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## Regulatory Update

# EEOC and DOJ Issue Guidance on ‘DEI-Related Discrimination’

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Following President Donald Trump’s issuance of the “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” executive order, which sought to curb “illegal” diversity, equity and inclusion (DEI) initiatives, employers have waited for further guidance from the government as to what constitutes unlawful DEI.<sup>1</sup> That guidance has now arrived.

On March 19, 2025, the Equal Employment Opportunity Commission (EEOC) and Department of Justice (DOJ) released a joint one-page technical assistance document titled, “[What To Do If You Experience Discrimination Related to DEI at Work](#).” The EEOC simultaneously released a longer question-and-answer technical assistance document titled, “[What You Should Know About DEI-Related Discrimination at Work](#).” These documents provide valuable insight into what the government considers to be DEI-related discrimination.

The one-page technical assistance document focuses on prohibited “DEI-related disparate treatment” in:

- Hiring
- Firing
- Promotion
- Demotion
- Compensation
- Fringe benefits
- Exclusion from training
- Fellowships, mentoring or sponsorship programs
- Selection for interviews

The longer question-and-answer technical assistance document makes clear that DEI-related disparate treatment can involve:

- Internship, fellowship or summer associate programs;
- Placement or exclusion from a candidate “slate” pool;
- Trainings characterized as leadership development programs; and
- Changes to job duties or work assignments.

The guidance further reminds that in light of the Supreme Court's decision in *Muldrow v. City of St. Louis*, only "some harm" is needed to establish a Title VII claim. Likewise, "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." (Emphasis original.)

The guidance specifically discusses:

- **Employee Resource Groups (ERG) or other affinity groups.** The guidance notes that "[p]rohibited conduct may include: [l]imiting membership in workplace groups, such as Employee Resource Groups (ERG) or other employee affinity groups, to certain protected groups [and] 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."
- **Candidate "slates" or pools.** The guidance suggests that employers may violate Title VII of the Civil Rights Act of 1964 by placing or excluding any employee or applicant on a candidate "slate" or pool based on their protected characteristics.
- **DEI training.** The guidance indicates that employees may plausibly allege a hostile work environment claim by "pleading or showing that the [DEI] training was discriminatory in content, application, or context." Relatedly, "[r]easonable 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."

### **EEOC's Position on Remedial Action and "Reverse" Discrimination Claims**

The EEOC takes the position that an employer cannot justify any action motivated by an individual's protected characteristic, even if the employer has a business necessity or interest in diversity. The guidance specifically calls out client and customer preferences as not being a legitimate defense to race or color discrimination. "Employment decisions based on the discriminatory preferences of clients, customers, or coworkers are just as unlawful as decisions based on an employer's own discriminatory preferences." The guidance notes, however, that employers may raise a bona fide occupational qualification in "very limited circumstances" to exclude hiring based on religion, sex or national origin.

While the guidance indicates no "diversity interest" exception exists for making race-motivated employment decisions, it makes no mention of Supreme Court precedent holding that in very narrow remedial circumstances voluntary affirmative action (i.e., race- or sex- conscious preferences) may be permitted by Title VII.

The guidance also emphasizes that the EEOC does *not* require a higher showing of proof for "reverse" discrimination claims, though we note this issue is currently before the Supreme Court in *Ames v. Ohio Dep't of Youth Servs.*, 145 S. Ct. 118 (2024).

### **What Should Employers Do?**

1. Review policies, procedures and race-/sex-conscious diversity-related programs for compliance with these technical assistance documents, including any practices related to diverse candidate slates.
2. Review ERG and affinity group policies and practices, and ensure membership is open to all.
3. Reevaluate DEI-related trainings in light of the EEOC's emphasis on hostile work environment claims.

We are here to support and collaborate with employers as they navigate the potential impact of the evolving federal legal landscape and related executive orders (discussed in our previous client alerts<sup>2</sup> and our [presidential actions hub](#)).

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



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<sup>1</sup> For a more detailed recap of the Ending Illegal Discrimination executive order, see [The “Ending Illegal Discrimination” Executive Order: What Does it Mean for Employers](#).

<sup>2</sup> [The “Ending Illegal Discrimination” Executive Order: What Does it Mean for Employers](#), [The Defending Women Executive Order Presents Potential Clash Between Federal and State Antidiscrimination Law](#), [Federal Contractors With DEI Policies at Increased Risk of False Claims Act Liability](#), [Fourth Circuit Court of Appeals Stays Preliminary Injunction of Anti-DEI Executive Order](#)