



Webinar 13 – July 9, 2025

Diversity, Equity & Inclusion in the Workplace

WEBINAR OUTLINE

INTRO/SETTING THE STAGE

- EEO Laws at a Glance and About the EEOC

COMPLIANCE WITH EEO LAWS

- Non-Discrimination Policy
- Posting Requirements

KEY UPDATES

- Navigating the DEI Executive Orders
- What is Illegal DEI?
- Supreme Court Decision

BEST PRACTICES FOR EMPLOYERS

HRtelligence TIPS

INTRO/SETTING THE STAGE

EEO Laws at a Glance

- Equal employment opportunity (EEO) compliance laws forbid discriminating against employees and job applicants based on protected characteristics.
- The EEO laws businesses must follow depend on their size and number of employees.

About the EEOC

The EEOC was created in 1965 and the mandate and authority of the EEOC was set forth in Title VII of the Civil Rights Act of 1964 and expanded in later laws enacted by Congress. The EEOC's jurisdiction has grown and now includes the following statutes:

- **Title VII of the Civil Rights Act of 1964 (Title VII)**

Note: Prohibits employment discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), and national origin.

- **The Age Discrimination in Employment Act of 1967 (ADEA)**

Note: Prohibits employment discrimination against workers age 40 and older.

- **The Pregnancy Discrimination Act of 1978 (PDA)**

Note: Amended Title VII to clarify that discrimination based on pregnancy, childbirth, or related medical conditions constitutes sex discrimination and requires employers to treat women affected by pregnancy, childbirth, or related medical conditions the same as any other employees with temporary disabilities with respect to terms and conditions of employment, including health benefits.

- **The Equal Pay Act of 1963 (EPA)**

Note: (included in the Fair Labor Standards Act), as amended, prohibits sex discrimination in the payment of wages to men and women performing substantially equal work in the same establishment.

- **Titles I and V of the Americans with Disabilities Act of 1990 (ADA),**

Note: Prohibits employment discrimination based on disability by private and state and local government employers. Sections 501 and 505 of the Rehabilitation Act of 1973 provide the same protections for federal employees and applicants for federal employment.

- **Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)**

Note: Prohibits employment discrimination based on an applicant's or employee's genetic information (including family medical history).

- **The Pregnant Workers Fairness Act (PWFA)**

Note: Requires covered employers to provide reasonable accommodations to a qualified applicant's or employee's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.

- Together, these laws protect individuals from employment discrimination (including unlawful harassment) based on race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age, disability, and genetic information.
- They also make it illegal to retaliate against a person for opposing employment discrimination, filing a charge of discrimination, or participating in an employment discrimination proceeding.
- Most of these laws apply to private and state and local government employers with 15 or more employees, labor organizations, employment agencies, and the federal government ("covered entities").
- The ADEA applies to state and local governments and to private employers with 20 or more employees.
- There is no minimum employee requirement under the EPA.

COMPLIANCE WITH EEO LAWS

Non-Discrimination Policy

- Follow anti-discrimination and anti-harassment laws when recruiting, hiring, and managing your workforce.
- Beyond reducing the risk of penalties, businesses complying with EEO laws also creates a culture of equality and respect that fosters productivity and loyalty.
- To help create a workplace free of discrimination, the key is to develop strong policies, hold training for managers and supervisors, and ensure everyone understands and is accountable for the consequences of their actions.

Posting Requirements

- You'll need to post the "EEO is the Law" poster describing the federal laws that prohibit job discrimination.
- This poster summarizes the applicable laws and how an employee or job applicant can file a complaint.
- It should be placed in a conspicuous location where other notices are typically posted.
- In addition, you should disseminate an electronic version either via email or on your internal website.

Note: You can [find a poster for downloading on the EEOC website](#).

KEY UPDATES

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) revokes federal contractors' obligation 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.

WHAT IS ILLEGAL DEI?

EEOC and DOJ Guidance

On March 19, 2025, the EEOC and DOJ jointly issued a technical assistance documents providing guidance on unlawful discrimination related to diversity, equity, and inclusion (DEI) in the workplace.

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<https://www.eeoc.gov/what-do-if-you-experience-discrimination-related-dei-work>

<https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work>

When Are DEI Initiatives Unlawful?

The DEI Guidance advises that the Title VII prohibition against discrimination and harassment applies to all workers, including those in mentorship, internship, or training programs, as well as to reverse discrimination claims by individuals from majority groups.

The DEI Guidance further provides that there is “no general business interest in diversity and equity (including perceived operational benefits or customer/client preference)” that would be “sufficient to allow race-motivated employment actions.”

When are DEI Initiatives Unlawful?

The DEI Guidance provides that although Title VII does not define DEI, the following DEI programs, policies, initiatives, etc., can be unlawful if an employer or other covered entity takes “an employment action motivated—in whole or in part—by an employee’s or applicant’s race, sex, or another protected characteristic”:

- Unlawfully using quotas/balancing a workforce
- Disparate treatment in terms, conditions, privileges of employment
- Limiting, segregating, classifying employees based on protected characteristics
- Harassment based on protected characteristics in DEI training
- Retaliation against individuals who oppose DEI training

Examples of Unlawful DEI Initiatives

The guidance provides examples of unlawful DEI-related practices, including:

- **Employee Resource Groups/Affinity Groups:** Employer-sponsored groups that limit membership based on a protected characteristic.
- **Workplace Opportunities:** Training, workplace programming, or other privileges of employment that separate workers based on race, sex, or another protected characteristic, even if the separate groups receive the same content or resources.
- **Hiring:** Diverse slate requirements that place or exclude an individual from a candidate “slate” or pool.
- **Assignments:** Employment decisions that are based on the discriminatory preferences of a client or customer, except where religion, sex, or national origin is a bona fide occupational qualification that is “reasonably necessary” to the business’ normal operation. The exception does not apply to race or color.

- **DEI Training:** The guidance states that, “[d]epending on the facts, DEI training may give rise to a colorable hostile work environment claim[,]” if an employee shows that “the training was discriminatory in context, application or content.”
- **Retaliation:** The guidance states that “opposition to a DEI training may constitute protected activity if the employee provides a fact-specific basis for [their] belief that the training violates Title VII.”
- **Filing Charges:** The guidance notes that a charge of discrimination may be filed with the EEOC by a third-party on behalf of an aggrieved person, such as an organization. This departs from the traditional understanding that charges brought “on behalf of a person” generally cover parents, guardians, or others in similar standing.

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.

Supreme Court Decision

Recently, the Supreme Court issued an opinion that lowered the bar for employees seeking to sue their employer. In *Ames v. Ohio Department of Youth Services*, a heterosexual white woman claimed that she suffered discrimination when her employer promoted lesbian and gay candidates instead of her. The Court held that a majority group plaintiff cannot be subjected to a higher evidentiary standard based on the text of Title VII of the Civil Rights Act.

Prior to this Supreme Court decision, many courts across the United States required majority group plaintiffs to meet a heightened standard of “background circumstances” in order to proceed with a discrimination case. The “background circumstances” standard required that majority group plaintiffs produce certain types of evidence such as a member of the minority group making the employment decision at issue or statistical evidence showing a pattern of discrimination. Now, courts can no longer use this heightened standard in deciding whether a majority group plaintiff can proceed with their discrimination case.

The Supreme Court supported its decision by looking to the actual text of Title VII, which draws no distinctions between majority and minority group plaintiffs. Rather,

the provision makes it unlawful “to fail or refuse to hire or to discharge *any individual*, or otherwise to discriminate against *any individual* with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”

Note: Based on this lowered standard for majority group plaintiffs, employers may see a rise in discrimination lawsuits filed by members of majority groups. It is recommended that employers review their anti-discrimination policies and ensure they reflect a commitment to equal opportunity for all. Employers should also assess company programs that seek to increase diversity or target specific groups of people, as these types of programs may be subject to additional scrutiny.

BEST PRACTICES FOR EMPLOYERS

- It’s important to remember that the Executive Orders do not require private employers to abandon their *lawful* DEI programs. Notably, 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.

The U.S. Attorneys General have released 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.



Implement and Adhere to Policies

- Employers should tailor their policies and practices in consideration of the EEOC's recently released strategic objectives.

Training and Accountability

- Ensure that management—specifically HR managers—and all employees know EEO laws. Implement a strong EEO policy with executive level support. Hold leaders accountable. Also: If using an outside agency for recruitment, make sure agency employees know and adhere to relevant laws.

Evaluate Practices and Audit Selection Criteria

- Monitor compensation and evaluation practices for patterns of potential discrimination and ensure that performance appraisals are based on job performance and accurate across evaluators and roles.
- Ensure that selection criteria do not disproportionately exclude protected groups unless the criteria are valid predictors of successful job performance and meet the employer's business needs. Additionally, make sure that employment decisions are based on objective criteria rather than stereotypes or unconscious bias.