

2025 US Executive Orders, DEI, and Employment: How In-house Lawyers Can Help the Business

Employment and Labor



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Remind me, what's an executive order?

Executive orders are directives ordered by the president of the United States that direct government agencies and officials to take specific actions. While they are not laws, they have the force of law and impact how existing laws are implemented or enforced.

Executive orders affect the agencies of the executive branch and therefore do not need the approval of Congress. They must be within the president's constitutional authority and may be challenged in court if deemed unconstitutional.

Executive orders may be rescinded, overturned by future presidents, or challenged in court, and enforcement priorities can change during any administration.

The new administration's actions have far-reaching effects beyond executive orders. For more on mitigating risk, global businesses can seize new opportunities by remaining nimble.

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Implications of the executive orders for DEI initiatives and employment in private-sector organizations

On Jan. 21, President Trump issued “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” which reverses various prior executive orders and memoranda, including Executive Order 11246 (EO 11246) signed in 1965 by President Lyndon B. Johnson.

EO 11246 required every government contract to include a statement that the contractor will not discriminate against any employee or applicant for employment based on race, creed, color, or national origin.

Despite President Trump’s new executive order, the underlying federal anti-discrimination law remains unchanged for private-sector employees.

However, the executive order signals that there may be changing enforcement priorities in the new administration. The order directs all federal agencies to “combat illegal private-sector DEI preferences, mandates, policies, programs, and activities.”

In December 2024, President-elect Trump tapped Harmeet K. Dhillon to lead the Justice Department’s civil rights office, pointing to his record of “suing corporations who use ‘woke’ policies to discriminate against their workers.”

The second installment of the ACC Foundation’s Beyond the Backlash series features Gibson Dunn’s DEI Task Force discussing strategies for companies to navigate current challenges to DEI initiatives.

In addition to revoking EO 11246, the Jan. 21 executive order instructs each agency of the federal government to identify “up to nine potential civic compliance investigations” of private sector entities within 120 days of the order — by May 21, 2025.

The private sector entities subject to these investigations include publicly traded corporations, large nonprofits — including bar associations — large foundations, and universities whose endowments exceed US$1 billion.

Organizations that may be targeted should ask:

- What is my organization’s risk tolerance?
- How will employees react to the company’s actions?
- How will customers and stakeholders respond?

What in-house counsel should think about:

Assess any federal contracts and grants

- Determine if they contain any terms or conditions related to DEI that may conflict with current laws and regulations

Review your organization's existing DEI policies to understand your risk

- Prepare for increased scrutiny and potential civil compliance investigations

Document, document, document

- Hiring and recruitment processes
- Performance evaluations and promotion decisions
- Training materials and attendance records
- Any changes to DEI policies

Implications for federal contractors

Among other measures, the Jan. 21 Executive Order requires the heads of federal agencies to include specific terms in every contract or grant award:

- "A term requiring the contractual counterparty or grant recipient to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code"; and
- "A term requiring such counterparty or recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws."

Section 3729 of title 31 of the United States Code is a provision of the US False Claims Act, a federal law that imposes civil penalties on those who make false claims to the government in order to influence the payment or receipt of money or property.

The certification requirement carries a potential risk of litigation for federal contractors under the False Claims Act. In-house lawyers at federal contractors thus have a particular interest in ensuring their organization's policies, procedures, practices, communications and content, are reviewed. Assess if adjustments are needed to mitigate the risk of litigation.

Executive orders targeting illegal immigration

President Trump's initial flurry of executive orders included many — such as the Jan. 20 executive order "Protecting the American People Against Invasion" — aimed at restricting illegal immigration and deporting illegal immigrants. The orders call for enforcement actions by federal agencies against illegal immigration.

In-house lawyers should consider reviewing their organization's employment eligibility verification process. They may also want to consider whether the organization is prepared for responding to an I-9 audit or a worksite enforcement action (or raid) by immigration enforcement agencies.

Sectors that may be particularly impacted include agriculture, hospitality, and other industries such as construction. From 2020-2022, 42 percent of crop farmworkers held no work authorization, according to the US Department of Agriculture. The American Immigration Council estimates that more than one million undocumented immigrants work in hospitality, representing 7.1 percent of the workforce.

In-house counsel have an important role to play in developing and ensuring consistent application of the Form I-9 and E-Verify regulations the federal government uses to implement and enforce immigration law, shares John W. Mazzeo, AGC, director of I-9 and E-Verify compliance for Vertical Screen, Inc., in a 2024 *ACC Docket* article.

Check out informative checklists of considerations relevant for in-house lawyers on the topic of I-9 audits and worksite enforcement actions.

If an employer does not cooperate with a civil administrative warrant presented by US Immigration and Customs Enforcement (ICE), there is a risk that the agency could commence an I-9 audit if they felt an employer was obstructing their need to arrest a non-citizen employee, or in some cases obtain a criminal warrant from a judge if actions support it.

Steps in-house counsel should consider:

- Determine how many employees could potentially be affected
- Review your organization's employment eligibility verification process
- Ensure your organization's process is documented and defensible
- Implement and enforce clear policies
- Monitor legal developments, including litigation and enforcement guidance

Mitigate risk, remain nimble, and seize new opportunities

The recent executive orders will significantly affect global businesses. Legal departments and in-house counsel will need to help their organizations understand and adapt to changes, ensuring compliance or litigating when appropriate.

Many of the new administration's decisions will play out over the coming months, including new executive orders and legal challenges. The *Docket* will continue to monitor developments. Global in-house lawyers should prepare for rapid developments related to:

- **Trade and tariffs.** On Feb. 1, President Trump ordered the imposition of a 25-percent tariff on imports from Canada and Mexico, and 10-percent additional tariffs on imports from China. The former two were both delayed by a month as the administration engages in negotiations. Meanwhile, China has begun its own retaliatory measures on US goods. He had previously announced his intent to impose 25-percent escalating tariffs on Colombia (an action that was ultimately not taken).

- **Technology and intellectual property.** One of the president's first actions was to rescind the previous administration's AI executive order. The new administration also extended a grace period for TikTok's impending ban, sending waves throughout the technology sector, both in the United States and abroad.

- **Energy, climate, and health.** The president also withdrew the United States from the Paris Climate Agreement and the World Health Organization, putting an early emphasis on American energy independence and away from the previous administration's global sustainability efforts.

Steps in-house counsel should consider:

- Assess the impact of potential tariff increases on supply chain and business continuity.
- Assess the organization's dependency on social media platforms, such as for marketing purposes, and the potential needs to backup social media data and assets in the event their preferred platform ceases to be available.
- Consider how developments in the new administration's approach to environmental, sustainability and governance issues may impact the organization's ESG strategy.

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