



Webinar 8 – April 23, 2025

## Communication Approaches to Navigate a Shifting DEI Landscape

### WEBINAR OUTLINE

#### INTRO/SETTING THE STAGE

#### NAVIGATING THE DEI EXECUTIVE ORDERS

#### WHAT IS ILLEGAL DEI

- DOJ Memo
- OPM Memo
- How Companies are Responding to the Recent EOs and Guidance
- Georgetown University Law School
- Harvard University

#### BEST PRACTICES FOR EMPLOYERS

#### HRtelligence TIPS

##### I. INTRO/SETTING THE STAGE

- Recent executive orders have introduced significant changes to Diversity, Equity, and Inclusion (DEI) initiatives in the workplace.
- While these changes primarily target federal contractors and agencies, they signal broader shifts in DEI program scrutiny across all sectors, including private employers.

## II. NAVIGATING THE DEI EXECUTIVE ORDERS

Since taking office in January, President Trump has signed a flurry of Executive Orders on a wide range of topics. Some of the most significant are the DEI Executive Orders.

- Executive Order 14151, titled “[Ending Radical and Wasteful Government DEI Programs and Preferencing](#),” purports to eliminate “all discriminatory programs,” including DEI-related offices, policies and initiatives tied to the federal government. EO 14151 mandates that federal agencies terminate “equity-related grants or contracts” and DEIA positions, signaling a definitive end to government-backed diversity efforts.
- Executive Order 14173, titled “[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#),” (1) rescinds Lyndon B. Johnson’s 1965 Executive Order 11246, which compelled federal contractors to adopt affirmative action plans; (2) requires federal contractors to certify that they do not operate programs promoting DEI that conflict with federal anti-discrimination laws (or risk losing federal funding); and (3) calls for civil compliance investigations of private sector companies engaged in “illegal” DEI and DEIA (Diversity, Equity, Inclusion, and Accessibility) programs – all in an effort to deter what the Executive Order refers to as “illegal DEI discrimination and preferences.”

Multiple organizations have filed lawsuits challenging the DEI EOs on First, Fifth and Fourteenth Amendment grounds – specifically, that the EOs are unconstitutionally vague, chill free speech, violate the separation of powers doctrine and exceed the president’s authority.

On February 21, 2025, a Maryland federal court, in *National Association of Diversity Officers in Higher Education (NADOHE), et al. v. Donald J. Trump, et al.*, enjoined the Trump administration on a nationwide basis from pausing or terminating federal funding pursuant to the DEI Executive Orders.

On March 14, 2025, the U.S. Court of Appeals for the Fourth Circuit lifted the nationwide injunction which means the administration can continue to implement all provisions.

The Department of Education recently said it is investigating 45 colleges over allegations that they participated in “race-exclusionary practices.”

The Department of Education warned 60 colleges, including Harvard and Yale, their federal funds could be cut if they don't address allegations of antisemitic harassment on campus.

## III. WHAT IS ILLEGAL DEI?

Executive Order 14173 directs federal agencies to propose ideas for how to encourage the private sector to end “illegal DEI discrimination and preferences.”

To carry this out, federal agencies have been directed to identify nine potential targets for “civil compliance investigations” from among the following groups: publicly traded corporations; large nonprofit corporations or associations; foundations with assets of \$500 million or more; state and local bar and medical associations; and institutions of higher education with endowments over \$1 billion. The federal agencies must develop ideas for potential lawsuits and regulatory action the government can undertake to deter DEI practices.

Executive Order 14173 does not contain a definition of what constitutes “illegal DEI.” It refers only to ending “illegal preferences and discrimination.” However, two federal agencies have since issued memos that provides some insight into what the Trump administration may consider to be illegal.

#### **A. DOJ Memo**

Attorney General Pamela Bondi issued a memo directing the Department of Justice’s (DOJ) Civil Rights Division to investigate, eliminate and penalize illegal DEI preferences, mandates, policies, programs and activities in the private sector (DOJ Memo).

While the DOJ Memo does not define the term “illegal DEI” it offers guidance on the types of activities that the attorney general considers unlawful.

The DOJ states that the memorandum is intended to encompass programs, initiatives, or policies that discriminate, exclude, or divide individuals based on race or sex. The DOJ memo states that it does not prohibit educational, cultural, or historical observances – such as Black History Month, International Holocaust Remembrance Day, or similar events – that celebrate diversity, recognize historical contributions, and promote awareness without engaging in exclusion or discrimination.

By March 1, 2025, the memo instructs the Civil Rights Division and the Office of Legal Policy to jointly submit a report to the Associate Attorney General containing recommendations for enforcing federal civil-rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including policies relating to DEI and DEIA.

#### **B. OPM Memo**

On February 5, 2025, the acting director of the Office of Personnel Management (OPM) issued a memo (OPM Memo), that may also offer some insight into what is considered impermissible.

The OPM Memo directs federal agencies to end unlawful discrimination practices and policies, which are defined to mean any actions that are “motivated, in whole or in part, by protected characteristics.” For example, federal agencies are required to end “unlawful diversity requirements for the composition of hiring panels” and “candidate pools.”

In addition, the OPM Memo calls for the end of “discriminatory” employee resource groups (ERGs), which are voluntary associations made up of employees who share common interests, identities or life experiences. The directive prohibits ERGs from:

- Promoting unlawful DEI initiatives and recruitment, hiring, preferential benefits (including career development opportunities), or employee retention
- Limiting attendance at ERG meetings and events, or dividing participants who are in attendance, based on a protected characteristic
- Permitting the formation of some ERGs but not others

### C. How Companies are Responding to the Recent EOs and Guidance

The situation is ever evolving and company responses are likely to continue to shift as the legal and political landscape surrounding DEI changes.

- Scaling back DEI initiatives
- Rebranding DEI efforts
- Standing firm on DEI

Success in this environment requires careful attention to legal compliance while maintaining a clear commitment to workplace fairness and equal opportunity for all employees.

### A Case Study – Georgetown Law School Rebuffs DEI Threat

The dean of Georgetown University Law Center on Thursday rebuked a threat from the acting US attorney in Washington, DC, that he would not hire the law school’s students if it does not remove diversity, equity and inclusion from its curriculum.

- Ed Martin, interim US attorney for DC appointed by Trump, threatens law school over diversity initiatives in letter. Martin warned the university that his justice department office will not hire students or other affiliates associated with a university that utilizes DEI. Martin said he was investigating the academic institution after it had come to his “attention reliably” that they were teaching and promoting DEI.
- The letter states, “This is unacceptable.....” At this time, you should know that no applicant for our fellows program, our summer internship, or employment in our office who is a student or affiliated with a law school or university that continues to teach and utilize DEI will be considered.”

- In his response, Treanor emphasized how First Amendment rights to freedom of speech and religion prohibit the government from controlling Georgetown's curriculum.
- Treanor said the First Amendment protects Georgetown's professors, curricula and educational mission.
- In a statement, a Georgetown spokesperson said that the university's practices were constitutionally protected and that the university complied with all federal and local regulation: "As a Catholic and Jesuit university, Georgetown was founded on the principle that serious and sustained discourse among people of different faiths, cultures, and beliefs promotes intellectual, ethical, and spiritual understanding."
- The statement continued: "The letter inquires about Georgetown's curriculum and classroom teaching, which is protected by the First Amendment. Restricting or suppressing legally protected speech would contradict the First Amendment, contravene the University's mission, and undermine the educational experience that prepares students to navigate an increasingly complex world."

While the Department of Education can dictate policy initiatives, the federal government cannot dictate the curriculum of private universities. The federal government can, however, threaten to pull funding for specific programs if an institution is noncompliant with federal law. A university spokesperson said nothing within GULC's programming violates the law or is preferential to certain identities that Martin alleged was discriminatory.

#### **Harvard University Rejects Demands on DEI**

- The Trump administration's dispute with Harvard University began on April 11, 2025, when representatives from multiple federal agencies sent the university a letter accusing it of violating federal civil rights law with its diversity, equity and inclusion programming and for not doing enough to combat antisemitism in student protests around the Israel-Hamas war.
- The administration subsequently froze more than \$2.2 billion in grants, called for the Internal Revenue Service to remove the university's tax-exempt status and threatened to revoke its ability to accept and host international students.
- The university filed a lawsuit on April 21, 2025 to block those measures.

## **IV. BEST PRACTICES FOR EMPLOYERS**

- It's important to remember that the Executive Orders do not require private employers to abandon their *lawful* DEI programs. Importantly, employers should be reminded that federal, state and local law remains unchanged – employers cannot discriminate against individuals based on a protected characteristic and must accordingly maintain a commitment to equal opportunity in the workplace.

- Employers should take the Executive Orders into account for assessing potential legal exposure and deciding on future steps. It is advisable that employers act now to conduct a comprehensive audit of all DEI-related policies, programs and initiatives. Employers should begin by gathering all policies, protocols, plans, statements and other materials that relate to commitments and/or efforts surrounding DEI in the workplace or with respect to company resources. Once such materials are gathered, employers should review them with legal counsel to ensure compliance with existing laws.

The Attorneys General included a list of best practices to ensure legal compliance, including the following:

- Identify and remediate policies and practices that have an unlawful disparate impact on current and prospective employees;
- Prioritize widescale recruitment to attract applicants from various backgrounds;
- Use panel interviews to ensure fair and objective decisions;
- Set standardized criteria to evaluate individuals based on skills and experience;
- Ensure equal access to all aspects of employment and professional development;
- Create clear protocols to report discrimination or harassment;
- Provide channels for employees to communicate about workplace experiences;
- Establish work groups to create strategies that support inclusive practices; and
- Integrate practices that promote belonging and unity into an organization's everyday way of doing business.

As always, employers should ensure their DEIA policies comply with federal, state, and local laws.



In light of the recent guidance, employers should take the following steps:

- Conduct privileged reviews of current or recent DEI programs, policies, and practices that may be implicated by the recent orders and guidance;
- Ensure that all employees have equal access to training, mentorship, and advancement opportunities.