

Publications

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EEOC Guidance on DEI-Related Discrimination in the Workplace

On March 20, 2025, the Equal Employment Opportunity Commission (EEOC) issued two key pieces of guidance: What To Do If You Experience Discrimination Related to DEI at Work and What You Should Know About DEI-Related Discrimination at Work. It is crucial for employers to understand the potential implications of DEI programs and initiatives, and these pieces of guidance provide insight into what the EEOC will be monitoring. This article highlights key aspects of DEI-related discrimination and provides practical advice for employers to navigate these issues effectively.

What is DEI-Related Discrimination?

The guidance states that DEI-related discrimination occurs when an employer's actions, policies, or practices are motivated, in whole or in part, by an employee's race, sex or another protected characteristic. Title VII prohibits such discrimination in various aspects of employment, including hiring, firing, promotion, compensation and access to training and mentorship programs, and this guidance emphasizes these aspects of employment. Additionally, both pieces of guidance also identify access to fellowships/internships, networking, and sponsorship; fringe benefits; demotion; selection for interviews; and job duties. It applies to employees, applicants, interns and participants in training programs.

Recognizing Disparate Treatment

The guidance cautions that DEI initiatives could violate Title VII by leading to disparate treatment or creating a hostile work environment. Disparate treatment involves treating employees differently based on race, sex or other protected characteristics. These guidance documents also state that using quotas or "balancing" a workforce based on these characteristics could be unlawful.

Reverse Discrimination

The guidance explains that Title VII protections apply to all employees and applicants, not just those part of a minority group, diverse, historically under-represented or women. The guidance also states that there is not a higher showing of proof for reverse discrimination claims.

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Avoiding Segregation and Classification

The guidance also emphasizes that employers may not limit, segregate or classify employees in ways that affect their employment status or opportunities. This includes restricting membership in workplace groups or separating employees during DEI training based on protected characteristics, even if the content is the same for all groups.

Addressing Harassment and Hostile Work Environments

The guidance explains that workplace harassment is illegal when it results in an adverse change to employment terms or is so severe that it creates a hostile work environment. DEI training that includes discriminatory content or application can contribute to such an environment, according to these guidance documents. Employers should ensure that DEI programs are designed and executed in a manner that respects all employees' rights.

Understanding Retaliation

The guidance explains that Title VII protects employees from retaliation for engaging in protected activities, such as opposing discriminatory practices or participating in investigations. In particular, the guidance states that opposing unlawful discrimination that is labeled as DEI could be a protected activity.

Practical Advice for Employers

1. **Review DEI Policies:** Regularly review and update DEI programs and policies to ensure compliance with Title VII. Consider how these pieces of guidance suggest the EEOC would view the programs and policies. Evaluate whether the company might be believed to be using quotas or making employment decisions based on race, sex or other protected characteristics.
2. **Train Managers and Employees:** Provide training on recognizing and preventing discrimination and harassment. Evaluate whether anti-discrimination or DEI training would be experienced as inclusive and respectful of all employees.
3. **Encourage Open Communication:** Foster an environment where employees feel comfortable reporting discrimination or harassment without fear of retaliation.
4. **Consult Legal Experts:** Work with legal professionals to navigate complex DEI-related issues and address compliance with federal and state laws.

Polsinelli's Labor & Employment team is available to assist with evaluating DEI-related documents and initiatives or responding to EEOC claims. If you have any additional questions, please feel free to reach out to William Vail, Erin Schilling, Shivani Bailey, Polsinelli's Executive Action Working Group or your Polsinelli attorney.