

UPDATE ON THE CURRENT STATUS AND LATEST DEVELOPMENTS RELATED TO EEO AND DEI COMPLIANCE AT THE END OF THE FEDERAL GOVERNMENT FISCAL YEAR

DirectEmployers Association

ROFFMAN HORVITZ, PLC
LEGAL COUNSELING
HUMAN RESOURCES COMPLIANCE AND EMPLOYMENT DATA ANALYTICS

**JOSHUA S. ROFFMAN
ALISSA A. HORVITZ
JAMES M. MCCAULEY**

SEPTEMBER 25, 2025

1

1

MEET THE TEAM



JOSHUA S. ROFFMAN
MANAGING ATTORNEY

Joshua Roffman is the Managing Attorney of the Firm. Josh's practice focuses on advising and assisting employers with using data and statistical tools to evaluate their employment practices. He has been advising federal contractor employers about compliance with federal and state equal employment opportunity and "affirmative action" requirements for over twenty years. He currently is guiding employers in assessing their DEIA and similar programs for risk mitigation and compliance with nondiscrimination laws.

Josh also advises and assists employers with privileged pay equity statistical analyses. He develops and runs the statistical analyses and combines that with knowledge of the law and a pragmatic understanding of businesses and other employers to ensure analytical rigor, usefulness, and legal soundness.

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2

2

MEET THE TEAM



ALISSA A. HORVITZ
MEMBER ATTORNEY

Alissa Horvitz is a Member Attorney in the firm she co-founded with Josh Roffman. Alissa focuses her practice on evaluating nondiscrimination and equal opportunity throughout all phases of employment using data and employment analytics. This includes analysis and advice regarding EEO in recruiting, hiring, promotions, terminations, and compensation (pay equity), as well as DEI reviews for government contractor employers seeking to unwind their compliance with EO 11246. Alissa also does live and virtual training on relevant employment law topics.

MEET THE TEAM



JAMES M. MCCAULEY
ASSOCIATE ATTORNEY

James McCauley is an Associate Attorney with Roffman Horvitz. James's experience includes evaluation and analysis of employment practices to ensure equal opportunity; preparation of EEO-1, VETS-4212, and California Pay Data Reporting filings; pay equity analyses; and analysis of applicant and hire records to address potential claims of hiring disparities.

OUTLINE

- Executive Order 14173 Implementation
- Guidance on “Unlawful” DEI
- Regulatory Activity
- Status of OFCCP and EEOC
- Anti-DEI Activity
- Use of Statistical Analysis in Assessing Employment Decisions and Practices

EXECUTIVE ORDER 14173 IMPLEMENTATION

EXECUTIVE ORDER 14173 TIMELINE

- January 21, 2025: [Executive Order](#) Issued
- May 21, 2025: Deadline for Attorney General to submit a report containing recommendations for appropriate measures to encourage the private sector to end illegal discrimination and preferences

MAY 21 ATTORNEY GENERAL'S REPORT

- Directed to identify:
 - Key sectors of concern within each agency's jurisdiction
 - The most egregious and discriminatory DEI practitioners in each sector
 - A plan to deter DEI programs that constitute illegal discrimination (next slide)
 - Other strategies to encourage the private sector to end illegal DEI discrimination and preferences and comply with all Federal civil rights laws
 - Litigation that would be appropriate for federal lawsuits, intervention, or statements of interest
 - Potential regulatory action and sub-regulatory guidance.

PLAN TO DETER ILLEGAL DEI

- All agencies to identify up to 9 civil compliance investigations of:
 - Publicly traded corporations, large non-profit corporations or associations, foundations with assets of 500 million dollars or more
 - State and local bar and medical associations, and institutions of higher education with endowments over 1 billion dollars
- Voluntary OFCCP contractor portal submissions?
 - Efforts to wind down compliance with the EO 11246 regulatory scheme and ensure full compliance with the Nation's non-discrimination laws
 - Actions taken in response to EO 14173

ENFORCEMENT MECHANISMS (Slide 1 of 2)

- False Claims Act
 - Consequences
 - Qui tam actions
 - What makes something a "false claim"
 - Falsity and knowledge of falsity
 - Knowledge is subjective
 - Actual knowledge
 - Deliberate ignorance
 - Reckless disregard

ENFORCEMENT MECHANISMS (Slide 2 of 2)

- Contractor Certification
 - Substance
 - Implementation status
 - [Interim Final Rule Implementing EO 14173](#) (FAR Council)?
- DOJ Civil Rights Fraud Initiative

GUIDANCE ON “UNLAWFUL” DEIA

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- EEOC DEI at Work Poster and DEI-Related Discrimination at Work FAQs – March 19
- Attorney General Memo – Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination – July 29
- Other Perspectives

REGULATORY ACTIVITY

REGULATORY ACTIVITY

- Proposed [rescission](#) of EO 11246 Regulations (OFCCP)
- Proposed [revision](#) of the VEVRAA Regulations, principally to remove cross references to the enforcement provisions previously set out in the EO 11246 regulations (OFCCP)
- Proposed [revision](#) of the Section 503 Regulations
 - Remove cross references to the enforcement provisions previously set out in EO 11246 regulations (OFCCP)
 - Eliminate the collection of disability self-identification data from applicants and employees
 - Eliminate data collection analyses for individuals with disabilities
 - Eliminate the disability utilization analysis
 - Retain requirement to annually assess effectiveness of efforts in identifying and recruiting individuals with disabilities
- Summary of comments
- [Request for public comments](#) regarding disability self-identification form
 - Comments due by October 23, 2025

STATUS OF OFCCP AND EEOC

UNCERTAINTY ABOUT OFCCP'S FUTURE

- Budget
- Contractor portal
- Proposed regulations
- Staffing

EEOC – STILL NO QUORUM

- Kalpana Kotagal
 - Democrat, Biden appointee
 - Assumed office on August 9, 2023
 - Term expires on July 1, 2027
- Andrea Lucas
 - Republican, Trump appointee
 - Assumed office on October 19, 2020
 - Made Acting Chair on January 20, 2025
 - Current term was scheduled to expire on July 1, 2025
 - Renominated on March 24, 2025
 - Confirmed by Senate on July 31, 2025
 - Term expires July 1, 2030
- Brittany Panuccio
 - Republican, Trump nominee
 - Nominated by President Trump on May 6, 2025 for term that expires on July 1, 2029
 - Advanced by Senate HELP Committee on July 23, 2025
 - Identified in September 18, 2025 Senate Majority Leader executive resolution to schedule confirmation by full Senate of 108 nominees before end of month / fiscal year

ANTI-DEI ACTIVITY

19

19

ANTI-DEI ACTIVITY

- EEOC letters to large law firms
- Educational institutions
 - Department of Education position
 - Investigations
 - Settlements and pressure campaigns
 - Litigation
 - Department of Justice
 - IPEDS data to monitor race-based admissions
 - [August 7, 2025 Presidential Memorandum](#)
- Federal Communications Commission
- States

20

20

USE OF STATISTICAL ANALYSIS IN ASSESSING EMPLOYMENT DECISIONS AND PRACTICES

21

21

USE OF STATISTICAL ANALYSIS IN ASSESSING EMPLOYMENT DECISIONS AND PRACTICES

- Disparate Impact
 - [Executive Order 14281](#) (“Restoring Equality of Opportunity and Meritocracy”) – April 23, 2025
 - Title VII, Civil Rights Act of 1991
 - State Laws
 - EEOC – Right to Sue Letters
- Pattern or practice of intentional discrimination
 - Acting EEOC Chair May 7, 2025 Post on X

22

22

REMINDER

- VETS-4212s due by September 30

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THANK YOU