JANUARY 30, 2025 | DISCRIMINATION, HARASSMENT & RETALIATION

The Trump Administration intends to take a hard look at private sector DEI policies, with investigations possible. Is your company ready?

By Mark Ishu

Shortly after aggressively terminating Diversity, Equity and Inclusion ("DEI") policies that applied to the federal workforce, the Trump Administration turned its attention outward to the private sector. President Trump's January 22, 2025, Executive Order ("EO") titled, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, claims to "protect[] the civil rights of all Americans and expands individual opportunity by terminating radical DEI" in the private sector. It enlists federal agencies, including the Attorney General ("AG"), to act swiftly to police "DEI-based discrimination" and preferencing in federal contracting and the private sector.

[T]he Attorney General, within 120 days of this order, in consultation with the heads of relevant agencies and in coordination with the Director of OMB, shall submit a report to the Assistant to the President for Domestic Policy containing 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.

EO at § 4(b). As part of the strategic enforcement plan required by the EO, each agency head "shall identify up to nine potential civil compliance investigations of publicly traded corporations, large non-profit corporations or associations, foundations with assets of 500 million dollars or more, State and local bar and medical associations, and institutions of higher education with endowments over 1 billion dollars."[1] *Id.* at § 4(b)(iii). Most companies and not-for-profits may be targeted for an investigation by an agency head, though the focus will presumably be on "[k]ey sectors of concern within each agency's jurisdiction," *id.* at § 4(b)(i), and "[t]he most egregious and discriminatory DEI practitioners in each sector of concern," *id.* at § 4(b)(ii). The Attorney General's report will also contain a "proposed strategic enforcement plan," which identifies:

- "…specific steps or measures to deter DEI programs or principles (whether specifically denominated 'DEI' or otherwise);"
- "Other strategies to encourage the private sector to end illegal DEI discrimination and preferences and comply with all Federal civil-rights laws;"

- “Litigation that would be potentially appropriate for Federal lawsuits, intervention, or statements of interest;” and
- “Potential regulatory action and sub-regulatory guidance.”

How Can You Prepare?

The EO requires the AG to finalize the ordered report within 120 days, so there should be a grace period before these activities begin. In the interim, companies should evaluate their websites and other public-facing information, which discusses “diversity,” “affirmative action,” or similar programs, as they could attract government attention. Companies also need to evaluate how this drastic policy shift will impact their hiring and must carefully document decisions to hire specific candidates.

Conn Maciel Carey LLP has expertise in reviewing DEI programs and can help your organization put together a comprehensive plan to mitigate enforcement and other risks, including, for example, the threat of federal litigation. If you have questions about how this new EO affects your organization, please contact CMC’s national Labor and Employment Practice Group.

[1] Private-sector employment programs supporting U.S. military veterans are exempted from the directives of the Order.