

Federal Court Blocks Provisions of Trump Administration's 'Illegal DEI' Executive Orders

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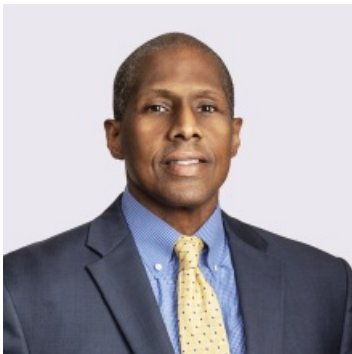
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Takeaways

- The federal district court for the district of Maryland issued a preliminary injunction temporarily stopping the Trump Administration from enforcing aspects of its EOs that ban “illegal DEI (Diversity, Equity and Inclusion).”
- The court ruled that the plaintiffs have a likelihood of establishing the illegal DEI EOs are unconstitutional, at least in part, because they are vague and violate free speech.
- Federal contractors and recipients of federal funding have at least a temporary reprieve from being targeted for investigation pursuant to the EOs by their granting agencies for “illegal DEI.”
- The decision does not prevent plaintiffs— applicants, employees or third-party organizations — from bringing claims against private sector employers, contractors, or recipients of federal funds based on DEI initiatives or the EEOC from pursuing investigations based on what they perceive to be illegal DEI programming. Moreover, it is likely the administration will appeal the decision on various grounds, making the overall fate of the EOs uncertain.
- The decision arguably does not prevent the Department of Justice, agencies, or state attorneys general from voluntarily bringing legal claims or pursuing investigation based on DEI initiatives or programming.
- The decision does not prevent the Department of Justice, EEOC, or other federal and state enforcement agencies from investigating or asserting violations of Title VII or other civil rights laws on bases other than “illegal DEI.”
- Employers should continue to conduct privileged assessments of their DEI programming for compliance with civil rights laws.

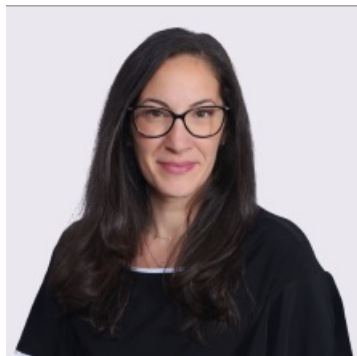
Related links

- [Trump Administration Revokes EO 11246, Prohibits 'Illegal' DEI: What the EO Ending Illegal Discrimination and Restoring Merit-Based Opportunity Means for Employers](#)
- [Post-EO DEI Assessments: What Are They and Why Should You Do Them?](#)
- [Ten State Attorneys General Launch Inquiry into Major Financial Institutions' DEI & ESG Programs](#)
- [Association of Diversity Officers in Higher Education et al. v. Trump et al.](#)(opinion)
- [Association of Diversity Officers in Higher Education et al. v. Trump et al.](#)(injunction order)
- [Federal Register :: Ending Radical and Wasteful Government DEI Programs and Preferencing](#)
- [Federal Register :: Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)



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Article

The federal district court for the district of Maryland on Feb. 21, 2025, issued a preliminary injunction temporarily prohibiting the Trump Administration from enforcing three provisions of the Administration’s Jan. 20 and 21, 2025, EOs banning “illegal DEI.” [*National Association of Diversity Officers in Higher Education et al. v. Trump et al.*](#) No. 1:25-cv-00333 (D. Md. Feb. 21, 2025).

Specifically, the court ruled that plaintiffs, the National Association of Diversity Officers in Higher Education, the American Association of University Professors, Restaurant Opportunities Centers United, and the Mayor and City Council of Baltimore, are likely to establish the following three provisions of the EOs banning “illegal DEI” are unconstitutional:

1. Requiring federal agencies to terminate “equity-related grants or contracts” (“Termination Provision”);
2. Requiring federal contractors and grant recipients to include in every contract or grant award a certification enforceable through the False Claims Act that the contractor or grantee does not operate illegal DEI programs (“Certification Provision”); and
3. Directing the attorney general to take appropriate measures to encourage the private sector to end illegal DEI and to identify civil compliance investigations to accomplish said deterrence (“Enforcement Threat Provision”).

The Executive Orders at Issue

The ruling is about [Executive Order 14151](#), “Ending Radical and Wasteful Government DEI Programs and Preferences,” which on January 20 directed federal agencies to terminate all “equity-related” grants or contracts within 60 days.

It also is about [Executive Order 14173](#), “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” which on January 21 directed agencies to “include in every contract or grant award: a term requiring the contractual counterparty or grant recipient to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government’s payment decisions for purposes,” including the False Claims Act (FCA).

Executive Order 14173 also directed the attorney general to develop a plan for encouraging the private sector to end “illegal DEI;” identify up to nine potential civil compliance investigations of “publicly traded corporations, large non-profit corporations or associations, foundations with assets of 500 million dollars or more, State and local bar and medical associations, and institutions of higher education with endowments over 1 billion dollars.”

Impact and Standard for a Preliminary Injunction

The court issued a preliminary injunction prohibiting the government from enforcing certain parts of the EOs pending further proceedings.

First, the plaintiffs established that they had “standing,” meaning that they have a right to bring the lawsuit.

Then the court ruled that the plaintiffs met their burden of demonstrating the following four factors:

1. They are likely to succeed on the merits;
2. They are likely to suffer irreparable harm absent relief;
3. The balance of equities favors plaintiffs; and
4. An injunction is in the public interest.

The Ruling

After deciding that the plaintiffs had standing to sue and that the dispute was ripe for adjudication, the court ruled that the plaintiffs were likely to succeed in establishing that the Termination Provision; the Certification Provision; and part of the Enforcement Threat Provision violate the Constitution. Notably, the court's preliminary injunction applies not just to the plaintiffs but to all similarly situated contractors, grant recipients, and private sector entities nationwide.

The Termination Provision

The court ruled that the EOs' failure to define key terms, like "equity," "equity-related," "DEI," and "illegal DEI," renders them unconstitutionally vague and leaves contractors and grant recipients unable to determine whether their contracts or grants will be terminated or how to comply with the EOs' directives.

The Certification Provision

The court ruled that the Certification Provision likely violated the First Amendment's right of freedom of speech, because it required contractors and grant recipients to certify they do not operate programs the administration may determine constitute "illegal DEI," under the threat of FCA liability.

The Enforcement Threat Provision

The court ruled that the plaintiffs will likely succeed in establishing that the Enforcement Threat Provision constitutes a violation of free speech, because of its lack of definition and clarity on what constitutes illegal DEI will chill DEI-related speech.

Conclusion

While the preliminary injunction offers a temporary reprieve from enforcement of aspects of the EOs at issue, the ruling is likely to be appealed by the Trump Administration.

In addition, the ruling does not impact investigations or lawsuits based on longstanding civil rights laws such as Title VII of the Civil Rights Act of 1964. The Equal Employment Opportunity Commission, for example, has announced that ending unlawful DEI programs is a priority for Title VII enforcement. Nor does the preliminary injunction prevent plaintiffs – applicants, employees or third-party organizations – from pursuing discrimination claims based on what they perceive to be illegal DEI programming.

The preliminary injunction also does not prevent the Department of Justice, agencies, or state attorneys general from issuing letters, investigations, and lawsuits based on employer DEI initiatives. Employers should conduct privileged vulnerability assessments of their DEI programming and initiatives for compliance with civil rights laws such as Title VII and alignment with their risk tolerance.

Jackson Lewis attorneys are closely watching developments in this area.

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