

LEGAL ALERT

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MAKING SENSE OF THE EVOLVING DEI LANDSCAPE AND ITS EFFECTS ON FEDERAL CONTRACTORS AND GRANTEEES

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We recently wrote about the [preliminary injunction](#) entered by the U.S. District Court for the Northern District of Illinois, blocking the Department of Labor from enforcing certain provisions of Executive Orders 14173 and 14151, both of which limit or prohibit federal grants or programs relating to “illegal,” “unlawful,” and “immoral” diversity, equity, and inclusion (“DEI”). The case in Illinois is one of several cases we have reported on that are pending in various District Courts around the country relating to Executive Orders 14173 and 14751. In light of the rapidly changing legal landscape with respect to DEI, federal contractors and grantees are asking how the various court rulings affect each other and what the current state of the law is with respect to these Orders.

We are currently tracking five lawsuits that may impact the enforcement of Executive Orders 14173 and 14151. Each of the lawsuits challenges the constitutionality of the Executive Orders in U.S. District Courts in California, Illinois, Pennsylvania, Maryland and the District of Columbia. To date, only the courts in Maryland and Illinois have issued rulings affecting the enforcement of the Executive Orders. The remaining courts are likely to issue rulings in the coming months as those cases progress, and we will continue to provide timely updates.

In previous posts we reported on the [nationwide preliminary injunction granted by the District Court in Maryland](#) that was later stayed by the Fourth Circuit Court of Appeals. The stay allows the government to enforce the Executive Orders while the appeal of the preliminary injunction is pending before the Fourth Circuit.

Meanwhile, the District Court in Illinois has granted a preliminary injunction that is limited to the Department of Labor. Specifically, the Department of Labor may not enforce the “Certification Provision” of Executive Order 14173, which requires a federal contractor or grantee to certify that it does not operate any programs “promoting DEI that violate any applicable Federal anti-discrimination laws.” The preliminary injunction also enjoined the Department of Labor from enforcing the “Termination Provision” of Executive Order 14151,

which requires the termination of equity-related grants, but this injunction applies only to the Plaintiff, Chicago Women in Trades, and only as to one of its five grants. As to all other federal contractors and grantees, the Termination Provision is currently enforceable.

The current status of Executive Order 14173 is that it is fully enforceable by the federal government except only that the Department of Labor may not require a contractor or grantee to make certification that it does not operate any programs “promoting DEI that violate any applicable Federal anti-discrimination laws.” The Order included a 90-day period in which contractors were allowed to continue under the prior regulations, but that 90-day period has now expired. Federal contractors should expect updated guidance from the Office of Federal Contract Compliance Programs (OFCCP), but currently no guidance has been published.

For now, federal contractors and grantees should be prepared to comply with the Executive Orders and direction from OFCCP as it comes out. Hahn Loeser & Parks will continue to monitor this issue and provide updates as they become available.

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