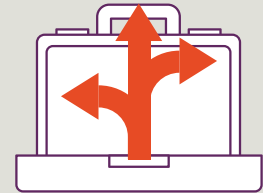


Unpacking and Navigating the Executive Orders

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NAMWOLF



The attacks on DEI acknowledge an employer's obligation to comply with civil rights laws prohibiting discrimination. Think of DEI as an anti-discrimination tool rather than an affirmative action tool.

1. Conduct a Legal and Risk Assessment

- Review All DEI Programs for Compliance: Ensure that DEI Programs do not inadvertently create preferences or quotas based on protected characteristics.
- Evaluate affinity group policies. If affinity groups do not already have a charter, create charters that articulates the purpose of the affinity group. Ensure that affinity groups are open to everyone and participation is voluntary. Focus on intersectionality and shared interests rather than restricting participation based solely on protected characteristics (e.g., creating a “working parents” group versus solely a “women’s group”).
- Audit Contracts and Federal Obligations: Review all federal contracts and grants to understand how compliance with the EO may affect funding or continued eligibility.

2. Reinforce a Merit-Based Approach w/o Sacrificing DEI Objectives

- Consider shifting language in DEI Initiatives: Reframe DEI efforts to emphasize the creation of a culture where all feel a sense of belonging and a commitment to individual opportunity, professional development, and meritocracy while continuing to promote equity and inclusion.
- Promote Broad-Based Programs: Structure DEI programs around business goals like increasing innovation, enhancing employee engagement, or fostering leadership development. Programs should benefit all employees, regardless of demographics. Terminology is key!
- Develop Objective Metrics for Advancement: Use neutral, non-biased performance measures to ensure hiring, promotion, and pay decisions align with merit-based principles.

3. Monitor and Adapt to Potential Regulatory Risks

- Stay Updated on Federal Guidance: Monitor updates from the Department of Labor, OFCCP, and Attorney General's Office for clarity on how the EO will be enforced. Be prepared to pivot based on enforcement trends.
- Prepare for Compliance Reviews: Anticipate potential civil compliance investigations by conducting internal reviews of DEI and hiring practices. **Key Focus Areas:** Public statements about DEI (including 10Ks), workforce data, and any program funding sources.

4. Focus on “Anti-Discrimination”

- Implement Legal and DEI Compliance Training: Provide updated training to HR teams, managers, and DEI leaders on balancing compliance with DEI values. Avoiding implicit bias claims, legal boundaries of DEI initiatives, and reinforce workplace inclusion.
- Avoid Polarizing Language in DEI Communications: Focus communications on universal.
- Be ready for litigation by being prepared to demonstrate actions to prevent discrimination.
- Prepare for Scrutiny: Be ready to defend DEI initiatives by clearly documenting how they align with business needs and comply with anti-discrimination laws.
- Develop a strategy for responding to public or regulatory criticism of DEI programs, including media statements and internal messaging.

Risk Levels

HIGHEST RISK



- Programs that target protected groups for tangible benefits
 - Quotas
 - Hiring set-asides
 - Tiebreaker practices
 - Manager compensation tied to meeting specific diversity goals
 - Group-specific internships/fellowships
 - Affinity groups with closed membership
 - Leadership/training opportunities solely provided to protected category

MEDIUM RISK



- Training based on “essentialist, deterministic, and negative language” about a protected group

LOWEST RISK



- Programs that remove biases and lead to level playing field
 - Structured hiring, promotions, review practices
 - Open affinity groups
 - Open mentoring, training, and professional development
 - Universal DEI frameworks
 - Training re: researched backed biases/barriers
 - Expanding outreach to broaden candidate pools
 - Pay transparency
 - Programs targeted on the basis of demonstrated commitment

Specific Talking Points *re:* NAMWOLF

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