PUBLICATION

Navigating the Trump Administration's Executive Orders: Key Implications for Employers and Federal Contractors

Authors: Martha L. Boyd, Nakimuli O. Davis-Primer, Lydia Mabel Arroyo-Tirado, Kseniya Kuprovska
January 31, 2025

The unprecedented pace at which the Trump administration is issuing Executive Orders (EO) that have far-reaching impacts on longstanding employment laws and practices has left employers scrambling to determine which area needs their attention first. Given the volume of information that you are probably receiving, we wanted to distill some of the impactful changes into simple terms so you can slow down, analyze your vulnerabilities, and plan your mitigation efforts.

Implications of President Trump's Anti-DEI Executive Orders for Government Contractors

On January 21, 2025, the day after his inauguration, President Trump signed an Executive Order to eliminate federal contractors' affirmative action requirements and curtail many other DEI programs and initiatives for federal employees. The Order repeals a slew of other executive orders from the past 50 years, including EO 11246 of September 24, 1965, (Equal Employment Opportunity). Below is an overview of how this new Order affects federal government contractors and/or grant recipients:

- In the coming weeks, agencies will issue new guidance and modifications to existing contracts, grants, and pending solicitations/requests for proposals to: (1) include a new certification attesting that the contractor "does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws"; and (2) remove most of the existing affirmative action requirements, such as FAR 52.222-26 – Equal Opportunity.

- The Order provides a 90-day grace period ending on **April 21, 2025,** for contractors to comply with the new requirements.

- Any pending Office of Federal Contract Compliance Programs (OFCCP) cases, audits, complaints, or any other enforcement actions or investigations will be closed by January 31, 2025.

- The Order does not affect small business set-aside programs under the Small Business Act.

- The Order does not affect affirmative action requirements for veterans under the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) or for individuals with disabilities under Section 503 of the Rehabilitation Act.

- The Order seeks to make contractors subject to False Claims Act (FCA) liability for noncompliance, including statutory treble damages.

- We anticipate many future FCA whistleblower lawsuits based on this Order. We anticipate legal challenges to the Order, as well as FCA whistleblower lawsuits against employers for noncompliance.

With the above in mind, federal contractors and employers should seek counsel to assist them in reviewing their handbooks, internal policies, and subcontracts to ensure compliance with the executive orders and applicable federal laws. Baker Donelson attorneys are ready to assist.

Anti-DEI Warnings for Private Employers

The administration did not stop with its efforts to eliminate DEI in government contracting. While the executive orders do not reach private companies, the order contained language requesting the Attorney General's office provide "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." On January 21, 2025, Andrea Lucas was appointed as the acting chair of the Equal Employment Opportunity Commission (EEOC). Commissioner Lucas has made clear that all "unlawful" DEI programs maintained by private-sector employers will be targeted. The warnings about private employer DEI programs are vague; they fail to define what an "unlawful" DEI program is, for example. It is likely that more executive orders or agency guidance for private employers will be forthcoming. Nonetheless, below is a list of our recommendations for actions you can take now:

- Employers should not make rash decisions about their programs and initiatives and instead focus on their strategic plan as a guidepost to what policies, programs, initiatives, and practices are instrumental to their organization;

- Employers who have implemented DEI programs and initiatives should review their programs to assess potential legal risks and ensure compliance with applicable civil rights laws;

- Employers should review how the company describes their DEI efforts on their website, in employee handbooks, and in employee training; and

- Employers should develop a communication plan for discussing these issues and the company's stance with their employees.

Baker Donelson can help you with auditing your DEI programs, affinity groups, and other initiatives as well as your policies, handbooks, websites, training, and diversity and mission statements with the goal of assessing and minimizing legal risk concerning scrutiny by the EEOC, other federal agencies, and outside activists who may target your company for unwanted public attention. We can also assist you with messaging your employees who are likely wondering where your company stands on these issues.

Increased Immigration Enforcement

The new administration has resumed workplace raids, which were temporarily stopped by the previous administration. The administration has also announced that they will resume I-9 audits. In light of continued raids and scrutiny of the demographics of your workforce, we recommend:

- **Conduct I-9 Audits** – An I-9 audit happens when ICE examines a company's Employment Eligibility Verification Forms (Form I-9), which mandate employers confirm that their employees are legally authorized to work in the U.S. During an I-9 audit, ICE may carry out an onsite inspection to ensure compliance. The process begins when ICE sends a Notice of Inspection (NOI), notifying the employer that they must provide the I-9 forms for their workers within three business days. ICE may deliver the NOI in person, without prior warning.

- Employers should conduct I-9 audits, making corrections for any violations that can be corrected and making appropriate employment decisions for any employees who are not authorized to legally work in the United States.

- **Immigration raids** – ICE may carry out an enforcement action or a raid on an employer without prior notice. ICE agents will arrive at your location intending to conduct a search, collect documents, and interview employees. If this situation arises, it's crucial that key employees such as receptionists,

hosts, or others likely to be the first point of contact in a raid, are familiar with these procedures ahead of time. For example, if law enforcement or ICE agents show up at your facility, what credentials do you ask to see? What documents do you ask to review? What questions should your managers answer and not answer? How are you going to continue to run your business if you are suddenly without seized records or computers or, worse yet, staff?

- Employers should have counsel ready to assist you in the event of a raid to help guide you through the process and provide invaluable on-the-ground assistance.

Baker Donelson can assist you in conducting the I-9 audits, assessing appropriate employment decisions based on the results of the audit, creating a response plan, and training your managers and leadership so your company is prepared in the event of a raid on your business. If you have any questions, please contact the authors or a member of Baker Donelson's Labor & Employment and Immigration teams.