

President Trump Rescinds Federal Contractor Affirmative Action Executive Order

Alert

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On January 21, 2025, President Donald Trump signed an executive order revoking several longstanding executive orders that prioritized implementing diversity measures across the federal government, including Executive Order 11246. Executive Order 11246 required covered federal contractors and subcontractors to, among other things, implement Affirmative Action Programs (AAPs) and engage in affirmative steps to ensure that applicants and employees receive equal employment opportunity regardless of race, color, religion, sex, sexual orientation, gender identity, and national origin. Executive Order 11246 was signed in 1965 and remained in place through 11 presidents, both Democrat and Republican, including during the first Trump administration.

Yesterday's order, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," directed the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) to immediately stop "promoting 'diversity'" and "holding Federal contractors and subcontractors responsible for taking 'affirmative action.'" This immediate direction would, on its face, appear to disable OFCCP from engaging in most of the actions it would take in audits and/or litigation.

Importantly, however, OFCCP still has enforcement authority related to two federal statutes that protect veterans and workers with disabilities: The Vietnam Era Veterans' Readjustment Assistance Act and Section 503 of the Rehabilitation Act, respectively. As of now, federal contractors still have obligations related to the hiring and employment of veterans and workers with disabilities under these statutes, and OFCCP still has the authority to enforce and monitor those statutes. Further, although President Trump's action rescinded Executive Order 11246, there are implementing regulations for Executive Order 11246 in place, which makes the immediate impact on any existing OFCCP audits still unclear.

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President Trump's action does not impact state or local requirements on affirmative action or development of AAPs. Companies with state, city, or county contracts that require AAPs and other obligations—such as in Minnesota and Wisconsin—should ensure they are still meeting those obligations while they assess what action to take following yesterday's order. Per the order, federal contractors and subcontractors "may continue to comply with the regulatory scheme in effect on January 20, 2025" for 90 days (through April 21, 2025).

Yesterday's order directs the U.S. Attorney General to issue a report by May 21, 2025, making further recommendations "for enforcing Federal civil-rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI."

Federal contractors are strongly encouraged to work with their counsel on assessing how they will move forward with this significant change. Further information and guidance is expected.

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