

New Executive Order Targets DEI, Reduces Affirmative Action Requirements

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The new Executive Order condemns corporate and governmental policies on “diversity, equity, and inclusion” (DEI) and “diversity, equity, inclusion, and accessibility” (DEIA), saying they promote “demeaning and immoral race- and sex-based preferences.”

Impact on Employers

We don’t know the full extent to which the new administration will take action against private employers who encourage diversity and inclusion in their workforces, but the Executive Order makes clear that the federal government will be keeping a close eye on employers and other entities. The Executive Order instructs the Attorney General to submit a report within 120 days identifying “the most egregious and discriminatory DEI practitioners.” Interestingly, the Executive Order creates a “quota” of sorts, telling federal agencies to identify up to nine potential civil compliance investigations of large corporations and foundations, state and local bar and medical associations, and educational institutions with endowments over \$1 billion.

Sharp Reduction in Affirmative Action Requirements

The new Executive Order revokes several diversity-related executive orders from prior administrations, most notably the Johnson administration’s **Executive Order 11246**. That Executive Order is the foundation for many affirmative action requirements applicable to government contractors, including the [Office of Federal Contract Compliance Programs](#)’ (OFCCP) detailed regulations requiring affirmative action programs for minorities and females. Those regulations apply to companies that do business directly with the federal government (government contractors) as well as firms that supply goods or services to those companies (government subcontractors).

President Trump’s January 21 Executive Order includes the following:

1. Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity), is hereby revoked. For 90 days from the date of this order, federal contractors may continue to comply with the regulatory scheme in effect on January 20, 2025.
2. The OFCCP within the Department of Labor shall immediately cease:
 - Promoting “diversity;”
 - Holding federal contractors and subcontractors responsible for taking “affirmative action;” and
 - Allowing or encouraging federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.

On its website, [OFCCP has acknowledged the revocation of Executive Order 11246](#) and says that the agency is updating the website to comply with the new Executive Order. OFCCP was also quick to point out that Section 503 of the Rehabilitation Act as well as the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) are statutory (i.e., can't be revoked by an executive order) and **remain in effect**. So, affirmative action for the disabled and for protected veterans is still the law.

Acting Secretary of Labor Vince Micone has ordered all OFCCP employees to cease and desist investigative and enforcement activity under the rescinded Executive Order 11246 and the regulations issued under it. According to Micone, "the department no longer has any authority under the rescinded Executive Order 11246" or its regulations. Micone also said that Section 503 and VEVRAA components of OFCCP investigations would be "held in abeyance pending further guidance."

Barring a successful challenge to the new Executive Order, the bottom line is that federal contractors will no longer be subject to OFCCP's affirmative action requirements for minorities and females. These are the requirements that are most detailed and burdensome. Contractors must continue their AAPs for the disabled and for protected veterans unless and until Congress amends the Rehabilitation Act and VEVRAA. Contractors will continue to have other obligations under federal and state laws, such as EEO-1 and VETS-4212 filings.

Please contact [Bill](#) or a member of the firm's [labor and employment](#) team if you have questions or are concerned about how this guidance may impact your business.