

EXECUTIVE SUMMARY

Key Implications for Federal Contractors and the Private Sector On President Trump's Executive Order "Ending Illegal Discrimination and Restoring Merit-Based Opportunity"

We are actively monitoring the potential impacts of President Trump's recent Executive Order (EO), titled Ending Illegal Discrimination and Restoring Merit-Based Opportunity, issued on January 21, 2025. The EO revokes Executive Order 11246, which has governed affirmative action requirements for federal contractors since 1965. While the full implications for private sector employers and federal contractors are still being evaluated, we are providing an initial analysis to help you understand the EO's key provisions and its potential consequences.

KEY TAKEAWAYS

- Revocation of Executive Order 11246: The EO eliminates the affirmative action requirements for federal contractors previously mandated under Executive Order 11246, including the preparation of annual affirmative action plans and compliance evaluations.
- Shift in Focus: The EO directs federal agencies to promote individual merit, initiative, and excellence while discouraging practices perceived as discriminatory under diversity, equity, and inclusion (DEI) programs.
- Potential Enforcement Actions: Federal agencies must identify organizations for potential compliance investigations and submit recommendations within 120 days for deterring illegal DEI practices.
- Remaining Compliance Obligations: Federal contractors still need to meet other legal obligations, including those under Section 503, the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), and various state and local requirements.

DISCUSSION

A Systematic Dismantling of DEI and Affirmative Action

President Trump's EO represents a significant shift in federal policy by repealing Executive Order 11246, which had served as the cornerstone of affirmative action and non-discrimination efforts for federal contractors for nearly six decades. Under the prior framework, federal contractors were required to develop affirmative action programs, undergo compliance evaluations by the Office of Federal Contract Compliance Programs (OFCCP), and adhere to non-discrimination policies.

With this EO:

- The OFCCP is no longer authorized to enforce these affirmative action requirements.
- Furthermore, federal contractors are directed to cease workforce balancing based on race, gender, or other protected characteristics.
- Pending OFCCP audits related to Executive Order 11246 are expected to be terminated.

The EO also signals a broader focus on discouraging DEI programs in both federal and private sectors.

- Notably, Section 4 of the EO directs federal agencies, with assistance from the Attorney General, to encourage private sector employers to discontinue DEI practices that may violate civil rights laws.

- Agencies are required to identify organizations for potential investigations, including publicly traded companies, large non-profits, foundations with significant assets, and institutions of higher education with large endowments.
- A report naming “egregious and discriminatory DEI practitioners” is expected within 120 days, alongside measures to deter such practices.

Implications for Federal Contractors and Private Employers

1. Federal Contractors:

While the EO eliminates affirmative action requirements under Executive Order 11246, federal contractors must remain compliant with:

- Section 503 and VEVRAA: Affirmative action requirements for individuals with disabilities and protected veterans remain in effect, as they are based on statutory authority.
- EEO-1 and VETS-4212 Reporting: Contractors with 100 or more employees must continue filing EEO-1 reports, and those with federal contracts or subcontracts worth \$150,000 or more must file VETS-4212 reports.
- Pay Equity and Transparency Laws: The EO does not impact obligations under federal Equal Pay laws or similar state and local requirements. Internal pay equity audits are recommended to ensure compliance.

2. Private Sector Employers:

The EO emphasizes the federal government’s intention to discourage DEI practices perceived as discriminatory. We are advising all Employers to carefully evaluate their DEI initiatives to ensure they align with existing anti-discrimination laws. We are further advising those employers with government contracts to be particularly cautious, as DEI efforts deemed non-compliant may result in increased scrutiny or jeopardize future contracts.

CONCLUSION AND NEXT STEPS

This Executive Order marks a significant policy change with far-reaching implications for federal contractors and private employers alike. We are advising Employers to remain vigilant in monitoring compliance obligations under existing laws while reassessing their DEI and affirmative action initiatives in light of this EO. We will continue to evaluate the EO’s developments and provide updates as additional guidance or enforcement actions emerge.