

Publications

Trump Revokes Executive Order 11246 Requiring Affirmative Action

Related Attorneys

Michael C. Griffaton

Jeffrey A. Miller

Victor A. Walton, Jr.

Related Services

Corporate Diversity, Equity and Inclusion Programs

Employment Counseling

False Claims Act and Qui Tam

Labor and Employment

CLIENT ALERT | 1.22.2025

On January 21, 2025, President Trump revoked Executive Order 11246, which has been in place since 1965. EO 11246 prohibited federal contractors from discriminating on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin and required federal contractors to take affirmative action to ensure equal opportunity in all aspects of employment. Under the new “[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)” Executive Order, “federal contractors and subcontractors shall not consider race, color, sex, sexual preference, religion, or national origin in ways that violate the Nation’s civil rights laws.”

President Trump has directed “all executive departments and agencies to terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements.” He has further ordered all agencies to “combat illegal private-sector DEI preferences, mandates, policies, programs, and activities.” The accompanying [Fact Sheet](#) calls this “the most important federal civil rights measure in decades” and explains the Executive Order ends “radical DEI preferencing in federal contracting” and mobilizes the federal government “to relentlessly combat private sector discrimination.”

Specifically with respect to EO 11246, President Trump ordered the Office of Federal Contract Compliance Programs to “immediately cease” from: (1) “[p]romoting ‘diversity’”; (2) “[h]olding Federal contractors and subcontractors responsible for taking ‘affirmative action’”; and (3) “[a]llowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.” Federal contractors may continue to comply with their existing affirmative action requirements for the next 90 days. Relatedly, Trump also revoked Executive Order 13672 which protected employees of federal contractors from discrimination based on sexual orientation and gender identity.

The Trump Executive Order doesn't apply to employers that are not federal contractors. However, the Executive Order contains a section "Encouraging the Private Sector to End Illegal DEI Discrimination and Preferences" which targets private employers. That section requires federal agencies and the Attorney General to take "appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI." They will develop a strategic enforcement plan within the next 120 days that identifies "[t]he most egregious and discriminatory DEI practitioners in each sector of concern." Each agency must also identify "up to nine potential civil compliance investigations of publicly traded corporations, large non-profit corporations or associations, foundations with assets of \$500 million or more, state and local bar and medical associations, and institutions of higher education with endowments over \$1 billion." The Executive Order specifically envisions litigation, regulatory action, and sub-regulatory guidance as potential methods "to deter DEI programs or principles (whether specifically denominated as 'DEI' or otherwise)."

The Executive Order also requires that future government contracts include terms stating that "compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code" and requiring contractors to certify that they do "not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws." This suggests that the Trump administration is intending to use the Federal False Claims Act against companies employing DEI practices, potentially subjecting them to statutory penalties and treble damages.

Federal contractors also have affirmative action obligations under Section 503 of the Rehabilitation Act (for individuals with disabilities) and the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) (for protected veterans). These obligations are legislative requirements that remain in effect, so should be unaffected by the Trump Executive Order.

Federal contractors should review their existing affirmative action obligations and any current solicitations to determine whether any contractual provisions are affected by the Executive Order. Private employers – especially those in sectors targeted by the Executive Order – should closely review their equal employment opportunity and diversity policies and initiatives. We will continue to monitor these developments. Contact your Vorys attorney with questions.