Client Alert: Federal Agencies Release Much-Anticipated Guidance on DEI in the Workplace

BY TRACY THOMAS BOLAND AND BENJAMIN J. HINKS • MARCH 21, 2025

On March 19, 2025, the U.S. Equal Employment Opportunity Commission ("EEOC") and the U.S. Department of Justice ("DOJ") issued joint guidance highlighting workplace diversity, equity, and inclusion ("DEI") practices that may be unlawful. The published guidance includes a lengthy FAQ-style document entitled "What You Should Know About DEI-Related Discrimination at Work" (the "FAQ") and a one-page summary geared towards employees entitled "What To Do If You Experience Discrimination Related to DEI at Work," which shares much of the same information as the FAQ. Both the FAQ and summary can be accessed here.

While these guidelines do not create new law, they help to explain how well-established federal civil rights rules may apply to DEI employment practices and policies. The guidelines also illuminate how the current Administration will look at DEI from an enforcement perspective. This may be welcome news for employers who were left perplexed by the Trump Administration's January 2025 executive orders which summarily stated the Administration's intent to penalize "illegal DEI" practices without defining that term.

At the outset of the FAQ, the EEOC explains the familiar process for bringing civil rights claims under Title VII and the scope of protections afforded under the law, including legally protected characteristics (e.g., race, sex, etc.). It then notes that "[u]nder Title VII, DEI initiatives, 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 or applicant's race, sex, or another protected characteristic." Notably, the EEOC points out there is "no such thing as 'reverse' discrimination" and that "Title VII's protections apply equally to all workers."

The EEOC notes that "limiting, segregating, or classifying employees or applicants based on race, sex, or other protected characteristics in a way that affects their status or deprives them of employment opportunities" is unlawful under Title VII. It then provides examples of DEI-related programs and practices that could amount to unlawful disparate treatment, including, among other things, "[a]ccess to or exclusion from training, (including training characterized as leadership development programs)"; "access to mentoring, sponsorship, or workplace networking"; "internships (including internships labeled as 'fellowships' or 'summer associate' programs); and "[s]election for interviews, including placement or exclusion from a candidate 'slate' or pool." Moreover, the FAQ specifically notes that "business interests in diversity and equity" will not be deemed sufficient to allow "race-motivated employment actions."

Finally, the guidance addresses DEI-related training, suggesting that such trainings could create an actionable hostile work environment if they are "discriminatory in content, application, or context."

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EMPLOYER TAKEAWAY

DEI is likely to remain a focus of the current federal Administration. Now that the EEOC has released guidance, employers should take stock of any DEI-related programming, policies, and practices within their organizations and assess whether they are compliant.

We will continue to monitor this issue and related developments. If you have any questions, please contact your attorney in Bowditch's Employment practice group.

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