

LEGAL UPDATE

DOJ Issues DEI Guidance for Federal Funding Recipients



On **July 29, 2025**, the U.S. Department of Justice (DOJ) issued a [memorandum](#) to recipients of federal funding to provide guidance on unlawful diversity, equity and inclusion (DEI) programs. The guidance clarifies the application of federal antidiscrimination laws, including Title VII of the Civil Rights Act (Title VII), to DEI and related programs and provides employer best practices for compliance.

Overview of DOJ Guidance

The DOJ memorandum asserts that entities receiving federal funds must comply with applicable civil rights laws, such as Title VII. Title VII prohibits employers with **15 or more employees** from discriminating against individuals on the basis of their protected characteristic (including race, color, national origin, sex and religion) in any terms, conditions or privileges of employment.

Prohibited Practices

The memorandum provides a nonexhaustive list of unlawful practices that could result in revocation of grant funding, including:

- **Preferential treatment based on protected characteristics** (e.g., race-based programs, preferential hiring or promotion practices, and access to facilities or resources based on race or ethnicity);
- **Prohibited use of proxies for protected characteristics** (e.g., cultural competence requirements, geographic or institutional targeting, and “overcoming obstacles” narrative or diversity statement requirements);
- **Segregation based on protected characteristics** (e.g., race-based training sessions, segregation in facilities or resources, implicit segregation through program eligibility, race-based candidate pool selection, sex-based selection for contracts, and race- or sex-based program participation); and
- **Training programs that promote discrimination or hostile environments** (e.g., trainings that include statements stereotyping individuals based on protected characteristics).

Employer Best Practices

The DOJ memorandum outlines several best practices federal funding recipients may follow to comply with federal antidiscrimination laws. Such practices include the following:

- **Ensure inclusive access.** Ensure workplace programs, activities and resources are open to all qualified individuals, regardless of their protected characteristic (other than necessary sex separation where biological differences implicate privacy, safety or opportunity);
- **Focus on skills and qualifications.** Base selection decisions on specific, measurable skills and qualifications related to job performance or program participation;
- **Prohibit demographic-driven criteria.** Discontinue programs or policies designed to achieve discriminatory outcomes, even those using facially neutral means;
- **Document legitimate rationales.** Document clear, legitimate and nondiscriminatory rationales used in employment decisions;

- **Scrutinize neutral criteria for proxy effects.** Before implementing facially neutral criteria, rigorously evaluate and document whether they are proxies for a protected characteristic;
- **Eliminate diversity quotas.** Discontinue policies that mandate representation of specific protected groups in candidate pools, hiring panels or final selections and focus solely on nondiscriminatory performance metrics;
- **Avoid exclusionary training programs.** Ensure trainings are open to all qualified participants, regardless of protected trait, avoid segregating participants into groups based on their protected traits, and do not require participants to affirm specific ideological positions or confess to personal biases or privileges;
- **Include nondiscrimination clauses in contracts to third parties and monitor compliance.** Incorporate nondiscrimination clauses in grant agreements, contracts or partnership agreements, monitor third party federal funding recipients to ensure ongoing compliance, audit programs for discriminatory practices, and terminate funding for noncompliant programs; and
- **Establish clear anti-retaliation procedures and create safe reporting mechanisms.** Implement and communicate policies that prohibit retaliation against individuals who engage in protected activities, such as raising concerns, filing complaints or refusing to participate in nondiscriminatory programs. Include such policies in employee handbooks and provide confidential reporting channels.

Employer Takeaways

Although the DOJ guidance does not alter existing law (which has always banned consideration of an individual's protected trait in employment decisions), it provides insight into how the DOJ will evaluate the lawfulness of DEI programs and how employers may prevent discrimination claims. While the guidance only explicitly applies to federal funding recipients, such as federal contractors, all employers may consider reviewing the guidance and applying the best practices to comply with Title VII and other federal antidiscrimination laws.

Provided by National Insurance Services

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