

March 21, 2025

EEOC and DOJ Issue Technical Assistance Documents on DEI-Related Discrimination in the Workplace

On March 19, 2025, the U.S. Equal Employment Opportunity Commission (“EEOC”) and the U.S. Department of Justice (“DOJ”) issued two technical assistance documents addressing the agencies’ views as to what diversity, equity, and inclusion (“DEI”) practices in the workplace may be illegal. The documents advise that although DEI is a “broad term” that is not defined in Title VII of the Civil Rights Act of 1964 (“Title VII”), DEI activities may be unlawful if they involve an employment action motivated “in whole or in part” by an employee’s race, sex, or other protected characteristic. The documents emphasize that Title VII applies “to a wide variety of aspects of employment,” and that “workers only need to show ‘some injury’ or ‘some harm’ affecting ‘their terms, conditions or privileges’ of employment” “to allege a colorable claim of discrimination.” The agencies also reject the concept of “reverse discrimination,” stating that Title VII applies “equally to all workers” and that the same standard of proof is applicable to all race discrimination claims, regardless of the victim’s race. In addition, the documents address the application of Title VII to certain DEI practices relating to DEI training, Employee Resource Groups, diverse interview slates, mentoring and networking programs, and training and programming.

TECHNICAL ASSISTANCE DOCUMENTS

In the March 19, 2025 joint press release, the EEOC and DOJ stated that the technical assistance documents were being issued to “educat[e] the public about unlawful discrimination related to [DEI] in the workplace.” The release noted that DEI practices have become “increasingly prevalent in many of our nation’s largest and most prominent businesses, universities, and cultural institutions,” but that the “widespread adoption” of such practices “does not change longstanding legal prohibitions against the use of race, sex, and other protected characteristics.” The two technical documents include:

New York Washington, D.C. Los Angeles Palo Alto London Paris Frankfurt Brussels
Tokyo Hong Kong Beijing Melbourne Sydney

SULLIVAN & CROMWELL LLP

- A joint one-page [technical assistance document](#) released by the EEOC and the DOJ, titled *What To Do If You Experience Discrimination Related to DEI at Work*, which advises employees about their rights and how to report unlawful discrimination based on DEI practices (“EEOC/DOJ Information Sheet”); and
- A [technical assistance document](#) issued solely by the EEOC, titled *What You Should Know About DEI-Related Discrimination at Work*, which provides answers to 11 questions relating to DEI (“EEOC Q&A Document”).

In the press release, EEOC Acting Chair Andrea Lucas stated: “Far too many employers defend certain types of race or sex preferences as good, provided they are motivated by business interests in ‘diversity, equity, or inclusion.’ But no matter an employer’s motive, there is no ‘good,’ or even acceptable, race or sex discrimination. . . . While the public may be confused about what rules apply to DEI, the law itself is clear. And there are some serious implications for some very popular types of DEI programs. These technical assistance documents will help employees know their rights and help employers take action to avoid unlawful DEI-related discrimination.” Deputy Attorney General Todd Blanche also stated that the DOJ is “committed to ending illegal DEI initiatives, policies, and programs. . . . The technical assistance document provides clear information for employees on how to act should they experience unlawful discrimination based on DEI practices.”

As of January 28, 2025, following President Trump’s removal of two Commissioners, the EEOC has not had a quorum of Commissioners. As a result, the EEOC currently does not have the authority to vote on rulemaking, issue new policies, or rescind prior guidance. Accordingly, the technical assistance documents issued by the EEOC do not reflect new EEOC policy; rather, as stated in the joint press release, the documents reflect the agencies’ views on the application of “Title VII, existing EEOC policy guidance and technical assistance documents and Supreme Court precedent” to DEI practices.

A. EEOC Q&A Document

The EEOC Q&A Document addresses the scope of Title VII and the process for bringing a Title VII claim. The document stresses that Title VII does not have any exception for DEI practices, and a DEI practice is unlawful if it involves an employer “taking an employment action motivated—in whole or in part—by race, sex, or another protected characteristic.”¹ “For there to be unlawful discrimination, race or sex (or any other protected characteristic under Title VII) does not have to be the exclusive (sole) reason for an employer’s employment action or the ‘but-for’ (deciding) factor for the action. An employment action still is unlawful even if race, sex, or another Title VII protected characteristic was just one factor among other factors contributing to the employer’s decision or action.” The document further states that “to allege a colorable claim of discrimination, workers only need to show ‘some injury’ or ‘some harm’ affecting their ‘terms, conditions, or privileges’ of employment.”

The Q&A Document emphasizes that unlawful DEI practices cannot be justified because they have a “business necessity or interest in ‘diversity,’ including preferences or requests by the employer’s clients or customers.” “[C]lient or customer preference is not a defense to race or color discrimination.” “Basing

SULLIVAN & CROMWELL LLP

employment decisions on the racial preferences of clients, customers, or coworkers constitutes intentional race discrimination.”

The Q&A Document provides that, among other things, Title VII bars discrimination or disparate treatment against employees in the terms, conditions, or privileges of employment, including disparate treatment in:

- Hiring;
- Firing;
- Promotion;
- Demotion;
- Compensation;
- Fringe benefits;
- Access to or exclusion from training (including training characterized as leadership development programs);
- Access to mentoring, sponsorship, or workplace networking/networks;
- Internships (including internships labeled as “fellowships” or “summer associate” programs);
- Selection for interviews (including placement or exclusion from a candidate “slate” or pool); and
- Job duties or work assignments.

With respect to training, the Q&A Document also states that (i) an employee may allege that “diversity or other DEI-related training created a hostile work environment by pleading or showing that the training was discriminatory in content, application, or context”; and (ii) “[u]nlawful limiting, segregating, or classifying workers related to DEI can arise when employers separate workers into groups based on race, sex, or another protected characteristic when administering DEI or any trainings, workplace programming, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources.”

The Q&A Document specifically addresses Employee Resource Groups, in the context of discussing unlawful segregation of employees. It states that it is unlawful for employees to “limit[], segregate[], or classify[] employees or applicants based on race, sex, or other protected characteristics in a way that affects their status or deprives them of employment opportunities.” “In the context of DEI programs, unlawful segregation can include limiting membership in workplace groups, such as Employee Resource Groups (ERG), Business Resource Groups (BRGs), or other employee affinity groups, to certain protected groups.”

The Q&A Document also notes that Title VII prohibits employers from “retaliating because an individual has engaged in protected activity under the statute,” which, “[d]epending on the facts, . . . could include opposing unlawful employment discrimination related to an employer policy or practice labeled as ‘DEI.’”

The Q&A Document also states that Title VII prohibits discrimination “based on race, sex, or another protected characteristic[,] . . . no matter which employees or applicants are harmed.” “The EEOC does not

SULLIVAN & CROMWELL LLP

require a higher showing of proof for so-called ‘reverse’ discrimination claims.” “The EEOC’s position is that there is no such thing as ‘reverse’ discrimination; there is only discrimination.”²

B. EEOC/DOJ Information Sheet

The one-page EEOC/DOJ Information Sheet contains much of the same information as the EEOC Q&A Document and advises employees, potential and actual applicants, interns, and training program participants to promptly contact the EEOC if they experience DEI-related discrimination.

TAKEAWAYS

Although the technical assistance documents do not have the force of law, they set forth the agencies’ views as to what constitutes illegal DEI under existing law and reflect that DEI practices will continue to be a focus for President Trump’s administration.

ADDITIONAL INFORMATION

To stay informed of litigation and regulatory developments that affect the workplace, [click here](#) to subscribe to our *Legal Developments Affecting the Workplace* [blog](#).

* * *

ENDNOTES

- ¹ The technical assistance documents do not address the applicability of the Supreme Court’s decisions in *United Steelworkers of America v. Weber*, 443 U.S. 193 (1979) and *Johnson v. Transportation Agency, Santa Clara County*, 480 U.S. 616 (1987), which permit affirmative action plans under Title VII in certain circumstances.
- ² A Supreme Court decision in *Ames v. Ohio Dep’t of Youth Services* is currently pending, which is expected to address the question of whether a majority-group plaintiff must show additional “background circumstances” to support a discrimination claim under Title VII, beyond what a minority-group plaintiff must show. A decision is expected by June 2025.

SULLIVAN & CROMWELL LLP

ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 900 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers or to any Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an e-mail to SCPublications@sullcrom.com.