

Workplace Governance Under the Trump Administration

Camille A. Olson
Partner
Seyfarth Shaw LLP
233 S. Wacker Drive
Suite 8000
Chicago, Illinois 60606-6448
Telephone: (773) 988-1100
Email: COlson@seyfarth.com

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Workplace Governance Under the Trump Administration

Camille A. Olson, Partner, Seyfarth Shaw LLP¹

I. The Trump Administration's Approach to Governing the Workplace

The governing framework for workplace policy under the second Trump administration centers on executive-driven coordination, with federal agencies serving as the operational mechanisms for advancing defined enforcement and policy goals. The administration is moving quickly and decisively to implement its goals.² This centralized approach ensures uniform direction across the federal government, speeds implementation, and extends the reach of executive initiatives. The administration's structural and operational agenda centers on deregulation, government reduction, and agency restructuring. Alongside these institutional changes, the administration is advancing its workplace policy priorities of eliminating illegal diversity, equity, and inclusion ("DEI"); deprioritizing disparate impact theory; upskilling the workforce for artificial intelligence ("AI") literacy; accelerating AI development; and immigration enforcement.

The administration's efforts to coordinate its exercise of executive power to influence workplace policy and practice extends far beyond the traditional Equal Employment Opportunity Commission ("EEOC") and Department of Labor guidance and enforcement efforts. The administration deploys a dual strategy: workplace-focused agencies like the EEOC implement political priorities around DEI elimination and immigration enforcement, while non-traditional agencies like the FCC leverage their regulatory authority to extract workplace-related concessions from private companies seeking approvals. This approach is amplified by strategic use of federal spending power through contracting requirements, grant conditions, and negotiated settlements, and the threat of federal enforcement and third-party litigation under the False Claims Act, in order to compel private-sector compliance without formal enforcement actions. The result is a governing framework in which the administration's policy objectives drive agency coordination across domains, creating compliance pressures that emanate from multiple federal touchpoints simultaneously and often focus on specific entities.

A. Overview of Strong Central Executive and White House

The *unitary executive theory* is a constitutional interpretation that holds that all executive power, as vested by Article II of the U.S. Constitution, resides in the President, and that Congress may not create independent limitations on the President's control over the executive branch.³ Under this theory, the President possesses broad authority to direct, supervise, and, if necessary, remove executive branch officials, including those in traditionally independent agencies, to

¹ Special thanks to Korin T. Isotalo of Seyfarth Shaw LLP for her contribution to the preparation of this paper.

² See Russell Vought Plenary Address, "Deconstructing the Administrative State," National Conservatism Conference, September 3, 2025. Available at: https://www.youtube.com/watch?v=2yS2p_tKjJE. (Visited on September 29, 2025).

³ Cass R. Sunstein & Adrian Vermeule, *The Unitary Executive: Past, Present, Future*, The Supreme Court Review, 2021 (83-117).

ensure faithful execution of the laws. Some argue that this theory promotes clarity and accountability, since executive officers ultimately answer to a single elected official who is directly accountable to the electorate. Others caution that an expansive application may alter the balance among the branches of government, affect the independence of agencies intended to perform regulatory functions apart from political influence, and raise concerns about the concentration of authority in the presidency. Recent Supreme Court decisions, such as *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U. S. 197 (2020) and *Collins v. Yellen*, 594 U. S. 220 (2021), have reinforced aspects of the unitary executive theory by limiting Congress’s ability to shield agency heads from presidential removal. The Trump administration’s workplace governance strategy reflects this philosophy: by issuing executive orders (“EOs”) to set cross-agency priorities, exerting direct control over independent bodies like the EEOC and NLRB, and ensuring uniform enforcement approaches on issues such as DEI and disparate impact, the administration has used centralized presidential authority to shape employment policy consistently across the federal government.

A unique feature of the Trump 2.0 administration’s approach to the use of a strong central executive is its reliance on non-traditional levers to drive compliance and advance policy priorities. Beyond executive orders, the administration has encouraged resolution of disputes through negotiated agreements between the administration and certain employers, often structured as settlements that extend beyond the immediate dispute to include broader commitments. For example, law firms have entered into settlements with the administration and federal agencies, including the EEOC, following requests for information or in anticipation of executive orders about corporate DEI programs. In an April 11, 2025 EEOC settlement, four law firms – Kirkland & Ellis, Latham & Watkins, Simpson Thacher & Bartlett, and A&O Shearman Sterling – disavowed DEI programs and reaffirmed their commitment to merit-based employment practices.⁴ Nine law firms reached preemptive settlements with the administration to avoid executive actions against them in exchange for pro bono services valued at \$940 million.⁵ The administration has also reached settlements with non-law firm entities as a governing strategy to secure compliance with its priorities while avoiding extended litigation. Universities have reached settlements with the administration to alter admissions, scholarship, and Title IX practices, often without formal findings of liability but with mandated program changes and monitoring. In July, 2025, for example, Columbia University⁶ and Brown University⁷ reached settlements with the administration regarding alleged unlawful racial discrimination. Columbia University agreed to pay \$200 million to settle civil-rights claims, regain reinstated federal funding and future grant eligibility, adopt independent oversight, share

⁴ See “In EEOC Settlement, Four ‘BigLaw’ Firms Disavow DEI and Affirm Their Commitment to Merit-Based Employment Practices,” EEOC Press Release Dated April 11, 2025. Available at: <https://www.eeoc.gov/newsroom/eeoc-settlement-four-biglaw-firms-disavow-dei-and-affirm-their-commitment-merit-based>. (Visited on August 20, 2025).

⁵ See “Here’s Where All the Firms in the Trump-Big Law Fight Stand,” Business Insider, May 28, 2025. Available at: <https://www.businessinsider.com/trump-big-law-fight-firms-legal-dilemma-2025-3>. (Visited on August 20, 2025).

⁶ See “Fact Sheet: President Donald J. Trump Secures Major Settlement with Columbia University,” White House Fact Sheet Dated July 24, 2025. Available at: <https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-secures-major-settlement-with-columbia-university/>. (Visited on August 21, 2025).

⁷ See “Fact Sheet: President Donald J. Trump Secures Major Settlement with Brown University,” White House Fact Sheet Dated July 30, 2025. Available at: <https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-secures-major-settlement-with-brown-university/>. (Visited on August 21, 2025).

admissions and hiring data to enforce merit-based standards, and resolve anti-Semitism claims – including over \$20 million paid to Jewish employees following the October 2023 attacks. Brown University’s July 2025 settlement with the Trump administration restored its federal funding in exchange for eliminating race-based practices, adopting federal sex definitions, prohibiting gender treatments for minors, enhancing protections for Jewish students, submitting to three years of oversight, and committing \$50 million over ten years to compliant workforce programs. These settlements serve as practical compliance signals for the broader employer community and reflect the administration’s ability to set expectations outside of traditional forums. Taken together, such mechanisms illustrate how the administration can use enforcement actions, investigatory letters, and negotiated outcomes to shape workplace practices on a national scale.

A further illustration of the administration’s embrace of the unitary executive theory comes from the EEOC. At her confirmation hearing, Acting Chair Andrea Lucas emphasized that the EEOC is “an executive branch agency,” not an independent commission. This statement underscores the administration’s position that the EEOC falls squarely within presidential direction and control, rather than operating with insulation from political influence. By framing the EEOC as an extension of the President’s authority, Acting Chair Lucas reinforced the administration’s view that the agency’s enforcement priorities should mirror the White House’s policy agenda. The alignment between this characterization and recent Supreme Court decisions limiting protections for independent agencies highlights how the administration has sought to recast the EEOC’s role—not as a neutral enforcer of workplace law, but as a vehicle for advancing the administration’s broader policy objectives in employment regulation.

B. Increased Use of Executive Orders

From the outset of his second term, President Trump has used executive orders as the primary mechanism for advancing labor and workplace policy, establishing cross-agency priorities, and directing agency enforcement. In the first 200 days of his presidency, President Trump signed more than 185 executive orders,⁸ a pace that exceeds modern presidential norms. The use of executive authority has allowed the administration to impose immediate, binding directives on federal agencies, both those within the President’s direct control and those traditionally considered independent. President Trump’s executive orders have required robust, specific, coordinated, and timely agency action. The scope of these directives has included elimination of illegal DEI, dismantling federal contractor affirmative action obligations, deprioritization of disparate impact theory of liability, immigration enforcement, and a comprehensive federal AI innovation strategy.

EO 14179⁹ exemplifies this approach. It revoked Biden-era AI regulatory safeguards and directed the development of a comprehensive AI Action Plan within 180 days, setting clear mandates for multiple agencies to advance U.S. leadership in AI. Executive action enables the

⁸ See 2025 Donald J. Trump Executive Orders, Federal Register. Available at: <https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2025>. (Visited on August 15, 2025).

⁹ See EO 14179, “Removing Barriers to American Leadership in Artificial Intelligence,” Signed January 23, 2025. Available at: <https://www.federalregister.gov/documents/2025/01/31/2025-02172/removing-barriers-to-american-leadership-in-artificial-intelligence>. (Visited on August 14, 2025).

administration to bypass slower legislative processes, align objectives across the federal government, and hold agencies accountable through measurable deliverables. The Order required collaboration among labor, commerce, technology, and procurement agencies to support AI deployment and workforce readiness. Driven from the Oval Office, this coordination reflects the unitary executive theory's emphasis on centralized authority and has reshaped how agencies approach enforcement, guidance, and resource allocation in the employment sector. By using executive orders as the organizing framework for workplace governance, the administration has centralized decision-making, accelerated policy shifts, and minimized the risk of divergent agency approaches.

The use of EOs has also allowed the administration to synchronize policy across multiple domains that touch workplace governance, particularly in its efforts to eliminate illegal DEI. President Trump's DEI EOs have been operationalized through coordinated actions by the Department of Labor ("DOL"), Department of Justice ("DOJ"), Department of Education ("DOE"), Health and Human Services ("HHS"), and the EEOC, signaling a top-down approach to policy realignment. For example, EOs 14148,¹⁰ 14151,¹¹ and 14173¹² were immediately implemented by the Office of Personnel Management ("OPM"),¹³ Attorney General Bondi,¹⁴ DOL,¹⁵ and DOE,¹⁶ reflecting a whole-of-government approach to employment-related policy. The DOJ also joined the EEOC in issuing technical assistance to encourage individuals to file charges with the EEOC if they have experienced DEI-related workplace discrimination.¹⁷ As far as other employment-related agencies like the National Labor Relations Board's ("NLRB"), given the nature of its jurisdiction is limited, DEI has not been a top policy priority for the Board. Beyond civil-rights agencies, the Federal Communications Commission ("FCC") under Chairman Brendan Carr aligned with the policy priority of eliminating illegal DEI by using merger review and enforcement letters to press regulated companies to abandon corporate DEI

¹⁰ See EO 14148, "Initial Rescissions of Harmful Executive Orders and Actions," Signed January 20, 2025. Available at: <https://www.federalregister.gov/documents/2025/01/28/2025-01901/initial-rescissions-of-harmful-executive-orders-and-actions>. (Visited on August 19, 2025).

¹¹ See EO 14151, "Ending Radical and Wasteful Government DEI Programs and Preferencing," Signed January 20, 2025. Available at: <https://www.federalregister.gov/documents/2025/01/29/2025-01953/ending-radical-and-wasteful-government-dei-programs-and-preferencing>. (Visited on August 15, 2025).

¹² See EO 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," Signed January 21, 2025. Available at: <https://www.federalregister.gov/documents/2025/01/31/2025-02097/ending-illegal-discrimination-and-restoring-merit-based-opportunity>. (Visited on August 14, 2025).

¹³ See "Further Guidance Regarding Ending DEIA Offices, Programs, and Initiatives," OPM Memo Released February 5, 2025. Available at: <https://chcoc.gov/sites/default/files/OPM%20Memo%20Further%20Guidance%20Regarding%20Ending%20DEIA%20Offices%20Programs%20and%20Initiatives%202-5-2025%20FINAL.pdf>. (Visited on August 19, 2025).

¹⁴ See "Ending Illegal DEI and DEIA Discrimination and Preferences," DOJ Memo Released February 5, 2025. Available at: <https://www.justice.gov/ag/media/1388501/dl?inline>. (Visited on August 19, 2025).

¹⁵ See "Secretary's Order 03-2025 – To Cease and Desist All Investigative and Enforcement Activity Under Rescinded Executive Order 11246," DOL Memo Released January 24, 2025. Available at: <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2025/01/Secretarys-Order-03-2025.pdf>. (Visited on August 19, 2025).

¹⁶ See "U.S. Department of Education Takes Action to Eliminate DEI," Press Release Dated January 23, 2025. Available at: <https://www.ed.gov/about/news/press-release/us-department-of-education-takes-action-eliminate-dei>. (Visited on August 19, 2025).

¹⁷ See "What To Do If You Experience Discrimination Related To DEI At Work," issued March 19, 2025. Available at: https://www.eeoc.gov/sites/default/files/2025-03/One_Pagers_2025-2_%28002%29_508.pdf. (Visited on August 19, 2025).

programs.¹⁸ Taken together, these coordinated actions demonstrate how the administration’s EOs are instruments of a whole-of-government strategy to realign workplace policy.

C. Deregulatory and Pro-Business Operational Agenda

The second Trump administration has made deregulation the centerpiece of its operational strategy, embedding pro-business priorities into the structure of federal governance. Through a series of executive orders and agency directives, the White House sought not only to halt the pipeline of new regulations but also to dismantle existing frameworks viewed as costly or restrictive. The administration’s approach combined immediate measures – such as freezing pending rules – with broader structural reforms that centralized review authority in the Executive branch and imposed strict cost-cutting mandates on agencies. Together, these initiatives reflect a governing model designed to constrain regulatory growth, reduce compliance burdens, and align federal policymaking with the administration’s deregulatory and pro-business agenda.

On January 20, 2025, President Trump issued a memorandum for the heads of executive departments and agencies entitled, “Regulatory Freeze Pending Review.”¹⁹ The memorandum mandated a halt on the proposal or issuance of any rule in any manner, pending review and approval by presidential appointees. It directed all executive departments and agencies to immediately withdraw any unpublished rules and postponed the effective dates of published rules not yet in force by 60 days for review. By stopping the flow of new regulations, delaying effective dates, and centralizing review of all new rules, the regulatory freeze set the direction of the administration’s deregulatory focus.

On January 31, 2025, President Trump signed EO 14192 to formalize the policy of the executive branch to be “prudent and financially responsible in the expenditure of funds, from both public and private sources, and to alleviate unnecessary regulatory burdens placed on the American People.”²⁰ The EO is a central component of the administration’s deregulatory strategy. At its core, the Order mandates that for every new regulation introduced, federal agencies must repeal at least ten existing regulations or guidance documents. This “10-for-1” rule is designed to ensure that regulatory expansion is balanced, or outweighed, by deregulation, compelling agencies to reduce the cumulative burden on private sector compliance. The Order imposes a legal requirement that the total incremental cost of all new regulations – including those eliminated – must be “significantly less than zero.” In other words, regulatory actions should result in net cost savings, not additional financial burdens.

On February 18, 2025, President Trump signed EO 14215, an Order that required independent agencies to submit major rules to the White House, via the Office of Management

¹⁸ See Brendan Carr Letters. Available at: <https://www.fcc.gov/about/leadership/brendan-carr/letters>. (Visited on August 19, 2025).

¹⁹ See “Regulatory Freeze Pending Review,” Issued January 20, 2025. Available at: <https://www.federalregister.gov/documents/2025/01/28/2025-01906/regulatory-freeze-pending-review>. (Visited on August 19, 2025).

²⁰ See EO 14192, “Unleashing Prosperity Through Deregulation,” Signed January 31, 2025. Available at: <https://www.federalregister.gov/documents/2025/02/06/2025-02345/unleashing-prosperity-through-deregulation>. (Visited on August 15, 2025).

and Budget (“OMB”) and the Office of Information and Regulatory Affairs (“OIRA”).²¹ OIRA review has historically been used to enforce cost-benefit analysis and regulatory restraint. By requiring independent agencies to submit all major rules through centralized review, EO 14215 narrows agencies’ ability to issue expansive or burdensome rules. The Order directed the establishment of a position of White House Liaison within each respective agency. Section 7 of the Order defers authoritative legal interpretations to the President or Attorney General: “The President and the Attorney General, subject to the President’s supervision and control, shall provide authoritative interpretations of law for the executive branch.” EO 14215 constrains the growth of federal regulation at its source.

In the technology sector, “Winning the Race: America’s AI Action Plan” (“AI Plan”) – announced on July 23, 2025 – illustrates the administration’s deregulatory and pro-business agenda by positioning AI as a driver of economic growth and global competitiveness.²² The AI Plan establishes a “try-first” regulatory approach that favors innovation and market experimentation over regulation, removes DEI- and climate-based requirements from federal AI guidance, and directs agencies to weigh state regulatory burdens when distributing federal AI funding. By tying federal dollars to regulatory posture, the administration creates incentives for states to scale back their own AI restrictions, effectively advancing deregulation even after Congress declined to preempt state laws.

D. Government Reduction and Restructuring

The Trump administration’s early efforts to shrink and restructure government included the immediate termination of EEOC Commissioners Charlotte Burrows and Jocelyn Samuels, alongside NLRB Member Gwynne Wilcox – moves widely viewed as the administration expanding executive power and tightening presidential control over independent agencies. Wilcox and Samuels filed lawsuits challenging their dismissals.²³ Wilcox’s litigation, currently in the D.C. Circuit, could escalate to the Supreme Court. There is a case challenging *Humphrey’s Executor*, the 1935 precedent limiting the president’s removal authority over independent agency officials, that has been granted certiorari by the Supreme Court this Term.²⁴ The case involves a terminated member of the Federal Trade Commission. As a result of President Trump’s terminations, both the EEOC and the NLRB have been without quorum since January 2025, limiting their ability to issue decisions or fulfill statutory duties. To remedy this, the administration nominated Republican Brittany Bull Panuccio – an Assistant U.S. Attorney in Florida – to the EEOC. Panuccio was confirmed by the Senate on October 7, 2025, a move that restores quorum at the EEOC and will shift its policy direction. Trump has also nominated Scott Mayer, Boeing’s chief labor counsel, and James Murphy, a career NLRB attorney, to fill two of

²¹ See EO 14215, “Ensuring Accountability for All Agencies,” Signed February 18, 2025. Available at: <https://www.federalregister.gov/documents/2025/02/24/2025-03063/ensuring-accountability-for-all-agencies>. (Visited on September 5, 2025).

²² See “Winning the Race: America’s AI Action Plan.” Released July 23, 2025. Available at <https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf>. (Visited on August 19, 2025).

²³ See *Gwynne A. Wilcox v. Donald J. Trump et al.* (D.C. Cir.), Case No. 25-5057 and *Jocelyn Samuels v. Donald J. Trump et al.* (D.D.C.), Case No. 25-cv-01069.

²⁴ See *Trump, et al. v. Slaughter, et al.* (S. Ct.), Case No. 25-5261.

the vacant Republican seats on the NLRB, potentially restoring that agency’s quorum as well. Those nominations are pending.

The absence of a quorum at the EEOC for many months has been part of the administration’s broader effort to reduce and restructure the federal government. By removing Commissioners and leaving seats unfilled, the administration limited the agency’s ability to issue decisions or formal guidance, effectively constraining its role without legislation. At the same time, while the EEOC has lacked a quorum, Acting Chair Lucas has used the reduced structure to pivot the EEOC toward consequential actions, such as issuing investigatory letters, releasing technical assistance, and negotiating settlements. This approach reflects the administration’s strategy of reshaping agencies not only through budget cuts and consolidations, but also by narrowing their operational footprint while still advancing executive priorities. With the confirmation of Commissioner Panuccio and a restored quorum, the EEOC will be positioned to formalize its policy priorities, expanding the impact of an agency that has already been restructured to operate under closer presidential direction.

The Trump administration’s Department of Government Efficiency (“DOGE”) initiative is a central mechanism to enact its broader project of streamlining and reducing the federal government. Created by EO 14158,²⁵ DOGE was tasked with embedding deregulatory teams across all agencies to identify, repeal, and consolidate rules and programs deemed inefficient, unlawful, or inconsistent with administration priorities. Subsequent orders expanded DOGE’s mandate: EO 14210²⁶ authorized the consolidation and elimination of agency functions, EO 14219²⁷ directed the transfer of certain enforcement authorities to more “cost-effective” entities or the private sector, and EO 14222²⁸ formalized the closure or merger of offices no longer aligned with executive priorities. Together, these orders operationalize the administration’s stated goal of shrinking the size, scope, and cost of the federal bureaucracy, complementing broader efforts like EO 14192’s deregulation requirements and large-scale budget cuts at agencies such as the DOL. By combining organizational restructuring with regulatory rollback, DOGE serves as both the architect and enforcer of the administration’s downsizing agenda.

Within the federal workplace and employment sphere, the DOGE initiative has been a significant driver of the Trump administration’s restructuring and enforcement realignment strategy. Pursuant to EO 14158, each agency head was directed to establish within their agencies

²⁵ See EO 14158, “Establishing and Implementing the President’s ‘Department of Government Efficiency,’” Signed January 20, 2025. Available at: <https://www.federalregister.gov/documents/2025/01/29/2025-02005/establishing-and-implementing-the-presidents-department-of-government-efficiency>. (Visited on August 15, 2025).

²⁶ See EO 14210, “Implementing the President’s ‘Department of Government Efficiency’ Workforce Optimization Initiative,” Signed February 11, 2025. Available at: <https://www.federalregister.gov/documents/2025/02/14/2025-02762/implementing-the-presidents-department-of-government-efficiency-workforce-optimization-initiative>. (Visited on August 15, 2025).

²⁷ See EO 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative,” Signed February 19, 2025. Available at: <https://www.federalregister.gov/documents/2025/02/25/2025-03138/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency>. (Visited on August 15, 2025).

²⁸ See EO 14222, “Implementing the President’s ‘Department of Government Efficiency’ Cost Efficiency Initiative,” Signed February 26, 2025. Available at: <https://www.federalregister.gov/documents/2025/03/03/2025-03527/implementing-the-presidents-department-of-government-efficiency-cost-efficiency-initiative>. (Visited on August 15, 2025).

a DOGE Team of at least four employees, typically including one DOGE Team Lead, one engineer, one human resources specialist, and one attorney. EO 14222 directed each agency head, with the assistance of the agency’s DOGE Team Lead, to build a centralized technological system within the agency to seamlessly record every payment issued by the agency pursuant to each of the agency’s covered contracts and grants, along with a brief, written justification for each payment submitted by the agency employee who approved the payment. The Order also directed agency heads to review existing contracts and terminate or modify them to reduce overall federal spending or reallocate spending to promote efficiency and advance the policies of the administration.

The federal workforce has also been reduced by EOs 14217²⁹ and 14238³⁰ that establish the policy of the administration to dramatically reduce the size of the federal government while increasing its accountability to the American people. EO 14217 mandates the elimination of non-statutory components and functions – and the associated personnel – of agencies such as the Presidio Trust, Inter-American Foundation, U.S. African Development Foundation, and the U.S. Institute of Peace, directing agency leaders to reduce operations to the minimum legally required level and to report compliance to OMB within 14 days. Building on this effort, EO 14238 continued this downsizing initiative by ordering the scaled-down operation – or full elimination, where consistent with law – of non-statutory functions and staff at additional entities, including the Federal Mediation and Conciliation Service, U.S. Agency for Global Media, Woodrow Wilson International Center for Scholars in the Smithsonian Institution, Institute of Museum and Library Services, U.S. Interagency Council on Homelessness, Community Development Financial Institutions Fund, and the Minority Business Development Agency. These two EOs, taken together, reflect a concerted two-phase approach: first initiating broad reductions to trim government excess, then systematically extending that downsizing across a second wave of institutions – delivering on the administration’s promise of streamlined, smaller federal operations.

Alongside the DOGE initiative and other executive actions, the Trump administration has moved to significantly restructure and reduce the size of the DOL. The proposed FY 2026 budget calls for a 35% cut in discretionary funding, reducing the DOL’s budget from approximately \$13.5 billion to \$9 billion.³¹ The plan would eliminate the Office of Federal Contract Compliance Programs (“OFCCP”) as an independent unit, transferring its Section 503 enforcement responsibilities to the EEOC and its Vietnam Era Veterans’ Readjustment Assistance Act (“VEVRAA”) functions to the Veterans’ Employment and Training Service (“VETS”). It would also close the Job Corps and the Women’s Bureau. Staffing reductions are equally substantial, with the total headcount projected to drop from 14,855 to 10,879 – a loss of nearly 4,000 employees – through buyouts and attrition.

²⁹ See EO 14217 “Commencing the Reduction of the Federal Bureaucracy,” Signed February 19, 2025. Available at: <https://www.federalregister.gov/documents/2025/02/25/2025-03133/commencing-the-reduction-of-the-federal-bureaucracy>. (Visited on August 20, 2025).

³⁰ See EO 14238 “Continuing the Reduction of the Federal Bureaucracy,” Signed March 14, 2025. Available at: <https://www.federalregister.gov/documents/2025/03/20/2025-04868/continuing-the-reduction-of-the-federal-bureaucracy>. (Visited on August 20, 2025).

³¹ See FY 2026 Budget. Available at: <https://www.dol.gov/general/budget>. (Visited on August 19, 2025).

Subagency budgets would be tightened across the board. The Wage and Hour Division's budget would decline from \$260 million to \$235 million, with staffing reduced from 1,152 to 906. The Occupational Safety and Health Administration ("OSHA") would face an 8% cut, reducing its budget from \$632.3 million to \$582.4 million, which would likely diminish inspection and enforcement capacity. The Employment and Training Administration ("ETA") would see large grant programs consolidated or eliminated, replaced by a "Make America Skilled Again" model focused on employer-led training and apprenticeship activities.

E. Administration Policy Priorities

1. Elimination of "Illegal DEI"

A central feature of this administration's workplace policy is the elimination of "illegal DEI" programs under Titles VI, VII, and IX of the Civil Rights Act, enforced through both traditional agency oversight and novel use of the False Claims Act ("FCA"). Through executive orders, agency guidance, investigatory letters, technical assistance, enforcement initiatives, and other coordinated efforts in the federal agencies, the Trump administration has advanced its policy priority of eliminating illegal DEI across multiple domains of workplace governance and federal oversight.

President Trump has issued several DEI-related EOs that have shaped the cross-agency, coordinated policy priority of eliminating illegal DEI. First, EO 14148 rescinded 67 EOs and 11 memoranda from the Biden administration, stating that the "injection of 'diversity, equity, and inclusion' (DEI) into our institutions has corrupted them by replacing hard work, merit, and equality with a divisive and dangerous preferential hierarchy" (p. 8237). Among the rescinded EOs were several DEI-related orders that directed the federal government to embed equity and inclusion across operations by advancing racial equity in public programs and services, expanding diversity, equity, inclusion, and accessibility within the federal workforce, and promoting pay equity and transparency in federal contracting. Next, EO 14151 dismantled DEI programs, positions, and offices across federal agencies; ordered the removal of DEI-related content from training and communications; and terminated contracts tied to DEI services. EO 14168³² defines "sex" as an immutable characteristic of either male or female and, for DEI-related policy, directs agencies to use "sex" not "gender." The EO rejects *Bostock v. Clayton County*, 590 U.S. 644 (2020) as requiring gender-identity access to single-sex spaces, bars federal funds for "gender ideology," prioritizes guidance and enforcement to protect single-sex spaces, mandates IDs reflect biological sex, and seeks legislation to codify these definitions. EO 14173 extends the scope of the administration's policy priority to include federal contractors, revoking EO 11246³³ that imposed affirmative action obligations on federal contractors and conditioning future contract eligibility on certification that no prohibited DEI initiatives are in place. EO 14173 also extended scrutiny of DEI programs to the private sector. Section 4 of the

³² See EO 14168, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," Signed January 20, 2025. Available at: <https://www.federalregister.gov/documents/2025/01/30/2025-02090/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal>. (Visited on August 19, 2025).

³³ See EO 11246, "Equal Employment Opportunity," Signed September 24, 1965. Available at: https://archives.federalregister.gov/issue_slice/1965/9/28/12315-12325.pdf. (Visited on August 19, 2025).

Order directed federal agencies to promote “individual initiative, excellence, and hard work” in the private sector (p. 8635). It further instructed DOJ and other agencies to recommend ways to enforce civil rights laws against illegal DEI by identifying the most egregious and discriminatory practitioners in each industry sector. Taken together, these orders triggered synchronized agency action, eliminating federal DEI programs, removing DEI personnel and offices, and centralizing authority under executive-aligned offices, marking a significant shift in the enforcement stance of the federal government toward DEI initiatives.

Shortly after her confirmation in February, 2025, Attorney General Bondi issued two memoranda that set a new course for DOJ’s treatment of DEI. The first February 5 memo³⁴ directs the Civil Rights Division and Office of Legal Policy to consider potential criminal investigations into DEI practices, prepare a report identifying high-risk sectors and entities, and outline civil and regulatory enforcement strategies to deter programs deemed to involve unlawful preferences. Her second memo³⁵ directs DOJ components to narrow reliance on disparate impact theories, clarify that statistical disparities alone are insufficient to prove discrimination, and review all existing consent decrees, settlements, litigation positions, and internal practices to eliminate race- or sex-based preferences. Together, the memos not only signal heightened scrutiny of external DEI programs but also mandate internal reforms, including the removal of DEI-related language from training materials, with limited exceptions for certain diversity observances.

On March 17, 2025, EEOC Acting Chair Lucas issued letters to 20 major law firms, requesting extensive information about their DEI-related employment practices. The firms included A&O Shearman, Debevoise & Plimpton, Cooley, Freshfields, Goodwin Procter, Hogan Lovells, Kirkland & Ellis, Latham & Watkins, McDermott Will & Emery, Milbank, Morgan Lewis, Morrison & Foerster, Perkins Coie, Reed Smith, Ropes & Gray, Sidley Austin, Simpson Thacher, Skadden, White & Case, and WilmerHale.

In the press release³⁶ announcing the inquiry, Acting Chair Lucas stated, “The EEOC is prepared to root out discrimination anywhere it may rear its head, including in our nation’s elite law firms,” and “No one is above the law – and certainly not the private bar.” The press release further stated, “the letters note concerns that some firms’ employment practices, including those labeled or framed as DEI, may entail unlawful disparate treatment in terms, conditions, and privileges of employment, or unlawful limiting, segregating, and classifying based on race, sex, or other protected characteristics, in violation of Title VII”. Among other things, the letters requested that the firms provide information about their participation in internship and fellowship programs directed at underrepresented groups, along with demographic data, selection criteria for applicants, and other DEI-related policies and practices.

³⁴ Ending Illegal DEI (fn 12).

³⁵ See “Eliminating Internal Discriminatory Practices,” DOJ Memo Released February 5, 2025. Available at: <https://www.justice.gov/ag/media/1388556/dl?inline>. (Visited August 22, 2025).

³⁶ See “EEOC Acting Chair Andrea Lucas Sends Letters to 20 Law Firms Requesting Information About DEI-Related Employment Practices,” Press Release Dated March 17, 2025. Available at: <https://www.eeoc.gov/newsroom/eeoc-acting-chair-andrea-lucas-sends-letters-20-law-firms-requesting-information-about-dei>. (Visited on August 20, 2025).

On March 18, 2025, seven former EEOC officials issued an open letter addressed to Acting Chair Lucas in response to her information requests to major law firms.³⁷ The signatories to the letter were Charlotte Burrows (former EEOC Chair and Commissioner), Jenny Yang (former EEOC Chair and Commissioner), Jocelyn Samuels (former EEOC Vice Chair and Commissioner), Chai Feldblum (former EEOC Commissioner), Karla Gilbride (former General Counsel), David Lopez (former General Counsel), and Peggy Mastroianni (former Legal Counsel). The letter urged Acting Chair Lucas to withdraw the information requests and the related press release, arguing that EEOC lacks Title VII authority to request employer data absent a sworn Commissioner charge and that any such charge must remain confidential to support cooperative compliance rather than public pressure. The letter also argued that the requests likely violated the Paperwork Reduction Act because they bypassed the required notice and comment process.

As noted earlier, four law firms entered into a settlement agreement with the EEOC, choosing to voluntarily resolve the matters without admission of liability. The EEOC's press release of the settlement noted, "Under the multi-year agreement, the law firms affirmed their commitment to lawful merit-based hiring, promotion, and retention; agreed not to engage in unlawful discrimination or preferences based on race, sex, or other protected characteristics, including in any policies, programs, and practices previously labeled, characterized, or framed as a diversity or DEI program; agreed to no longer categorize any lawful employment or practices (including those addressing equal employment opportunity, accessibility, or reasonable accommodation for religion, disability, or pregnancy) as DEI; and agreed to compliance monitoring."³⁸

Another example of the administration's coordinated strategy is the EEOC Acting Chair's Commissioner's Charge against Harvard University, issued April 25, 2025.³⁹ The charge asserts a pattern or practice of disparate treatment against white, Asian, male, and straight employees, applicants, and training-program participants across core employment decisions (hiring, promotion/tenure, compensation, separation) and pipeline programs, and it extends to multiple Harvard-affiliated entities (including HMS, the Chan School, MGH, Brigham and Women's, and Dana-Farber/Harvard Cancer Center). Citing Harvard's own faculty-diversity reports and a range of fellowship and internship programs that prioritize underrepresented groups, the charge frames these practices as identity-based decision-making inconsistent with Title VII. Substantively, it signals how the EEOC can pursue high-visibility institutions to advance broader policy priorities, even absent new regulations—leveraging investigatory powers and public filings to drive changes in hiring, promotion, and career-development structures at major employers.

On March 19, 2025, the EEOC issued two technical assistance documents addressing "DEI-related discrimination" in the workplace. The first document,⁴⁰ issued jointly with DOJ, is

³⁷ See Open Letter to Acting Chair Andrea Lucas, Dated March 18, 2025. Available at: <https://www.chaifeldblum.com/wp-content/uploads/2025/03/Letter-to-Acting-Chair-Lucas-March-18-2025.pdf>. (Visited on August 22, 2025).

³⁸ EEOC Press Release (fn 2).

³⁹ See EEOC Commissioner's Charge Against Harvard University Dated April 25, 2025. Available at: <https://freebeacon.com/wp-content/uploads/2025/05/2025.04.25-Commissioner-Charge-Against-Harvard-University.pdf>. (Visited on September 11, 2025).

⁴⁰ What To Do (fn 15).

a one-page document that encourages employees to file charges with the EEOC if they believe they have experienced DEI-related discrimination. The second document,⁴¹ issued solely by the EEOC, is a detailed Q&A describing how Title VII applies to DEI initiatives. It summarizes the EEOC's position that certain DEI-related practices are problematic and may be unlawful under Title VII. The technical assistance documents provide clarity regarding several specific DEI practices:

- *Diverse Interview Slates* – The EEOC's Q&A document states that “the prohibition against disparate treatment, including DEI-related disparate treatment, includes disparate treatment in...selection for interviews, including placement or exclusion from a candidate ‘slate’ or pool.” Employers who use “diverse slate” policies that require a minimum representation of candidates from specific demographic groups in their interview pools are cautioned that this practice may constitute evidence of discrimination.
- *Employee Resource Groups (“ERGs”)* – Both technical assistance documents address ERGs with membership restrictions based on protected characteristics as a potential area of concern. ERGs should be open to all employees.
- *No “Diversity Interest” Exception* – The EEOC's Q&A documents states that “no general business interests in diversity and equity (including perceived operational benefits or customer/client preference) have ever been found by the Supreme Court or the EEOC to be sufficient to allow race-motivated employment actions.” The document adds that “Title VII does not provide any ‘diversity interest’ exception to these rules. Nor has the Supreme Court ever adopted such an exception.”
- *Segregated Training or Programming* – Both technical assistance documents contain warnings against “separating workers into groups based on race, sex, or another protected characteristic when administering DEI or any trainings, workplace programming, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources.” This language addresses practices such as race-specific or gender-specific training sessions, certain affinity “safe spaces” or other separated programming.
- *Mentoring and Network Programs* – Both technical assistance documents emphasize the employers cannot permit race or sex bias to affect access to “mentoring, sponsorship, or workplace networking/networks.” Training and mentoring opportunities should be open to all employees.

The EEOC's Q&A document also contains additional statements clarifying its position regarding how Title VII applies to other aspects of workplace DEI initiatives and practices:

- *Broad Application of Title VII and Rejection of the Concept of “Reverse” Discrimination* – The EEOC's technical assistance confirms the well-understood principle that Title VII's protections “apply equally to all workers” and that “different treatment based on race, sex, or another protected characteristic can be unlawful discrimination, no matter which

⁴¹ See “What You Should Know About DEI-Related Discrimination at Work,” Technical Assistance Issued by EEOC Dated March 19, 2025. Available at: <https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work>. (Visited on August 22, 2025).

employees or applicants are harmed.” The EEOC rejects the concept of ‘reverse discrimination,’ stating that “there is no such thing as ‘reverse’ discrimination; there is only discrimination.”

- *Mixed Motive* – The EEOC’s technical assistance confirms its position that the mixed-motive standard under Title VII applies fully to DEI-related employment decisions. The document states: “An employment action still is unlawful even if race, sex, or another Title VII protected characteristic was just one factor among other factors contributing to the employer’s decision or action.” It rejects the argument that discrimination occurs only when protected characteristics are the “but-for” or deciding factor, making clear its position that even partial consideration of race, sex, or other protected characteristics in DEI initiatives can create Title VII liability.
- *Hostile Work Environment Claims From DEI Training* – The EEOC’s technical assistance confirms its position that “depending on the facts, an employee may be able to plausibly allege or prove that a diversity or other DEI-related training created a hostile work environment” based on its content, application, or context. The document does not provide guidance about what fact patterns might give rise to a hostile work environment claim.
- *Protected Opposition to DEI Programs* – The EEOC’s technical assistance states that “reasonable opposition to a DEI training may constitute protected activity if the employee provides a fact-specific basis for his or her belief that the training violates Title VII.” Here, too, the document does not describe what would constitute a sufficient “fact-specific basis” for such opposition or provide examples of protected opposition activities related to DEI programs.

On April 3, 2025, ten former EEOC officials released an open letter⁴² addressed to the legal community regarding the technical assistance Q&A document⁴³ issued by the EEOC on March 19, 2025. The letter questioned the legal basis of the technical assistance document and warned that it could chill lawful employer EEO efforts, harm workers and businesses, and impede the broader economy. The former EEOC officials urged employers to continue lawful DEI – identifying and removing barriers, using data-driven EEO analytics, and maintaining anti-discrimination/anti-harassment training (which they note does not generally create hostile environments) – clarifying that voluntary ERGs are lawful despite new uncertainty. The letter offered a framework for compliant DEI that included expanded recruiting, workforce data collection for barrier analysis, and proactive compliance. The two letters published by former EEOC officials in response to DEI-related actions by EEOC signal unified, institutional pushback against the agency’s actions that offer employers alternative considerations regarding the review of DEI programs.

⁴² See “Statement of Former Equal Employment Opportunity Commission (EEOC) Officials on Employer Diversity, Equity, and Inclusion Efforts,” Dated April 3, 2025. Available at: <https://www.chaifeldblum.com/wp-content/uploads/2025/04/Statement-of-Former-EEOC-Officials-on-DEI-04.03.25-1.pdf>. (Visited on August 22, 2025).

⁴³ What You Should Know (fn 36).

Beginning in March, 2025, President Trump signed a series of EOs directed at specific law firms: Perkins Coie,⁴⁴ Paul Weiss,⁴⁵ Jenner & Block,⁴⁶ WilmerHale,⁴⁷ and Susman Godfrey.⁴⁸ These orders were framed as addressing risks associated with the firms' internal DEI programs or public diversity commitments. While the orders varied slightly in scope and language, the common thread was an effort to limit federal engagement with firms believed to be engaged in allegedly unlawful DEI practices. Paul Weiss was the first firm to reach a settlement with the administration. Within a week of issuance of EO 14237, the firm entered into a settlement agreement with the administration to provide \$40M pro bono legal work, after which EO 14237 was revoked.⁴⁹ Other firms subsequently made similar agreements with the administration to provide pro bono services in an effort to prevent an executive order being issued.⁵⁰ The other four law firms that were named in specific executive orders challenged the orders in court, and so far, the judiciary has acted decisively. Each of these EOs has been permanently enjoined by a federal district court. Judges found them to exceed executive authority or conflict with constitutional or statutory protections. For example, EO 14230 directed at Perkins Coie was permanently enjoined by Judge Howell in May 2025;⁵¹ EO 14246 addressing Jenner & Block was enjoined by Judge Bates later that month.⁵² Similar rulings followed for WilmerHale⁵³ and Susman Godfrey.⁵⁴ While these EOs were blocked, they underscore the administration's willingness to name specific entities and use executive authority to challenge private-sector DEI practices it views as problematic.

⁴⁴ See EO 14230, "Addressing Risks from Perkins Coie LLP," Signed March 6, 2025. Available at: <https://www.federalregister.gov/documents/2025/03/11/2025-03989/addressing-risks-from-perkins-coie-llp>. (Visited on August 20, 2025).

⁴⁵ See EO 14237, "Addressing Risks from Paul Weiss," Signed March 14, 2025. Available at: <https://www.federalregister.gov/documents/2025/03/20/2025-04867/addressing-risks-from-paul-weiss>. (Visited on August 20, 2025).

⁴⁶ See EO 14246, "Addressing Risks from Jenner & Block," Signed March 25, 2025. Available at: <https://www.federalregister.gov/documents/2025/03/28/2025-05519/addressing-risks-from-jenner-and-block>. (Visited on August 20, 2025).

⁴⁷ See EO 14250, "Addressing Risks from WilmerHale," Signed March 27, 2025. Available at: <https://www.federalregister.gov/documents/2025/04/03/2025-05845/addressing-risks-from-wilmerhale>. (Visited on August 20, 2025).

⁴⁸ See EO 14263, "Addressing Risks from Susman Godfrey," Signed April 9, 2025. Available at: <https://www.federalregister.gov/documents/2025/04/15/2025-06458/addressing-risks-from-susman-godfrey>. (Visited on August 20, 2025).

⁴⁹ See EO 14244, "Addressing Remedial Action by Paul Weiss," Signed March 21, 2025. Available at: <https://www.federalregister.gov/documents/2025/03/26/2025-05291/addressing-remedial-action-by-paul-weiss>. (Visited on August 20, 2025).

⁵⁰ Business Insider (fn 3).

⁵¹ See Memorandum Opinion, Issued May 2, 2025. Available at: https://storage.courtlistener.com/recap/gov.uscourts.dcd.278290/gov.uscourts.dcd.278290.185.0_2.pdf. (Visited on August 20, 2025).

⁵² See Memorandum Opinion, Issued May 23, 2025. Available at: https://storage.courtlistener.com/recap/gov.uscourts.dcd.278932/gov.uscourts.dcd.278932.138.0_7.pdf. (Visited on August 20, 2025).

⁵³ See Memorandum Opinion, Issued May 27, 2025. Available at: https://storage.courtlistener.com/recap/gov.uscourts.dcd.278933/gov.uscourts.dcd.278933.110.0_4.pdf. (Visited on August 22, 2025).

⁵⁴ See Memorandum Opinion, Issued June 27, 2025. Available at: https://storage.courtlistener.com/recap/gov.uscourts.dcd.279461/gov.uscourts.dcd.279461.206.0_1.pdf. (Visited on August 22, 2025).

On May 19, 2025, the DOJ announced its Civil Rights Fraud Initiative,⁵⁵ a program that merges civil-rights enforcement with the financial penalties of the FCA. Led jointly by the Civil Fraud Section and the Civil Rights Division, the initiative is directed at federal funding recipients that falsely certify compliance with civil rights laws in contracts or grant applications, particularly where identity-based policies such as DEI programs are alleged to limit access to benefits, services, or opportunities. Each U.S. Attorney's Office must designate a lead prosecutor to advance these cases, which may result in treble damages and per-claim fines under the FCA, supported by whistleblower suits. Beyond civil liability, the initiative introduces potential criminal exposure under 18 U.S.C. § 287 for false claims and explores a novel use of 18 U.S.C. § 241 to prosecute conspiracies to violate civil rights, even absent federal funding. This marks a significant expansion of enforcement tools by aligning civil rights oversight with the FCA's fraud framework. The initiative signals that employers and federal contractors face heightened FCA exposure if DEI or other identity-based programs are framed as false certifications of civil rights compliance, raising the stakes for both compliance reviews and whistleblower risk.

The administration's policy priority to eliminate illegal DEI has been implemented not only by executive actions and workplace-focused agencies like the DOL and EEOC, but also by entities with no traditional employment jurisdiction, such as the FCC. The FCC has emerged as a particularly notable example of a non-employment agency advancing the administration's workplace priorities. Beyond its conventional role in telecommunications and media oversight, the FCC has used its authority over merger approvals to secure workplace-related concessions from companies seeking regulatory clearance. Recent settlements with Skydance Media, T-Mobile, and Verizon illustrate this strategy: each company agreed to scale back or eliminate internal DEI programs as a condition for merger approval. By linking workplace policy changes to corporate transactions, the FCC extended the administration's DEI agenda into sectors well outside traditional employment law. These actions demonstrate how the administration has leveraged regulatory bottlenecks to impose its priorities, effectively restructuring corporate governance through conditions imposed in unrelated regulatory contexts. The FCC's role underscores the breadth of the administration's governing framework—deploying agencies not typically associated with workplace regulation to advance political objectives and reinforce compliance pressures on private employers.

In recent high-profile merger reviews, including the Skydance Media acquisition of Paramount Global and T-Mobile's acquisition of US Cellular, the FCC applied DEI-related conditions and disclosures as part of its evaluation process, reflecting a broader federal effort to integrate this policy priority across domains. On July 24, 2025, the FCC approved the \$8.4 billion acquisition of Paramount Global by Skydance Media, finalizing one of the year's largest media transactions. The approval followed a series of public commitments by Skydance to restructure Paramount's internal policies, particularly those related to DEI, in response to recent federal mandates and legal precedent. The FCC's decision came after Skydance submitted a

⁵⁵ See "Justice Department Establishes Civil Rights Fraud Initiative," Press Release Dated May 19, 2025. Available at: <https://www.justice.gov/opa/pr/justice-department-establishes-civil-rights-fraud-initiative>. (Visited on August 20, 2025).

detailed letter⁵⁶ to Commissioner Brendan Carr outlining its plans to eliminate DEI initiatives and align employment practices with equal opportunity laws.

In the July 22 letter, Skydance confirmed that it does not operate DEI programs and will not implement them following the acquisition. Paramount, under review since the Supreme Court's decision in *Students for Fair Admissions v. Harvard*, has already begun dismantling DEI-related policies. These changes include the removal of race- and gender-based hiring goals, the elimination of DEI-linked compensation metrics, and the discontinuation of leadership programs limited by demographic criteria. Paramount also committed to ending minimum spend requirements for diverse suppliers and disbanding its Office of Global Inclusion. All future hiring, promotion, and development decisions will be based solely on non-discriminatory criteria.

Additionally, Paramount will revise its public and internal messaging to remove references to DEI and ensure compliance with EEOC guidance. Employee Resource Groups will remain open to all staff but will be centrally managed to prevent any preferential treatment. Skydance emphasized that these policies will apply across all U.S. entities under the new ownership structure. The commitments reflect a broader shift in corporate governance and regulatory compliance, aligning Paramount's operations with recent executive orders and federal guidance on equal employment opportunity.

On July 29, 2025, the DOJ issued a memorandum to all federal agencies providing guidance regarding unlawful discrimination.⁵⁷ The memorandum provides updated direction to federal agencies and federal funding recipients regarding compliance with federal civil rights laws, particularly in the context of DEI-related programs and initiatives.

The guidance is provided to all "federally funded entities," noting that like all other entities subject to federal anti-discrimination laws, entities that receive federal funds "must ensure that their programs and activities comply with federal law and do not discriminate on the basis of race, color, national origin, sex, religion, or other protected characteristics – no matter the program's labels, objectives, or intentions." For public and private employers, as well as educational institutions and nonprofit organizations, the guidance is significant because it articulates non-binding 'best practices' designed to facilitate compliance with federal anti-discrimination laws.

The memorandum outlines several categories of practices that may present legal risk:

- *Use of Protected Characteristics as Selection Criteria:* Programs or policies that grant benefits, access, or preferences based on protected characteristics (e.g., scholarships for a specific racial group, hiring preferences for women or "underrepresented" candidates) are

⁵⁶ See July 22, 2025 Letter from Skydance Media to FCC Chairman Brendan Carr. Available at: <https://www.fcc.gov/ecfs/document/1072299913934/1>. (Visited on August 19, 2025).

⁵⁷ See "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination," DOJ Memo Released July 29, 2025. Available at: https://www.justice.gov/ag/media/1409486/dl?inline=&utm_medium=email&utm_source=govdelivery. (Visited on August 26, 2025).

unlawful unless they satisfy very narrow exceptions under the applicable level of judicial scrutiny.⁵⁸

- **Facially Neutral Proxies:** Criteria such as “cultural competence,” “lived experience,” or geographic targeting may be unlawful if used as proxies for protected characteristics or if intended to produce demographic outcomes. Notably, this guidance has been viewed by some as conflicting with the *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U. S. 181 (2023) Supreme Court decision that included lived experience as a non-discriminatory factor as long as it is tied to a particular student’s “unique ability to contribute.” Here the critical difference between the memorandum and the *SFFA* example is whether the criteria is being used as a proxy for a protected status, or whether the criteria is used to identify unique abilities to contribute that may or may not be as a result of a person overcoming an obstacle, for example, related to a protected status or a non-protected status characteristic.
- **Evaluation Metrics and Incentives:** Linking compensation, promotions, or performance evaluations to demographic goals or identity-based participation may constitute unlawful differential treatment.
- **Retaliation Protections:** Individuals who object to or decline participation in programs they reasonably believe to be discriminatory are protected from adverse actions under federal law.
- **Third-Party Liability:** Entities may be held accountable for discriminatory practices carried out by contractors, grantees, or affiliated organizations using federal funds. The DOJ advises entities to include clear nondiscrimination clauses in contracts, grants, or partnership agreements with third parties. Organizations are encouraged to monitor compliance of those third-party partners who receive federal funds and to discontinue contracting relationships where noncompliant violations occur.

The memorandum outlines non-binding “best practices” to help organizations mitigate legal risk. These include conducting legal reviews of DEI programs, avoiding identity-based selection criteria, scrutinizing the use of proxies, reviewing evaluation and incentive structures, and ensuring that all programs are structured to comply with applicable civil rights statutes.

The DOJ’s guidance reflects a heightened enforcement posture toward DEI initiatives that incorporate protected characteristics into decision-making, even when pursued with positive intentions. While the memorandum does not alter existing legal standards, it reaffirms that federal nondiscrimination laws apply consistently across all federally funded entities, regardless of how a program is labeled or framed. Although the guidance does not define what constitutes lawful DEI programming, it offers a framework for identifying practices that may raise compliance concerns and trigger federal scrutiny.

⁵⁸ For race-based actions, this means meeting the Supreme Court’s strict scrutiny standard, which requires a “compelling governmental interest and narrowly tailored means to achieve that interest.” Sex-based decisions are subject to heightened scrutiny, requiring an “exceedingly persuasive justification and substantial relation to an important governmental objective.” In practice, such direct justifications are rarely invoked by organizations in carrying out their programs, as most programs do not rely on protected characteristics for making decisions.

2. Deprioritization of Disparate Impact

On April 23, 2025, President Trump signed EO 14281, "Restoring Equality of Opportunity and Meritocracy."⁵⁹ The Order set forth a new federal policy: "It is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible." EO 14281 directed all federal agencies, including the EEOC and DOJ, to deprioritize any enforcement and litigation regarding disparate impact claims. It further directed agency heads across the federal government to assess all existing regulations, guidance, rules, or orders that impose disparate impact liability, as well as other laws or decisions and detail steps for their amendment or repeal. As part of the review, agency heads were also directed to report to the President other laws or decisions, including at the state level, that impose disparate impact liability and recommend appropriate measures to address their legality.

Disparate impact liability is a legal theory that posits that practices that are neutral on their face can still be considered discriminatory if they disproportionately and adversely affect members of protected classes. Disparate impact liability is part of existing civil rights laws not just in employment, but in housing, education, credit and lending, government contracting, and other areas. The theory was first established by the Supreme Court in 1971 in *Griggs v. Duke Power*, 401 U.S. 424 (1971), which held that Title VII "proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation". In 1991, Congress amended Title VII to add Section 703(k), which codified how "an unlawful employment practice based on disparate impact" could be established.

EO 14281 and its accompanying fact sheet take a different position that characterizes disparate impact theory as fundamentally at odds with constitutional principles. The fact sheet states that disparate impact theory "violates the Constitution's guarantee of equal treatment for all by requiring race-oriented policies and practices to rebalance outcomes along racial lines" and that it "undermines civil-rights laws by mandating discrimination to achieve predetermined, race-oriented outcomes."

By themselves, EOs cannot change the law or a lawfully implemented regulation subject to the Administrative Procedure Act, but they can provide direction to the Executive Branch regarding arguments the government's lawyers will make in court, as well as the way the government will prioritize enforcement and litigation efforts. EOs can also direct agencies to take other actions, including but not limited to taking steps to repeal existing regulations or initiating new regulatory efforts.

Section 3 of EO 14281 revokes prior Presidential approvals of regulations applicable to programs and activities receiving federal financial assistance under Title VI, as enforced by the DOJ. Section 4 of EO 14281 directs federal agencies to "deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability," with explicit reference to Title VII employment discrimination provisions and Title VI regulations. As mentioned above, Sections 5, 6, and 7 of EO 14281 instruct federal agencies to identify and evaluate existing

⁵⁹ See EO 14281, "Restoring Equality of Opportunity and Meritocracy," Signed April 23, 2025. Available at: <https://www.federalregister.gov/documents/2025/04/28/2025-07378/restoring-equality-of-opportunity-and-meritocracy>. (Visited on August 14, 2025).

disparate impact frameworks across the federal government, including regulations, guidance, rules, or orders that impose disparate impact liability, and once identified, plan for their amendment or repeal.

Section 6 has particular relevance to employers, as it requires the Attorney General and EEOC Chair to assess "all pending investigations, civil suits, or positions taken in ongoing matters . . . that rely on a theory of disparate-impact liability." Once identified, agencies are to take "appropriate action" consistent with EO 14281's policy. Given the broad language in the EO, "appropriate action" could include dismissing existing litigation in whole or in part, withdrawing amicus briefs, curtailing or ending pending investigations, modifying or halting conciliation agreements and consent decrees, and scaling back other enforcement activity.

The direction to assess pending investigations and litigation extends to the Department of Housing and Urban Development ("HUD"), Consumer Financial Protection Bureau ("CFPB"), Federal Trade Commission ("FTC"), and other agencies enforcing laws such as the Equal Credit Opportunity Act and Fair Housing Act. Section 7 directs the Attorney General to determine whether federal authorities preempt state laws imposing disparate impact liability and to take "appropriate measures" in response to any identified "constitutional infirmities." Section 7 signals the administration's intent to challenge state-level disparate impact laws it views as unconstitutional and assert federal preemption to limit states from imposing disparate impact liability. Several states and local and tribal governments have enacted their own fair employment laws that recognize disparate impact liability, and these laws remain unchanged by EO 14281, other executive orders, and the federal government's own decisions regarding enforcement priorities.

Acting EEOC Chair Andrea Lucas confirmed the agency's compliance with this new directive in a May 20, 2025 message to employers participating in the annual EEO-1 data collection process.⁶⁰ In her statement, Lucas emphasized that "The EEOC is an executive branch agency, not an independent agency. We will fully and robustly comply with this and all Executive Orders. Under my leadership, the EEOC will prioritize remedying intentional discrimination claims." Her statement noted that the disparate impact EO had directed all agencies to "deprioritize 'disparate impact' enforcement – that is, investigations and lawsuits that challenge neutral practices that have disparate outcomes based on race, sex, or other protected characteristics – and also revoked prior Presidential approvals of certain disparate-impact regulations." Lucas further reminded employers in her message that "the fact that a neutral employment policy or practice has an unequal outcome on employees of a particular race or sex – that is, has a 'disparate impact' based on race or sex – does not justify your company or organization treating any of your employees differently based on their race or sex."

The administration's directive to deprioritize disparate impact enforcement has drawn criticism from former federal officials who oversaw enforcement efforts regarding employment discrimination during previous administrations. On May 13, 2025, ten former EEOC and Department of Labor officials, including former EEOC Chair Charlotte Burrows, EEOC

⁶⁰ See "Message from EEOC Acting Chair Lucas about Opening of 2024 EEO-1 Component 1 Data Collection," EEOC Bulletin Dated May 20, 2025. Available at: <https://content.govdelivery.com/accounts/USEEOC/bulletins/3e1407f>. (Visited on August 21, 2025).

Commissioner Jocelyn Samuels, and EEOC General Counsel Karla Gilbride – all of whom were removed from their positions by President Trump in January – issued a joint statement⁶¹ characterizing EO 14281 as inconsistent with federal law. The former officials emphasized that "an Executive Order may not change a clear statutory mandate and decades of legal precedent" and warned employers against assuming they have "a free pass on disparate impact liability simply because the President has instructed federal agencies not to pursue enforcement of the law." Their statement asserted that the Trump administration's characterization of disparate impact theory "bears little resemblance to the actual practice of disparate impact challenges," and rejected the administration's assertion that disparate impact analysis requires employers to engage in racial balancing or establish race-based preferences. The former officials predicted "a redoubling of efforts on the part of the private bar, as well as state and local governments, to bring legitimate disparate impact claims," emphasizing that private plaintiffs retain the right to pursue such claims regardless of federal enforcement priorities.

On July 16, 2025, Representative Brandon Gill (R-TX) introduced H.R. 4448,⁶² the Restoring Equal Opportunity Act, which proposes a significant shift in federal employment discrimination law. The bill seeks to eliminate the legal basis for disparate impact claims under Title VII of the Civil Rights Act of 1964 and the Fair Housing Act. If enacted, it would restrict employment discrimination claims to those involving intentional acts, effectively barring lawsuits that challenge facially neutral workplace policies with disproportionate effects on protected groups. The bill also aims to invalidate any existing or future regulations issued by the EEOC that rely on disparate impact theory. It includes a formal declaration that the policy of the United States is to eliminate disparate impact liability "to the maximum extent permitted" by law.

In a joint press release with Senator Mike Lee (R-UT), who introduced companion legislation⁶³ in the Senate, Gill stated that the bill aims to "bring merit, rather than DEI, back to our hiring and selection processes" by restoring race-neutral, qualifications-based decision-making in hiring. He emphasized that "Americans deserve equal opportunity, not race-based quotas," and framed the legislation as a defense of constitutional principles like equal protection and due process.

If enacted, the bill would represent a major shift in federal employment law, curtailing a long-standing legal framework used to challenge systemic discrimination in hiring, promotion, and workplace policies.

3. Upskilling in the Workforce and AI Literacy

⁶¹ See "President Trump's Executive Order on Disparate Impact Analysis is Legally Incorrect and Will Undermine Meritocracy and Equal Employment Opportunity," Joint Statement by Former EEOC Officials Dated May 13, 2025. Available at:

<https://static1.squarespace.com/static/67f14b136c5a8838cca88ae0/t/683fa09d38aa72134433f80e/1749000349572/EO+Leaders+Statement+on+Disparate+Impact+05.13.25.pdf>. (Visited on August 21, 2025).

⁶² See H.R. 4448, "Restoring Equal Opportunity Act," Introduced in the House of Representatives on July 16, 2025. Available at: <https://www.congress.gov/bill/119th-congress/house-bill/4448/text>. (Visited on August 21, 2025).

⁶³ See S. 2343, "Restoring Equal Opportunity Act," Introduced in the U.S. Senate on July 17, 2025. Available at: <https://www.congress.gov/bill/119th-congress/senate-bill/2343/text>. (Visited on August 21, 2025).

A key priority of the Trump administration’s labor and employment agenda is upskilling the American workforce to meet the demands of a rapidly changing economy. The administration has framed this priority around two themes: expanding apprenticeships as the primary vehicle for work-based learning and ensuring AI literacy so that workers are prepared for technological transformation across industries. The DOL has been designated as the lead agency, along with the Department of Commerce (“DOC”) and DOE, to implement the promotion and expansion of Registered Apprenticeships and improve the transparency of performance outcomes of workforce development programs and credentials supported through federal investments. Rather than relying solely on traditional workforce development grants, the administration is emphasizing flexible pathways that blend employer demand, industry-recognized credentials, and a stronger focus on applied technical skills.

EO 14277⁶⁴ advances the administration’s upskilling priority by embedding AI literacy across the education-to-workforce pipeline. It establishes a White House Task Force on AI Education to coordinate federal efforts and launches a Presidential AI Challenge to promote student and educator achievements nationwide. The Order emphasizes early exposure to AI concepts in K–12, professional development for teachers, and public-private partnerships to develop accessible instructional resources. It directs the DOE and the National Science Foundation (“NSF”) to prioritize AI in grant funding and research, while tasking the Department of Agriculture to integrate AI into 4-H and Cooperative Extension programs. Critically, it links AI education to workforce readiness by requiring the Department of Labor to expand Registered Apprenticeships in AI-related fields, encourage states to use Workforce Innovation and Opportunity Act funds for AI skills training, and promote high-quality AI coursework and certifications for high school students and youth programs. Together, these provisions operationalize a national strategy to prepare students, educators, and workers with the skills necessary to thrive in an AI-driven economy.

In parallel, EO 14278⁶⁵ advances the administration’s upskilling agenda by aligning federal workforce development programs with the country’s reindustrialization needs and prioritizing pathways into the skilled trades. The Order directs the DOL, DOC, and DOE to conduct a comprehensive review of all federal workforce programs, identifying opportunities to consolidate fragmented initiatives, eliminate ineffective programs, and realign resources toward in-demand skills determined by employers. It emphasizes reskilling and upskilling incumbent workers, particularly in industries integrating new technologies such as AI, and promotes alternative credentials as practical substitutes for four-year degrees. EO 14278 also sets an ambitious goal of creating more than one million new active apprentices, requiring a plan to expand Registered Apprenticeships into emerging industries and link them more directly to education systems through programs like the Carl D. Perkins Career and Technical Education Act (“Perkins V”) and federal student aid. Finally, the Order mandates greater transparency and accountability by publishing earnings and employment outcomes for federally supported

⁶⁴ See EO 14277, “Advancing Artificial Intelligence Education for American Youth,” Signed April 23, 2025. Available at: <https://www.federalregister.gov/documents/2025/04/28/2025-07368/advancing-artificial-intelligence-education-for-american-youth>. (Visited on August 14, 2025).

⁶⁵ See EO 14278, “Preparing Americans for High-Paying Skilled Trade Jobs of the Future,” Signed April 23, 2025. Available at: <https://www.federalregister.gov/documents/2025/04/28/2025-07369/preparing-americans-for-high-paying-skilled-trade-jobs-of-the-future>. (Visited on August 14, 2025).

workforce programs and credentials. Collectively, these measures underscore the administration's strategy of scaling apprenticeships, reducing duplication, and driving employer-focused workforce policy to equip Americans for high-paying jobs in a modern industrial economy.

The framework for carrying out these executive directives is captured in the newly released plan, "America's Talent Strategy: Building the Workforce for The Golden Age."⁶⁶ The report presents the administration's plan to transform the federal government's approach to workforce development. The plan is structured around interagency coordination between DOL, DOC, and DOE. DOL will oversee work programs, labor standards, and training outcomes. DOC will ensure that economic growth policies align with workforce capabilities. DOE will shape curricula, funding mechanisms, and credential frameworks. The strategy outlines the administration's blueprint for how it will prepare the workforce to seize new opportunities and access good paying jobs, build pipelines of skilled talent for critical industries, and prepare the workforce system for an AI-driven economy. The report includes five strategic pillars:

Pillar I: Industry-Driven Strategies: Building reliable talent pipelines through a workforce system led by industry and aligned with America's economic priorities. Expanding proven work-based learning models like Registered Apprenticeships.

Pillar II: Worker Mobility: Bringing more Americans into the labor force and helping them advance, including through the innovative use of technology and labor market data.

Pillar III: Integrated Systems: Replacing a fragmented web of duplicative programs with a streamlined, coordinated system that delivers unified workforce services.

Pillar IV: Accountability: Ensuring federally funded workforce programs deliver measurable results by linking investments to outcomes & enforcing performance discipline.

Pillar V: Flexibility & Innovation: Creating new models of workforce innovation built to match the speed and scale of AI-driven economic transformation, including AI literacy and reskilling.

As part of its broader talent strategy, the administration proposes to modernize the apprenticeship system by making registration faster and simpler for employers.⁶⁷ DOL will streamline approval processes so that companies can launch Registered Apprenticeship programs without months of administrative back-and-forth. Employers will have the option to adopt ready-made, industry-vetted training standards or customize them to meet specific workforce needs, reducing barriers to entry. By cutting red tape, the strategy positions apprenticeships as a practical, real-time solution to close skills gaps, enabling businesses to respond quickly to labor

⁶⁶ See "America's Talent Strategy: Building The Workforce for the Golden Age," Published August 12, 2025. Available at: <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2025/08/Americas-Talent-Strategy-Building-the-Workforce-for-the-Golden-Age.pdf>. (Visited on August 21, 2025).

⁶⁷ America's Talent Strategy, pp. 11-12.

market demands and helping workers gain access to high-quality, in-demand careers more efficiently.

Together, these initiatives reflect how the Trump administration is using the DOL as a central driver of workforce transformation. By combining deregulation of apprenticeship programs with new national initiatives around AI literacy, the administration is attempting to modernize workforce policy without creating new entitlement programs. The emphasis on partnership and compliance incentives underscores the administration’s governing approach – leveraging executive orders and strategic frameworks to drive systemic change. In this way, upskilling serves both as a pro-business policy priority and as a means of preparing the American workforce for what the administration calls a “golden age” of technological innovation and economic growth.

4. Eliminating Restraints and Building Infrastructure to Support AI Development and Deployment

The administration’s AI Plan represents another example of cross-agency coordination to effectuate the administration’s policy priorities.⁶⁸ The AI Plan articulates a highly coordinated, whole-of-government effort to secure U.S. leadership in AI, ushering in a “roadmap to victory” composed of more than 90 policy actions across economic, security, and technological fronts. Spearheaded by the Office of Science and Technology Policy (“OSTP”), OMB, and supported by agencies such as the FCC and FTC, the AI Plan mandates collaborative review of burdensome regulations, enforcement actions, and funding practices that hinder AI innovation. This interagency coordination ensures that federal governance responds dynamically to AI’s growth – prompting regulatory reform, procurement updates, and the dismantling of obstacles to private-sector-led breakthroughs. To immediately operationalize the framework, the administration issued EOs directed at federal use of “woke AI,”⁶⁹ streamlining data-center permitting,⁷⁰ and promoting the export of a U.S. “AI technology stack.”⁷¹ Together, these moves demonstrate a shift toward market-driven growth and industry-led governance, rather than prescriptive regulation.

The AI Plan’s first pillar, Accelerate AI Innovation, focuses on creating a deregulated environment where private innovation can flourish. Agencies are tasked with issuing Requests for Information (“RFIs”) to identify and revise or rescind rules that unnecessarily impede AI development. It further promotes open-source and “open-weight” AI models through expanded access to computing resources and the National AI Research Resource pilot. The pillar also reaffirms First Amendment principles as central to AI development, urging systems to uphold

⁶⁸ Winning the Race (fn 19).

⁶⁹ See EO 14319, “Preventing Woke AI in the Federal Government,” Signed July 23, 2025. Available at: <https://www.federalregister.gov/documents/2025/07/28/2025-14217/preventing-woke-ai-in-the-federal-government>. (Visited on August 21, 2025).

⁷⁰ See EO 14318, “Accelerating Federal Permitting of Data Center Infrastructure,” Signed July 23, 2025. Available at: <https://www.federalregister.gov/documents/2025/07/28/2025-14212/accelerating-federal-permitting-of-data-center-infrastructure>. (Visited on August 21, 2025).

⁷¹ See EO 14320, “Promoting the Export of the American AI Technology Stack,” Signed July 23, 2025. Available at: <https://www.federalregister.gov/documents/2025/07/28/2025-14218/promoting-the-export-of-the-american-ai-technology-stack>. (Visited on August 21, 2025).

free speech and neutrality, and advocates for technical evaluation frameworks and regulatory sandboxes to accelerate adoption across sectors.

Under its second pillar, Build American AI Infrastructure, the AI Plan addresses physical and systemic capacity for AI expansion. It calls for streamlined permitting for data centers, semiconductor fabrication, and energy facilities through tools like NEPA categorical exclusions and FAST-41 procedures. Federal lands are to be made available for AI infrastructure, while the DOC and others push to revitalize U.S. semiconductor manufacturing, boost the electric grid, and develop high-security data centers for sensitive uses. Cybersecurity is also prioritized: agencies will develop AI-specific incident response protocols, the National Institute of Standards and Technology (“NIST”) will design safety benchmarks, and operators are encouraged to integrate secure-by-design methodologies across critical infrastructure. In addition, the AI Plan highlights workforce development, seeking to ensure that skilled labor is available to support these infrastructure priorities. This integrated approach is designed to remove bottlenecks, increase U.S. capacity, and safeguard critical systems from foreign interference or cyber threats.

The third pillar, Lead in International AI Diplomacy and Security, elevates U.S. AI policy onto the global stage. The AI Plan directs export of a full U.S. AI stack – including hardware, software, models, applications, and standards – to allies and partners, coordinated through industry consortia and the DOC. The AI Plan seeks to align protection measures globally through diplomatic and trade “policy levers,” positioning the United States as both a supplier of trusted AI systems and a gatekeeper against rival use of advanced technologies. While these measures aim to reinforce U.S. geopolitical leverage, they also introduce compliance challenges for companies operating global supply chains.

Crucially, the AI Plan identifies the removal of regulatory barriers and the construction of infrastructure as prerequisites to scaling AI across government and economy. This vision materializes in part through the launch of USAi, a secure, GSA-managed generative AI evaluation platform for federal agencies.⁷² USAi offers features like chat, code generation, and document summarization tools in a trusted environment, enabling agencies to experiment, assess model capabilities, and make informed procurement decisions – accelerating AI adoption while safeguarding data and promoting interoperability.

The AI Plan sets a coordinated federal agenda to remove friction from AI innovation, construct critical infrastructure, and assert U.S. leadership on the global stage – leveraging interagency collaboration, deregulation, infrastructure buildout, and diplomatic outreach. The launch of USAi exemplifies practical implementation, embedding the strategy into real-world government operations.

5. Immigration Enforcement

Immigration enforcement has emerged as another policy priority for the Trump administration, with a particular focus on tightening worksite enforcement and employer accountability. The administration has directed federal agencies to ramp up audits, inspections,

⁷² See “GSA Launches USAi to Advance White House ‘America’s AI Action Plan,’” U.S. General Services Administration Press Release Dated August 14, 2025. Available at: <https://www.gsa.gov/about-us/newsroom/news-releases/gsa-launches-usai-to-advance-white-house-americas-ai-action-plan-08142025>. (Visited on August 21, 2025).

and investigations of employers suspected of hiring unauthorized workers. Executive orders and agency guidance emphasize deterrence through heightened penalties, publicized enforcement actions, and coordination with other regulatory priorities. This approach builds on the administration's broader goal of limiting illegal immigration by focusing on both individuals and the businesses and industries that employ them.

The administration's flagship immigration EO was issued immediately on January 20, 2025.⁷³ EO 14159 directs federal agencies to fully enforce U.S. immigration laws by revoking Biden-era immigration policies,⁷⁴ expanding U.S. Immigration and Customs Enforcement ("ICE"), U.S. Customs and Border Protection ("CBP"), and DOJ enforcement priorities, and establishing nationwide task forces with state and local law enforcement to address unauthorized immigration and related criminal activity. It authorizes increased fines, penalties, and prosecutions not only against undocumented individuals but also against those who facilitate their employment, while emphasizing rapid removals and expanded detention capacity. The Order signals intensified worksite enforcement, through I-9 audits, civil and criminal liability for hiring unauthorized workers, and closer coordination between immigration and labor enforcement agencies.

President Trump also signed EO 14160 on the first day of his second Presidency, which seeks to end birthright citizenship and redefine the Fourteenth Amendment's scope for children born to unauthorized or temporary-status immigrants.⁷⁵ EO 14160 reinterprets the Fourteenth Amendment by declaring that children born in the United States to parents who are unlawfully present, or whose lawful presence is only temporary, are not automatically entitled to U.S. citizenship. The Order directs federal agencies – including the State Department, Department of Homeland Security ("DHS"), DOJ, and Social Security Administration ("SSA") – not to issue or accept documents recognizing citizenship for these children if born 30 days after the Order's effective date. There are currently 11 pending lawsuits in the federal courts challenging EO 14160.⁷⁶ On June 27, 2025, the Supreme Court granted an emergency application for a partial stay in *Trump et al. v. Casa, Inc. et al.* (24A884). Although the Court did not address the merits, it held that universal injunctions "likely exceed the equitable authority that Congress has given to federal courts." Accordingly, it stayed the lower court injunctions against EO 14160 to the extent

⁷³ See EO 14159, "Protecting the American People Against Invasion," Signed January 20, 2025. Available at: <https://www.federalregister.gov/documents/2025/01/29/2025-02006/protecting-the-american-people-against-invasion>. (Visited on September 3, 2025).

⁷⁴ EO 14159 rescinded several Biden-era EOs aimed at broad civil immigration reforms, including EOs [13993](#), [14010](#), [14011](#), and [14012](#), which had focused on humane enforcement, family reunification, and regional migration frameworks.

⁷⁵ See EO 14160, "Protecting the Meaning and Value of American Citizenship," Signed January 20, 2025. Available at: <https://www.federalregister.gov/documents/2025/01/29/2025-02007/protecting-the-meaning-and-value-of-american-citizenship>. (Visited on September 3, 2025).

⁷⁶ See *New Hampshire Indonesian Community Support et al. v. Donald J. Trump et al.* (D.N.H.), Case No. 25-cv-00038; *Doe et al. v. Donald J. Trump et al.* (D. Mass.), Case No. 25-cv-10135; *Thien Le v. Donald J. Trump* (C.D. Cal.), Case No. 25-cv-00104; *State of New Jersey et al. v. Donald J. Trump et al.* (D. Mass.), Case No. 25-cv-10139; *Casa, Inc. et al. v. Donald J. Trump et al.* (D. Md.), Case No. 25-cv-00201; *State of Washington et al. v. Donald J. Trump et al.* (W.D. Wash.), Case No. 25-cv-00127; *Franco Aleman et al. v. Donald J. Trump et al.* (W.D. Wash.), Case No. 25-cv-00163; *OCA-Asian Pacific American Advocates v. Marco Rubio et al.* (D.D.C.), Case No. 25-cv-00287; *County of Santa Clara v. Donald J. Trump et al.* (N.D. Cal.), Case No. 25-cv-00981; *New York Immigration Coalition et al. v. Donald J. Trump et al.* (S.D.N.Y.), Case No. 25-cv-01309; and *Barbara et al. v. Donald J. Trump et al.* (D.N.H.), Case No. 25-cv-00244.

those injunctions went beyond what was necessary to provide complete relief to the plaintiffs with standing.⁷⁷ Once pending litigation regarding this EO has been resolved, if it becomes effective, this EO could complicate employment verification and documentation practices, as individuals previously assumed to have birthright citizenship may lack recognized status – raising new risks in I-9 compliance and potential anti-discrimination challenges.

DHS, through ICE and U.S. Citizenship and Immigration Services (“USCIS”), is the lead enforcer of these initiatives. ICE has been instructed to increase the frequency of I-9 audits, expand the use of electronic monitoring tools, and pursue civil and criminal penalties against noncompliant employers. USCIS has been tasked with tightening standards around employment verification systems, including E-Verify, and implementing stricter review of visa applications that involve employment-based sponsorship. The DOJ, through its Immigrant and Employee Rights Section, also plays a role by investigating claims of unlawful discrimination in hiring and verification processes, further heightening compliance pressure on employers. Attorney General Bondi issued a guidance memorandum to all law enforcement officers regarding the implementation of the Alien Enemies Act pursuant to President Trump’s Proclamation invoking same.⁷⁸ The March 14 memo specifically referenced that individuals in violation of the Act should be removed from residences and workplaces.

Acting Chair of the EEOC Andrea Lucas has made public statements regarding immigration enforcement as an agency priority. In a press release, Acting Chair Lucas announced, “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.”⁷⁹ The EEOC announced a \$1.4 million settlement with LeoPalace Resort in Guam over claims it paid American employees less than Japanese employees, highlighting its enforcement of national origin discrimination laws.⁸⁰ The agency emphasized that protecting American workers from unlawful discrimination in favor of foreign workers is a key policy priority under federal civil rights law and recent executive orders.

For employers, the implications are significant. Companies face increased exposure to government investigations, reputational harm, and financial penalties if their workforces are not fully compliant with immigration laws. Routine practices such as onboarding, use of staffing agencies, and sponsorship of foreign workers will require more robust internal controls and legal

⁷⁷ See Opinion of the Court dated June 27, 2025. Available at:

https://www.supremecourt.gov/opinions/24pdf/24a884_8n59.pdf. (Visited on September 3, 2025).

⁷⁸ See “Guidance for Implementing the Alien Enemies Act,” DOJ Memo Released March 14, 2025. Available at:

<https://s3.documentcloud.org/documents/25915967/doj-march-14-memo-alien-enemies-act.pdf>. (Visited on September 3, 2025). See also Proc. 10903, “Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua,” Signed March 14, 2025. Available at: <https://www.federalregister.gov/documents/2025/03/20/2025-04865/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua>. (Visited on September 3, 2025).

⁷⁹ See “EEOC Acting Chair Vows to Protect American Workers from Anti-American Bias,” EEOC Press Release Dated February 19, 2025. Available at: <https://www.eeoc.gov/newsroom/eeoc-acting-chair-vows-protect-american-workers-anti-american-bias>. (Visited on September 4, 2025).

⁸⁰ See “LeoPalace Resort to Pay Over \$1.4 Million in EEOC National Origin Discrimination Lawsuit,” EEOC Press Release Dated February 18, 2025. Available at: <https://www.eeoc.gov/newsroom/leopalace-resort-pay-over-14-million-eeoc-national-origin-discrimination-lawsuit>. (Visited on September 4, 2025).

oversight. Employers may also face immigration enforcement actions at worksites, creating disruptions and potential workforce shortages. Employers may also need to balance compliance with anti-discrimination obligations, as overzealous verification can lead to liability under Title VII or the Immigration and Nationality Act's anti-discrimination provisions. Immigration enforcement under the Trump administration reflects both a continuation and an escalation of earlier policies, making it an essential compliance priority for businesses navigating the administration's broader employment agenda.

II. Employer Compliance Amid Conflicting Pressures

The Trump administration's approach to governing the workplace has created a compliance environment characterized by both deregulatory momentum and heightened legal complexity. Employers are contending with a series of policy shifts that, while aimed at reducing federal regulatory burdens, have introduced new and sometimes conflicting pressures under overlapping federal, state, and local requirements. The administration's formal rescission of long-standing federal contractor affirmative action requirements, its policy to deprioritize disparate impact enforcement, and its deregulatory posture toward AI have altered traditional compliance benchmarks. At the same time, statutory obligations under Title VII and Supreme Court precedent – including *Bostock v. Clayton County*, whose protections for sexual orientation and gender identity are settled in the employment context but unsettled in other areas – remain in force, while state and local mandates may diverge from current federal policy priorities. Against this backdrop, employers must reassess DEI programs, evaluate the collection and use of workforce demographic data, interpret conflicting signals on disparate impact liability, weigh the benefits and risks of deploying AI in employment decisions, and understand the scope and limits of *Bostock's* protections.

A. Reassessing DEI Programs, EEO Obligations, and Affirmative Action

Employers today face a fragmented and often conflicting legal landscape when it comes to structuring and maintaining DEI programs. At the federal level, Title VII of the Civil Rights Act of 1964 prohibits employment decisions based on race, sex, or other protected characteristics. While employers remain committed to ensuring equal opportunity and preventing discrimination, recent litigation and enforcement positions have heightened scrutiny of any program that appears to consider identity directly, even for well-intentioned diversity goals. This creates risk exposure where DEI initiatives could be challenged as unlawful preferences, necessitating that employers carefully distinguish between permissible efforts to broaden outreach or remove barriers and impermissible race- or sex-based decision-making.

Overlaying Title VII are the executive orders and agency actions of the Trump administration, which specifically address what it characterizes as illegal DEI. These federal actions direct federal agencies to investigate and restrict programs that incorporate identity-based employment decisions, leveraging tools like the False Claims Act and federal contracting authority. Employers with federal contracts or grants face additional compliance burdens and enforcement risks, as the administration seeks to standardize programs around merit-based principles and limit disparate impact liability. As a result, companies must weigh the risks of

being subject to federal scrutiny against the internal and external pressures to maintain robust DEI frameworks.

At the same time, state and local laws are moving in divergent directions. Several states have enacted restrictions on DEI activities in state and local government offices, state regulatory boards and commissions, and higher education that are aligned with the Trump administration's policy priority of eliminating illegal DEI.⁸¹ In contrast to the Trump administration's priorities, some states have moved in the opposite direction by imposing affirmative obligations, such as pay transparency and demographic reporting requirements. For example, 16 states have enacted pay transparency laws, including California, Illinois, and New York, that require the disclosure of wage information, a core DEI strategy that states have implemented to reduce pay disparities across protected groups.⁸² Two states, California and Illinois, require the collection and production of workforce pay data from private employers. In Illinois, many corporations are required to provide EEO-1-style annual reports to the Illinois Secretary of State.⁸³ In California, some private employers are required to file pay data with the California Civil Rights Department.⁸⁴ Multi-jurisdiction employers navigating these conflicting requirements face compliance challenges, as federal enforcement postures on DEI intersect with state and local requirements that impose conflicting obligations.

A lawsuit challenging a board diversity reporting law in Illinois provides a clear illustration of these conflicting compliance pressures. A federal judge in the Northern District of Illinois, U.S. District Judge Sharon Johnson Coleman, recently rejected attempts by both the Trump administration and Edward Blum's American Alliance for Equal Rights ("AAER") to block enforcement of Illinois Senate Bill 293, a law enacted in June 2024 requiring certain nonprofit organizations to publicly report aggregate demographic data on the race, gender, and sexual orientation of their officers and directors.⁸⁵ The court ruled that the Trump administration lacked legal standing because it failed to demonstrate how enforcement of the law caused it any harm, and found Blum's group lacked standing to sue on behalf of unnamed member nonprofits, since the law does not compel disclosure if such information was never voluntarily provided.⁸⁶ While the judge acknowledged that Blum's organization had standing to challenge the underlying data collection requirement, she declined to issue a preliminary injunction on that

⁸¹ For example, the following states have passed legislation that restricts DEI: Arkansas ([S.B. 520](#)), Indiana ([S.B. 289](#)), Iowa ([H.F. 856](#)), Kansas ([S.B. 125](#)), Mississippi ([H.B. 1193](#)), Ohio ([S.B. 1](#)), Oklahoma ([S.B. 796](#)), Tennessee ([S.B. 1084](#), [S.B. 376](#), [S.B. 1235](#), and [S.B. 1083](#)), Texas ([S.B. 12](#)), West Virginia ([S.B. 474](#)), and Wyoming ([H.B. 147](#)).

⁸² See "Pay Transparency Wage Range Disclosure Compendium," Seyfarth Shaw Desktop Reference Dated March, 2025. Available at: https://www.seyfarth.com/dir_docs/documents/reports/Pay-Transparency-Wage-Range-Disclosure-Compendium-RPT-M36.pdf. (Visited on August 26, 2025).

⁸³ See "Significant New Pay and EEO Reporting Obligations on the Horizon for Illinois Employers," Seyfarth Shaw Legal Update Dated March 24, 2021. Available at: <https://www.seyfarth.com/news-insights/significant-new-pay-and-eo-reporting-obligations-on-the-horizon-for-illinois-employers.html>. (Visited on August 26, 2025).

⁸⁴ See "California's Civil Rights Department Releases Updated Pay Data Reporting Guidance," Seyfarth Shaw Legal Update Dated February 1, 2024. Available at: <https://www.seyfarth.com/news-insights/californias-civil-rights-department-releases-updated-guidance-and-resources-for-upcoming-ca-pay-data-reporting.html>. (Visited on August 26, 2025).

⁸⁵ See S.B. 2930. Available at: <https://legiscan.com/IL/bill/SB2930/2023>. (Visited on August 26, 2025).

⁸⁶ See Memorandum Opinion and Order Dated August 20, 2025. Available at: <https://fingfx.thomsonreuters.com/gfx/legaldocs/xmpjeevgrvr/illinois.pdf>. (Visited on August 26, 2025).

basis, and the group vowed to appeal. The litigation underscores the tension between Illinois' affirmative reporting obligations and the Trump administration's federal enforcement priorities aimed at eliminating DEI initiatives.

Despite the revocation of Executive Order 11246, which had long required federal contractors to implement affirmative action programs, several states continue to impose their own affirmative action obligations, particularly in the context of state contracting and public employment. EO 14173 does not impact state and local affirmative action requirements or state and local pay transparency laws and reporting requirements. Jurisdictions such as California, New York, Illinois, Minnesota, Connecticut, and Wisconsin require contractors above certain thresholds or in certain industries to maintain affirmative action plans, submit workforce composition reports, or meet diversity goals tied to state procurement.⁸⁷ These state-level mandates place multi-jurisdiction employers in a difficult position: while federal policy under the Trump administration seeks to eliminate affirmative action and related DEI requirements, state laws in some jurisdictions continue to obligate employers to collect demographic data and engage in affirmative action planning. This divergence underscores the compliance tension between a deregulatory federal posture and state-level requirements that preserve or expand obligations aimed at advancing workforce diversity. This patchwork means that a single national employer may be prohibited from using certain DEI practices in one jurisdiction while being required to implement them in another. Navigating these inconsistencies often demands tailoring programs to the most restrictive standards, which can dilute or complicate company-wide policies.

Beyond the statutory and regulatory frameworks, reputation and risk tolerance play a central role in shaping employer decisions. Companies face increasing pressure from employees, investors, and the public to demonstrate commitments to fairness and inclusion, even as the legal risks of certain DEI practices grow. For some, the reputational cost of scaling back visible DEI efforts may outweigh the legal risks, while others adopt a more cautious approach, prioritizing compliance certainty over public positioning. Balancing these pressures requires continuous reassessment of risk tolerance, careful legal review of DEI programs, and transparent communication strategies that emphasize equal opportunity, fairness, and compliance with applicable law. In this environment, employers must tread carefully – aligning DEI commitments with shifting legal requirements while maintaining credibility with stakeholders.

B. Workforce Demographic Data: Collection, Use, Benefits, and Risks

The collection, use, benefits, and risks of workforce demographic data is another area where employers face conflicting pressures. On one hand, collecting workforce data – via EEO-1 reporting and internal analytics – is necessary for enforcement compliance and mitigating disparate impacts, particularly under Section 709(c) of Title VII, which mandates recordkeeping to detect unlawful patterns. EEOC guidance also reinforces that demographic awareness is essential to enforce anti-discrimination laws. On the other hand, in the context of EO 14173's prohibition on "illegal DEI," employers risk running afoul of federal directives by collecting data that might be interpreted as supporting illegal DEI initiatives. Employers have been advised to

⁸⁷ See Cal. Code Regs. Title 2, §§ 11105, 11106, 11122; N.Y. Exec. Law § 312; Ill. Admin. Code Title 44, § 750.130; Minn. R. 5000.3420; Conn. Gen. Stat. § 4a-60; and Wis. Admin. Code Admin. § 50.04.

balance these considerations carefully, ensuring data collection serves compliance and not preference purposes. Moreover, EEOC Acting Chair Lucas has warned that there is no “diversity exception” to Title VII – demographic data must not be used to take discriminatory employment actions. This tension places employers in a paradox: collecting data to prevent bias without using it in a manner that could be construed as impermissibly using preferences.

The 1978 Uniform Guidelines on Employee Selection Procedures, issued jointly by the EEOC, DOL, DOJ, and Civil Service Commission, establish the federal framework for evaluating whether employer selection practices comply with Title VII.⁸⁸ The Guidelines require employers to collect and analyze data on applicant flow and selection rates by race, sex, and ethnic group to determine whether their procedures have an adverse impact, using the so-called “four-fifths rule” as a benchmark. Where adverse impact is identified, employers must conduct validation studies – through content, criterion-related, or construct validation – to demonstrate that the selection procedure is job-related and consistent with business necessity. Employers are also required to maintain ongoing records of this data and periodically reassess their practices to ensure compliance. By mandating the systematic collection and analysis of demographic data, the Uniform Guidelines place employers under compliance obligations that run counter to the Trump administration’s policy priority of limiting or discouraging such data collection, creating a direct tension for multi-jurisdictional employers navigating whether, when, and how to gather workforce demographic information.

The EEO-1 Report, administered by the EEOC since the 1960s, requires private employers with 100 or more employees, and federal contractors with 50 or more employees and a qualifying contract, to file annual workforce demographic data by race, ethnicity, sex, and job category.⁸⁹ This data serves as a foundation for the agency’s enforcement of Title VII and related anti-discrimination statutes, enabling the identification of patterns suggestive of disparate treatment or impact. Under Acting Chair Lucas, the EEOC has signaled a shift in enforcement priorities consistent with the Trump administration’s broader agenda to curtail DEI-related obligations. While the statutory and regulatory framework for EEO-1 reporting remains intact, questions have arisen as to whether the EEOC will continue to prioritize, analyze, and publicly report on this data, or whether the filing requirement will be maintained in form but diminished in substance through reduced use and enforcement.

On February 11, 2025, EEOC Acting Chair Lucas posted on X (formerly known as Twitter) that, “Requesting pre-employment information which discloses or tends to disclose an applicant’s race suggests that race will be unlawfully used as a basis for hiring. Solicitation of such pre-employment information is presumed to be used as a basis for making selection decisions.” And, if such “information is used in the selection decision and members of particular racial groups are excluded from employment, the inquiries can constitute evidence of discrimination.”⁹⁰ Acting Chair Lucas’s public statement creates a direct tension for DEI data initiatives that depend on demographic information for compliance and risk management.

⁸⁸ Uniform Guidelines on Employee Selection Procedures, 43 Fed. Reg. 38, 290 (Aug. 25, 1978) (codified at 29 C.F.R. § 1607).

⁸⁹ 29 C.F.R. § 1602.7.

⁹⁰ See Andrea Lucas (@andrealucasEEOC), X (February 11, 2025 10:52 AM), Available at: <https://x.com/andrealucasEEOC/status/1889356741197914227>. (Visited on August 26, 2025).

Employers face competing signals: federal enforcement rhetoric discourages pre-hire collection, while frameworks such as the Uniform Guidelines’ adverse-impact monitoring, EEO-1 workforce reporting, and various state transparency or pay-data mandates rely on robust demographic data. To navigate this conflict, employers can shift to voluntary self-identification outside decision workflows, segregate and restrict access to protected-class data, document purpose and legal basis, require vendor attestations and audit trails, and tie analyses to defined compliance uses.⁹¹ The practical effect is to elevate the litigation and enforcement risk of pre-hire demographic questions even when intended for lawful monitoring, pushing organizations to redesign data-collection practices to preserve analytic value without implying that protected traits influence selection decisions.

Several states require or permit an “X” non-binary category on identity documents and in employment records, but at the federal level, EO 14168 defines legal sex as male or female. In her message surrounding the opening of the 2024 EEO-1 filing portal, EEOC Acting Chair Lucas noted that the EEO-1 data collection had been revised to comply with EO 14168 and the 2025 instructions provide only binary options with no guidance for non-binary self-identification.⁹² This federal realignment superseded the EEOC’s April 2024 request to OMB to add non-binary instructions and has been reinforced by policy signals. Jonathan Berry (nominated to be Solicitor of Labor) has advocated eliminating EEO-1 reporting altogether⁹³ and Acting Chair Andrea Lucas has made public statements that she is “committed to dismantling identity politics.”⁹⁴ For multi-jurisdiction employers, the result is a practical mismatch: state law or practice may obligate employers to capture and store non-binary data, while federal reporting requires recoding or suppressing those fields. That reconciliation introduces accuracy and audit risks (e.g., misclassification, inconsistent datasets), privacy and employee-trust concerns, and additional governance burdens around data mapping, retention, and disclosure. In short, state recognition of non-binary status collides with a binary federal reporting mandate, producing a compliance tension over whether, when, and how to collect non-binary gender data.

C. Conflicting Compliance Signals Regarding Disparate Impact

As noted earlier, the current federal enforcement posture deprioritizes disparate impact theory, but the underlying law remains intact. Title VII, codified in 1991 to recognize disparate-

⁹¹ Relatedly, some states, such as Maine, prohibit an employer from collecting demographic data unless the data collection is required by state or federal law (Me. Rev. Stat. Ann. tit. 5, § 4572; 94-348 CMR § 3.04).

⁹² See “EEOC Opens 2024 EEO-1 Filing Portal: Employers Urged to Begin Preparation,” Seyfarth Shaw Legal Update Dated May 20, 2025. Available at: <https://www.seyfarth.com/news-insights/eecoc-opens-2024-eeo-1-filing-portal-employers-urged-to-begin-preparation.html>. (Visited on August 26, 2025).

⁹³ See “Standing up for the Rule of Law: Ending Illegal Racial Discrimination and Protecting Men and Women in U.S. Employment Practices,” Testimony of Jonathan Berry at Hearing before the House Committee on Oversight and Accountability, June 27, 2024. Available at: <https://oversight.house.gov/wp-content/uploads/2024/06/Berry-Statement.pdf>. (Visited on August 26, 2025).

⁹⁴ See “Statement from EEOC Acting Chair Andrea Lucas Celebrating the Supreme Court’s Unanimous Ruling in *Ames* Restoring Evenhanded Application of Title VII.” Available at: <https://www.eeoc.gov/wysk/statement-eeoc-acting-chair-andrea-lucas-celebrating-supreme-courts-unanimous-ruling-ames>. (Visited on August 26, 2025). See also “Statement of Andrea R. Lucas, Nominee for Reappointment as Member of the U.S. Equal Employment Opportunity Commission,” Testimony before the Senate Committee on Health, Education, Labor, and Pensions, June 18, 2025. Available at: <https://www.help.senate.gov/imo/media/doc/b84627cb-a494-972e-f701-c6d384f7f879/Lucas%20Testimony.pdf>. (Visited on August 26, 2025).

impact liability within a burden-shifting framework, continues to govern workplace discrimination. Supreme Court decisions from *Griggs* through *Ricci v. DeStefano*, 557 U.S. 557 (2009) recognized and clarified disparate impact liability under Title VII. The 1978 Uniform Guidelines on Employee Selection Procedures operationalized the legal theory into practice by directing employers to track applicant flow and selection rates, screen for adverse impact (e.g., the four-fifths rule), and validate selection devices that disproportionately affect protected groups. Several states, including California and New York, reinforce these expectations through parallel statutory requirements, contributing to a legal landscape that presumes ongoing, data-driven monitoring and job-related validation.

Against this backdrop, EO 14281 instructs federal agencies to deprioritize the use of disparate impact liability in civil rights enforcement. This executive action creates a divergence between statutory and precedential obligations that are enforceable by courts and private plaintiffs and federal agency priorities. Employers thus confront uncertainty about the cadence and depth of adverse-impact testing, the documentation needed to defend selection procedures, and the degree of enforcement interest they should anticipate from federal regulators, even as state agencies and private litigants may press forward under disparate impact standards. The result is not a repeal of duties but a recalibration of practical risk: fewer federal signals to guide program design, alongside persistent exposure in litigation and in jurisdictions that maintain robust disparate impact enforcement.

In her message about opening the 2024 EEO-1 Component data collection, Acting Chair Lucas noted, “That order (14281) directed all agencies, including the EEOC, to deprioritize ‘disparate impact’ enforcement – that is, investigations and lawsuits that challenge neutral practices that have unequal outcomes based on race, sex, or other protected characteristics – and also revoked prior Presidential approvals of certain disparate-impact regulations. The EEOC is an executive branch agency, not an independent agency. We will fully and robustly comply with this and all Executive Orders. Under my leadership, the EEOC will prioritize remedying intentional discrimination claims.”⁹⁵ Acting Chair Lucas’s statement confirms that the EEOC is aligned with the administration’s enforcement position on disparate impact, signaling that employers should recalibrate expectations regarding the role of demographic data and adverse impact analyses in federal oversight.

The administration’s policy shift regarding disparate impact has already impacted existing litigation. For example, the FTC withdrew race-based disparate-impact allegations in a pending case.⁹⁶ In the FTC’s administrative case against Asbury Automotive Group – concerning three David McDavid dealerships in Texas – the agency initially alleged a disparate-impact violation of the Equal Credit Opportunity Act, claiming Black and Latino consumers were charged more than white customers for identical add-on products. After EO 14281, the FTC moved to amend its complaint and withdrew the race-based disparate-impact allegations “out of an abundance of caution,” while leaving other unfair-practices claims in place.

⁹⁵ Message from EEOC Acting Chair Lucas (fn 55).

⁹⁶ See Motion to Partially Lift Stay Dated May 6, 2025. Available at: https://www.ftc.gov/system/files/ftc_gov/pdf/613288.2025.05.06_cc_motion_to_amend_complaint.pdf. (Visited on August 26, 2025).

The result of EO 14281 is a layered and inconsistent landscape: federal enforcement priorities now signal a retreat from disparate impact theories, while federal statute, Supreme Court precedent, longstanding federal guidelines, and certain state laws continue to presuppose their application.

D. Benefits and Risks of the Use of AI

As employers increasingly incorporate AI into their workplace processes, they must weigh the benefits of efficiency, scale, and data-driven insights against risks of algorithmic bias. The Trump administration's pro-innovation posture lowers the regulatory bar for deploying workplace AI by emphasizing speed, permissive experimentation, and the removal of perceived compliance frictions. Yet the legal floor has not moved: Title VII, the ADA, and the ADEA still govern selection and employment decisions, disparate impact liability remains codified in the Civil Rights Act of 1991, and the Uniform Guidelines continue to frame data and validation expectations. The result is a mismatch between policy and law: federal encouragement to adopt AI tools set against unchanged statutory exposure if those tools produce discriminatory outcomes.

Reputational, litigation, and employee-relations risks amplify that mismatch. Opaque or biased model outputs can trigger private lawsuits, investigative journalism, shareholder scrutiny, and workforce backlash (including union objections), even where federal enforcement signals are muted. Opacity also complicates evidentiary narratives: when employers cannot explain model logic, they face greater uncertainty in discovery, defensibility challenges in court, and credibility costs with employees and the public.

AI-driven tools also attract scrutiny for disparate treatment, not only disparate impact. Systems that directly encode protected traits, rely on close proxies (e.g., geography, names, affinity signals), or deploy rules that sort applicants differently by identity characteristics invite allegations of intentional discrimination. In these disputes, vendor disclaimers and "black box" claims do little to shield the ultimate decision-maker, and design artifacts (prompts, thresholds, features, targeting criteria) can be read as evidence of intent.

Even as federal policy trends toward deregulation, a growing patchwork of state and local measures regulates employment-related AI and demographic data practices, requiring employers to navigate overlapping and sometimes divergent mandates. In New York City, Local Law 144, enacted in 2022 and enforced since July 2023, regulates automated employment decision tools that "substantially assist or replace" discretionary decision-making.⁹⁷ Covered employers must complete an independent bias audit within the year before use and provide public notices and disclosures, including candidate notice and access to audit results. Worker advocates describe the law as narrow because it reaches only AEDTs, applies only within city limits, and relies largely on applicant complaints rather than robust public investigations. New Jersey has taken a broader civil-rights approach. In January 2025, the Attorney General and Division on Civil Rights launched the Civil Rights and Technology Initiative and issued guidance applying the New

⁹⁷ See LL 144. Available at: <https://rules.cityofnewyork.us/wp-content/uploads/2023/04/DCWP-NOA-for-Use-of-Automated-Employment-Decisionmaking-Tools-2.pdf>. (Visited on August 26, 2025).

Jersey Law Against Discrimination to algorithmic discrimination across the full lifecycle.⁹⁸ The guidance flags risks in design and training data, warns against misuse in deployment, recognizes disparate treatment, disparate impact, and failure-to-accommodate theories, and makes clear that employers remain responsible even when they rely on third-party tools.

Additional state law requirements are coming into effect in the next year. California’s Civil Rights Council regulations under FEHA take effect on October 1, 2025, and clarify that automated decision systems can violate state law when outcomes harm protected groups.⁹⁹ The rules require at least four years of recordkeeping and caution that some AI-based assessments may constitute unlawful medical inquiries. Illinois’s HB 3773, effective January 1, 2026, builds transparency by requiring employers to notify employees when AI is used in employment decisions and authorizes the Department of Human Rights to issue implementing rules, while reaffirming that discriminatory AI use is unlawful.¹⁰⁰ Texas’s Responsible Artificial Intelligence Governance Act (“TRAIGA”) (HB 149), also effective January 1, 2026, prohibits intentional discrimination through AI, states that disparate impact alone does not prove intent, offers safe harbors tied to recognized risk-management frameworks and self-identified, cured violations, and assigns enforcement to the Attorney General with a 60-day cure period.¹⁰¹ Colorado’s SB 205, effective February 2026, adopts a comprehensive, cross-sector model that includes employment, requires impact assessments and disclosures with opt-out notices, and vests enforcement in the Attorney General while leaving existing state civil-rights claims in place.¹⁰²

Employers operate in a two-level environment: a permissive federal policy climate that favors rapid adoption of AI, and a simultaneously durable set of state and federal legal standards that judge outcomes and processes by traditional antidiscrimination rules, creating ongoing tension over how aggressively to deploy automated systems in core employment functions.

E. Supreme Court’s *Bostock* Standard and Its Coverage

Bostock v. Clayton County remains a controlling authority interpreting Title VII with respect to employment discrimination, even as executive policy in other domains moves toward binary definitions of sex. The Supreme Court held in *Bostock* that Title VII’s ban on discrimination “because of sex” covers sexual orientation and gender identity, and that an employer who fires an individual “merely for being gay or transgender” violates the statute. That holding is binding nationwide and continues to define Title VII liability in the workplace.

At the same time, EO 14168¹⁰³ directs federal agencies to recognize only two sexes (male and female) and to align definitions, forms, and guidance with that binary framework. Federal

⁹⁸ See “Guidance on Algorithmic Discrimination and the New Jersey Law Against Discrimination,” Released January 2025. Available at: https://www.nj.gov/oag/newsreleases25/2025-0108_DCR-Guidance-on-Algorithmic-Discrimination.pdf. (Visited on August 26, 2025).

⁹⁹ See “Notice of Approval of Regulatory Action,” Dated June 27, 2025. Available at: <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2025/06/Notice-of-Approval-regulations-automated-employment-decision-systems.pdf>. (Visited on August 26, 2025).

¹⁰⁰ See H.B. 3773. Available at: <https://legiscan.com/IL/bill/HB3773/2023>. (Visited on August 26, 2025).

¹⁰¹ See H.B. 149. Available at: <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=89R&Bill=HB149>. (Visited August 26, 2025).

¹⁰² See S.B. 205. Available at: <https://leg.colorado.gov/bills/sb24-205>. (Visited on August 26, 2025).

¹⁰³ Gender Ideology Extremism (fn 28).

agencies have implemented this position through agency action¹⁰⁴ and guidance.¹⁰⁵ The resulting administrative posture narrows federal recognition of gender identity in policies and data systems even as *Bostock* endures as a statutory interpretation of Title VII.

The Supreme Court's recent decision in *United States v. Skrametti*, 605 U.S. ___ (2025) complicates *Bostock*'s reach: deciding an Equal Protection challenge to Tennessee's ban on gender-affirming care for minors, the Court applied rational-basis review and expressly declined to say whether *Bostock*'s reasoning extends beyond the Title VII context. Concurring opinions in *Skrametti* went further in cautioning against importing *Bostock* into constitutional analysis. The upshot is a split legal signal – *Bostock* continues to govern employment discrimination claims, while *Skrametti* limits the traction of *Bostock*-style arguments outside Title VII and has already been invoked by agencies in non-employment settings,¹⁰⁶ producing uncertainty about how far *Bostock* constrains government policy beyond the workplace.

For employers, these cross-currents produce conflicting pressures: Title VII, as construed in *Bostock*, preserves workplace protections for sexual orientation and gender identity, while executive policy narrows administrative recognition to a binary scheme and *Skrametti* signals limited traction for *Bostock*'s logic outside Title VII. The practical result is a legal landscape in which statutory employment protections coexist with federal policy moves (including data and form changes) that pull in opposite directions, maintaining litigation exposure under Title VII even as administrative definitions and reporting conventions shift.

¹⁰⁴ See “Removing Gender Ideology and Restoring the EEOC’s Role of Protecting Women in the Workplace,” EEOC Press Release Dated January 28, 2025. Available at: <https://www.eeoc.gov/newsroom/removing-gender-ideology-and-restoring-eeocs-role-protecting-women-workplace>. (Visited on August 26, 2025).

¹⁰⁵ See “Updated Guidance Regarding Executive Order 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” OPM Memo Released July 10, 2025. Available at: https://www.opm.gov/policy-data-oversight/latest-memos/updated-guidance-regarding-executive-order-14168-defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/?utm_source=chatgpt.com. (Visited on August 26, 2025).

¹⁰⁶ See “U.S. Department of Education Finds California Department of Education and California Interscholastic Federation in Violation of Title IX,” DOE Press Release Dated June 25, 2025. Available at: https://www.ed.gov/about/news/press-release/us-department-of-education-finds-california-department-of-education-and-california-interscholastic-federation-violation-of-title-ix?utm_source=chatgpt.com. (Visited on August 26, 2025).