

# DEIA DEVELOPMENTS WEBINAR SERIES

Webinar #3

**ROFFMAN HORVITZ, PLC**  
LEGAL COUNSELING  
FEDERAL CONTRACT COMPLIANCE & EMPLOYMENT DATA ANALYTICS

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

**APRIL 11, 2025**

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## 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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## 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

- Florida Attorney General Policy Memorandum
- Presidential Memorandum Directing Repeal of “Unlawful” Regulations
- Other Developments
- Deals Have Consequences
- Certifying Compliance With Executive Order 14173

## FLORIDA ATTORNEY GENERAL POLICY MEMORANDUM (slide 1 of 2)

- Florida Attorney General’s Office will no longer engage private law firms “who have or continue to engage in illegal and inappropriate discrimination and bias”
- Law firm “practices/programs/affiliations/memberships” with “disqualifying presumption”:
  - DEI (“give rise to a disqualifying presumption”)
    - Mansfield Certification
    - Minority Corporate Counsel Association Scorecard
    - Diversity Targets in Hiring, Promotion, and Contracting
    - Diversity Fellowships
      - Leadership Council for Legal Diversity
      - SEO Law Fellowship
    - Diversity Mentorship Programs
    - DEI Websites
    - Workplace DEI Trainings

## FLORIDA ATTORNEY GENERAL POLICY MEMORANDUM (slide 2 of 2)

- Law firm “practices/programs/affiliations/memberships” with “disqualifying presumption” (continued):
  - ESG (“illegal and immoral social engineering:” give rise to a disqualifying presumption”)
    - NetZero Lawyers Alliance
    - Legal Charter 1.5
    - NetZero Practice Groups Promoting ESG To Clients
  - Programs mandated by clients
    - Hewlett-Packard
    - Microsoft Law Firm Diversity Program
- Takeaways
  - Most of these things are unquestionably lawful; none are definitively unlawful
  - The leverage is not getting (or losing) state contracts
  - Targeting third-party diversity initiatives and requirements imposed by law firm clients

## PRESIDENTIAL MEMORANDUM DIRECTING REPEAL OF UNLAWFUL REGULATIONS (slide 1 of 2)

- April 9 memorandum directs agencies to identify unlawful regulations within 60 days and begin plans to repeal them
- References 10 specific US Supreme Court decisions
- Noteworthy SCOTUS decisions:
  - *Loper Bright*
    - Overturned Chevron doctrine
  - *West Virginia v. EPA*
    - Major questions doctrine

## PRESIDENTIAL MEMORANDUM DIRECTING REPEAL OF UNLAWFUL REGULATIONS (slide 2 of 2)

### •Noteworthy SCOTUS decisions (continued):

#### •*Jarkesy*

- Limitations on use of ALJs and agency courts
- Third Circuit Appeals court hearing on April 10 – DOL ALJs under the Immigration and Nationality Act (“public rights”)

#### •*Michigan v. EPA*

- Administrative Procedure Act (“APA”) cost-benefit analysis

#### •*Students for Fair Admissions v. Harvard*

- College/university affirmative action programs
- “Agencies . . . must repeal any regulation that imposes racially discriminatory rules or preferences. As the Court said, ‘[e]liminating racial discrimination means eliminating all of it.’”

## OTHER DEVELOPMENTS

### •Fired EEOC Commissioner Samuels initiates unlawful termination suit – April 9

#### •1964 Civil Rights Act explicitly mandates a bipartisan Commission

- “shall be composed of five members, not more than three of whom shall be members of the same political party” 42 U.S.C. § 2000e-4(a)

- Courts seem to be giving significant discretion to White House on terminating appointed leaders of independent agencies

#### •January 28 termination email/letter

### •Starbucks motion to dismiss Missouri Attorney General’s lawsuit targeting the company’s DEI programs – April 7

## DEALS HAVE CONSEQUENCES

- Senator Blumenthal / Representative Raskin information requests / letters to law firms that made deals with the Trump Administration – April 6
- President Trump states intention to use pro bono commitments of law firm deals for work on tariffs negotiations and Defense Protection Act coal mining initiative – April 8

## CERTIFYING COMPLIANCE WITH EXECUTIVE ORDER 14173

## CONTRACTOR CERTIFICATION

- That compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of the False Claims Act
- It does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws

## FALSE CLAIMS ACT

“Two essential elements of an FCA violation are (1) the falsity of the claim and (2) the defendant’s knowledge of the claim’s falsity.”  
*United States et al. Ex Rel. Schutte v. Supervalu, Inc.*, 143 S.Ct. 1391, 1394 (2023).

- Knowledge (based on subjective beliefs)
  - Actual Knowledge
  - Deliberate Ignorance
  - Reckless Disregard

*See id.*

## REVIEW OF DEIA PROGRAMS (slide 1 of 2)

- Assessing from three perspectives
  - Ensuring all initiatives are lawful
  - Assessing risks to the organization
    - Risk don't flow in one direction; retreating from DEI initiatives may have negative ramifications vis-à-vis customers, recruiting, employees, workforce morale
    - Programs that are likely lawful will be targets of federal, state, and private party anti-DEI initiatives
  - Determining organization's core values
- Recommended that it be done under privilege
- Should be done soon
  - April 21
  - Publicly available information probably already being scrutinized

## REVIEW OF DEIA PROGRAMS (slide 2 of 2)

- Areas for review:
  - Language
  - Participation in third-party diversity initiatives
  - Internal website and communications
  - External website and communications
  - SEC filings, annual reports / quarterly statements, ESG programs
  - Employee resource/affinity groups
  - Internships, trainings, and other "diversity" employment programs
  - Diverse slates and preferences for "diverse" candidates
  - Performance evaluations and bonuses tied to diversity metrics
- Adverse impact and other data analyses
- Messaging



## DEIA DEVELOPMENTS WEBINAR SERIES INFORMATION

- Next Webinar – Thursday, April 24 (2 – 3 PM Eastern)
  - <https://attendee.gotowebinar.com/register/5532174509999951190>
- Recording of March 28 Webinar
  - <https://attendee.gotowebinar.com/recording/2350460537810695518>
- Recording of April 4 Webinar
  - <https://attendee.gotowebinar.com/recording/4288541096943950593>

## ROFFMAN HORVITZ DIRECTEMPLOYERS WEBINAR

- April 23 (2 PM Eastern) – The First 90 Days: Developments Since Executive Order 11246 Was Rescinded
  - [https://directemployers.zoom.us/webinar/register/WN\\_1PvqBbVMRqy0E7C8JxVmUA#/registration](https://directemployers.zoom.us/webinar/register/WN_1PvqBbVMRqy0E7C8JxVmUA#/registration)

ROFFMAN HORVITZ, PLC  
LEGAL COUNSELLING  
ROFFMAN HORVITZ, PLLC is a member firm of the

**JOSHUA S. ROFFMAN**

Managing Attorney  
(703) 752-3775  
jroffman@roffmanhorvitz.com

**ALISSA A. HORVITZ**

Member Attorney  
(703) 752-3776  
ahorvitz@roffmanhorvitz.com

**JAMES M. MCCAULEY**

Associate Attorney  
(703) 752-3766  
jmccauley@roffmanhorvitz.com

**THANK  
YOU**