Trump Administration 2.0: Update on Legal Developments Impacting Employers

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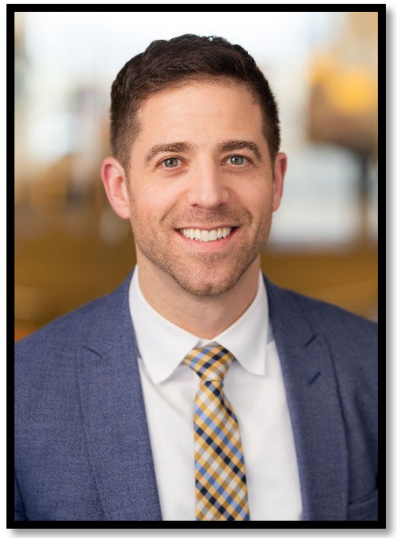
COZEN O'CONNOR

Today's Presenters



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Immigration Updates

Let's Put This Discussion into Perspective

The Trump Administration 2.0 has already produced 70 (as of today) executive orders with several of them dedicated to immigration and enforcement. In light of the scrutiny of I-9s and the anticipated increase in site visits and ICE raids, it is more important now than ever that employers know their requirements and obligations as they relate to I-9 and immigration compliance. During this legal update, we will provide an overview of I-9 best practices and processes as well as what further actions could be rolled out during the Trump 2.0 administration. The presenters will also cover potential lawsuits that they expect to see as a result of increased I-9 audits and ICE raids, which may include workplace harassment by federal agents and 4th amendment issues, including unreasonable searches and seizures by the government.

The key takeaway from today, always plan ahead!

Impact to the I-9 Process

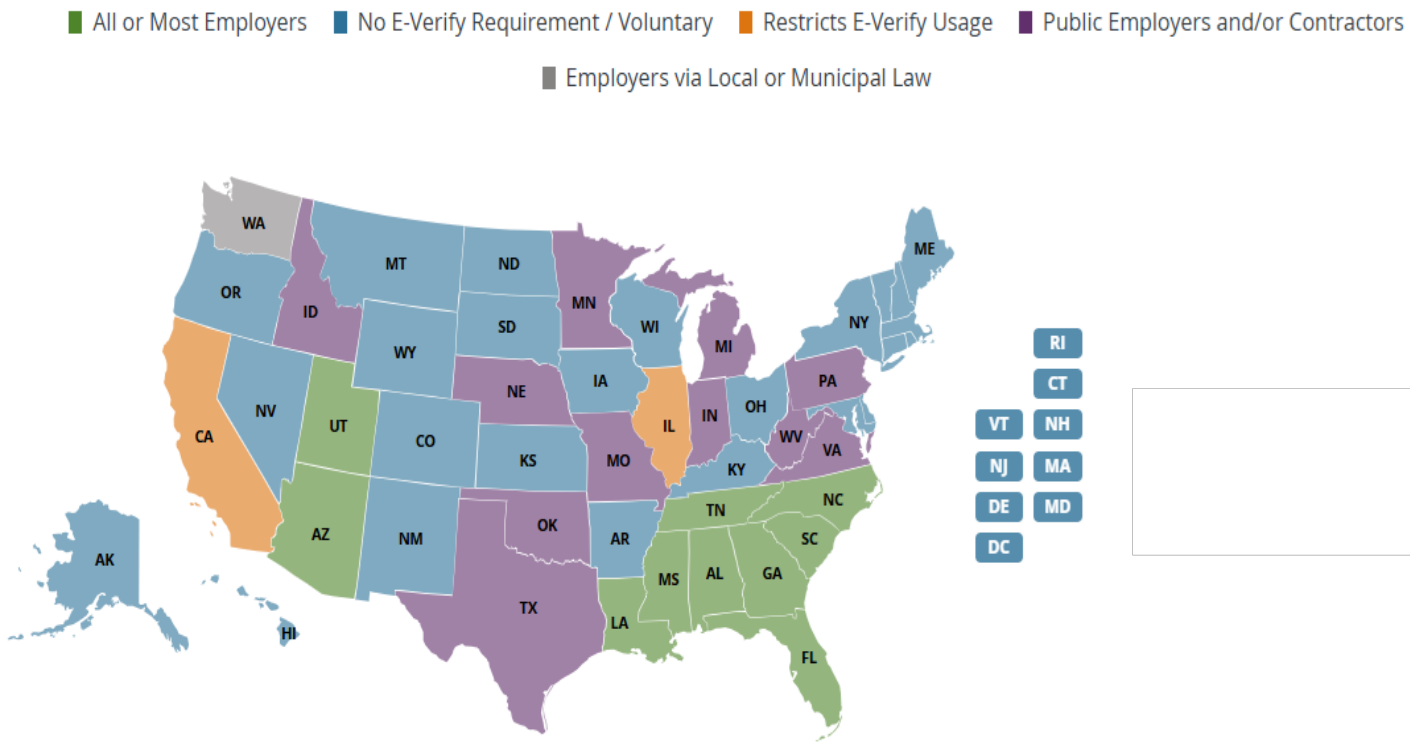
- **Form required by the United States Citizenship and Immigration Services (USCIS) to establish that an employee is eligible to work in the United States.**
- **All U.S. employers must properly complete Form I-9 for every individual they hire for employment in the United States. This includes citizens and noncitizens.**
- **Both employees and employers (or authorized representatives of the employer) must complete the form.**
- **Also utilized to verify an individual's identity by requiring the individual to provide documentation establishing their identity through the I-9 process.**
- **The employer must examine these documents to determine whether they reasonably appear to be genuine and relate to the employee, then record the document information on the employee's Form I-9.**
- **Certain employers who choose to remotely examine the employee's documentation under a DHS-authorized alternative procedure rather than via physical examination must indicate they did so by checking the box provided.**
- **New Form I-9 now includes alternative procedures for E-Verify employers to remotely examine employee documents.**
- **NOTE: It is vital that your organization has an established and consistent I-9 process for each newly hired employee as well as reverifying a current foreign national employee's work authorization for example.**

Form I-9 Compliance

- **Penalties for incorrect or missing I-9 forms can be imposed by ICE, the U.S. Immigration and Customs Enforcement agency. The penalties for I-9 violations have recently increased. The size of penalties depends on several factors including company size and number of violations.**
  - **On June 28, 2024, DHS announced the following fine schedule:**
    - **I-9 Paperwork Violations: $281 to $2,789 per Form I-9**
    - **Knowingly Employing Unauthorized Alien (First Offense): $698 to $5,579 per violation**
    - **Knowingly Employing Unauthorized Alien (Second Offense): $5,579 to $13,946 per violation**
    - **Knowingly Employing Unauthorized Alien (Third or More Offense): $8,369 to $27,894 per violation**
    - **E-Verify Employers – Failure to Inform DHS of Continuing Employment Following Final Nonconfirmation: $973 to $1,942 per relevant individual employee**
- **Under the DOJ's new schedule, fines for document abuse and unfair-immigration related employment practices are as follows:**
  - **Document Abuse: $230 to $2,304 per violation**
  - **Unfair Immigration-Related Employment Practices (First Offense): $575 to $4,610 per individual against whom the employer is found to have discriminated**
  - **Unfair Immigration-Related Employment Practices (Second Offense): $4,610 to $11,524 per individual against whom the employer is found to have discriminated**
  - **Unfair Immigration-Related Employment Practices (Third or More Offense): $6,913 to $23,048 per individual against whom the employer is found to have discriminated**
- **If employers try to trick ICE, or ignore credible warnings, they risk serious fines. Companies can also be punished for "subsequent offenses" even if their prior punishment wasn't in the recent past.**
- **DOES THIS SCARE YOU? IT SHOULD. As they say, the best offense is a good defense. Ensuring a consistent I-9 process in your organization can prevent any/all of the above.**

E-Verify

- E-Verify is an Internet-based system that compares information entered by an employer from an employee's Form I-9, Employment Eligibility Verification, to records available to the U.S. Department of Homeland Security and the Social Security Administration to confirm employment eligibility.
- E-Verify operates with speed and accuracy. E-Verify is the only free, fast, online service of its kind that electronically confirms an employee's information against millions of government records and provides results within as little as three to five seconds.
- E-Verify was initially designed to be a voluntary program, although an increasing number of states have enacted laws, ordinances, and executive orders which require certain employers to use E-Verify for their newly hired employees.
- Refer to map to see which states require E-Verify.
- Federal contractors MUST use E-Verify.



I-9 Recommendations and Warnings

- **Over the last two years, there has been an increase in fines for failure to comply with I-9 regulations, as well as increased awareness of I-9 compliance in general. Historically, when DHS departments (including I-9 and USCIS) increase fees, that typically leads to more money available for enforcement, which, in this case, includes I-9 inspections. Here are some quick tips to ensure compliance:**
  - **Make sure you have a consistent and timely I-9 program whereby each new hire completes the I-9 process as part of the onboarding process.**
  - **If you are not already enrolled, we strongly encourage your company to be enrolled in E-Verify.**
  - **Ensure that you are using the latest version of Form I-9.**
  - **Proactively audit your current I-9 program to ensure compliance, which will provide insight into the strengths (or weaknesses) of your current I-9 program.**
- **Homeland Security Investigations (HSI) initially issues a Notice of Inspection (NOI) upon an employer whereby an employer has three (3) business days to produce the requested information.**
- **HSI's workforce consists of more than 10,000 employees, including special agents, criminal analysts, mission support personnel, and contract staff assigned to offices throughout the United States and around the world.**
- **Will President Trump increase this department?**
- **In 2018, ICE delivered more than 5,200 audit notices to businesses across the United States – since COVID-19, that number has dramatically increased. What does President Trump have to do in order to increase enforcements again?**

ICE Raids

- ICE agents may come to your workplace for a Form I-9 audit, a raid, or to detain specific people
- This may be without warning
- ICE agents are not police officers
- Uniforms may say “Police” or “Federal Agent”
- They may carry guns
- Local police officers may go with ICE agents on ICE raids
- ICE agents may be looking for a particular person (or people)
- While on site, they may try to question, detain, and even arrest other people

ICE Raids (cont.)

- **Know your rights:**
  - Employees have the right to remain silent.
  - Employers must NOT provide either false information or false documents in an attempt to "assist" employees, which also includes impeding the agents' ability to search.
  - Immigration officers are only allowed to enter public spaces within the workplace and require valid search warrants to enter private spaces.
  - The warrant should detail a list of items to be searched.
  - You can record and write down the names of agents.
  - You can assign an employee who will follow the agents around the facility.
  - If an officer requests to look at "privileged" documents, you can explain this to them, but ultimately, you can prevent them from taking these documents.
  - Company representatives should not make any statements to agents.

ICE Raids (cont.)

- **Best advice: Stay calm.**
  - Do not run to the exits. This will make things worse. ICE agents can say that people who are running are likely violating immigration laws.
  - If ICE agents enter a public area of your business, you can say: “I am the employer. You cannot go to other areas of the workplace without my permission.”
  - If ICE agents try to enter a private area, say: “This is a private area. You cannot enter without a judicial warrant signed by a judge. Do you have a judicial warrant?”
  - If they have a warrant, again, ask for a copy and read it. Make a copy if you can.
  - You are not required to answer questions or give any information or sign any documents.

ICE Raids (cont.)

- **ICE shows you a warrant with an employee's name on it:**
  - **You do NOT have to say if that employee is working on that day or not**
  - **You do NOT have to take the ICE agents to the employee named on the warrant**
- **Monitor the agents and see if they are complying with what's written in the warrant**
- **May video or record what the ICE agents do at your workplace**
- **ICE agents try to stop, question, detain, or arrest a worker?**
  - **ICE agents may try to stop, question, or even arrest a worker without the proper authority**
  - **You have a right to remain silent and ask for an attorney**

ICE Raids (cont.)

- Do not put yourself or anyone else in harm's way
- Do not open the door if an immigration agent is knocking
- Do not answer any questions, you have the right to remain silent
- Do not sign any documents without first speaking with a lawyer
- Ask if you are free to leave, and leave calmly
- Compliance with a warrant is required
- Think clearly, and remain calm
- Do not provide any false documents or information
- Provide a know your rights card

What You Should Take Away

- Everyone wants to know what will be but we should talk about what we already know:
  - Appointment of Tom Homan as the Border Czar
  - Appointment of Elon Musk and Vivek Ramaswamy to head the "Department of Government Efficiency" (DOGE) – REMEMBER! They don't have legislative authority
- We strongly believe that employer audits are coming
- E-Verify might go from a state-by-state decision to a federally mandated decision
- Most likely, the industries with historic previous I-9 violations could be targeted initially
- What should you do now?
  - Ensure your I-9 process is consistent, efficient, and accurate
  - If any doubt, conduct a proactive audit of your I-9 process
  - If not on E-Verify already, explore that option
  - Be prepared for longer processing times and additional scrutiny but remain cautiously optimistic
- For now, get your house in order!

EEOC Updates

No Quorum at the EEOC

The Commission

- Andrea R. Lucas, Acting Chair
- Kalpana Kotagal, Commissioner
- (vacant)
- (vacant)
- (vacant)

The General Counsel

- Andrew Rogers (acting)

Andrea Lucus
Named Acting Chair
on 1/21/25
Appointed by Trump

Kolpana Kotagal
Commissioner
Appointed by
Biden in 2023

Charlotte Burrows
Former
Commissioner
Appointed by Biden
Served Until
1/27/25 Removal
by Trump

Jocelyn Samuels
Former
Commissioner
Appointed by Biden
Served Until
1/27/25 Removal
by Trump

Keith Sonderling
Former
Commissioner
Appointed by
Trump
Served Until Term
Ended in 2024

Andrew Rogers
Named Acting
General Counsel
2/4/25

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EEOC Drops Transgender Discrimination Cases

- **The EEOC has filed motions to drop its cases across the country alleging discrimination against transgender or gender nonconforming workers.**

- **The EEOC cites Trump's executive order declaring that the government would recognize only two "immutable" sexes — male and female — as the reason for why it no longer intends to pursue the cases.**

Pursuant to Executive Order 14168, Acting Chair Lucas has taken the following actions to date:

- Announced that one of her priorities—for compliance, investigations, and litigation—is to defend the biological and binary reality of sex and related rights, including women's rights to single-sex spaces at work.
- Removed the agency's "pronoun app," a feature in employees' Microsoft 365 profiles, which allowed an employee to opt to identify pronouns, content which then appeared alongside the employee's display name across all Microsoft 365 platforms, including Outlook and Teams. This content was displayed both to internal and external parties with whom EEOC employees communicated.
- Ended the use of the "X" gender marker during the intake process for filing a charge of discrimination.
- Directed the modification of the charge of discrimination and related forms to remove "Mx." from the list of prefix options.
- Commenced review of the content of EEOC's "Know Your Rights" poster, which all covered employers are required by law to post in their workplaces.
- Removed materials promoting gender ideology on the Commission's internal and external websites and documents, including webpages, statements, social media platforms, forms, trainings, and others. The agency's review and removal of such materials remains ongoing. Where a publicly accessible item cannot be immediately removed or revised, a banner has been added to explain why the item has not yet been brought into compliance.

EEOC's Focus on Anti-American Bias

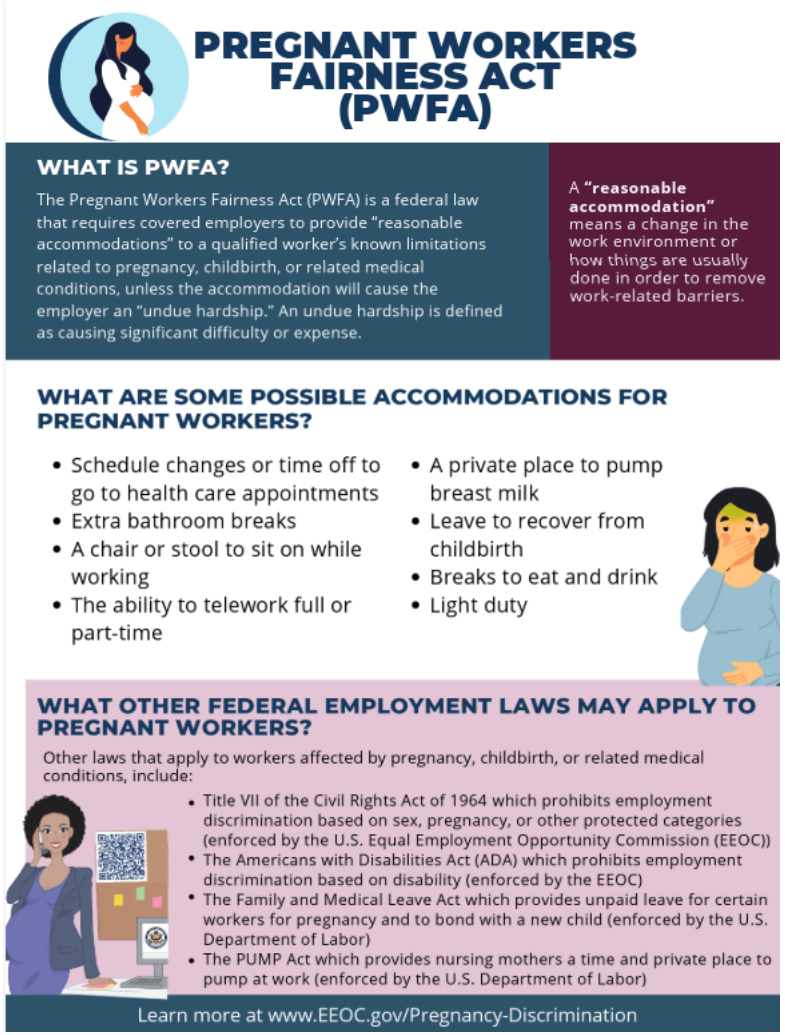
- **Acting Chair Andrea Lucas announced on February 19, 2025, "The EEOC is putting employers and other covered entities on notice: if you are part of the pipeline contributing to our immigration crisis or abusing our legal immigration system via illegal preferences against American workers, you must stop. The law applies to you, and you are not above the law. The EEOC is here to protect all workers from unlawful national origin discrimination, including American workers."**

Employers have many excuses for why they may prefer non-American workers, but none of these are legally permissible reasons to violate Title VII:

- lower cost labor (whether due to payment under the table to illegal aliens, or exploiting rules around certain visa-holder wage requirements, etc.);
- a workforce that is perceived as more easily exploited, in terms of the group's lack of knowledge, access, or use of wage and hour protections, antidiscrimination protections, and other legal protections;
- customer or client preference;
- biased perceptions that foreign workers are more productive or have a better work ethic than American workers.

"The law is clear: the prohibition on national origin discrimination applies to *any* national origin group, including discrimination against American workers in favor of foreign workers," said Lucas. "The EEOC is going to rigorously enforce the law to protect American workers from national origin discrimination."

EEOC's Position on the PWFA



- **Acting Chair Lucas has been vocal in her opposition to certain parts of the Commission's Final Rule implementing the Pregnant Workers Fairness Act ("PWFA").**
- **Acting Chair Lucas voted against the Final Rule when it came up for a vote in April 2024 because she believed "at a high level, the rule fundamentally erred in conflating pregnancy and childbirth accommodation with accommodation of the female sex, that is, female biology and reproduction."**
- **"Once a quorum is re-established at the Commission, Acting Chair Lucas intends for the Commission to reconsider portions of the Final Rule that she believes are unsupported by law."**

Key Takeaways for Employers

- **Employers should review their policies and practices to ensure they align with the EEOC's new focus areas, including anti-American bias, religious freedom, and rights based on biological sex.**

- **Remember EEOC’s guidance serves merely as an interpretation of existing employment laws and may provide insight into how the EEOC would approach certain cases, but it does not have the force of law.**

- **Employers must still comply with state and local laws.**

Affirmative Action/DEI Updates

What is DEI?

- DEI is an acronym representing Diversity, Equity, and Inclusion.

- DEI Impacts:
  - Policy Development
  - Training Programs
  - Employee Resource Groups (ERGs)
  - Recruitment and Hiring Practices
  - Mentorship and Sponsorship Programs
  - Accessibility Improvements
  - Data Collection and Analysis
  - Leadership Commitment
  - Scholarships

Executive Orders Targeted at DEI Efforts

- **DEI-Related Orders:**
  - **Higher Education:** EO 14190, EO 14188, EO 14201
  - **Private Employers:** EO 14173
  - **Federal Contractors:** EO 14170, EO 14173
  - **Federal Employees:** EO 14183, EO 14151, EO 14168

Impact on Private Employers

- **On January 21, 2025, President Trump signed an EO targeting DEI programs in the private sector.**
  - **The EO encourages private employers to focus on "*individual merit, aptitude, hard work, and determination*" when selecting people for jobs.**
  - **The EO tasks the U.S. Attorney General and the heads of all agencies to "*enforce our longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities*."**

Impact on Private Employers

- **The law has not changed for private-sector employers.**
  - **Private employers must comply with ALL federal anti-discrimination laws.**
    - **Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employment discrimination based on race, color, religion, sex, or national origin.**
    - **Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities.**
    - **Age Discrimination in Employment Act (ADEA) prohibits employers from discriminating against employees who are 40 or older.**
    - **Equal Pay Act of 1963 (EPA) prohibits pay discrimination based on sex.**
    - **Genetic Information Nondiscrimination Act (GINA) prohibits employers from using genetic information to make employment decisions.**
    - **Pregnancy Discrimination Act (PDA) prohibits employment discrimination based on pregnancy, childbirth, or related medical conditions.**
  - **Private employers must comply with applicable state laws.**
    - **21 states (including Illinois, California, and New York) have passed state laws protecting individuals from discrimination based on their sexual orientation and gender identity.**
    - **21 states have passed the CROWN Act, prohibiting discrimination based on natural hairstyles and textures.**

Impact on Federal Contractors

- **On January 21, 2024, President Trump revoked EO 11246.**
  - **EO 11246, signed by President LBJ in 1965, prohibits federal contractors from discriminating based on race, color, religion, sex, sexual orientation, gender identity, or national origin and mandates affirmative action by covered federal contractors to ensure equal employment opportunities.**
  - **Now, all government contracts and grants must include a term requiring the contractor or grant recipient to "certify" that it does not operate any programs promoting DEI that violate any federal anti-discrimination laws.**

U.S. Attorney General Pam Bondi Memorandum

In addition to GSA potentially reducing that 90-day grace period, U.S. Attorney General Pam Bondi issued a memorandum on February 5, 2025, titled "Ending Illegal DEI and DEIA Discrimination and Preferences," which stated in relevant part, "To fulfill the Nation's promise of equality for all Americans, the Department of Justice's Civil Rights Division will investigate, eliminate, and penalize illegal DEI and DEIA preferences, mandates, policies, programs and activities in the private sector and in educational institutions that receive federal funds." The memorandum specifically set forth a date of March 1, 2025, as the date by which personnel at the U.S. Department of Justice would jointly submit a report containing recommendations for enforcement actions and other measures to encourage the private sector to end illegal discrimination and preferences. According to this memorandum,

Legal Challenges to Date

Nationwide Preliminary Injunction on Certain Elements of DEI Orders

***National Association of Diversity Officers in Higher Education et al. v. Trump et al.*, No. 1:25-cv-00333, U.S. District Court for the District of Maryland**

- **The City of Baltimore and a group of academic and restaurant workers' groups filed a lawsuit challenging President Trump's DEI EOs as unconstitutionally vague and in violation of the First Amendment.**
  - **The plaintiffs claims that federal agencies will have to make "arbitrary decisions" about whether grants are "equity related," leaving the plaintiffs in limbo as they wait to see if they will receive their funding.**
  - **The plaintiffs argue that the EOs are so vague that it's unclear which DEI programs would be considered illegal.**

- **On February 21, 2025, the federal district court for the District of Maryland entered a preliminary injunction temporarily blocking Trump from enforcing key portions of the EOs that are unconstitutionally vague.**
  - **The court held that the EOs impermissibly target the expression of views supportive of equity, diversity and inclusion and violates the First and Fifth Amendments of the United States Constitution.**

- **On February 24, 2025, the Trump administration filed a notice of appeal to challenge the preliminary injunction and filed a motion to stay the injunction's enforcement pending the appeal.**

Legal Challenges to Date

***National Urban League et al. v. Trump et al.*, No. 1:25-cv-00471, U.S. District Court for the District of Columbia**

- **In a lawsuit filed in DC, three civil rights organizations asked for injunctions against three EOs relating to DEI initiatives and gender. In the complaint, plaintiffs described themselves as "*mission-driven nonprofit organizations committed to principles of diversity, equity, inclusion, and accessibility ('DEIA')*."**
  - **Plaintiffs target three specific executive orders: "Ending Radical and Wasteful DEI Programs and Preferencing;" "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;" and "Ending Illegal Discrimination and Restoring Merit-Based Opportunity."**
- **Plaintiffs argue that the EOs are unconstitutional because they amount to intentional discrimination and violate the Plaintiffs' free speech and due process rights. Plaintiffs also allege that the EOs exceed President Trump's authority under the U.S. Constitution and violate the Fifth Amendment's equal protection clause.**

Legal Challenges to Date

Lambda Legal Defense Lawsuit; No. 3:25-cv-01824, **U.S. District Court for the Northern District of California**

- **Multiple LGBTQ, Health, and HIV organizations sued the Trump Administration represented by Lambda Legal challenging the EOs as unconstitutional.**

Chicago Women in Trades v. Trump et al., **No. 1:25-cv-02005, U.S. District Court for the Northern District of Illinois**

- **A nonprofit dedicated to empowering women in skilled trades, launched another lawsuit challenging Trump's DEI-related executive orders for violating the First Amendment by banning DEI advocacy, chilling expression through vague mandates, and conditioning federal funding on the abandonment of DEI advocacy; violating the Fifth Amendment by denying due process with unclear prohibitions and risk arbitrary enforcement; and encroaching upon congressional power over spending and grant conditions and exceed presidential authority.**

Impact on Higher Education

- **Trump's Executive Order directs the U.S. attorney general and the secretary of the U.S. Department of Education, and other agencies to issue guidance by May 21, 2025 to all institutions that participate in federal student aid programs under Title IV regarding the measures and practices to ensure compliance with Students for Fair Admissions v. Harvard, 600 U.S. 181 (2023).**
- **Trump has directed these federal agencies to identify up to nine institutions with endowments over $1 billion as targets for civil compliance investigations due to their failure to comply with the Administration's DEI efforts.**
- **Institutions that receive federal fundings through grants and contracts will soon be required to certify that they do not operate any programs promoting DEI that violate any applicable federal anti-discrimination laws.**

“Dear Colleague Letter” from Dept. Educ.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ACTING ASSISTANT SECRETARY

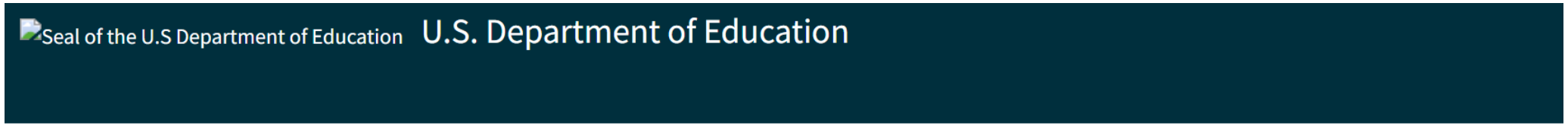
February 14, 2025

Dear Colleague:

Discrimination on the basis of race, color, or national origin is illegal and morally reprehensible. Accordingly, I write to clarify and reaffirm the nondiscrimination obligations of schools and other entities that receive federal financial assistance from the United States Department of Education (Department).[1] This letter explains and reiterates existing legal requirements under Title VI of the Civil Rights Act of 1964,[2] the Equal Protection Clause of the United States Constitution, and other relevant authorities.[3]

Promised “appropriate enforcement measures” within 14 days to assess compliance

“End DEI” Portal: enddei.ed.gov



Schools should be focused on learning.

The U.S. Department of Education is committed to ensuring all students have access to meaningful learning free of divisive ideologies and indoctrination. This submission form is an outlet for students, parents, teachers, and the broader community to report illegal discriminatory practices at institutions of learning. The Department of Education will utilize community submissions to identify potential areas for investigation.

Your email:

50 Character Limit

School or school district:

50 Character Limit

Legal Challenges

American Federation of Teachers and American Sociological Assoc. v. U.S. Dept of Educ. et al., **No. 1:25-cv-00628, U.S. District Court for the District of Maryland**

- **The AFT union filed a lawsuit on February 25, 2025 seeking an injunction to block enforcement of the Letter, and a declaratory judgment that the "Letter" violates the Constitution.**

National Education Association and ACLU v. U.S. Dept of Educ. et al., **No. 1:25-cv-00091, U.S. District Court for the District of New Hampshire**

- **The NEA and ACLU filed a lawsuit on March 5, 2025 seeking an injunction to block enforcement of any legal interpretations set forth in the Letter, including the "enddei" portal and a declaratory judgment that the Letter violates the Constitution.**

What Steps Should Employers Take Now

- **Risk Assessment.** Evaluate your organization's risk tolerance and appetite for potential legal challenges.
- **Legal Review:** Conduct a thorough review of all DEI policies and programs to ensure they comply with federal law, and any applicable state laws.
- **Messaging:** Consider how best to communicate the company's commitment to lawful DEI initiatives and the legality of its programs to employees, stakeholders, and the public, without unnecessarily increasing the risk of litigation or loss of federal contracts/grants.
- **Training:** Review training materials to ensure they are lawful, effective, and consistent with company values without being unnecessarily divisive or political.
- **Monitoring:** Continuously monitor legal developments with respect to DEI programs and adjust internally as needed to ensure the programs achieve their intended goals without violating the rapid changing law in this area.

Developments at the NLRB

Trump to Board: You're Fired!

Jennifer Abruzzo

Gwynne Wilcox

January 27, 2025: **President Trump fired General Counsel Jennifer Abruzzo and Board Member Gwynne Wilcox**

February 1, 2025: **President Trump fired Acting General Counsel Jessica Rutter**

Removal of Board Member Gwynne Wilcox

- **Removal of a Board member was unprecedented**
  - **NLRA provides that a Board member may be removed only "upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause"**
  - **Supreme Court precedent from 1935 upheld restrictions on the authority of a president to remove commissioners of independent agencies**
  - **A 2020 Supreme Court case also upheld the constitutionality of removal shields for certain independent agencies, like the CFPB**
- **Wilcox filed a lawsuit challenging her removal in federal court in DC**
- **Board now lacks a quorum to issue decisions, as required under the Supreme Court's decision in *New Process Steel***

Removal of General Counsel

- **The GC of the NLRB serves as both the agency's chief prosecutor and the advisor to the Board**
- **Following the dismissal of Jennifer Abruzzo, President Trump appointed William Cowen to serve as interim Acting GC**
- **AGC Cowen promptly withdrew many of the memoranda issued by his predecessor, including those related to the following:**
  - **Statutory rights of players at academic institutions**
  - **Securing full remedies for victims of unlawful conduct**
  - **Obtaining full remedies in settlements**
  - **Section 10(j) injunctive relief**
  - **Intersection of FERPA and the NLRA for colleges and universities**
- **AGC Cowen signaled that further guidance related to *Cemex* case handling and other matters will be forthcoming**

Future of the NLRB

- **Potential four-month wait for Senate confirmation of a new Board member**
  - **Lack of quorum means that the Board cannot issue decisions until a third member is nominated by the President and confirmed by the Senate**
  - **Delegation of authority: The Board issued regulations in 2011 following *New Process Steel*, which address the continued operations of the agency during periods of no quorum**

- **Executive challenges to the "independence" of the NLRB**
  - **President Trump issued two Executive Orders seeking to rein in the authority of independent agencies like the NLRB**
  - **The EOs bring independent agencies under the oversight of the White House and require them to follow White House interpretations of the law and obtain approval for rulemaking**

Future of the NLRB

- **Legal challenges to the structure of the NLRB**
  - Ongoing litigation by such companies as Space-X, Amazon, Trader Joe's, and Starbucks challenging the constitutionality of the NLRB's administrative structure
- **Supreme Court's overturning of *Chevron***
  - The Supreme Court's decision in *Loper-Bright*, overturning *Chevron* deference, may or may not have any bearing on future circuit court interpretations of Board decisions
- **Further cuts to staffing levels**
  - Current delays in processing of representation and ULP cases will continue

Key Takeaways

- **Change is likely to be slow with all of the changes at the NLRB**
- **Biden-era precedent continues to be the law until the Board changes it**
- **CEMEX continues to be the law, although there might be changes to how cases are processed**
- **Consider asserting arguments related to lack of quorum, delegation authority, constitutional structure, etc.**
- **Representation and ULP cases will continue to be processed, but there likely will be delay**
- **There might be new opportunities for settlement in ULP cases that were not possible before**


Q&A
You have Questions
We have Answers

Thank You

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