



Stephen E. Irving
sirving@pecklaw.com



Tara R. Munder
tmunder@pecklaw.com

Navigating the Executive Order Ending Affirmative Action and DEI for Federal Contractors: Essential Steps for Compliance

Overview of Executive Order 14173

Federal contractors, subcontractors and grantees have until April 21, 2025, to comply with President Trump's Executive Order ("EO") 14173 entitled "**Ending Illegal Discrimination and Restoring Merit-Based Opportunity.**" This Order introduces significant changes for federal contractors and subcontractors and impacts those working on contracts where the project is wholly or partly funded by the federal government. The EO eliminates long-standing affirmative action requirements and restricts diversity, equity, and inclusion ("DEI") programs, asserting DEI programs may constitute illegal discrimination. Federal contractors, subcontractors and grantees must reassess their compliance and hiring practices to align with the new regulatory framework, while maintaining compliance with other federal, state and local laws and regulations.

Key Changes for Federal Contractors, Subcontractors and Grantees

1. Elimination of Affirmative Action Requirements

Since 1965, federal contractors, subcontractors and recipients of federal grants have been required to implement affirmative action programs pursuant to EO 11246. President Trump's Order revokes that EO, eliminating mandates for workforce composition analysis and hiring preferences based on protected characteristics such as race, national origin, sex, age, disability, and gender, among others. Federal

contractors, subcontractors and grantees are now prohibited from implementing hiring or promotion policies that could be interpreted as favoring certain groups over others.

While the Order revokes EO 11246, it does not eliminate Federal Acquisition Regulation (FAR) 52.222-23 and related affirmative action compliance regulations that are incorporated into federal construction contracts. It is expected, however, that steps will be taken to remove or modify those regulations.

2. DEI Program Restrictions

The Office of Federal Contract Compliance Program ("OFCCP"), which was primarily founded to implement affirmative action programs and promote workplace diversity, has been ordered to "cease and desist all investigative and enforcement activity" under the rescinded EO 11246, and barred from requiring or promoting DEI initiatives in federal contracts, grants, and financial assistance programs.

In addition to removing affirmative action requirements, contractors and subcontractors will be required to certify that they do not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws. The EO also directs the Office of Management and Budget to remove DEI-related principles and language from federal contracts and grants.

The EO expressly requires contractors to certify compliance with federal anti-discrimination laws subject to action under the False Claims Act ("FCA"), a statute that can impose significant criminal or civil liability, in order to rout out DEI programs "that can violate the civil-rights laws." The new certification requirement can also be

a mechanism for third-party whistleblowers to bring lawsuits for perceived noncompliance. The EO also tasks the Department of Justice to make recommendations for “measures to encourage the private sector to end illegal discrimination and preferences, including DEI.”

The Order provides an exception for federal and private-sector preferences for veterans and U.S. armed forces, and for disabled individuals under the Rehabilitation Act (Section 503), and for protected veterans under the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA), as well as nondiscrimination, non-harassment, and anti-retaliation obligations under Title VII, the Equal Pay Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act.

What Contractors Should Do Now

Although EO 14173 relieves contractors of many DEI-related compliance requirements, it also presents new risks and uncertainties. Contractors who remain interested in and value a diverse employee base should take proactive steps to ensure compliance, including:

1. Review Existing Policies

- Contractors should review and revise diversity and inclusion initiatives, training programs, hiring and promotion practices, and other internal policies, to strike a balance between the continuing obligation to avoid unlawful discrimination based on sex, age, race, disability and other protected characteristics and the new mandate to avoid DEI.
- This should involve scrubbing websites of DEI related language, discontinuing certain DEI training programs, and reassessing hiring and promotion practices to determine whether they are still necessary or if they could now be viewed as a form of impermissible “preference” in employment decisions.
- Managers and supervisors should receive regular training on company anti-discrimination/harassment compliance policies to mitigate the risk of discrimination claims and regulatory penalties.

2. Broaden Recruitment Efforts

- Contractors interested in maintaining a diverse workforce should expand outreach to a diverse talent pool, including organizations that support veterans, individuals with disabilities, and candidates from underrepresented socio-economic backgrounds, as well as trade schools and universities with diverse enrollment, while making sure that hiring decisions are merit based.

3. Redefine Diversity

- Contractors should consider a broader definition of “diversity” that includes factors such as educational background, experience, economic hardship, language skills and neurodiversity, which can contribute to a varied and dynamic workplace without violating new restrictions.

4. Closely Monitor Legal Developments

- On February 5, 2024, U.S. Attorney General Pam Bondi issued a memo titled, “Ending illegal DEO and DEIA Discrimination and Preferences,” which directed the DOJ’s Civil Rights Division to investigate, eliminate and penalize impermissible DEI practices in the private sector. Private actors, whether operating in the public or private sector, could be subject to regulatory penalties if their DEI initiatives violate EO 14173.

- For contractors with FAR mandated affirmative action compliance regulations in existing contracts, continue to comply with those obligations unless instructed otherwise or further guidance is provided.

5. Ensure Multi-Level Compliance

- Some states and local governments may still have DEI and affirmative action requirements despite changes at the federal level. Federal contractors should stay informed of these state and local regulations which may impose additional obligations.

Conclusion

EO 14173 marks a significant shift in federal contracting requirements, which must be navigated strategically. Contractors must be proactive in adjusting policies, monitoring legal developments, and ensuring compliance.

Peckar & Abramson is monitoring government developments that may impact the construction industry. Planning for changes in the law is the best way to stay prepared and avoid being caught off guard. Stay up to date and subscribe to our alerts [here](#). Contact us today for guidance on how this executive order affects your business and compliance strategy.

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