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How the DEI Executive Order Impacts Employers

Client Alert

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On the second day of his new term in office, President Trump initiated by Executive Order fundamental changes in longstanding federal policy as to Diversity, Equity, and Inclusion (“DEI”) and related initiatives. The “*Ending Illegal Discrimination and Restoring Merit-Based Opportunity*” Executive Order (the “EO”), signed into law on January 21, 2025, takes aim at DEI programs everywhere, including those involving federal agencies, federal contractors and grant recipients, and the private sector. While reaction to the EO has run the spectrum from outrage to celebration, and legal challenges are sure to come, the EO’s actual impact is still unfolding. The following is a summary of some of the key points of this complex law.

Federal Grant Recipients and Federal Contractors

The EO revokes past Executive Orders, including the original Equal Employment Opportunity Order signed by President Lyndon Johnson in 1965 (Executive Order 11246), and it orders the federal agency charged with enforcement of Executive Order 11246, the Office of Federal Contract Compliance Programs (the “OFCCP”), to cease: “(A) Promoting ‘diversity;’ (B) Holding Federal contractors and subcontractors responsible for taking ‘affirmative action;’ and (C) Allowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.”

In reaction to the EO, the Acting Department of Labor (“DOL”) Secretary ordered the OFCCP to stop enforcing Executive Order 11246 and advised federal contractors and subcontractors that any part of an ongoing investigation related to Executive Order 11246 is considered closed. Importantly, the EO did not (and cannot) repeal Section 503 of the Rehabilitation Act (“Section 503”) or the Vietnam Era Veterans’ Readjustment Assistance Act (“VEVRAA”), requiring affirmative action in the employment of

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disabled individuals and protected veterans, respectively. The OFCCP has indicated, however, that it is halting investigations involving Section 503 and VEVRAA until it receives further guidance. The EO also does not impact the requirement that federal contractors file annual EEO-1 and VETS 4212 reports.

In addition to revoking Executive Order 11246, the EO requires that federal agencies include in all federal contracts and grants a term requiring the parties to certify that they do not promote DEI programs that violate federal anti-discrimination laws. Federal contractors and grantees also must acknowledge that their agreement to cease DEI initiatives is a material term in the Federal Government's payment decisions.

Publicly Traded Companies and Education Industry

Every agency must create a list of up to nine targets for potential civil compliance investigations related to "DEI programs or principles...that constitute illegal discrimination or preferences." Targets must be either publicly traded corporations, large non-profit corporations or associations, foundations with assets of \$500 million or more, state and local bars and medical associations, or institutions of higher education with endowments over \$1 billion. Further, the Attorney General must provide the President with a strategic enforcement plan for discouraging DEI programs within 120 days of the EO.

Within the same 120-day period, the Attorney General and the Secretary of Education must issue guidance to all state and local educational agencies that receive federal funding, and institutions of higher education that receive federal grants or participate in the federal loan assistance program under 20 U.S.C. § 1070 et seq., about how to comply with *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023), the U.S. Supreme Court decision that held affirmative action programs in college admissions are illegal.

Federal Agencies

The EO terminates DEI programs in all federal agencies. In fact, the EO ordered all federal agencies and departments to close DEI offices and eliminate DEI positions, action plans, equity-related grants or contracts, and DEI performance requirements. This past week, President Trump's office directed federal agencies to compile a list of federal DEI offices and workers, and by January 31, 2025, to develop a plan for halting those offices and laying off the workers. It has been reported that federal employees have already lost their jobs because of the EO.

Butzel is closely monitoring ongoing developments related to this EO. Please reach out to the authors of this Client Alert or your Butzel attorney in our Labor & Employment or Education Industry groups for further information.

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