

PUBLICATION

Unpacking the U.S. Attorney General's "Ending Illegal DEI and DEIA Discrimination Preferences" Memo

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The U.S. Attorney General's Office issued a Memorandum, on February 5, 2025, to the employees of the U.S. Department of Justice (DOJ) directing the DOJ Civil Rights Division to "investigate, eliminate, and penalize illegal DEI and DEIA preferences, mandates, policies, programs, and activities in the private sector and in educational institutions that receive federal funds."

What is noted in the Memo?

The Memorandum cites the United States Supreme Court's decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.* 600 U.S. 181 (2023) and President Trump's Executive Order 14173 titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." In *Students for Fair Admissions, Inc.*, the U.S. Supreme Court held that race-based affirmative action programs in college admissions processes violate the Equal Protection Clause of the Fourteenth Amendment. President Trump's Executive Order 14173 directs all federal executive departments and agencies to terminate DEI and DEIA programs and to enforce civil rights laws in a manner to combat DEI "preferences, mandates, policies, programs, and activities" in the private sector, and U.S. Attorney General Pam Bondi's Memo follows suit.

What makes a DEI or DEIA program illegal?

There is no guidance on what will be considered an "illegal" DEI or DEIA program, activity, or initiative. Instead, the Memorandum identifies the following two action items:

1. By March 1, 2025, the DOJ Civil Rights Division and the Office of Legal Policy are to jointly submit a report containing recommendations for enforcing federal civil rights laws as well as "taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including policies relating to DEI and DEIA." The report is expected to address various points including:
 - "Key sectors of concern" within the DOJ's jurisdiction;
 - "The most egregious and discriminatory DEI and DEIA practitioners in each sector of concern"; and
 - "A plan including specific steps or measures to deter the use of DEI and DEIA programs or principles that constitute illegal discrimination or preferences, including proposals for criminal investigations."
2. In accordance with Executive Order 14173, the DOJ is to work with the Department of Education "to issue directions, and the Civil Rights Division will pursue actions, regarding the measures and practices required to comply with *Students for Fair Admissions*."

What should private-sector employers be doing now?

While the DOJ has authority to enforce Title VI and the False Claims Act, it only has authority to enforce Title VII against government entities. Nonetheless, private employers who are not federal contractors and do not

receive federal funds should remain vigilant and aware of these efforts to ensure their programs, policies, and initiatives comply with applicable law.

For now, with the serious evolving changes in the legal landscape, organizations should consider taking the following steps:

3. Obtain legal counsel to audit your diversity programs and initiatives, as well as your policies, training, marketing materials, and website to ensure all are inclusive in substance and implementation.
4. Create an internal subgroup or committee that will work with legal counsel to review and discuss the current legal landscape including any changes in applicable laws relating to DEI and DEIA. Meet regularly to discuss whether any changes need to be made to existing programs or materials, along with steps to identify and implement those changes.

We are here to assist you with these recommended next steps and will continue to monitor these and other developments. Indeed, Executive Order 14173 is already facing legal challenges, and just last year the Eleventh Circuit held that Florida's Stop WOKE Act was unconstitutional. Be on the lookout for additional alerts and webinars from Baker Donelson.

Please contact the authors, a member of our [Labor & Employment Group](#), or your regular Baker Donelson attorney to discuss audits and next steps.