

New Executive Order May Require Contractors to Review Their Diversity and Inclusion Trainings

Alert

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On September 22, 2020, President Donald Trump issued an executive order on Combatting Race and Sex Stereotyping that the president purports is necessary to combat the “destructive ideology” that is “rooted in the pernicious and false belief that America is an irredeemably racist and sexist country; that some people, simply on account of their race or sex, are oppressors; and that racial and sexual identities are more important than our common status as human beings and Americans.”

There are two immediate action items for government contractors and subcontractors under the executive order:

1. Within 60 days—by November 21, 2020—covered contractors must include in government contracts, [new language](#) that limits the content of diversity and inclusion trainings and requires a notice be posted in the workplace and sent to each labor union regarding this executive order, unless the contractor is exempt by section 204 of Executive Order 11246.
2. Review planned trainings on equal employment opportunity, anti-harassment/anti-discrimination, and diversity and inclusion to confirm whether, as drafted, they may run afoul of the executive order.

Anti-harassment, anti-discrimination and diversity and inclusion training are not prohibited by the executive order and employers are still required to comply with their obligations under Title VII, Executive Order 11246, and analogous state and local laws. We strongly recommend that government contractors continue trainings to promote compliance with their legal obligations. However, President Trump has charged OFCCP to establish a hotline and investigate complaints alleging that a government contractor is providing trainings in violation of this executive order. OFCCP is also required to publish within 30 days in the Federal Register a request for information regarding the government contractor’s training, workshops

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or similar programming provided to employees. We therefore recommend reviewing any planned trainings with legal counsel to minimize the risk of standard trainings being deemed to run afoul of the new executive order.

While the violators of the executive order may be subject to contract suspension or termination and the contractor may be subject to suspension or debarment, we anticipate the executive order being challenged based on potential inconsistencies with equal employment opportunity, anti-discrimination/anti-harassment, affirmative action and even free speech laws. Even if not challenged immediately, the executive order may be rolled back entirely after the presidential election. As a result, while we again recommend a review of trainings planned for the near future, we do not recommend immediately ceasing or making fundamental changes to existing diversity and inclusion trainings.

We are monitoring the situation and will provide updates on new developments.

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