

Employment Alert

U.S. Court of Appeals Grants Stay of Preliminary Injunction and EEOC Issues Guidance on DEI: Employers Are Advised to Carefully Review DEI & DEIA Initiatives

March 2025

Update on Executive Orders

In our recent [February 26, 2025 alert](#), we described President Trump's January executive orders (EOs) regarding Diversity, Equity, and Inclusion (DEI) and Diversity, Equity, Inclusion, and Accessibility (DEIA) initiatives applicable to federal contractors and private employers, and the order of a Maryland federal court preliminarily enjoining enforcement of many key aspects of those orders.

Following the issuance of the preliminary injunction, the federal government filed an appeal of the order and sought a stay (or pause) of the preliminary injunction. On March 14, 2025, the U.S. Court of Appeals for the Fourth Circuit issued an order granting the government's request for a stay. This means that the EOs are again in effect, while the appellate court is considering the merits of the appeal.

Each judge on the three-judge panel wrote separately regarding their rationale in granting the stay. All three judges (two of whom were appointed by President Obama and one of whom was appointed by President Trump) were skeptical that the EOs were unconstitutional on their face. Considering the views expressed by the judges in their decision on the preliminary injunction, it appears likely that the preliminary injunction will ultimately be vacated by the appellate court.

EEOC Guidance on DEI

Shortly after the Fourth Circuit's ruling, on March 19, 2025, the federal Equal Employment Opportunity Commission (EEOC) issued a guidance document called "[What You Should Know About DEI-related Discrimination at Work.](#)"

In a Q&A format, this document describes the EEOC’s position that an employer’s DEI policy, program, or practice may be unlawful under Title VII if it involves “taking an employment action motivated—in whole or in part—by race, sex, or another protected characteristic.” The EEOC stated that “DEI-related disparate treatment” could include disparate treatment not only in hiring, firing, promotion, demotion, compensation, and fringe benefits, but also in access to or exclusion from training, access to mentoring, sponsorship, or workplace networking/networks; internships, including fellowships or summer associate programs; and selection for interviews, including placement or exclusion from a candidate pool.

In light of these developments, we again urge all employers – both federal contractors and private employers – to continue evaluating any DEI/DEIA programs to ensure they are compliant with anti-discrimination laws.

CONTACT

To discuss your company’s policies and procedures, or anything related to Massachusetts employment laws, please contact a member of our [Employment Law Practice](#).