

## Publications

### EEOC and DOJ Increase Scrutiny on Employer Diversity, Equity, and Inclusion Programs and Practices

#### Related Attorneys

Janay M. Stevens

Jocelyn M. Hoffman

Michael C. Griffaton

Rebecca L. Hill

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On March 19, 2025, the U.S. Equal Employment Opportunity Commission (EEOC) released two “technical assistance” documents clarifying the Trump Administration’s position on diversity, equity, and inclusion (DEI) in the workplace. Unlike formal agency guidance, which adopts new enforcement policies and must be approved by a majority vote of the Commission, technical assistance documents can be issued solely under Acting EEOC Chair Andrea Lucas’ authority and direct how the EEOC will apply its current enforcement practices under a different or new set of facts.

The first technical assistance document, “[What To Do If You Experience Discrimination Related to DEI at Work](#),” was issued jointly with the U.S. Department of Justice and directs employees to file an EEOC charge if they are subject to a diversity, equity, and inclusion-related employment action motivated, in whole or in part, by race, sex, or another protected characteristic. This guidance reinforces that Title VII’s protections apply to all groups of employees, not just to individuals who are part of a minority group. The guidance also provides what the EEOC and DOJ consider to be examples of potential diversity, equity, and inclusion-related discrimination, including: disparate treatment through excluding certain groups from qualifying for fringe benefits, fellowships, or other employment programs; limiting, segregating, or classifying employees based on race, sex, or other protected characteristics when providing training or access to employer-sponsored employee resource groups (ERG); exposing groups of employees to diversity, equity, and inclusion training that creates a hostile working environment; and retaliating against employees who oppose their employer’s discriminatory diversity, equity, and inclusion practices.

The second technical assistance document issued by the EEOC, “[What You Should Know About DEI-Related Discrimination at Work](#)” describes the EEOC’s position on certain specific diversity, equity, and inclusion workplace practices in a more in-depth “Q & A” format. In this document, the EEOC clearly asserts that it does not view a business interest in fostering diversity or equity as a sufficient basis for

implementing recruitment strategies, leadership development programs, or employer-sponsored ERGs that limit selection criteria or membership to certain protected groups, “even if the separate groups receive the same programming content or amount of employer resources.” Rather, the EEOC takes the position that employers should instead provide the same training and mentoring to workers “of all backgrounds.” Accordingly, the EEOC views any policy or practice as potentially discriminatory if its implementation involves the consideration of an individual’s protected characteristic, even if the protected characteristic is “just one factor among other factors contributing to the employer’s decision or action.”

The EEOC also posits that workplace diversity, equity, and inclusion training may create an actionable hostile work environment claim against employers. To succeed in asserting such a claim, the employee need only show the training was discriminatory in content, application, or context. Further, the EEOC contends that Title VII’s retaliation protections extend to employees “opposing unlawful employment discrimination related to an employer policy or practice labeled as ‘DEI’” including, in certain circumstances, “opposition to a DEI training.”

The EEOC’s March 19 technical assistance documents further demonstrate the Trump Administration’s intent to aggressively target employers that it views as engaging in discriminatory diversity, equity, and inclusion practices. This represents a significant shift in agency perspective from the Biden Administration, which generally encouraged diversity, equity, and inclusion workforce initiatives. Employers should undertake a privileged review of their existing diversity, equity, and inclusion policies and practices (including training materials) in light of the EEOC’s enforcement priorities outlined in the newly issued technical assistance and other recent actions taken by the Trump Administration to eradicate diversity, equity, and inclusion initiatives. Contact your Vorys lawyer if you have questions about workplace diversity, equity, and inclusion issues.