

**Partners
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Thriving Through Belonging



NW Equity Summit
Reframed & Refocused

Navigating Legal Crossroads: What HR and DEI Leaders Need to Know About Today's Shifting Legal Landscape

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An Evolving Legal Landscape

- An evolving legal landscape regarding DEI/A/B has created new challenges for HR and DEI professionals.
- The reasons for the change:
 - The Trump Administration's recent Executive Orders (EOs);
 - An executive order is a signed, written, and published directive from POTUS that manages operations of the federal government.
 - Recent case decisions;
 - Note: Not all court decisions apply nationwide.
 - Recent federal and state guidance; and
 - Evolving public's views.
- Many HR and DEI professionals are uncertain on how to reassess approaches to ensure compliance while maintaining the effective of DEI strategies.



Agenda

- We will be discussing FAQs on “illegal DEI, ” affirmative action, bias, hiring discrimination, data collection, and more.
- For more information about the EOs and “legal stuff, ” please join us at our follow - up panel: Building and Inclusive Organization and Navigating Compliance in Shifting Legal Landscape!



What is “illegal DEI?”

- President Trump’s January 21, 2025, EO titled “Ending Illegal Discrimination and Restoring Merit - Based Opportunity” calls for merit - based employment decisions and prohibits “illegal DEI” practices.
- The term “illegal DEI” is not expressly defined, leaving its interpretation open to ambiguity and creating potential compliance risks.
- The EO does not change Title VII protections, which continue to prohibit discrimination based on race, sex, and other protected characteristics.
- Instead, the EO primarily targets preferential treatment, which was already prohibited under Title VII. In reviewing existing programs, organizations should focus on compliance with Title VII.
- Remember: Oregon law still applies!

What are some examples of language that could raise red flags?

- Examples:
 - Any language that specifically calls out a particular group based on protected class.
 - Any “diversity, ” “equity, ” and “inclusion ” program or agreement.
 - Language that could be interpreted, as the Trump Administration has stated, that addresses White privilege or calls out White people for past discrimination.
 - Terms like “unconscious bias, ” “implicit bias, ” “BIPOC,” “systemic racism, ” “critical race theory, ” “race relations, ” and many more.

What are some examples of language that could raise red flags?

- Simply changing the name of a program or initiative is not enough to ensure compliance with EOs. Organizations must make a real assessment of their current their processes, culture, and methodologies to determine if any changes need to be made.
 - For example, an organization should not simply relabel a “diversity sponsorship program” as a “sponsorship program” and still exclude or provide preferential treatment to certain groups.
- Changing the language without adjusting the underlying structure or goals will likely not prevent potential problems. The change should involve thinking how the program or initiatives operate and ensure equal opportunity for everyone.
 - Avoid a “bait - and - switch” approach.

What mechanisms can help ensure that workplaces hire based on merit?

- Trump 's rescission of EO 11246 (signed in 1965) rolled back requirements for federal contractors to practice affirmative action based on race and gender.
- Workplace protections remain in place under Title VII and equal employment opportunity (EEO) laws (and Oregon law!).
- This means not discriminating based on race, sex, gender, and other protected classes.
- Discrimination v. preference.

Can organizations still conduct bias and cultural competence training?

- Yes, but organizations should ensure that it is designed and implemented correctly.
- Ask yourself:
 - Why are we doing the unconscious bias training?
 - What issues or issues are we trying to solve with the training?
- Organizations must first identify the specific problem they aim to address, assess the why, and ensure that training is inclusive and results - driven.
- While training structures may vary, their purpose should be clear — whether it 's managing bias, improving cultural competency, or fostering inclusive leadership.
 - For example, addressing bias in hiring, promotions, and performance management.

Can organizations still conduct bias and cultural competence training?

- Training on unconscious bias and cultural competence can be designed to comply with Title VII and other laws, and should still be given to mitigate discrimination risks.
 - Consider incorporating anti - bias principles into current anti - discrimination training.
- Beyond Title VII protections, one of the most impactful approaches to reducing bias in decision - making is training managers and people leaders to recognize and manage their own biases. These programs increase self awareness and help individuals make more objective decisions and fostering inclusive workplaces.

Do the EOs affect EEO or ADA compliance?

- The language used in job postings needs to be considered in response to the rescission of EO 11246.
 - Anti - discrimination disclaimer v. “We encourage individuals from historically marginalized communities to apply.”
- Hiring without regard to race, color, religion, national origin, sex, or other protected categories is lawful.
- While federal affirmative action obligations regarding race and gender have ended, affirmative action obligations for people with disabilities and veterans, and compliance with all state and local affirmative action and EEO reporting requirements, will continue.

Do the EOs affect EEO or ADA compliance?

- To remain compliant, organizations must be aware of various state and local requirements, some of which may still mandate affirmative action policies.
- HR teams should seek guidance from legal counsel to determine how this language resonates in the states and communities in which their organization operates.

What if there is a job requirement, such as “language skills, ” that leads to hiring more people of a certain race, etc., based on that certain skill?

- Organizations must clearly distinguish between job requirements and preferred skills to ensure job postings are accurate and legally compliant.
- If a qualification is a true requirement, employers can list it as such and hire accordingly.
 - Bona fide occupational qualifications (BFOQ) are interpreted narrowly.
- Issues may arise when hiring decisions are influenced by criteria that are not essential to the role.
- Be careful about deviating from a job requirement.

Can organizations continue to collect demographics information?

- While there is no legal prohibition against gathering this data, organizations should only do so for legitimate reasons — such as assessing adverse impacts or meeting EEO obligations.
- Collecting demographic data without a defined purpose can create compliance risks and data management challenges.

Can organizations continue to collect demographics information?

- HR teams should assess whether data practices serve a specific function or support meaningful objectives, such as advancing diversity efforts or ensuring fair hiring.
- The goal of data collection should always be to drive positive business and workforce outcomes.
- Employers collect two types of demographic data.
 - The first is legally required data, such as an annual EEO report, which mandates reporting employees' race and gender.
 - The second is discretionary data, such as race and ethnicity information, which organizations may gather voluntarily.

What should I do if an employee claims that my DEI training or programs are unlawful?

- Given the heightened risks of whistleblower and retaliation complaints, organizations should promptly and appropriately address any complaints about their DEI training or programs being unlawful or offending an employee's religious beliefs.
- Although an organization's response may vary based on the circumstances, organizations should, at a minimum, document the employee's concerns, promptly investigate those concerns to ensure DEI initiatives and trainings are compliant with antidiscrimination laws, make changes to programs or trainings if warranted, and address and close out concerns with the complainant.

What should I do if an employee claims that my DEI training or programs are unlawful?

- When meeting with the complainant:
 - DON'T talk politics
 - DO emphasize the benefits and intent of DEI programs, initiatives, and training
 - DO explain how the organizations strives to provide a workplace where all employees feel included and valued.
 - DO be mindful to assess and mitigate potential retaliation risks when employees opposing DEI practices are disciplined or terminated in the weeks or months after such opposition.
 - DO train managers and HR and provide them with guidance on how to address employee complaints about DEI programs, policies, and communications.

Can we still have employee resources groups?

- After the death of George Floyd, there was a big push towards employee resource groups or “affinity” groups, for example, Black@OrganizationX.
- The answer depends on the specific facts of the ERG.
- ERGs that are more likely to be compliant are:
 - ERGs that are open to all.
 - ERGs that are mission - focused excluding anyone, for example, “this is a safe space for X group.”
 - ERGs that offer leadership development through nondiscriminatory means.
 - ERGs that do not coerce or mandate participation.

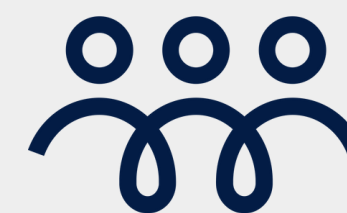
Can my organization still send our employees to conferences or events organized by affinity organizations?

- Yes, but the answer on the specific facts of the conference and event.
- Conferences and events that are more likely to be compliant include:
 - Opportunities to attend that are open to all.
 - Conferences and events that are mission - focused and part of an organization's professional development or cultural development program.
 - Participation is not required.
- Tip: Consider developing a professional development policy that includes non - discriminatory criteria.

Questions?

- Remember: You are not alone!
- If you have questions, your colleagues at other organizations are likely facing the same issues.
- There are resources!
 - Articles on law firm websites:
 - For example: “New Trump Administration Executive Orders Reflect Significant Policy Changes —Key Takeaways for School Administrators. ”
 - The Oregon Department of Justice
 - *Multi - State Guidance Concerning Diversity, Equity, Inclusion, and Accessibility Employment Initiative*
 - *Practical Guide for Oregon Nonprofits: Retaining DEIA Programs While Complying with State and Federal Law*
- Remember: Legal counsel is not just the “office of no fun ”; we can be thought partners.





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Thank you!