

DOJ Releases DEI Guidance

By Samia M. Kirmani, Michael D. Thomas, Michael R. Hatcher & Jennifer E. Burgess

July 31, 2025

Meet the Authors



Samia M. Kirmani

Principal

(617) 367-0025

Samia.Kirmani@jacksonlewis.com



Michael D. Thomas

Principal

(949) 885-5240

Michael.Thomas@jacksonlewis.com



Michael R. Hatcher

Principal

(703) 483-8328

Michael.Hatcher@jacksonlewis.com

Takeaways

- The DOJ released guidance on 07.30.25 regarding diversity, equity, and inclusion programs (as practices that may violate federal anti-discrimination law) and the application of federal anti-discrimination laws to those who receive federal funds.
- The guidance emphasizes that entities receiving federal funds must ensure compliance with federal law and avoid discrimination based on protected characteristics, no matter the program's labels, objectives, or intentions.
- It provides a non-exhaustive list of unlawful practices that could lead to the revocation of grant funding, emphasizing the importance of inclusive access and skills-based selection.
- The guidance emphasizes "best practices" as suggestions to help entities that receive federal funds avoid violating the law.

Related link

- [Memo from AG Bondi: Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination](#)

Article

Attorney General Pam Bondi issued [guidance](#) dated July 29, 2025, to all federal agencies and recipients of federal funding, reiterating the Trump Administration's January directive that all programs, policies, and activities — regardless of their stated objectives or labels — must comply with existing federal anti-discrimination laws.

The guidance urges all recipients of federal funding to review and, if necessary, revise their programs and policies to ensure full compliance with federal anti-discrimination laws. It also states that federal funding recipients "may also be liable for discrimination if they knowingly fund the unlawful practices of contractors, grantees, and other third parties."

The guidance identifies five practices that the Department of Justice (DOJ) considers unlawful and lists illustrative examples for each:

1. Practices that grant preferential treatment based on protected characteristics:

- Race-based scholarships or programs exclusively available to students of a specific racial group.
- Hiring or promotion practices that prioritize candidates from "underrepresented groups" for admission, hiring, or promotion.
- Access to facilities or resources based on race or ethnicity such as "safe spaces"



Jennifer E. Burgess

(BER-jis • She/Her • Jen)

KM Attorney

312-442-6104

Jennifer.Burgess@jacksonlewis.com

Related Services

Affirmative Action, OFCCP and
Government Contract Compliance
Corporate Diversity Counseling
Government Contractors
National Compliance and Multi-
State Solutions

accessible exclusively to people that belong to a specific racial or ethnic group.

2. Practices that use facially neutral proxies for protected characteristics:

- Requiring applicants to describe their “cultural competence,” “lived experience,” or “cross cultural skills,” if used by decision-makers to evaluate candidates’ racial or ethnic backgrounds rather than objective qualifications.
- Recruitment “strategies targeting specific geographic areas, institutions, or organizations chosen primarily because of their racial or ethnic composition rather than other legitimate factors.”
- Requiring applicants to provide “overcoming obstacles” narratives or “diversity statements” if such narratives and statements are used as a proxy to provide advantages based on protected characteristics.

3. Programs that segregate participants based on protected characteristics:

- Training sessions that separate participants into race-based groups.
- Segregation in facilities and resources based on protected characteristics (e.g., a study lounge or “safe” space restricted to BIPOC students). The guidance expressly excludes sex-segregated intimate spaces and women’s athletic competitions from this prohibition.
- Protected characteristic-based program eligibility.

4. Use of protected characteristics in candidate selection:

- “Diverse slate” policies for hiring that require a certain percentage of candidates be from an underrepresented group or of diverse backgrounds.
- Sex-based selection for contracts that prioritize women-owned businesses over equally qualified businesses owned by men.
- Race- or sex-based program participation such as an internship program requiring a certain percentage of selected participants be from underrepresented racial groups or be female students and, thus, rejects equally qualified majority group applicants and men.

5. Training programs that promote discrimination or hostile environments:

- Trainings that stereotype, exclude, or disadvantage individuals based on protected characteristics, or create a hostile environment through severe or pervasive use of materials that single out, demean, or stereotype individuals based on protected characteristics.

The guidance states that the above is “a non-exhaustive list.”

DOJ Best Practices

The guidance concludes with best practice recommendations to minimize legal risk of violating federal anti-discrimination laws:

1. Ensure inclusive access to all workplace programs, activities, and resources.
2. Focus on skills and qualifications when selecting candidates and base selection decisions on specific, measurable skills and qualifications without using proxies like socioeconomic status, first-generation status, or geographic diversity.
3. Eliminate demographic-driven criteria.
4. Document legitimate rationales to demonstrate that decisions are unrelated to protected characteristics.
5. Scrutinize neutral criteria for proxy effects.
6. Eliminate diversity quotas and focus solely on nondiscriminatory performance metrics without reference to protected characteristics.
7. Avoid exclusionary training programs and ensure trainings are open to all. Participants should not be required to affirm specific ideological positions or “confess” to personal biases or privileges based on protected characteristics.
8. Include nondiscrimination clauses in contracts and specify that federal funds cannot be used for programs that discriminate. Monitor third parties that receive federal funds to ensure ongoing compliance.
9. Establish clear anti-retaliation procedures and create safe reporting mechanisms and include these policies in employee handbooks and program guidelines.

Takeaways for Employers

Employers that receive federal funding should review and, if necessary, revise their programs and policies to ensure full compliance with federal anti-discrimination laws. Jackson Lewis attorneys are available to discuss your existing policies and how to ensure compliance with the guidance.

©2025 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>.