



Webinar 10 – October 2026

## **Updates on Diversity, Equity and Inclusion (DEI)**

### **WEBINAR OUTLINE**

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- New York State

#### **COMPLIANCE WITH EEO LAWS**

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## INTRO/SETTING THE STAGE

The regulatory landscape for workplace inclusion is shifting rapidly. Federal policies target the dismantling of government and contractor diversity programs, while New York State maintains and defends its equity initiatives despite mounting pressure and legal battles.

### Federal

- **Executive Actions:** The federal government has aggressively rolled back diversity programs. Executive Order 14151 eliminated formal diversity offices and equity hiring initiatives across the federal workforce. President Donald J. Trump signed additional orders, including measures restricting diversity-linked practices for federal contractors and subcontractors.
- **Enforcement and Scrutiny:** The Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC) have signaled strict enforcement of Title VII and the False Claims Act, targeting employment practices perceived as granting preferential treatment based on race or sex.
- **Court Rulings:** Federal courts remain sharply divided. A federal district judge in Boston vacated the U.S. Department of Education's anti-diversity directive that had previously justified cutting hundreds of millions in teacher-training grants, ruling the terminations unlawful. Other circuit rulings and appeals regarding executive orders remain active and contested.

### New York State

- **State Policy & Education:** Governor Kathy Hochul and the New York State Education Department (NYSED) continue to support and preserve diversity, equity, and inclusion frameworks across K-12 public schools, SUNY, and CUNY systems. NYSED's Office of Diversity, Equity, and Inclusion actively promotes culturally responsive education models.
- **Local Adjustments:** Driven by legal anxieties regarding federal funding clawbacks, some local entities have altered public documentation; for instance, municipal offices in New York City intentionally scrubbed explicit references to "DEI" terminology from internal drafts of major equity plans to limit federal exposure.
- **State Labor & Employment Protections:** The New York State Department of Labor (NYSDOL) and the state's Governor's Office of Diversity and Inclusion continue to enforce state-level equal opportunity, anti-discrimination, and language access policies under expanded state human rights statutes.

## 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

- Employers must 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.

## NAVIGATING THE DEI EXECUTIVE ORDERS

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?

### 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.

## RECENT UPDATES

### IRS Issues Proposed Rules Regarding Race-Based Programs for Private Schools

On September 4, 2026, the Department of the Treasury and the Internal Revenue Service (IRS) have issued proposed regulations to end federal tax-exempt status for private schools that engage in racial discrimination, delivering on President Trump's Executive Orders ending discrimination and restoring merit-based opportunity.

#### Background

- Federal law provides tax-exempt status to organizations that operate exclusively for charitable and educational purposes. For decades, the Supreme Court has recognized that eligibility for tax-exempt status is conditioned on compliance with fundamental public policy, including the prohibition against racial discrimination.
- The proposed regulations update Treasury and IRS guidance to reflect that longstanding principle, as established in *Brown v. Board of Education*, *Bob Jones University v. United States*, and *Students for Fair Admissions v. Harvard*, and provide greater clarity for private educational institutions regarding the nondiscrimination requirements associated with federal tax-exempt status.

## Proposed regulations

- Under the proposed rule, a private school would not qualify for Federal tax-exempt status under section 501(c)(3) if it adopts, maintains, or enforces a policy or practice that discriminates on the basis of race, color, or national or ethnic origin. The rule would apply across admissions, educational policies, scholarships and loans, athletics, and every other school-administered or school-supported program.
- The proposed regulations would apply to tax-exempt private primary and secondary schools, colleges, universities, professional schools, and trade schools. Treasury and the IRS estimate that the proposal may affect as many as 18,000 private educational institutions.
- The proposal would also eliminate outdated provisions of IRS guidance that permitted schools to favor certain racial preferences in admissions, facilities, programs, scholarships, and financial assistance.

## In the Courts

On September 17, 2026, eight states (California, Colorado, Illinois, Maryland, Massachusetts, New Jersey, New York, and Wisconsin) prevailed on summary judgment in their lawsuit challenging the Education Department's February 5, 2025, internal directive mandating the termination of federal education grants involving DEI-related programming. The court vacated the directive in its entirety and declared it unlawful. *State of California et al. v. U.S. Dep't of Education et al.*, No. 25-CV-10548-AK (D. Mass. Sep. 17, 2026).

The court found the directive arbitrary and capricious on four grounds and contrary to three independent sources of law, including the governing grant statutes, the General Education Provisions Act's (GEPA) notice-and-comment requirement, and the Uniform Guidance's limits on post-award terminations.

The ruling joins a growing line of federal court decisions blocking anti-DEI funding actions and reinforces the compliance uncertainty facing employers that hold federal grants or contracts

## 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.

## HYPOTHETICAL SCENARIO

Apex Logistics, a nationwide freight and distribution company, is hiring a new Regional Logistics Manager to oversee a network of three major fulfillment centers. The position carries significant responsibility, managing a \$15 million operational budget and leading a team of 40 workforce supervisors.

The job posting lists the following minimum qualifications:

- Bachelor's degree in Business, Supply Chain Management, or a related field.
- Minimum of 7 years of supervisory experience in logistics or supply chain operations.
- Demonstrated track record of improving operational efficiency and compliance.

### The Applicants

After an initial screening round, the hiring committee narrows the field to two final candidates:

1. **Candidate A:**
  - **Qualifications:** 10 years of direct experience as a Fulfillment Center Manager at a competitor, managing teams of up to 60 employees. Holds a

Master's Degree in Supply Chain Management. Possesses relevant industry certifications.

- **Interview Performance:** Scored top marks across all panel interviewers for technical knowledge, crisis management, and metrics-driven leadership.

## 2. Candidate B:

- **Qualifications:** 4 years of experience as an assistant warehouse supervisor. Holds a Bachelor's Degree in Business.
- **Interview Performance:** Strong interpersonal skills, positive recommendations, but lacked experience managing large budgets or multi-facility distribution networks.

## The Hiring Decision & Internal Mandate

During the final selection meeting, the hiring committee unanimously agrees that Candidate A is significantly more qualified based on the job criteria and interview results.

However, the VP of Human Resources intervenes, citing an internal memo recently distributed by executive leadership. The memo mandates that in order to meet annual Diversity, Equity, and Inclusion (DEI) targets tied to executive performance bonuses, **100% of newly open managerial positions in the logistics division for that fiscal quarter must be filled by individuals from historically underrepresented demographics.**

Because Candidate A does not fit the target demographic specified in the quota, the VP of HR instructs the hiring manager to reject Candidate A and extend the job offer to Candidate B.

When the hiring manager expresses concern that Candidate B does not meet the 7-year experience requirement listed in the official job description, HR instructs them to retroactively lower the minimum experience requirement on paper to match Candidate B's resume.

## Where the Legality Fails

Under federal law in the United States – specifically Title VII of the Civil Rights Act of 1964 – it is unlawful for an employer to fail or refuse to hire any individual based on their race, color, religion, sex, or national origin.

While lawful DEI programs typically focus on broadening the recruitment pool, eliminating bias in evaluations, and ensuring equal access to opportunities, this hypothetical scenario crosses the line into illegal employment discrimination for several specific reasons:

1. **Use of Strict Quotas / Explicit Preferences:** Federal civil rights laws strictly prohibit race- or gender-based quotas or making employment decisions (hiring, firing, promotion) where protected traits are the determinative factor.
2. **Passed Over a Qualified Candidate Based on a Protected Characteristic:** Candidate A was explicitly denied employment because of their demographic background, despite being objectively more qualified under the employer's own criteria.
3. **Manipulating Qualifications to Favor a Specific Group:** Altering posted job requirements post-hoc specifically to exclude or select candidates based on protected characteristics violates equal opportunity standard practices.



### **Implement and Adhere to Policies**

Implement equitable policies that benefit the entire workforce, recognizing diverse life circumstances. DEI is framed around fairness, objective standards, and equal opportunity—ensuring the best ideas and candidates succeed regardless of background.

### **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.