

Transition – A Presidential Change Update

March 2025

EEOC and DOJ Issue Warning Against Unlawful DEI-Related Discrimination

Key Notes:

- The EEOC and DOJ issued several technical assistance guidance documents related to unlawful workplace DEI.
- The agency documents outline circumstances in which the agencies may find that workplace DEI initiatives violate federal anti-discrimination laws.
- The EEOC and DOJ also provide guidance to employees who believe they are subjected to unlawful DEI-related discrimination.

On March 19, 2025, the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (DOJ) issued two technical assistance documents outlining their positions on discrimination related to diversity, equity and inclusion (DEI) in the workplace. The DOJ released a one-page technical assistance document titled, [“What To Do If You Experience Discrimination Related to DEI at Work,”](#) which summarizes protections under Title VII and provides steps to take if one encounters workplace discrimination. The EEOC’s guidance, [“What You Should Know About DEI-Related Discrimination at Work,”](#) is a more detailed, question-and-answer-style resource explaining how DEI initiatives intersect with Title VII and offering examples of unlawful discrimination related to DEI practices. These guidance documents reflect the EEOC’s interpretations of Title VII and provide insight into potential future enforcement activity.

According to the guidance, DEI initiatives, policies, programs or practices may violate Title VII of the Civil Rights Act of 1964 if they involve discrimination based on race, sex or other protected characteristics.

However, the EEOC’s and DOJ’s technical assistance documents lack binding authority, as they were not issued through the required rulemaking process. Additionally, following the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*, federal courts are no longer required to defer to federal agency guidance. Nonetheless, these technical assistance documents illustrate how the agencies may approach the enforcement of DEI-related issues going forward.

A [press release](#) accompanying the publication states that the guidance documents are grounded in Title VII, existing EEOC policy guidance, prior technical assistance documents and Supreme Court precedent. The EEOC underscores that Title VII’s protections apply equally to all employees, applicants and participants in training programs—regardless of race, sex or other protected characteristics. The EEOC guidance clarifies that an employment action is unlawful if a protected characteristic was a motivating factor, even if it was not the sole or “but for” cause of the action.

The guidance rejects using a “heightened” evidentiary standard for reverse discrimination claims brought by “majority group” plaintiffs. The EEOC has joined an amicus brief in *Ames v. Ohio Department of Youth Services*, (No. 23-1039), a reverse discrimination case currently pending before the Supreme Court, arguing that the heightened, “background circumstances” test employed by some lower courts contradicts Supreme Court precedent and the text of Title VII.

The EEOC and the DOJ caution that employers cannot rely on DEI programs to justify employment decisions motivated

by race, sex or other protected characteristics, including decisions related to hiring, firing, promotion, demotion, compensation, training, mentoring or networking. The agencies also warn against limiting, segregating or classifying employees based on protected characteristics that affect their status or employment opportunities, such as restricting membership in employee or affinity groups or segregating employees on the basis of race, sex or other protected characteristics during DEI or other training. Additionally, the agencies emphasize that employers cannot subject employees to harassment or retaliation for opposing unlawful DEI policies or practices.

The EEOC and the DOJ urge employees who believe they have experienced DEI-related discrimination to contact the EEOC promptly, as strict time limits apply for filing a charge. The EEOC highlights its authority to investigate and litigate against private-sector employers and its ability to refer charges involving state and local government employers to the DOJ for possible legal action.

Recommendations for Employers

While challenges to executive orders on DEI issued during the Trump administration continue to work their way through the courts, employers should review their DEI initiatives, policies, programs and practices to ensure they do not involve actions that could be perceived as discriminatory based on race, sex or other protected characteristics. Employers should also assess whether their programs are consistent with the recent guidance from the EEOC and DOJ.

Additionally, employers should ensure that their DEI training and activities are inclusive, respectful and non-discriminatory and do not create a hostile work environment or expose employees to retaliation. Consultation with legal counsel is recommended if there are any questions regarding DEI policies or if a charge of discrimination is received from the EEOC or DOJ. Finally, employers should provide regular training and guidance to managers and employees on their rights and obligations under Title VII and other anti-discrimination laws.

FOR MORE INFORMATION

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