and understand whether the memo has the potential to apply to your organization and its policies. By its terms, the directive applies to many different entities and policies across several different industries and sectors; those most clearly at risk include any company, organization or institution receiving federal funds.

3. **Consult counsel to discuss potential civil or criminal risk.** This memo signals increased regulatory scrutiny and white-collar enforcement risk – particularly for entities like educational institutions and government contractors. If you have any questions about potential civil or criminal risk, or understanding the terms of this or any of the recent directives, consult outside counsel to discuss further and take appropriate next steps.

The second memorandum is titled Eliminating Internal Discriminatory Practices.

See also New Executive Order Would Terminate Race and Gender Affirmative Action Requirements for Federal Contractors, Cooley alert, January 23, 2025.

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