

PRESIDENT TRUMP SIGNS EXECUTIVE ORDERS IMPACTING ANTI- DISCRIMINATION, DEI AND GENDER - WHAT EMPLOYERS SHOULD KNOW

On Jan. 21, 2025, President Trump signed several executive orders (EOs) that have significant impact on employers. The EOs set the current administration's enforcement priorities with respect to federal discrimination laws and revoke executive orders signed by previous presidents, some of which have been in effect for over 60 years. As a result, many legal questions emerge, including how anti-discrimination requirements are to be enforced by the impacted agencies or how the new requirements will be applied to existing contractual obligations of federal contractors. We anticipate many other practical issues will develop, including how much funding each agency will receive from the Trump administration, which will determine the strength of investigation and enforcement efforts. Below is a discussion of what the new EOs revoke, what we know is required at this point, what we know is prohibited, and what we hope to be clarified in the coming months and years.

An executive order titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" (DEI EO) aims to change the landscape of diversity, equity and inclusion (DEI) rules that apply to business organizations across the nation, including not only federal contractors, but other private employers as well.

- **Executive Order 11246 of Sept. 24, 1965** (Equal Employment Opportunity)
 - In revoking previous executive orders such as EO 11246, the DEI EO dictates that the federal contracting processes "shall be streamlined to enhance speed and efficiency, reduce costs, and require Federal contractors and subcontractors to comply with our civil-rights laws." EO 11246, referred to as the Equal Employment Opportunity Act, was created because of the Civil Rights Act of 1964 and requires nondiscriminatory practices and affirmative action in the hiring process and employment of

PEOPLE

Jenna M. Lakamp

Onalee R. Yousey

Ida S. Shafaie

SERVICES AND INDUSTRIES

Employment and Labor



employers who are U.S. government contractors who do over \$10,000 in government business a year.

- The DEI EO directs the federal Department of Labor (DOL) and its bureaus to immediately cease the following actions: (1) promoting “diversity;” (2) holding federal contractors and subcontractors responsible for taking affirmative action; and (3) allowing or encouraging federal contractors to engage in “workforce balancing” based on race, color, sex, sexual orientation, religion or national origin.
- Many questions have already been raised as to how the new obligations of the DEI EO will be implemented as to the existing contractual obligations of federal contractors and subcontractors. Additionally, it remains unclear how the prohibition of prior requirements from EO 11264 will be enforced. The DEI EO allows federal contractors 90 days to operate under previous requirements. This timeframe is expected to allow the implicated agencies time to issue guidance and to allow employers to work with legal counsel. Businesses impacted by this significant change should work with their employment attorney to discuss specifics related to the terms and provisions of each contract, as they may differ.
- The DEI EO also directs the Attorney General to work with the heads of agencies and the Office of Management and Budget (OMB) to submit a report concerning private-sector discrimination, including identification of key areas and practitioners of concern, a plan to deter DEI programs that constitute illegal discrimination or preferences, potential civil compliance investigations and other strategies to encourage the private sector to end “illegal DEI discrimination and preferences and comply with all Federal civil-rights laws” which may include litigation and potential regulatory action and guidance.
- The Attorney General and the Secretary of Education are directed to issue guidance to all state and local educational agencies that receive federal funds, as well as institutions of higher education. Stay tuned for guidance and reach out to your employment attorney to discuss the implications of the DEI EO.
- Despite confusion on the internet and social media, the DEI EO does not abolish Title VII of the Civil Rights Act or any other federal law. The DEI EO also does not eliminate the Equal Employment Opportunity Commission (EEOC), the federal agency tasked with managing the administrative process required of litigants before filing various civil rights lawsuits against their employers. Nothing in the DEI EO impacts the functions of the EEOC or the process to file a charge of

discrimination with the EEOC. If you are an employer with a current EEOC charge of discrimination pending, the DEI EO will have no procedural impact on the agency's processing of the charge. However, limited funding may impact the process overall and redirect enforcement priorities within the EEOC.

The DEI EO also revokes **EO 12898** (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), which focused on reducing the disproportionate environmental harm to African-American and low-income populations through requirements imposed on federal contractors. The DEI EO revokes those requirements, however the DEI EO does not contain any analysis of or specific requirements replacing EO 12898.

The DEI EO also revokes **EO 13583** (Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce). As this EO applied chiefly to the government as an employer, its rescission has no direct impact on private employers. However, public entities that receive federal funding, including educational institutions, should consider the potential impacts of a directive from the executive office not to seek out a "diverse" workforce.

Other executive orders that were revoked by the DEI EO include **Executive Order 13672 of July 21, 2014** (Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity), and **The Presidential Memorandum of October 5, 2016** (Promoting Diversity and Inclusion in the National Security Workforce) both signed by President Obama to provide guidance to the federal government and its contractors on how to successfully increase diversity in the workforce.

In addition to the DEI EO, President Trump signed other executive orders on Jan. 21, 2025, that employers should note, including the "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government Executive Order" (Gender EO). The Gender EO declares that "[i]t is the policy of the United States to recognize two sexes, male and female," and includes the following requirements and policies:

- Defines "sex" as "an individual's immutable biological classification as either male or female," and explicitly excludes "gender identity" from the definition of sex. Federal agencies are directed to use the included definitions of sex and other related terms when interpreting or applying the law.
- Directs the Attorney General to immediately issue guidance regarding the definition of the word "sex" in the Gender EO and the administration's position on the binary nature of sex and protection of single-sex spaces in workplaces and public entities.
- Orders agencies to prioritize investigations and litigation to enforce the

goals and protections of the Gender EO.

The Gender EO does not provide concrete action items for private sector employers to adopt. However, it signals a significant shift in the federal government's treatment of gender, sex, and gender identity claims. As the Gender EO requires employers not to recognize claims of gender identity outside of the "two sexes" model espoused by the EO, there is a potential for discrimination complaints related to an employer's recognition of gender identity. Though there is no indication yet of how the courts will handle the practical implications of the Gender EO, the EEOC may lessen its willingness to consider charges of discrimination related to anti-transgender claims and may shift its focus toward claims of anti-male or "feminist" allegations against employers.

Employers are encouraged to consult with counsel before modifying any existing workplace policies related to the Executive Orders signed by President Trump. If you have any questions specific to your organization, please contact your regular Armstrong Teasdale lawyer or one of the authors listed below.