

A PAUSE IN THE PENDULUM SWING: FEDERAL JUDGE TEMPORARILY BLOCKS KEY PROVISIONS FROM PRESIDENT TRUMP'S DE&I EXECUTIVE ORDERS

On February 21, the U.S. District Court of Maryland issued a nationwide [preliminary injunction](#) against certain provisions of President Trump's recent executive orders targeting Diversity, Equity, and Inclusion ("DE&I") programming (which we had written about [here](#)). Specifically, the injunction blocks three key provisions within Executive Orders [14173](#) and [14151](#) that require (1) agencies to terminate "equity-related" grants or contracts ("**Termination Provision**"); (2) federal contractors or fund grantees to certify that they are not operating unlawful programs that "promote" DE&I ("**Certification Provision**"); and (3) that the U.S. Attorney General "encourage" the private sector to end DE&I initiatives under threat of enforcement ("**Enforcement Threat Provision**"). In so ruling, the court found that the challenged provisions were likely unconstitutionally vague and restrictive of free speech.

The decision was in response to a lawsuit brought by the Mayor and City Council of Baltimore, the National Association of Diversity Officers in Higher Education, the American Association of University Professors, and the Restaurant Opportunities Centers United. The plaintiffs moved for a preliminary injunction to block certain provisions of the orders, alleging that these provisions were in violation of their constitutional rights, including their First Amendment right to free speech and their Fifth Amendment right to due process. The district court granted the plaintiff's motion in part, finding that they were likely to succeed on their constitutional claims that the challenged provisions were unconstitutionally vague under the Fifth Amendment, and further, infringed upon their First Amendment rights to free speech. Specifically, the court pointed to the vagueness of the orders' "key terms," such as "equity-related," "illegal DEI," and "DEI," finding that this lack of clarity as to what constitutes prohibited activity would likely chill the free speech of companies and organizations. Further, the court found that the Certification Provision, as well as parts of the Threat of Enforcement Provision,

imposed unconstitutional restrictions on speech. See [Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump](#), No. 1:25-cv-00333 (D. Md. Feb. 21, 2025).

SCOPE AND EFFECT

- **Scope:** Under the injunctive order, federal agencies are temporarily barred from cancelling “equity-related” federal contracts or grants, and from requiring federal contractors or grantees to certify that their DE&I programs comply with anti-discrimination laws. The injunction applies to all similarly-situated federal contractors, federal grantees, and private sector companies.
- **Effect:** The injunction temporarily relieves federal contractors from the threat of liability under the False Claims Act for perceived “unlawful” DE&I programs. Further, the injunction prohibits False Claims Act enforcement actions against publicly traded companies. However, the court explicitly refrained from enjoining the Attorney General from preparing a report for the President providing recommendations for enforcing federal anti-discrimination laws, and from taking other appropriate measures to “encourage” the private sector to end illegal discrimination, including through DE&I, as directed under Executive Order 14173. On February 5, the Attorney General issued memoranda implementing E.O. 14173, one of which specifically targets the private sector. The [memo](#) calls for the Department of Justice’s Civil Rights Division to “investigate, eliminate, and penalize” illegal DE&I initiatives within the private sector, and directs the Civil Rights Division and the Office of Legal Policy to submit recommendations for enforcing federal civil rights law to “encourage” private companies to end “illegal” discrimination, including policies relating to DE&I.

WHAT PRIVATE EMPLOYERS SHOULD KNOW:

While the preliminary injunction prevents government agencies from enforcing the Executive Order against private employers for “unlawful” DE&I initiatives, it does not impact existing federal anti-discrimination laws such as Title VII and the Civil Rights Act. Accordingly, private employers must continue to exercise judgement to ensure compliance with all federal and state laws prohibiting discrimination. With respect to the new administration’s policies on DE&I, at a minimum, companies should examine what workforce programs they have in place (and how they have named those programs), what commitments they have made and/or announced publicly, and prepare to demonstrate how these programs and actions comply with U.S. civil rights laws and regulations.

We will continue to monitor for developments, including any response from the White House or further court action, and support our clients in responding to these developments.

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