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Litigation Update

Illinois District Court Blocks Portions of Anti-DEI Executive Order

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There are several concurrent challenges to President Donald Trump's "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" executive order (Anti-DEI EO).

Previously, the U.S. District Court for the District of Maryland issued a preliminary nationwide injunction against enforcement of parts of the Anti-DEI EO. It includes the certification provision requiring future government contracts to include a term stipulating that compliance with all applicable federal anti-discrimination laws is material to government payment decisions for purposes of the False Claims Act, and requiring federal contractors to certify that they do not operate any programs promoting DEI that violate any applicable federal anti-discrimination laws (the Certification Provision). (See [here](#) for a fuller discussion.) However, as we previously [reported](#), the Fourth Circuit Court of Appeals stayed the injunction on March 14, 2025, pending a decision on the merits.

A separate lawsuit challenging the Anti-DEI EO — particularly, the Certification Provision — was recently filed in the U.S. District Court for the Northern District of Illinois Eastern Division. On March 27, 2025, the court in *Chicago Women in Trades v. Trump*, DOL, No. 1:25-cv-02005, granted a temporary restraining order blocking enforcement of the Certification Provision, albeit on a narrower basis than the prior injunction granted by the Maryland District Court. We briefly discuss that decision and its impact.

What Did the District Court in Illinois Enjoin?

The Illinois District Court issued a temporary nationwide injunction enjoining the U.S. Department of Labor (DOL) from enforcing the Certification Provision. The court explained that the Certification Provision is unconstitutionally vague because it requires every grantee "to certify that it does not engage in any programs involving 'illegal DEI' (not just federally funded programs) without knowing what programs fall under that umbrella." (*Chi. Women in Trades*, No. 1:25-cv-02005 at *22.) Without clear definitions of the prohibited conduct, the court found it likely that many federal grantees will opt to stop speaking on anything related to DEI or equity to avoid losing their federal grants or to avoid liability under the False Claims Act.

The injunction issued by the Northern District of Illinois, however, is narrower than the one previously issued by the District Court in Maryland. The prior Maryland injunction applied to all agency heads — and not just the named defendants — while the Illinois injunction is limited to one of the named defendants, the DOL. However, the District Court in Illinois left open the possibility of changing the scope of the injunction at a later date (noting that it applies only to the DOL “at least at this juncture”).

Did the Court Enjoin Any Other Executive Orders?

The court also granted a limited injunction temporarily blocking enforcement of part of the “Ending Radical and Wasteful Government DEI Programs and Preferencing” executive order — but only as to the named plaintiff.

Specifically, the court took issue with the termination provision of that order, which requires the heads of government agencies to “terminate, to the maximum extent allowed by law, all DEI, DEIA, and ‘environmental justice’ offices and positions ... ; all ‘equity action plans,’ ‘equity’ actions, initiatives, or programs, ‘equity-related’ grants or contracts; and all DEI or DEIA performance requirements for employees, contractors, or grantees.” (*Id.* at *10.) The court found this provision to constitute an impermissible coercive threat intended to suppress disfavored speech by leading those impacted to “steer clear of ... DEI.” (*Id.* at *15.) However, the court refused to enter a nationwide injunction, finding it far less likely that other affected grantees will not challenge enforcement of this provision, since “[a] grantee whose funding is terminated would appear to have an ample incentive to challenge the termination so that it can retain funding; it is less likely that they will simply turn and walk away.” Still, this ruling provides a roadmap to other impacted grantees.

What Does This Mean for Employers?

At the moment, the DOL cannot require contractors to comply with the Certification Provision. Other agencies may so require, however, although it is unclear whether the District of Illinois will broaden the scope of its injunction to preclude other agency heads as well. A hearing on a preliminary injunction will be held on April 10. Also, even as to the DOL, agencies may continue requiring contractors to abide by the anti-discrimination provision of Title VII.

Until the Fourth Circuit Court of Appeals issues an order on the merits in the other case challenging the Anti-DEI EO (briefing is not scheduled to conclude until the end of May 2025), employers and agencies are unlikely to have clarity as to the scope and viability of the Certification Provision. In the meantime, employers should continue to:

1. Review policies, procedures and race/sex conscious diversity-related programs for compliance with the Anti-DEI EO, being mindful of potential conflicting state requirements.
2. Consider best practices for compliance with the Certification Provision.
3. Take steps, as necessary, to ensure programs and policies do not violate the anti-discrimination laws.

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