The Work Week

Bassford Remele Employment Practice Group

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Welcome to another edition of *The Work Week with Bassford Remele.* Each Monday, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

Bassford Remele Labor & Employment Practice Group

From Policy to Contract: What All Employers Need to Know About the New DEI Executive Order

Rachel A. Ball

The Trump Administration recently added another tool to its campaign against diversity, equity, and inclusion (DEI) programs on March 26, 2026, when President Trump signed an Executive Order titled "Addressing DEI Discrimination by Federal Contractors." Unlike earlier executive actions that directed federal agencies to wind down internal DEI initiatives, this new order reaches directly into the private sector, imposing binding contractual obligations on any employer that holds a federal contract or subcontract. For federal contractors, the compliance window is short: a mandatory contract clause must be incorporated into all covered contracts by April 25, 2026. Although the executive order focuses on federal contractors, the action signals a broader enforcement posture grounded in traditional anti-discrimination principles that all employers, regardless of federal contractor status, can expect to see play out in Title VII actions before the EEOC. Employers, and particularly those with federal contracts, who have not yet taken stock of their DEI programs should do so immediately.

Overview of the Executive Order

The March 26, 2026 Executive Order (EO 14398) builds on a series of prior anti-DEI directives issued in early 2025 aimed at dismantling DEI programs within federal agencies and scrutinizing similar initiatives in the private sector and represents the most operationally significant step to date. Where earlier orders largely expressed policy preferences, this one creates enforceable legal obligations through the mechanism of federal contracting.

The centerpiece of the order is a mandatory contract clause that all federal agencies must incorporate into covered contracts, subcontracts, and lower-tier subcontracts within 30 days of the order's signing—that is, by April 25, 2026. The clause requires contractors to certify, among other things, that they will not engage in "racially discriminatory DEI activities." The order defines that phrase broadly to mean "disparate treatment based on race or ethnicity" in recruitment, hiring, promotions, vendor agreements, program participation, and the allocation or deployment of company resources. Notably, "program participation" is further defined to include membership in, participation in, access to, or admission to training, mentoring, leadership development programs, educational opportunities, and company-sponsored clubs or associations — meaning the reach of the order extends well beyond traditional employment decisions.

The order also directs the Office of Management and Budget (OMB), in coordination with the Department of Justice (DOJ), to identify economic sectors at particular risk of noncompliance and to issue sector-specific guidance. The Federal Acquisition Regulatory Council is further directed to amend the Federal Acquisition Regulation within 60 days to align with the new requirements.

Implications of Noncompliance

The penalties for noncompliance are significant, and the enforcement framework is notably aggressive. Contractors who fail to comply face three primary categories of risk.

False Claims Act Liability: Perhaps the most alarming feature of the new order is its express invocation of the False Claims Act (FCA). The mandatory contract clause requires contractors to acknowledge that compliance with the DEI restrictions is "material to the Government's payment decisions." Under the FCA, submitting a false or fraudulent certification to the government, including an implicit certification embedded in an invoice that the contractor is complying with the executive order, can expose a contractor to treble damages plus civil penalties per each false claim. This means that every invoice submitted to a federal agency after April 25, 2026, carries with it an implicit representation that the contractor is in compliance with the new executive order. Companies found to have maintained prohibited DEI programs while billing the government may face liability far exceeding the value of the underlying contracts. Whistleblower-driven qui tam actions are a particular concern, as the FCA incentivizes employees and competitors to report suspected violations.

Contract Termination and Debarment: In addition to FCA exposure, the order expressly authorizes contracting agencies to cancel, terminate, or suspend contracts for noncompliance. Contractors may also be declared ineligible for future government contracts, known as debarment. This sanction has potentially devastating consequences for businesses that depend on federal revenue.

DOJ Enforcement: The order also authorizes the DOJ to bring civil suits against contractors and subcontractors who violate its requirements, adding another layer of federal enforcement pressure beyond the contracting agency relationship itself.

For employment law purposes, employers should understand that the definition of prohibited conduct is not limited to discriminatory hiring or promotion decisions — it extends to the structure of mentorship programs, employee resource groups (ERGs), leadership pipelines, supplier diversity initiatives, and talent development tracks that restrict access on the basis of race or ethnicity. Even programs that were well-intentioned and previously uncontroversial may now create legal exposure. And although the executive order focuses on race and ethnicity, employers should be aware that the EEOC has already begun filing Title VII complaints against businesses for providing identity-specific networking events, such as female-only networking trips, as my colleague Drew James recently wrote about.

Practical Takeaways for Employers

- **Act now if you hold federal contracts.** The April 25, 2026 deadline is not aspirational. Contracting agencies are expected to begin incorporating the new clause into contracts immediately. Companies should conduct a review, ideally under attorney-client protection, of all programs, policies, and practices that could constitute "racially discriminatory DEI activities" under the order's broad definition.

- **Review your entire supply chain.** The mandatory clause flows down to subcontractors at every tier, and prime contractors are required to report "known or reasonably knowable" violations by their subcontractors. This creates an affirmative monitoring obligation. Employers should update subcontractor agreements and assess flow-down compliance now.

- **Audit ERGs, mentorship programs, and leadership initiatives.** The order's reach into "program participation" means that access-restricted employee resource groups, race-specific mentorship tracks, or diversity fellowships may fall within the scope of prohibited conduct. Programs that restrict eligibility based on race or ethnicity, even if designed to remedy historical underrepresentation, should be reviewed carefully.

- **Watch for whistleblower risk.** The FCA's qui tam provisions allow private individuals, including current or former employees and even competitors, to bring suit on the government's behalf and share in any recovery. In an environment where employees are increasingly aware of DEI-related legal changes, this risk should be taken seriously in any compliance assessment.

- **Non-contractors should not assume they are insulated.** The broader enforcement environment, including the DOJ's ongoing lawsuit against the State of Minnesota over race-conscious hiring practices and the EEOC's current enforcement priorities, signals that DEI scrutiny extends well beyond the federal contracting context. All employers should evaluate whether their programs could give rise to Title VII exposure.

Conclusion

The March 26, 2026 Executive Order represents a fundamental shift in how DEI compliance risk is structured for federal contractors. What was once a matter of policy alignment is now a matter of contractual obligation, and specifically one backed by the threat of FCA liability, debarment, and DOJ enforcement. Employers who have not yet undertaken a comprehensive, attorney-client privileged audit of their DEI-related programs should strive for full compliance by the April 25, 2026 deadline. The enforcement apparatus established by this order is built for the long term, and the cost of noncompliance, measured in contract loss, treble damages, and reputational harm, far exceeds the cost of a thorough compliance review.

Bassford Remele's Labor and Employment Practice Group is here to help with these issues and more. Please reach out to discuss ways that we can help you audit your business practices to protect against government enforcement actions, private causes of action, or qui tam litigation based on DEI claims.

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