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Federal Court Temporarily Halts Implementation of Portions of President Trump's DEI-Related Executive Orders

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Update: On March 14, 2025, the Fourth Circuit granted the government's emergency motion for a stay of enforcement of the district court's injunction order. This means the federal government will be able, for now, to enforce the Termination, Certification, and Enforcement Threat Provisions of the DEI-related Executive Orders discussed below while the appellate court considers the full merits of the government's appeal. As currently scheduled, appellate briefing will not be completed until early May, meaning that we will not receive a decision from the Fourth Circuit until early summer at the earliest. Meanwhile, other lawsuits have been filed challenging the DEI-related Executive Orders in various other courts, and decisions in those cases will also impact the landscape here. We will continue to monitor the activity in this and other cases and will provide further updates as they become available.

A federal district court in Maryland has temporarily enjoined enforcement of several key aspects of two recent DEI-related executive orders from the Trump Administration – Executive Order 14151 (*Ending Radical and Wasteful Government DEI Programs and Preferencing*) and Executive Order 14173 (*Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, discussed further **here**) (together, the "Executive Orders"). In this post, we briefly summarize the court's decision and outline the implications for employers.

The Opinion

Less than three weeks after a group of higher education diversity officers challenged the constitutionality of the Executive Orders in *National Association of Diversity Officers in Higher Education et al. v. Trump*, Judge Adam B. Abelson of the U.S. District Court for the District of Maryland issued a 63-page opinion (the "Opinion") holding that the plaintiffs were "likely to prove" that certain aspects of the Executive Orders were unconstitutionally vague in violation of the Fifth Amendment and also unconstitutionally violated the First Amendment's right to free speech. The Opinion states that neither of the Executive Orders "gives guidance on what the new administration considers to constitute 'illegal DEI discrimination and preferences,'" and fails to define similar terms like "promoting diversity," and that because of this, "even the government does not know what constitutes DEI-related speech that violates federal anti-discrimination laws . . . ." The district court, therefore, issued a temporary *nationwide* injunction to preserve the status quo and prevent potential imminent harm while the litigation proceeds and the Court addresses the constitutional issues more closely. More specifically, the court's ruling temporarily prohibits federal agencies from:

1. Pausing, freezing, impeding, blocking, or terminating "equity-related grants or contracts" or changing the terms in those contracts (as required under Executive Order 14151, which the Opinion refers to as the "Termination Provision");

2. Requiring federal grantees or contractors to certify or make any other representation that they do not operate any programs promoting DEI in violation of anti-discrimination laws (as required under Executive Order 14173, which the Opinion refers to as the

"Certification Provision"); and

3. Commencing any enforcement actions, including False Claims Act enforcement actions (which we discussed further **here**), based on the aforementioned certification or in response to Executive Order 14173's call for private sector civil compliance investigations (as required under Executive Order 14173, which the Opinion refers to as the "Enforcement Threat Provision").

What Should Employers Do Now?

This decision may come as a welcomed development for employers and federal contractors/grant recipients, which have struggled to understand the contours of the Executive Orders and which have weighed how to approach DEI over the past month, particularly given the Executive Orders' lack of clarity on what constitutes "DEI-related" activity much less "illegal DEI". This, however, is not the end of the road. Far, far from it. This is only a preliminary injunction pending a full decision on the merits in the *National Association of Diversity Officers* litigation, and we anticipate that appellate activity and other related legal challenges will follow. For example, employers should also pay attention to a second litigation filed in the U.S. District Court for the District of Columbia on February 19, 2025 (*National Urban League et al. v. Trump*), which also challenged the Executive Orders, as well as the Trump Administration's "Gender Ideology" executive order (which we also discussed **here**) on various constitutional and statutory grounds.

While these legal developments continued to unfold, employers should:

1. Continue reviewing existing DEI policies and practices. With or without the Executive Orders, certain DEI-related programs and policies (e.g., use of hiring quotas) remain unlawful. Now remains a good time to understand what programs and policies your organization maintains, how they are implemented in practice, and whether they are legally compliant. It is also a good time to reflect on the goals of those programs and policies to ensure alignment.

2. Maintain a measured response and track developments. Just as when the Executive Orders were issued, this Opinion should not cause employers to overreact. Those who continue to be deliberate in the development and execution of their DEI-related programs and policies will be well-served. Again, employers should expect additional appellate activity and other legal developments that will continue to further shape their responses. As part of this, in addition to other litigation, the Administration may issue new executive orders or presidential memorandums aimed at achieving the same goals, and/or various federal agencies may attempt to issue similar federal rules and guidance. It is also likely that states will continue to pursue their own DEI-related agendas (on both sides of the political spectrum). For instance, as we discussed **here**, a coalition of Attorneys General from ten states, led by the Attorney General of Texas, recently penned a letter to several major financial institutions, warning that their embrace of "race-and-sex-based quotas" and investment decisions made "in the furtherance of political agendas" might violate federal and state laws. Employers should continue to stay informed and up-to-date to ensure legal compliance.

3. Remember what the Opinion does *not* change. Notably, the Opinion focused only on the Termination Provision, the Certification Provision, and the Enforcement Threat Provision of the Executive Orders. This means that the revocation of Executive Order 11246's race and sex affirmative action plans (discussed further **here**) remains in effect. Moreover, the Court confirmed that it did not enjoin the Enforcement Threat Provision in its entirety – it specifically called out that the U.S. Attorney General retains the authority to engage in investigative activity to the extent that "it is merely a directive" to the Attorney General to

develop a strategic plan to encourage the end of illegal discrimination in the private sector (though, at least for now, actual enforcement activity against private employers as envisioned under the Executive Orders would not proceed).

The Mintz Employment team is continuing to monitor ongoing actions by the Trump Administration along with other judicial and legislative developments, and stands ready to assist employers in responding to the rapidly evolving landscape. You can access more coverage on the administration's impact on the workplace **here**. You can also check out our "Predictions and Practical Policies" podcasts series (**here**), which covers what employers should expect with the new administration and recommended next steps.

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