

client alert

PRELIMINARY INJUNCTION GRANTED ON PORTIONS OF DEI EXECUTIVE ORDER

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On the evening of Friday, February 21, 2025, a judge in the U.S. District Court for the District of Maryland (Baltimore Division) partially granted a nationwide preliminary injunction for parts of President Trump’s [DEI Executive Orders 14151](#) (“Ending Radical and Wasteful Government DEI Programs and Preferencing”) and [14173](#) (“Ending Illegal Discrimination and Restoring Merit-Based Opportunity”) (the “DEI EOs”).

It is important to note that the plaintiffs in this lawsuit did not seek to bar the DEI orders in their entirety. Thus, the major premise of these orders – abolishing DEI programs while requiring compliance with Federal anti-discrimination laws – remains intact.

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The judge's memorandum and order **prohibit** the federal government from:

- Pausing, freezing, impeding, blocking, canceling, terminating, or modifying “equity-related’ grants or contracts” (EO 14151) (the court called this the “Termination Provision”);
- Requiring grantees and contractors to (1) agree to comply with Federal anti-discrimination laws; and (2) certify that the contractor does not have DEI programs that violate Federal anti-discrimination laws (EO 14173) (the court called this the “Certification Provision”); and
- Bringing any enforcement action, including a False Claims Act enforcement action, civil investigation, or lawsuit, against government contractors or private sector companies pursuant to the “Enforcement Threat Provision” (EO 14173).

What to know:

- Current “equity-related” grants and contracts can (for now) remain in place.
- Enjoining the Certification Provision in EO 14173 essentially removes the threat of False Claims Act liability for contractors that enter federal government contracts and still have DEI programs or policies.
- The judge’s order permits the Attorney General to provide the report required by EO 14173, which includes identifying certain private companies for “potential civil compliance investigations.” However, the judge includes “civil investigations” in its definition of “enforcement actions,” which are now enjoined, so it is unlikely that the Attorney General will be permitted to pursue actual civil investigations or other legal actions against companies based on EO 14173 for now.

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The preliminary injunction removes the immediate risks of contract termination and False Claims Act liability from the equation, for now. The remaining parts of the DEI EOs remain in place: e.g., the prohibition on DEI policies and hiring preferences (or any affirmative action) in federal hiring; the requirement that the federal government must roll back DEI policies while complying with Federal anti-discrimination laws; and the prohibition of the Office of Management and Budget referencing DEI/DEIA principles in acquisition directives or otherwise maintaining or mandating DEI programs. EO 14170 (“Reforming the Federal Hiring Process and Restoring Merit to Government Service”), requiring merit-based hiring, is untouched, as it was not challenged in the lawsuit.

Although the preliminary injunction order limits federal enforcement actions, state enforcement actions based on DEI are proceeding. For example, the Florida state attorney general recently filed suit against Target claiming its DEI initiatives mislead investors.

We note also that this injunction is preliminary. It will likely be months before the court determines whether to issue a permanent injunction against these provisions. Further, the order granting the injunction is immediately appealable and we suspect that the Government will appeal shortly to the United States Circuit Court of Appeals for the Fourth Circuit. The appeal will involve important First Amendment and separation of powers issues.