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US DOJ Memo Clarifies DEI Compliance for Federal Funding Recipients

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On July 30, 2025, US Attorney General Pam Bondi released a memo to all federal agencies titled "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination." This document clarifies how federal antidiscrimination laws apply to programs or initiatives "that may involve discriminatory practices," including diversity, equity and inclusion (DEI) initiatives.

The memo states that entities receiving federal funds – like all entities subject to antidiscrimination laws – must not discriminate on the basis of protected characteristics. Issued soon after the launch of the US Department of Justice (DOJ) Civil Rights Fraud Initiative, which aims to use the False Claims Act to pursue claims against federal fund recipients that violate federal antidiscrimination law, the memo details various practices that it considers unlawful and that could result in revocation of federal grant funding. According to the memo, federal funding recipients, such as educational institutions, local and state governments, and public employers, may also be held liable for discrimination if they "knowingly fund the unlawful practices of contractors, grantees, or other third parties." The guidance also contains nonbinding best practices as "practical recommendations to minimize the risk of violations" of federal antidiscrimination laws and states that all entities subject to federal antidiscrimination laws, including private employers, should review programs to ensure compliance with the law.

The memo lists five ways programs and policies may result in unlawful discrimination:

1. Granting preferential treatment based on protected characteristics

The memo states that preferential treatment occurs when recipients of federal funds provide "opportunities, benefits, or advantages" to individuals or groups based on protected characteristics, thereby disadvantaging similarly qualified individuals. Such practices are generally unlawful unless they meet narrow exceptions.

Examples of preferential treatment in the memo include:

- Race-based scholarships or programs, internships, mentorship programs or leadership initiatives that reserve spots for specific racial groups (e.g., scholarship funding available only to students of a certain race).
- Hiring or promotion practices that prioritize "underrepresented groups" over equally qualified candidates, "where the preferred 'underrepresented groups' are determined on the basis of a protected characteristic like race."
- Restricting access to facilities or resources based on race or ethnicity (e.g., designating "safe spaces" for a specific race or ethnic group).

2. Using 'proxies' for protected characteristics

The memo also addresses the use of "unlawful proxies," which it defines as intentional use of "ostensibly neutral criteria that function as substitutes for explicit consideration of" protected characteristics like race or sex. According to the DOJ, these practices are deemed unlawful when facially neutral criteria are "selected because they correlate with, replicate, or are used as substitutes for protected characteristics" or are "implemented with the intent to advantage or disadvantage individuals based on protected characteristics."

Examples provided in the memo include:

- Using "cultural competence" requirements, such as requiring applicants to demonstrate "lived experience" or "cross-cultural skills" in ways that, in effect, evaluate an applicant's racial or ethnic backgrounds, rather than objective qualifications, or using selection criteria that advantage candidates who have experiences the employer associates with certain racial groups.
- Geographic or institutional targeting, such as recruitment strategies targeting specific geographic areas, institutions or organizations because of their racial or ethnic composition rather than other legitimate factors.
- Narratives or "diversity statements," such as requiring applicants to describe obstacles they have overcome, when such statements are used as a proxy for providing advantages based on protected characteristics.

3. Segregation based on protected characteristics

Segregation based on protected characteristics occurs when organizations separate or restrict access to programs, activities or resources – like training sessions – by race, sex or other protected traits. The memo states that such practices will be viewed as violating federal law, even if they are intended to promote inclusion or address past inequities.

Examples of unlawful segregation include:

- Race-based training, such as when a DEI training session separates participants by race.
- Segregation in facilities or resources based on protected characteristics, even if done to create "safe spaces" (e.g., university study areas intended only for members of particular racial or ethnic communities).
- Programs that exclude qualified participants based on protected characteristics.

Although segregation is usually prohibited, the DOJ notes exceptions for sex-separated sports and intimate spaces, such as bathrooms, showers, locker rooms and dormitories. It notes that if federally funded institutions allow "males, including those who self-identify as 'women,' to access single-sex spaces designed for females," it undermines the "privacy, safety, and equal opportunity of women and girls." Federally funded organizations are advised to maintain "sex-based boundaries rooted in biological differences" to comply with federal law and safeguard rights. The memo cautions that failing to segregate in these instances risks creating a hostile work environment under Title VII or violating Title IX.

Organizations should note, however, that many state and city antidiscrimination laws require employers to permit employees to use multi-occupancy facilities, including bathrooms, that are consistent with their gender identity.

4. Using protected characteristics as candidate selection criteria

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- "Diverse slate" requirements, including mandating a minimum number of candidates from specific racial groups, setting demographic benchmarks or requiring representation in candidate pools.
- Prioritizing contracts for women- or minority-owned businesses or using sex or race as a primary selection factor.
- Internships, scholarships, fellowships or leadership programs that use race, sex or other protected traits as selection criteria.

5. Training programs promoting discrimination or hostile work environments

The memo also discusses DEI training programs that "through their content, structure, or implementation" "stereotype, exclude, or disadvantage individuals based on protected characteristics or create a hostile work environment."

For example, trainings that "single out, demean, or stereotype individuals based on protected characteristics" are unlawful, such as those that include statements such as "all white people are inherently privileged" or "toxic masculinity." Likewise, trainings that impose penalties for dissent could result in discriminatory treatment and lead to hostile work environments.

On the flip side, the memo notes that federal law permits trainings that are focused on unlawful workplace discrimination and do not "single out particular groups as inherently racist or sexist."

Best practices recommendations

The memo outlines the following recommendations on best practices and urges entities to review all programs and policies to ensure compliance with federal law:

- **Inclusive access:** Make all programs and resources available to qualified individuals, regardless of protected characteristics,

and avoid titles that may be perceived as limiting access based on race or ethnicity. (The memorandum states, however, that some sex separation "is necessary where biological differences implicate privacy, safety or athletic opportunity.")

- **Skills-based selection:** Base decisions on specific, role-related skills and qualifications. If criteria like socioeconomic status, first-generation status or geographic diversity are considered, ensure their use is justified on grounds unrelated to conferring an advantage based on a protected characteristic.
- **Avoid demographic targets:** Eliminate programs and selection criteria designed to achieve specific demographic representation.
- **Document criteria rationale:** If using selection criteria that may correlate with protected characteristics, clearly document the legitimate, nondiscriminatory reasons for using that criteria and apply those rationales consistently. For example, if applicants are asked to describe "obstacles they have overcome" or submit a "diversity statement," institutions and employers should document that this information is used to assess neutral attributes such as resilience or perseverance.
- **Review neutral criteria:** Ensure that facially neutral criteria are not indirectly serving as proxies for protected characteristics. As an example, the memo states that "a program targeting 'low-income students' must be applied uniformly without targeting areas or populations to achieve racial or sex-based outcomes."
- **No diversity quotas:** Remove any diversity quotas from programs or policies, including any requirements that a specific protected group be represented in candidate pools, hiring panels or final selections.
- **Open trainings:** Ensure all qualified individuals can participate in training programs. Avoid segregating groups or requiring agreement with particular beliefs based on protected characteristics.
- **Nondiscrimination clauses:** Include nondiscrimination clauses in all vendor and third-party contracts, monitor for ongoing compliance and terminate funding for noncompliant programs.
- **Anti-retaliation measures:** Establish anti-retaliation procedures and safe reporting mechanisms, including in employee handbooks and program guidelines. Provide confidential, accessible channels for individuals to report concerns about unlawful practices.

Next steps

The memo demonstrates the ever-increasing regulatory scrutiny from the DOJ toward recipients of federal funding, such as educational institutions, government contractors and other organizations. These entities should proactively review and audit all DEI policies, programs and initiatives, in conjunction with counsel, in light of the way the DOJ views antidiscrimination statutes.

While this memo highlights that grant recipients may jeopardize their federal funding by engaging in certain "unlawful" practices, it is important to note that this memo applies broadly to all entities subject to federal antidiscrimination laws and reflects the current administration's approach to enforcing such laws. Further, notwithstanding the DOJ memo, there remains a body of case law and competing state laws related to DEI practices that may present challenges for companies seeking to comply with the federal guidance.

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