

March 2025

Follow us on [LinkedIn](#) 

Judicial Update

Fourth Circuit Court of Appeals Stays Preliminary Injunction of Anti-DEI Executive Order

By [Kenneth Gage](#), [Blair Robinson](#), [Carson Sullivan](#), [Eric Distelburger](#) and [Claire Saba Murphy](#)

On March 14, 2025, the Fourth Circuit Court of Appeals stayed the nationwide preliminary injunction previously issued by the District of Maryland, which had enjoined certain aspects of Executive Order No. 14173, President Donald Trump's "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" executive order (Anti-DEI EO).

As a quick recap, the Anti-DEI EO eliminates affirmative action requirements for federal contractors and otherwise sought to root out diversity, equity and inclusion (DEI) in the private sector (for a fuller recap, [see our client alert](#)). It also directs agency heads to include terms in future agreements with federal contractors requiring those companies to certify that they do not operate unlawful DEI programs and stipulating that compliance with federal antidiscrimination laws is "material" to government payment decisions for purposes of the False Claims Act, 31 U.S.C. 3729(b)(4).

The certification provision of the Anti-DEI EO was preliminary enjoined on February 21, 2025 (for more information on the preliminary injunction issued in *National Association of Diversity Officers in Higher Education, et al. v. Trump*, see [our client alert](#)). The federal government immediately appealed the injunction to the Fourth Circuit and requested a stay pending appeal. (The government also sought a stay from the district court, but it denied the government's request on March 3, 2025.) On March 14, 2025, the Fourth Circuit granted the government's request for a stay pending its decision on the merits. The stay order indicates that the court will set an expedited briefing schedule to resolve the merits of the government's appeal.

Adding further complexity, on March 19, 2025, the District Court for the District of Columbia will hear arguments on another preliminary injunction sought in a different case (*National Urgan League, et al. v. Trump*), also challenging the Anti-DEI EO (along with other executive orders). We will continue to monitor all developments closely.

What This Means for Employers

In the meantime, the government can (and likely will) continue to insert certification provisions into federal contractor agreements, at least until the Fourth Circuit rules otherwise or the District of Columbia follows suit with its own nationwide preliminary injunction. The certification provision, coupled with the threat of False Claims Act enforcement, creates significant potential liability for contractors. Contractors need to understand how their own DEI programs interact with the Anti-DEI EO and the False Claims Act. Contractors (as all employers) must also continue to be mindful of Title VII enforcement. Certification

provision aside, the federal government can prosecute companies that promote what the government believes to be unlawful DEI under ordinary Title VII theories.

Join us for our upcoming webinar series: Employment Compliance at a Crossroads: Federal Shifts, State Conflicts and Employer Impacts.

✧ ✧ ✧

If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

Los Angeles

Elena R. Baca
+1-213-683-6306
elenabaca@paulhastings.com

Felicia A. Davis
+1-213-683-6120
feliciadavis@paulhastings.com

New York

Paul C. Evans
+1-212-318-6009
paulevans@paulhastings.com

Kenneth W. Gage
+1-212-318-6046
kennethgage@paulhastings.com

Blair Robinson
+1-212-318-6075
blairrobinson@paulhastings.com

Jeff Sturgeon
+1-212-318-6017
jeffreysturgeon@paulhastings.com

Sara B. Tomezsko
+1-212-318-6267
saratomezsko@paulhastings.com

San Francisco

Ryan D. Derry
+1-415-856-7092
ryanderry@paulhastings.com

Eric D. Distelburger
+1-415-856-7018
ericdistelburger@paulhastings.com

Washington, D.C.

Carson H. Sullivan
+1-202-551-1809
carsonsullivan@paulhastings.com

Claire Saba Murphy
+1-202-551-1827
clairesaba@paulhastings.com

Paul Hastings LLP

Stay Current is published solely for the interests of friends and clients of Paul Hastings LLP and should in no way be relied upon or construed as legal advice. The views expressed in this publication reflect those of the authors and not necessarily the views of Paul Hastings. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. These materials may be considered ATTORNEY ADVERTISING in some jurisdictions. Paul Hastings is a limited liability partnership. Copyright © 2025 Paul Hastings LLP.