

DOJ ISSUES NEW GUIDANCE ON UNLAWFUL DISCRIMINATION LABELED AS DEI FOR FEDERAL FUNDING RECIPIENTS

On July 29, 2025, the U.S. Department of Justice (DOJ) released updated guidance reminding federally funded organizations that antidiscrimination laws apply to all programs—including those under the Diversity, Equity and Inclusion (DEI) umbrella. The DOJ memo emphasizes that even well-meaning DEI efforts can violate federal law if they treat people differently based on race, sex or other protected traits.

Accordingly, any organization receiving federal financial assistance must ensure that its programs, policies, and partnerships fully comply with Title VI, Title VII, Title IX, and the Equal Protection Clause. Noncompliance may result not only in the loss of funding but also in significant legal exposure.

To help organizations navigate these complex legal obligations, here are the key compliance considerations and recent developments affecting federally funded entities.

KEY COMPLIANCE RISKS IDENTIFIED

- **Use of Protected Characteristics in Decision-Making:** Employment, admissions, scholarships and contracting decisions based on race, sex or other protected traits are presumptively unlawful unless narrowly tailored to remedy specific past discrimination.
 - *Example:* Offering internships only to women or only to Black students, even with good intentions, is likely unlawful unless it is part of a narrowly tailored remedy for proven past discrimination.
- **Proxy Discrimination:** Criteria such as “cultural competence,” “lived experience” or geographic targeting may be unlawful if used to advantage or disadvantage individuals based on protected characteristics.[\[1\]](#)
 - *Example:* Requiring applicants to demonstrate “lived experience

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as a person of color” or “cultural competence in LGBTQ+ communities” may be seen as indirectly favoring or excluding people based on race or sexual orientation.

- **Segregated Spaces and Programs:** Race- or sex-based lounges, training sessions or program eligibility criteria are likely unlawful unless explicitly permitted by law.
 - *Example:* Hosting a leadership retreat exclusively for women of color or creating a lounge only for LGBTQ+ students could be considered discriminatory unless explicitly allowed by law.
- **Sex-Separated Facilities and Athletics:** Institutions must maintain sex-separated intimate spaces and athletic competitions based on biological sex to comply with Title IX and Title VII.
 - *Example:* A university must base access to locker rooms or participation in women’s sports on biological sex, not gender identity, to comply with Title IX and Title VII.
- **Retaliation Protections:** Individuals who object to or refuse to participate in discriminatory programs are protected from adverse actions.
- *Example:* If an employee raises concerns about a DEI training that singles out participants by race or gender, the organization cannot demote, fire or otherwise punish them for speaking up.

While the DOJ memo does not prohibit organizations from pursuing lawful DEI initiatives, it does emphasize the importance of ensuring that all efforts—past and future—are carefully aligned with current legal standards and subject to thoughtful analysis.

At the same time, it’s important to recognize that overcorrecting can be just as risky. Companies that have abruptly scaled back their diversity commitments are already facing the consequences: talent attrition, missed opportunities and increased legal exposure. These reactionary decisions are proving costly—not only to reputation, but to long-term performance.

RECOMMENDED BEST PRACTICES

Federally funded entities should take the following steps:

1. **Audit DEI Programs:** Review all initiatives for compliance with federal nondiscrimination laws.
2. **Eliminate Demographic Quotas:** Replace race- or sex-based benchmarks with merit-based criteria.
3. **Scrutinize Neutral Criteria:** Ensure facially neutral policies do not

function as proxies for protected traits.

4. **Include Nondiscrimination Clauses in Contracts:** Require third-party compliance and monitor regularly.
5. **Establish Anti-Retaliation Protocols:** Provide safe, confidential reporting mechanisms for concerns.

For further guidance or to schedule a compliance review, please contact your regular AT attorney or one of the listed authors.

[1] Please note that this guidance may conflict with current law. While using criteria like “lived experience” or “cultural competence” to advantage individuals based on race may be unlawful, the Supreme Court in *Students for Fair Admissions v. Harvard* affirmed that institutions may still consider how race has shaped an individual’s life—so long as the evaluation treats applicants as individuals, not based solely on race. As Chief Justice Roberts clarified, applicants may be evaluated based on their personal experiences with race—such as overcoming discrimination or how their heritage influenced their character—so long as they are treated as individuals and not solely on the basis of race.