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Federal Court Issues Partial Preliminary Injunction Halting Enforcement of DEI-Related EOs

Law and the Workplace on **February 24, 2025**

On February 21, 2025, the U.S. District Court for the District of Maryland issued a preliminary injunction pausing enforcement of several provisions of President Trump's DEI-related executive orders on Ending Radical and Wasteful Government DEI Programs and Preferencing ("EO 14151") and Ending Illegal Discrimination and Restoring Merit-Based Opportunity ("EO 14173").

Notably, the ruling prevents the federal government from enforcing a clause of EO 14173 which would have required federal contractors and grantees to certify both that they: (i) do not operate "illegal" DEI programs; and (ii) are in material compliance with federal anti-discrimination laws – provisions which would have raised potential False Claims Act ("FCA") liability for covered entities.

Background

Plaintiffs, the National Association of Diversity Officers in Higher Education, American Association of University Professors, Restaurant Opportunities Centers United, and the Mayor and City Council of Baltimore (collectively, "Plaintiffs"), are federal contractors and grantees that fund DEI-related research, offer professional development services to individuals from underrepresented backgrounds, and conduct other "DEI-related activities." On February 3, 2025, Plaintiffs brought suit against President Trump, Attorney General Pam Bondi, and various federal agencies and agency heads, claiming the following provisions of EOs 14151 and 14173 pose an imminent threat of harm to members of Plaintiffs' organizations and violate the First Amendment, Fifth Amendment, and constitutional separation of powers principles:

- "Termination Provision" (EO 14151 § 2(b)(i)), which orders each "agency, department, or commission head" to "terminate, to the maximum extent allowed by law, all 'equity-related' grants or contracts";

- "Certification Provision" (EO 14173 § 3(b)(iv)), which orders each agency to include certifications in every contract or grant award that the contractor or grantee does not operate illegal DEI programs and that compliance with federal anti-discrimination laws is "material to the government's payment decisions for purposes of" the FCA; and
- "Enforcement Threat Provision: (EO 14173 § 4(b)(iii)), which orders the Attorney General to submit recommendations and a strategic plan for enforcement actions to challenge illegal DEI in the private sector.

Plaintiffs moved for a declaratory judgment that the EOs are unlawful, as well as a temporary restraining order and/or preliminary injunction barring the federal government from enforcing the EOs.

Court's Opinion and Reasoning

District Judge Adam B. Abelson issued a nationwide injunction partially enjoining the EOs, finding Plaintiffs had shown a likelihood of success on the merits of their First and Fifth Amendment challenges. The court concluded that the irreparable harms Plaintiffs faced, including "widespread chilling of unquestionably protected speech," outweigh the government's interest in "immediately imposing a new, not-yet-promulgated interpretation of what it considers 'eradicating discrimination.'" The court declined to consider Plaintiffs' separation of powers arguments because it found that Plaintiffs had already made a sufficient showing under their First Amendment claims to grant the preliminary injunction.

First, the court found that Plaintiffs were likely to succeed on their claim that the Certification Provision of EO 14173 violates the First Amendment. Given the potential threat of FCA liability and that the EO covers *all* contractor activity – not just actions related to federally sourced funds – the certification "constitutes a content-based restriction on the speech rights of federal contractors and grantees." Moreover, the court found that the EO targets speech in support of DEI without imposing "a similar restriction on anti-DEI principles that may also be in violation of existing federal anti-discrimination laws." The court explained that "[b]ecause even the government does not know what constitutes DEI-related speech that violates federal anti-discrimination laws," federal contractors and grantees are "highly likely to . . . self-censor" in order to be compliant with the Certification Provision.

Second, the Court found that Plaintiffs would likely succeed on their claim that the term "'equity-related' grants or contracts" in the Termination Provision is unconstitutionally vague under the Fifth Amendment because: (i) it is a broad, undefined term that is likely to result in arbitrary and discriminatory enforcement between and within federal agencies; and (ii) the term does not provide contractors and grant recipients with notice of "what, if anything, they can do to bring their grants into compliance such that they are not considered 'equity-related.'"

However, the court declined to pause the portion of the Enforcement Threat Provision that directs the Attorney General to create an enforcement plan and engage in investigations "to deter DEI programs or principles . . . that constitute illegal discrimination or preferences," which is "merely a directive from the President to the Attorney General," and does not implicate separation-of-powers principles.

As a result of this ruling, federal agencies: (i) may not enforce the Certification Provision while the injunction is in effect; (ii) must pause efforts to identify organizations for civil compliance evaluations; and (iii) must halt contract rescissions and contract modifications under the EOs. But any provision of EOs 14151 and 14173 not expressly enjoined by the ruling remains in effect – including the requirement for the Attorney General to develop a plan to deter illegal DEI efforts, which the Justice Department has indicated may involve potential criminal investigations.

Importantly, the decision does not foreclose private litigation challenging the use of DEI programs, including cases brought by prospective employee plaintiffs, attorneys general and organizations that have already taken the lead in pursuing such actions since the Supreme Court's June 2023 ruling in *Students for Fair Admissions v. Harvard*.

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Proskauer's DEI Risk Mitigation Group is comprised of seasoned attorneys who provide strategic guidance, regulatory insights, and thought leadership with respect to organizational diversity, equity, and inclusion policies and programs.

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