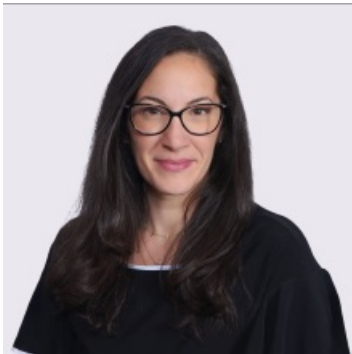


# Court Order Enjoins Enforcement of Executive Order Limiting Diversity Training

By Laura A. Mitchell

December 23, 2020

## Meet the Authors



**Laura A. Mitchell**

(She/Her)

Principal

303-225-2382

[Laura.Mitchell@jacksonlewis.com](mailto:Laura.Mitchell@jacksonlewis.com)

## Related Services

Affirmative Action, OFCCP and  
Government Contract  
Compliance  
Corporate Diversity Counseling  
Government Contractors  
Workplace Training

A federal district court has entered a nationwide preliminary injunction stopping the administration from enforcing [Executive Order \(EO\) 13950 - Combating Race and Sex Stereotyping](#). [\*Santa Cruz Lesbian and Gay Cmty. Ctr., et al. v. Trump\*](#) No. 5:20-cv-07741-BLF (N.D. Cal. Dec. 23, 2020).

EO 13950 prohibits federal contractors and subcontractors from using “any workplace training that inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating,” including a list of “divisive concepts.” The Office of Federal Contract Compliance Programs (OFCCP) had set up a [hotline to receive complaints](#) regarding training materials and issued an information request soliciting federal contractors to submit training materials for review. In addition, a clause implementing the requirements of EO 13950 was to be inserted into new federal contracts. The clause may have been inserted already into certain Department of Defense contracts.

The district court ruled that the EO violates the Free Speech Clause of the First Amendment “because it impermissibly chills the exercise of the Plaintiffs’ constitutionally protected speech, based on the content and viewpoint of their speech.” The court also ruled that parts of the EO are so vague that they violate the Fifth Amendment Due Process Clause because “it is impossible for Plaintiffs to determine what conduct is prohibited.”

A preliminary injunction is a court’s tentative conclusion that the plaintiff is likely to succeed on the merits of the case and otherwise meets the criteria for a preliminary injunction. Thus, the preliminary injunction may be rescinded as the case progresses or reversed on appeal. For now, the OFCCP and other federal government agencies may not enforce the EO.

While the OFCCP has said that training on “divisive concepts” also violates long-existing principles under EO 11246 requiring federal contractors to provide equal employment opportunities, it may be unlikely that the OFCCP will take any enforcement action under EO 11246 in light of the court’s order.

Please contact a Jackson Lewis attorney with any questions.

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.’s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients’ goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.