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What Employers Need to Know About the New Executive Order Revoking EO 11246 and Targeting DEI Efforts

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On January 22, 2025, President Donald Trump issued an executive order titled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” revoking Executive Order 11246 and implementing sweeping changes for federal contractors and employers nationwide. This order targets diversity, equity, and inclusion (DEI) programs and shifts the focus of federal anti-discrimination enforcement. Here's what this means for employers.

Key Changes Under the Executive Order

The new executive order eliminates the requirements of EO 11246, which had imposed nondiscrimination and affirmative action obligations on federal contractors and subcontractors. It also directs federal agencies to:

- Cease DEI and affirmative action programs: Federal contractors are no longer required to promote diversity, equity, or workforce balancing based on protected characteristics.
- Excise DEI principles from federal contracting and grants: Acquisition, grant, and assistance programs must eliminate DEI language and requirements.
- Focus on federal anti-discrimination laws: Contractors must certify compliance with all federal anti-discrimination laws, with potential liability under the False Claims Act for non-compliance.

For 90 days, federal contractors may continue complying with the prior regulatory framework, but compliance is discretionary.

Implications for Federal Contractors

Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) imposed nondiscrimination and affirmative action obligations on covered federal contractors and subcontractors. These regulations were enforced by the Office of Federal Contract Compliance Programs (OFCCP) within the Department of Labor.

The new executive order disrupts this regulatory framework, with several key implications:

1. **Nondiscrimination and Affirmative Action Requirements:**

- Elimination of EO 11246 requirements: Affirmative action obligations related to women and minorities are no longer operative. However, statutory nondiscrimination obligations under Title VII of the Civil Rights Act of 1964 and other federal laws remain in effect.
- Section 503 and VEVRAA obligations remain intact: Affirmative action, nondiscrimination, and accommodation requirements for individuals with disabilities and protected veterans continue under these statutory frameworks.

2. **Impact on OFCCP Audits:**

- The OFCCP's authority to audit federal contractors' affirmative action plans is curtailed. The executive order directs OFCCP to "immediately cease" promoting DEI initiatives and statistical impact analyses during audits.
- Pending and new OFCCP audits may shift focus, and employers should consult counsel to assess their obligations and manage compliance risks.

3. **False Claims Act Risk:**

- Federal contractors must certify compliance with anti-discrimination laws. Any misrepresentation or failure to comply could result in significant liability under the False Claims Act, potentially leading to costly investigations and penalties.

What About Non-Federal Contractors?

Even employers who are not federal contractors should pay close attention, as the new executive order signals heightened scrutiny of private-sector DEI efforts. Key highlights include:

- **Increased enforcement targeting DEI programs:**
The order underscores the administration's belief that many DEI initiatives violate federal civil rights laws.
- **EEOC priorities:**
The EEOC, under Acting Chair Andrea R. Lucas, has announced a renewed focus on investigating "reverse discrimination" claims and rooting out unlawful DEI-driven practices, including race and sex preferences.
- **Potential investigations:**
Federal agencies are directed to identify up to nine major entities, including corporations, large nonprofits, and universities, for compliance investigations based on DEI practices.

Action Steps for Employers

To adapt to these changes, HR professionals and employers should take the following steps:

1. **Review DEI Programs and Policies:**

- Evaluate existing DEI initiatives to ensure compliance with

federal anti-discrimination laws.

- Consider eliminating practices that could be construed as unlawful.

2. Audit Employment Practices:

- Review hiring, promotion, and compensation practices to confirm compliance with Title VII, the ADA, and other federal laws.

3. Prepare for Compliance Certifications:

- Federal contractors must ensure they can certify compliance with anti-discrimination laws under the new requirements.

4. Consult Legal Counsel:

- Legal guidance is critical for navigating these changes and it is recommended employers consult with an employment law attorney.

Looking Ahead

The new executive order represents a significant shift in federal policy, signaling an emphasis on merit-based practices and increased scrutiny of DEI programs. Employers must act quickly to adapt, ensuring compliance with federal laws and mitigating risks of liability.

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