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EEOC and DOJ Release Guidance on DEI and Workplace Discrimination

Law and the Workplace on **March 25, 2025**

On March 19, 2025, the U.S. Equal Employment Opportunity Commission ("EEOC") and the U.S. Department of Justice issued two technical assistance documents discussing how the agencies view and define Diversity, Equity and Inclusion ("DEI") in the context of workplace discrimination: "What You Should Know About DEI-Related Discrimination at Work" and "What To Do If You Experience Discrimination Related to DEI AT WORK."

Background

On January 20, 2025, President Trump appointed Andrea Lucas to serve as Acting Chair of the EEOC. According to the EEOC, Acting Chair Lucas "prioritizes evenhanded enforcement of civil rights laws for all Americans, including by rooting out unlawful DEI-motivated race and sex discrimination." Acting Chair Lucas's priorities align with the current Administration's rejection of "illegal DEI," as set forth in several Executive Orders, notably Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity."

This technical guidance sheds light on what constitutes "illegal DEI" in the EEOC's view in relation to Title VII of the Civil Rights Act of 1964.

What Conduct May Constitute Illegal "DEI"

The technical guidance starts by acknowledging that "DEI is a broad term that is not defined in Title VII." It explains that initiatives, policies, programs, or practices "may be unlawful if [they] involve[]" taking employment action "motivated—in whole or part—by race, sex, or another protected characteristic." The EEOC states that Title VII protects all workers from discrimination, not only "individuals who are part of a 'minority group,' (such as racial or ethnic minorities, workers with non-American national origins, 'diverse' employees, or 'historically underrepresented groups') women, or some other subset of individuals." To this end, "[t]he EEOC's position is that there is no such thing as 'reverse' discrimination; there is only discrimination."

The EEOC has identified several areas where "DEI" may result in actionable discrimination, including the following employment decisions:

- Hiring and firing;
- Promotion and demotion;
- Selection for interviews, "including placement or exclusion from a candidate 'slate' or pool;"
- Internships, fellowships, and summer associate programs;
- Job duties and responsibilities;
- Compensation; and
- Fringe Benefits.

In addition, the EEOC states that providing access to certain opportunities may give rise to a charge of discrimination in the following areas:

- Access to or exclusion from training (including leadership development programs);
- Access to mentoring, sponsorship, or workplace networking/networks; and
- Limiting membership in Employee Resource Groups "or other employee affinity groups" to certain protected groups.

The EEOC further states that separating employees into different groups based on protected characteristics is prohibited. The prohibited conduct is described as:

- "Separating employees into groups based on race, sex, or another protected characteristic when administering DEI or other trainings, or other privileges of employment."

With respect to training, the EEOC states that:

- "DEI training *may* give rise to a colorable hostile work environment claim"; and
- "Reasonable opposition to a DEI training *may* constitute protected activity."

No Exceptions in the Name of Diversity

The guidance notes that employers cannot justify making employment decisions motivated by protected characteristics by virtue of their interest in diversity or equity, even if that interest is a "business necessity" or is guided by operational benefits or the preferences or requests of clients and customers.

Implications

In addition to identifying the types of activities it considers to be illegal DEI, the EEOC has advised the public how to report perceived acts of discrimination to the EEOC and explained how the agency may respond to such complaints. Employers may wish to revisit their training materials and policies in light of these recently issued documents and will want to consider the guidance going forward.

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