



***Diversity, Equity, and Inclusion in
the Workplace: Growing Trends
and Legal Considerations***

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Agenda

- Legal Framework for DEI Initiatives
- Update on the Legal Landscape
 - State Legislation
 - Executive Orders
 - EEOC Guidance and Enforcement Actions
- Litigation Landscape
- Final Thoughts



Evolution of the DEI Landscape

- **Judicial Scrutiny (2023-2024)**

- June 2023: *Students for Fair Admissions v. Harvard/UNC*
- July 2023-2024:
 - Institutional review of DEI programs
 - Increase in DEI challenges and litigation

- **Federal Policy Reversal (2025)**

- January 2025: Trump rescinds prior Executive Orders and issues new Executive Orders
- Spring 2025: Agency implementation and compliance reviews

- **Active Enforcement (2025 – present)**

- March 2025: EEOC & DOJ issue Technical Assistance on DEI
- Spring 2025: EEOC leadership focuses on “illegal DEI” and individual discrimination claims
 - EEOC issues letters to law firms and Fortune 500 corporations probing DEI initiatives
- May 2025: DOJ establishes Civil Rights Fraud Initiative
- March 2026: Executive Order 14398
- 2026: EEOC and DOJ investigations and enforcement actions continue; activist suits continue

Legal Framework for DEI Initiatives

Title VII of the Civil Rights Act of 1964

- Prohibits employers from making employment decisions *based on* an applicant's or employee's protected status, including "race, color, religion, sex, or national origin"
- Applies to any aspect of employment (e.g., hiring, firing, pay, job assignments, promotions, training, fringe benefits, any other term or condition of employment)

Section 1981 of the Civil Rights Act of 1866

- Race-based claims only

Other federal anti-discrimination laws

- Including the Americans with Disabilities Act (ADA)

State and local anti-discrimination laws

- May differ

Title VII has long said employers **cannot** discriminate on the basis of any protected characteristic. This law has **not** changed.

Legal Framework for DEI Initiatives

EEOC Guidance on “DEI-Related Discrimination at Work” (March 2025)

- “Diversity, Equity and Inclusion (DEI) is a broad term that is not defined in Title VII of the Civil Rights Act of 1964 (Title VII). Title VII prohibits employment discrimination based on protected characteristics such as race and sex. Under Title VII, DEI initiatives, policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee’s or applicant’s race, sex, or another protected characteristic.”
- “Title VII does not provide any “diversity interest” exception to these rules. Nor has the Supreme Court ever adopted such an exception. No general business interests in diversity and equity (including perceived operational benefits or customer/client preference) have ever been found by the Supreme Court or the EEOC to be sufficient to allow race-motivated employment actions.”

Legal Framework for DEI Initiatives

- In addition to unlawfully using quotas or otherwise “balancing” a workforce by race, sex, or other protected traits, DEI-related discrimination in your workplace might include the following:

Disparate Treatment

DEI-related discrimination can include an employer taking an employment action motivated (in whole or in part) by race, sex, or another protected characteristic. Title VII bars discrimination against applicants or employees in the terms, conditions, or privileges of employment, including:

- Hiring
- Exclusion from training
- Firing
- Exclusion from mentoring or sponsorship programs
- Promotion
- Exclusion from fellowships
- Demotion
- Selection for interviews (including placement on candidate slates)
- Compensation
- Fringe benefits

Harassment

Title VII prohibits workplace harassment, which may occur when an employee is subjected to unwelcome remarks or conduct based on race, sex, or other protected characteristics. Harassment is illegal when it results in an adverse change to a term, condition, or privilege of employment, or it is so frequent or severe that a reasonable person would consider it intimidating, hostile, or abusive. Depending on the facts, DEI training may give rise to a colorable hostile work environment claim.

Limiting, Segregating, and Classifying

Title VII also prohibits employers from limiting, segregating, or classifying employees based on race, sex, or other protected characteristics in a way that affects their status or deprives them of employment opportunities. Prohibited conduct may include:

- Limiting membership in workplace groups, such as Employee Resource Groups (ERG) or other employee affinity groups, to certain protected groups
- Separating employees into groups based on race, sex, or another protected characteristic when administering DEI or other trainings, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources

Retaliation

Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, such as objecting to or opposing employment discrimination related to DEI, participating in employer or EEOC investigations, or filing an EEOC charge. Reasonable opposition to a DEI training may constitute protected activity if the employee provides a fact-specific basis for his or her belief that the training violates Title VII.



STATE LEGISLATION

State Legislative Trends

- Last 3 years: over 1,000 DEI-related bills introduced nationwide
 - Nearly 700 in 2025
- Most legislation targets:
 - Public universities and educational institutions
 - State agencies and public entities
 - Government contracting and procurement
 - ESG and corporate governance initiatives
 - Artificial intelligence and employment discrimination
- Relatively few laws directly regulate private employers' internal DEI programs.



DEI in the workplace is becoming increasingly regulated. Employers must evaluate DEI-related programs on a state-by-state basis, particularly when government contracts, grants, or procurement obligations are involved.

Selected State Legislative Developments – Government Contracts



New Hampshire – HB 2 – June 30, 2025: bars DEI-related provisions in public-entity contracts and requires review/reporting of state-agency contracts containing DEI-related provisions

Ohio – HB 96 (State Operating Budget) – June 30, 2025: eliminates Ohio state-contractor affirmative-action-plan requirements and removes certificate-of-compliance requirements for public works bidders.

Florida – CS/CS/SB 1134 / HB 1001 – April 23, 2026 (effective January 1, 2027): county/municipal grant recipients must certify they will not use funds to require employees, contractors, volunteers, vendors, or agents to study or be instructed using DEI-related materials.

Selected State Legislative Developments – Employer Anti-Discrimination

California – FEHA Amendment – October 1, 2025: clarifies that California FEHA prohibits discriminatory use of AI/automated decision systems in employment decisions, including hiring, promotion, and training selection.



Selected State Legislative Developments – Corporate Governance



Texas – SB 2337 – September 1, 2025: regulates proxy advisory firms, requiring them to provide written economic analyses for recommendations that rely on non-financial factors like Environmental, Social, and Governance (ESG) or Diversity, Equity, and Inclusion.

Illinois Legislation – HB 3773

- Signed August 9, 2024
- Effective January 1, 2026
- Amends the Illinois Human Rights Act to expand definitions and protections against employment discrimination by including the use of AI.
- Employers remain responsible for discriminatory outcomes produced by AI tools used in:
 - Hiring
 - Promotion
 - Discipline
 - Other employment decisions
- Prohibits use of zip codes as proxy in AI
- Requires notice of AI use be provided
- May 2026: IDHR proposed regulations addressing notice requirement
- June 2, 2026: IDHR postponed rulemaking





EXECUTIVE ORDERS

Trump Second Administration

January 20, 2025

EO 14148 – Initial

Rescissions of Harmful Executive Orders and Actions

January 20, 2025

EO 14168 – Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government

March 6, 2025

EO 14230 – Addressing Risks From Perkins Coie LLP

→ **Unconstitutional**

July 23, 2025

EO 14319 – Preventing Woke AI in the Federal Government

March 26, 2026

EO 14398 – Addressing DEI Discrimination by Federal Contractors

January 2025

February 2025

March 2025

April 2025

July 2025

December 2025

March 2026

January 21, 2025

EO 14173 – Ending Illegal Discrimination and Restoring Merit-Based Opportunity

January 20, 2025

EO 14151 – Ending Radical and Wasteful Government DEI Programs and Preferencing

April 23, 2025

EO 14281 – Restoring Equality of Opportunity and Meritocracy

December 11, 2025

EO 14366 – Protecting American Investors From Foreign-Owned and Politically-Motivated Proxy Advisors

Trump Second Administration

EO 14148 – Initial Rescissions of Harmful Executive Orders and Actions (January 20, 2025)

- Rescinded numerous prior executive orders and presidential actions, including orders relating to DEI initiatives, pandemic response measures, and certain environmental and public-health policies.
- The order served as the foundation for the administration's broader rollback of federal DEI and equity programs.

EO 14151 – Ending Radical and Wasteful Government DEI Programs and Preferencing (January 20, 2025)

- Directs OMB, OPM, and agency heads to terminate federal DEI, DEIA, environmental justice, equity action, and “preferencing” programs, offices, positions, action plans, grants, contracts, and performance requirements.
- Declares that DEI efforts are “illegal and immoral discrimination.”

EO 14168 – Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (January 20, 2025)

- Establishes federal policy recognizing only two sexes, male and female, and directs agencies to apply that definition throughout federal policy, forms, guidance, communications, and enforcement positions.
- The order requires agencies to remove policies, guidance, and materials that promote or rely on “gender ideology” and to maintain sex-separated spaces and programs based on the order's definition of sex.

Trump Second Administration

EO 14173 – Ending Illegal Discrimination and Restoring Merit-Based Opportunity (January 21, 2025)

- Revokes EO 11246 and ends OFCCP's role in promoting diversity initiatives, race- and sex-based affirmative action obligations, and workforce-balancing efforts among federal contractors.
- Requires federal contracts and grants to incorporate certification-related provisions tied to anti-discrimination compliance and DEI programs.
- It also directs the Attorney General to develop a private-sector enforcement strategy identifying sectors of concern, “egregious” DEI practitioners, and potential targets for investigation, including publicly traded corporations, large nonprofits, major foundations, professional associations, and universities with substantial endowments.

EO 14230 – Addressing Risks From Perkins Coie LLP (March 6, 2025)

- Targets Perkins Coie LLP and directs federal agencies to review relationships with the firm.
- The order also directed the EEOC to investigate large law firms' DEI-related employment practices.

EO 14281 – Restoring Equality of Opportunity and Meritocracy (April 23, 2025)

- Directs federal agencies to deprioritize enforcement of statutes and regulations to the extent they rely on disparate-impact liability theories.
- The order instructs the DOJ and EEOC to review pending investigations, litigation positions, and enforcement actions premised on disparate-impact theories and to assess existing consent decrees and injunctions based on such theories.

Trump Second Administration

EO 14319 – Preventing Woke AI in the Federal Government (July 23, 2025)

- Directs federal agencies to procure only large language models that comply with principles of truth-seeking and ideological neutrality. The order criticizes AI systems that allegedly embed DEI-related ideology, manipulate race or sex in outputs, or produce ideologically slanted responses.

EO 14366 – Protecting American Investors From Foreign-Owned and Politically-Motivated Proxy Advisors (December 11, 2025)

- Targets proxy advisory firms, particularly ISS and Glass Lewis, based on concerns that proxy advisors influence corporate governance and advance politically motivated agendas, including ESG and DEI objectives.
- The order directs federal agencies to increase oversight of proxy-advisory practices viewed as non-financially or ideologically driven.

EO 14398 – Addressing DEI Discrimination by Federal Contractors (March 26, 2026)

- Requires federal contracts, including subcontracts and lower-tier subcontracts, to include provisions prohibiting “racially discriminatory DEI activities.”
- The order defines such activities to include disparate treatment based on race or ethnicity in recruitment, employment, contracting, vendor relationships, program participation, and resource allocation.

Illinois joins states' challenge to Trump's anti-DEI contract rules



Kwame Raoul (WTTW News)

CS By Crain's Staff

June 11, 2026 10:09 AM CDT

Illinois Attorney General Kwame Raoul has joined attorneys general from 19 other states and Washington, D.C., in suing the Trump administration over new federal contract provisions aimed at eliminating diversity, equity and inclusion programs among government contractors.



EEOC GUIDANCE AND ENFORCEMENT ACTIONS

EEOC Chair Andrea Lucas on DEI

“Far too many employers defend certain types of race or sex preferences as good, provided they are motivated by business interests in ‘diversity, equity, or inclusion.’ But no matter an employer’s motive, there is no ‘good,’ or even acceptable, race or sex discrimination.”

“The EEOC stands ready to combat such discrimination and protect each worker’s individual rights to be judged on merit, as well as to help employers provide equal opportunity for all in the workplace. The agency’s mission is evident in our very name given to us by Congress in the Civil Rights Act of 1964 — we are the *Equal Employment Opportunity* Commission, not the *Equitable Employment Outcomes* Commission.”

EEOC's New National Enforcement Plan 2025-2029



Key Themes:

- Intentional discrimination prioritized over disparate impact.
- DEI-related race and sex discrimination identified as a Chair priority.
- “Anti-American” national origin discrimination added as a focus area.
- EEOC will minimize reliance on disparate impact theories whenever possible.

The NEP specifically calls into question:

- Diverse-slate requirements and diverse hiring panels
- Mentorship and sponsorship programs based on race or sex
- Demographic reporting to managers and decisionmakers
- Executive compensation tied to diversity goals
- Protected-class-based ERGs and affinity groups

Recissions and Proposed Recissions

Proposed Recission of 29 C.F.R. Part 1608 “Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964”

- Longstanding guidance supporting voluntary affirmative action plans. Historically provided employers a framework for self-analysis and affirmative action measures.
- If finalized, the recission would remove this safe harbor for affirmative action measures and is expected to boost lawsuits challenging diversity programs.

Proposed Recission of EEO-1 Reporting Requirements

- Seeking rescission of EEO-1, EEO-2, EEO-3, EEO-4, and EEO-5 reporting requirements, as well as related reporting obligations under Title VII, the ADA, GINA, and the PWFA.
- Signals concern that demographic reporting requirements may encourage employers to focus on workforce composition in ways that could lead to unlawful race- or sex-conscious decision-making.
- Existing reporting obligations remain in place unless and until final action is taken.

Recission of 2024 Harassment Guidance

- EEOC voted in January 2026 to rescind the Biden-era harassment guidance.
- In jurisdictions such as Illinois, state law may impose obligations or protections that go beyond the EEOC’s current federal enforcement position.

Sampling of Recent EEOC Enforcement Actions

New York Times (May 5, 2026)

- The EEOC alleges that the Times's race- and sex-based representation goals and DEI policies influenced the decision not to advance a white male employee to the final interview stage and ultimately to select a non-white female external candidate.

Coca-Cola Beverages Northeast (February 18, 2026)

- The EEOC alleges that Coca-Cola Beverages Northeast violated Title VII by excluding male employees from a two-day employer-sponsored networking event because of sex.

Nike (February 4, 2026)

- The agency is investigating whether Nike engaged in a pattern or practice of disparate treatment in hiring, promotion, demotion, separations, etc. related in part to Nike's public "five-year 2025 targets" for racial and ethnic minority representation in its U.S. workforce.

Planned Parenthood of Illinois (resolved through settlement March 19, 2026)

- The EEOC alleges that Planned Parenthood of Illinois engaged in DEI-related race discrimination against white employees through mandatory race-segregated affinity caucuses, DEI training sessions that allegedly included derogatory statements targeting white employees, and alleged denial of time off to white employees that was available to black employees.



LITIGATION LANDSCAPE

Supreme Court Precedent



Muldrow v. City of St. Louis (2024)

- Lowered the threshold for filing employment discrimination lawsuits under Title VII.
- Unanimously ruled that a plaintiff only needs to show they suffered "some harm" or an "identifiable disadvantageous change" regarding their employment terms, rejecting the previous requirement that the harm must be "significant" or "material".

Ames v. Ohio Department of Youth Services (2025)

- Eliminated heightened pleading requirements previously imposed on majority-group plaintiffs (e.g., white, male, or heterosexual employees) alleging so-called "reverse discrimination".

Litigation Trends Following *Muldrow* and *Ames*

Hiring and promotion challenges due to diversity goals

Retaliation claims related to DEI initiative opposition

Challenges to affinity groups and mentorship programs

Hostile work environment claims arising from DEI training and messaging

Sampling of Recent Cases

Young v. Colorado Department of Corrections (D. Colo. 2025)

- White employee attended mandatory DEI training that covered concepts such as “white fragility,” “white supremacy,” and “white exceptionalism.”
- Mandatory DEI training alone was insufficient to establish a hostile work environment without connection to employment actions.

Diemert v. City of Seattle (W.D. Wash. 2025)

- White employee alleged that the City’s Race and Social Justice Initiative and related DEI programming created a racially hostile work environment.
- Court held DEI programming is not inherently discriminatory.
- Affinity-group challenge also failed, as the City’s affinity groups were voluntary and open to all employees regardless of race.



Loeffler v. International Business Machines Corp. (C.D. Cal. 2025)

- Alleges IBM tied executive compensation and career advancement to diversity objectives and that managers were rewarded for increasing racial diversity within their teams, which led to a failure to promote a white male employee.

Sampling of Recent Cases – Illinois

Raza v. Accenture LLP (N.D. Ill.) – filed Apr. 14, 2025

- Former male senior manager alleged he was denied promotion in favor of less-qualified female employees.
- Complaint tied alleged discrimination to Accenture’s publicly stated goal of achieving gender parity.

Kleinschmit v. University of Illinois Chicago (N.D. Ill.) – filed Feb. 10, 2025

- Former professor alleged retaliation after objecting to race-conscious faculty hiring and retention programs.

American Alliance for Equal Rights v. American Bar Association (N.D. Ill.) – filed Apr. 12, 2025

- Challenge to ABA scholarship program limited to certain underrepresented racial and ethnic groups.
- ABA revised eligibility criteria and opened the program to all applicants regardless of race or ethnicity.





FINAL THOUGHTS

Final Thoughts

- Employers face heightened scrutiny regarding programs, policies, and practices that impact individuals of a particular race, sex, or another protected characteristic, including those that arguably influence:
 - Hiring & promotion
 - Compensation & assignments
 - Selection for leadership programs
 - Mentorship or sponsorship opportunities
 - Internships or fellowships
- Employers should continue to review existing programs, policies, and practices to ensure compliance with legal requirements and guidance at the federal and state level.
- Employers can continue to focus on:
 - Fostering an inclusive and positive workplace culture
 - Promoting respect and belonging
 - Striving to retain top talent
 - Ensuring equal opportunity
- It is important to keep apprised of evolving federal and state requirements. Remember there may be tension between federal and state laws and guidance.

Questions?

DIVERSITY **EQUITY** **INCLUSION**

FIDELITY SOCIAL JUSTICE HUMILITY SUPPORT SYSTEM COURAGE CATALYST DIFFERENCE
CULTURE RESPECT MUTUAL INTERSECTIONAL GROWTH INTERSECTIONALITY
BELONGING COURAGE TRUST ACCOUNTABILITY WELCOMING VALUED GROWTH CENTERING COMMUNITY
WELCOMING TRANSPARENCY INTERACTING ACTIVE FAIRNESS JUSTICE NEEDS DIGNITY
POWER OPENNESS FAMILY TRANSPARENCY RECEPTIVENESS CONNECTION
TRUST INTERSECTIONALITY COMMUNITY EXPERIENCES HONESTY WELCOMING RESPECT
HONESTY DIFFERENCE AFFIRMING IDENTITIES BACKGROUND INFORMATIVE SOCIAL JUSTICE FIDELITY
LEADERSHIP INFORMATIVE VALUED PERSPECTIVES AFFIRMING POSITIONALITIES
FRIENDLINESS SUPPORT SYSTEM SOLIDARITY BELONGING EMBODY
RECEPTIVENESS CATALYST THRIVING CONSCIOUS COMMUNITY APPRECIATION CARE