

PUBLICATION

Court Limits Trump Administration's Executive Orders on DEI: Employer Impact

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Summary of Executive Orders

As we have referenced in prior alerts, the Trump administration issued two Executive Orders relating to diversity, equity, and inclusion (DEI) programs for federal contractors, with language seeking to reach private employers. Executive Order No. 14151 (J20 Order) directs the director of the Office of Management and Budget to terminate all mandates, policies, programs, preferences, and activities relating to "diversity, equity, inclusion, and accessibility" (DEIA) within federal agencies. Executive Order No. 14173 (J21 Order) 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. The orders reference but do not define "illegal DEI and DEIA," "equity-related," "promoting DEI," or "illegal discrimination preferences."

Legal Challenges to the Executive Orders

The city of Baltimore and academic and restaurant workers' groups filed a lawsuit in Maryland district court challenging the constitutionality of the J20 and J21 Orders in a case styled *National Association of Diversity Officers in Higher Education et al. v. Donald J. Trump et al.*, Case No. 1:25-cv-00333-ABA. On Friday, February 21, 2025, the Maryland District Court issued an opinion partially enjoining the J20 and J21 Orders. The specific provisions of the J20 and J21 Orders the Maryland District Court considered were those that direct all executive agencies to "terminate . . . 'equity-related' grants or contracts," (the Termination Provision), those that direct all agencies to "include in every contract or grant award" a certification, enforceable through the False Claims Act, that the contractor and grantee "does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws," (the Certification Provision), and those that direct the Attorney General to take "appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI" to deter such programs or principles, and to "identify . . . potential civil compliance investigations" to accomplish such deterrence, (the Enforcement Threat Provision).

The court found the challengers were likely to prove that the Termination Provision and the Enforcement Threat Provision were unconstitutionally vague on their face based on the J20 and J21 Orders not adequately defining "DEI" and "equity related." The Court also determined the Enforcement Threat Provision and Certification Provision were content- and viewpoint-based restrictions that "chill speech as to anyone the government might conceivably choose to accuse of engaging in speech about 'equity' or 'diversity' or 'DEI,' or the other topics the J20 and J21 Orders cite."

The court did not enjoin the Attorney General from preparing reports or pursuing investigations related to the anti-DEI directives for separation-of-powers concerns. Accordingly, the Attorney General may investigate compliance with the anti-DEI mandates of the J20 and J21 Orders.

Key Considerations for Public and Private Sector Employers

While this preliminary injunction acts as a pause on the enforcement of the Termination Provision, Certification Provision, and Enforcement Threat Provisions of the J20 and J21 Orders, it provides only temporary relief. We anticipate additional challenges to the Executive Orders and court orders that will continue to shape the legal landscape of DEI programs and policies in both the public and private sectors. Moreover, the Attorney General

and Department of Justice may continue with the reporting of an investigation into DEI and DEIA programs, which can present a risk for federal contractors, grant recipients, and private employers.

How Baker Donelson Can Assist

Baker Donelson can help you audit your DEI programs, policies and initiatives, and other efforts related to DEI. We are available to assist in compliance with applicable laws, risk assessments for organizations (including those receiving federal funding), litigation defense against enforcement or criminal investigations, and constitutional challenges to the J20 and J21 Orders and other efforts to enforce them.

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