

## Publications

### Federal Judge Temporarily Halts DOL's Enforcement of Portions of President Trump's Diversity, Equity and Inclusion Executive Orders

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The Department of Labor (DOL) is enjoined from enforcing parts of President Trump's Diversity, Equity, and Inclusion-related Executive Orders following a partial nationwide injunction entered against them by Judge Matthew F. Kennelly of the U.S. District Court for the Northern District of Illinois.

### Background

In his first days in office, President Trump signed Executive Order 14151, titled "Ending Radical and Wasteful Government DEI Programs and Preferencing," and Executive Order 14173, titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." These Executive Orders (EOs) directed federal agencies to terminate diversity, equity, and inclusion-related contracts and activities, including grants and programs promoting diversity, equity, inclusion, and accessibility.

The EOs have three parts. First, they direct the Attorney General to prepare a report on government agencies engaged in diversity, equity, and inclusion activities. Second, they require federal agencies to terminate all "equity-related" grants (the "Termination Provision"). Third, they require grantees to certify that they do not operate any programs promoting diversity, equity, and inclusion (the "Certification Provision").

Chicago Women in Trades (CWIT) is a non-profit organization which is dedicated to preparing women across the country to enter and remain in high-wage skilled trades, including carpentry, electrical work, welding, plumbing, and others. CWIT receives about 40% of its funding from the federal government.

After President Trump issued EOs 14151 and 14173, CWIT received multiple communications from the Department of Labor (DOL) and other entities, instructing them to cease all diversity, equity, and inclusion-related activities. CWIT sued the DOL, challenging the EOs on constitutional grounds. CWIT argued that the EOs violated its First and Fifth Amendment rights, as well as the Constitution's Spending Clause and the separation of powers.

## Temporary Restraining Order Granted

The court found that CWIT was likely to succeed on the merits of its First Amendment challenges to the Termination and Certification Provisions of the EOs. The court determined that the Termination Provision was likely a coercive threat, selectively targeting diversity, equity, and inclusion-related speech. The Termination Provision's vagueness further exacerbated the chilling effect on protected speech, as grantees could not determine what conduct was permissible.

Similarly, the Certification Provision was found to likely infringe on CWIT's First Amendment rights by regulating its conduct outside the contours of the federal grants. The certification requires that grantees certify they are not engaged in *any* illegal diversity, equity, and inclusion activities, not just activities funded by their federal grants or contracts. According to the court, this placed grantees in a difficult position. Grantees must choose between making a certification that they are not engaged in "illegal DEI," without knowing what the government considers to be illegal, or declining to make a certification and losing their funding. Despite being pressed by Judge Kennelly, the Trump Administration's lawyers were unwilling or unable to define what is considered "illegal DEI."

The court concluded that CWIT had shown irreparable harm from the enforcement and threatened enforcement of the provisions and entered a temporary restraining order against the EOs.

## Scope of the Temporary Restraining Order

CWIT sought a nationwide injunction, arguing that the provisions were particularly appropriate for broad relief due to the categorical policy and the impact on similarly situated non-parties. The court granted a nationwide temporary restraining order for the Certification Provision to ensure complete relief for CWIT and prevent broader violations against other grantees. However, the temporary restraining order for the Termination Provision was limited to CWIT and any federal grantee through which CWIT holds a subcontract or is a subrecipient of federal funds. In addition, the injunction applies only to the DOL and does not include any agencies which are not parties to the litigation. Judge Kennelly did not enjoin the parts of the EOs that require the Attorney General to prepare and submit a report on diversity, equity, and inclusion activities at federal agencies. The preliminary injunction hearing is scheduled for April 10, 2025, where further arguments will be presented.

This injunction is narrower than the one **stayed** by the Fourth Circuit. There, Judge Abelson (U.S. District Court for the District of Maryland) enjoined both the Termination and Certification Provisions nationwide, and expanded the stay to include all federal agencies, not just the agencies that were parties to the case. The Fourth Circuit stayed that injunction pending appeal.

## Conclusion

Employers should continue to proceed with caution, monitor developments, and undertake privileged reviews of their existing diversity, equity and inclusion policies and practices. Contact your Vorys lawyer if you have questions about workplace diversity, equity, and inclusion issues.