

## DOJ Memoranda Take Aim at DEI-Related Private Sector Programs and Department Practices

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On February 5, 2025, U.S. Attorney General Pam Bondi issued two memoranda to all Department of Justice (DOJ) employees outlining the DOJ's new policies and directives concerning diversity, equity, inclusion, and accessibility (DEI) initiatives. The recent directives come just two weeks after President Trump issued Executive Order 14173 ([Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)) (DEI EO), which reflect the new administration's broader efforts to curtail DEI policies and initiatives within both the public and private sectors.

### DOJ MEMO NO. 1: ENDING ILLEGAL DEI AND DEIA DISCRIMINATION AND PREFERENCES

The first [memo](#) outlines the DOJ's Civil Rights Division plans to use its vast resources to address DEI efforts in the private sector and academic institutions. Under the auspices of "fulfill[ing] the Nation's promise of equality for all Americans," the memo indicates that the DOJ's Civil Rights Division "will investigate, eliminate and penalize [DEI] preferences, mandates, policies, programs, and activities in the private sector and in educational institutions that receive federal funds" and the memo is "intended to encompass programs, initiatives, or policies that discriminate, exclude, or divide individuals based on race or sex."<sup>[1]</sup> The memo is largely consistent with, and tracks the directives outlined in, President Trump's DEI EO and calls for the Civil Rights Division and Office of Legal Policy to jointly submit a report by March 1, 2025. Notably, however, the February 5 DOJ memo adds an *additional* element—not found in President Trump's DEI EO—regarding "proposals" for criminal investigation or prosecution of private actors. Specifically, the memo calls for the:

Development of a plan, including "specific steps or measures to deter the use of DEI . . . programs or principles that constitute illegal discrimination or preferences, including *proposals for criminal investigations . . .*."<sup>[2]</sup>

According to the memo, DOJ's directive to "end illegal discrimination and preferences" is consistent with the U.S. Supreme Court's 2023 decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023), which struck down affirmative action programs in higher education institutions. The latest DOJ memo, however, goes well beyond the decision in *Students for Fair Admissions*; the Attorney General is now directing the abolition of all "discriminatory" DEI initiatives, while suggesting that traditional efforts in the private sector to foster diversity and inclusion may be inherently discriminatory.

While it is unclear how DOJ intends to frame any potential criminal prosecution of private actors under the existing legal framework, all organizations should carefully evaluate their DEI programs in light of the latest directive

instructing the Civil Rights Division and the Office of Legal Policy to propose specific steps to investigate DEI practices in the private sector.

## DOJ MEMO NO. 2: ELIMINATING INTERNAL DISCRIMINATORY PRACTICES

The second [memo](#) requires all DOJ components to “thoroughly evaluate consent decrees, settlement agreements, litigation positions (including those set forth in amicus briefs), grants or similar funding mechanisms, procurements, internal policies and guidance, and contracting arrangements” to ensure there are no “race- or sex-based preferences, diversity hiring targets, or preferential treatment based on [DEI]-related criteria” within such materials, policies, or programs.<sup>[3]</sup> Significantly, the memo directs DOJ to update its guidance to “narrow the use of ‘disparate impact’ theories that effectively require use of race- or sex-based preferences. The guidance shall also emphasize that statistical disparities alone do not automatically constitute unlawful discrimination.”

The memo further instructs each DOJ component to “pay particular attention to ending references to DEI” in “(1) training and programs, including references to ‘unconscious bias,’ ‘cultural sensitivity,’ ‘inclusive leadership,’ and any emphasis on race- or sex-based criteria rather than merit; (2) policies and guidelines, including hiring, promotion, or performance evaluation policies; and (3) vendor contracts and budget materials.” The guidance—directed only to DOJ components and not to private entities—serves as a useful guidepost for private companies aiming to review, revise, or align with DOJ priorities in this area, and demonstrates how the federal government intends to reshape its programs to effectively eliminate references to DEI in its trainings, policies, vendor contracts, and budget materials.

For organizations in the private sector, this latest threat to DEI programs and initiatives comes on the heels of [potential False Claims Act exposure](#) for federal contractors and subcontractors and further emphasizes the need to evaluate those efforts in anticipation of potential close scrutiny and potential federal enforcement activity in this area.

**For more information, please see our [previous blog post](#) discussing this topic, *Executive Order Changes Requirements for Affirmative Action Plans and Other DEI Programs*. Please reach out to your Winston relationship partner if you have any additional questions.**

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[1] DOJ Mem., “Ending Illegal DEI and DEIA Discrimination and Preferences” (Feb. 5, 2025) at 1.

[2] *Id.* at 1-2 (emphasis added).

[3] DOJ Mem., “Eliminating Internal Discriminatory Practices” (Feb. 5, 2025) at 1.

4 Min Read

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