

EEOC and DOJ Issue Guidance on DEI-Related Discrimination at Work

By: Katie Conklin, Christopher Tillery, and John Vering

On February 5, 2025, we published a Client Alert regarding “What Clients Should Know About President Trump’s Anti-Diversity, Equity, and Inclusion (DEI) and Affirmative Action Executive Order and Its Potential Effects on Government Contractors, Grant Recipients, Nonprofits, and Private Sector Employers,” which can be found [here](#).

On March 19, 2025, the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (DOJ) jointly issued a guidance document titled “[What To Do If You Experience Discrimination Related to DEI at Work](#).” The EEOC also issued a second, longer document titled “[What You Should Know About DEI-Related Discrimination at Work](#).” These guidance documents align with President Trump’s recent executive orders regarding DEI and affirmative action in the workplace.

Key Points in Guidance

The EEOC and DOJ’s guidance warns against unlawful DEI-related discrimination and provide examples of employment policies, programs, or practices that may violate Title VII. Below are some key takeaways from the guidance:

- **No “reverse” discrimination.** The guidance reminds employers that Title VII’s protections apply equally to all workers, regardless of their race, sex, or any other protected characteristic, stating that “[t]he EEOC’s position is that there is no such thing as ‘reverse’ discrimination.”
- **No “business necessity” exception for DEI programs or diversity interests.** According to the guidance, there is no “business necessity” exception for DEI programs, and “Title VII does not provide any ‘diversity interest’ exception to these rules.” Based on this guidance, the EEOC warns that an employer is not justified in taking any employment action based on race, sex, or another protected characteristic based on a business necessity or interest in diversity, including preferences or requests by the employer’s clients or customers.
- **Unlawful quotas, balancing practices, and DEI-related disparate treatment.** Under the guidance, unlawful DEI-related discrimination includes using quotas or otherwise balancing a workforce by any protected characteristic and taking any employment action motivated in whole or in part by a protected characteristic, including hiring, firing, promotion, demotion, compensation, fringe benefits, selection for interviews, and exclusion from training, fellowships, or mentorship or sponsoring programs.
- **Unlawful limiting, segregating, and classifying.** The guidance also notes that limiting, segregating, and classifying employees based on race, sex, or other protected characteristics in a way that affects their status or deprives them of employment opportunities is unlawful under Title VII, including limiting membership to certain employee resource groups or other affinity groups, and separating employees into groups based on any protected characteristic when administering DEI or other trainings or programming.
- **Hostile work environment claims related to DEI training.** The guidance states that, depending on the facts, DEI training may give rise to a colorable hostile work environment claim. The guidance notes that workplace harassment is illegal when it results in an adverse change to a

term, condition, or privilege of employment or is so frequent or severe that a reasonable person would consider it intimidating, hostile, or abusive.

- **Retaliation for opposition to DEI training.** According to the guidance, an employee's reasonable opposition to DEI training may constitute a protected activity and protect them from retaliation under Title VII if the employee provides a fact-specific basis for their belief that the training violates Title VII.

The EEOC's guidance also encourages employees to file a charge for discrimination if they believe they have experienced DEI-related discrimination.

What This Means for Employers

Based on the guidance, only forms of DEI that take race, sex, or other protected characteristics into account may be considered unlawful under Title VII. However, because the guidance opens the door for employees to file charges with the EEOC for DEI-related discrimination, employers should review their policies, programs, and practices to assess if any may conflict with the guidance. If your organization has affirmative action or DEI-related policies, programs, or practices, we recommend that they be reviewed for legal compliance to reduce the risk of reverse discrimination claims and lawsuits.

Please contact the Seigfreid Bingham Employment Law Group with any questions about this client alert or if you need assistance reviewing or amending your employment policies or practices to comply with the latest challenges to DEI policies, programs, and practices. We will continue to monitor the latest developments, guidance, and legal requirements in this area of law.

This article is general in nature and does not constitute legal advice. If you have legal questions, please consult the authors, [John Vering \(jvering@sb-kc.com\)](mailto:jvering@sb-kc.com) at 816.265.4109, [Christopher Tillery \(ctillery@sb-kc.com\)](mailto:ctillery@sb-kc.com) at 816.265.4157, [Katie Conklin \(kconklin@sb-kc.com\)](mailto:kconklin@sb-kc.com) at 816.265.4114, or other attorneys in Seigfreid Bingham's Employment Law Group, including: [John Neyens \(johnn@sb-kc.com\)](mailto:johnn@sb-kc.com) 816.265.4152, [Mark Opara \(mopara@sb-kc.com\)](mailto:mopara@sb-kc.com) 816.265.4140, [Shannon Cohorst Johnson \(sjohnson@sb-kc.com\)](mailto:sjohnson@sb-kc.com) 816.265.4139, [Brenda Hamilton \(bhamilton@sb-kc.com\)](mailto:bhamilton@sb-kc.com) 816.265.4103, [Julie Parisi \(jparisi@sb-kc.com\)](mailto:jparisi@sb-kc.com) 816.265.4159, [Mirjana Gacanich \(mgacanich@sb-kc.com\)](mailto:mgacanich@sb-kc.com) 816.265.4148, or [Colby Stone \(cstone@sb-kc.com\)](mailto:cstone@sb-kc.com) 816.265.4162, or your regular contact at Seigfreid Bingham at 816.421.4460.