

The EEOC clarifies that DEI programs may violate Title VII

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On March 19, 2025, the U.S. Equal Employment Opportunity Commission (“EEOC”) and the U.S. Department of Justice (“DOJ”) released guidance discussing when “diversity, equity and inclusion” (“DEI”) practices may amount to unlawful discrimination under Title VII of the Civil Rights Act of 1964 (“Title VII”).

The two “technical assistance documents” include a one-page document released jointly by the EEOC and DOJ, “[What To Do If You Experience Discrimination Related to DEI at Work](#)” and a longer Q&A issued by the EEOC, “[What You Should Know About DEI-Related Discrimination at Work](#)” (“Q&A”).

Both documents begin by clarifying that DEI is a “broad term” that is not defined by Title VII. In the Q&A, the EEOC states that as with any other employment practice, a DEI initiative is unlawful if it involves an employer or covered entity “taking an employment action motivated – in whole or in part – by race, sex, or another protected characteristic.” In addition to employment actions such as hiring, firing, promotion, demotion and compensation, the EEOC reiterates that the prohibition against disparate treatment also includes disparate treatment in fringe benefits, access to training, mentoring and internships, selection for interviews, placement or exclusion from a job pool, and job duties and work assignments.

The EEOC and DOJ provide the following examples of DEI practices that may violate Title VII:

- Limiting membership in workplace groups (such as employee affinity groups) to certain protected groups;
- Separating workers into certain protected groups when administering training or programming;
- Basing employment decisions on the racial preferences of clients, customers, or coworkers; and
- Using quotas or “balancing” a workforce by race, sex or other protected traits.

The EEOC also warns that diversity or DEI-related training may give rise to a hostile work environment if an employee can “plausibly allege” that the training was “discriminatory in content, application, or context.” Similarly, the Q&A notes that opposition to DEI practices and trainings may constitute protected activity giving rise to a claim of unlawful retaliation.

The Q&A reiterates that in addition to protecting employees, Title VII protections also extend to applicants, training or apprenticeship program participants, and in some cases – interns. The Q&A also reviews that a “covered entity” under Title VII includes employers, employment agencies, entities operating training programs

and labor organizations.

Cullen and Dykman LLP continues to monitor important developments in labor and employment law. Should you have any questions about the impact of this guidance on your institution or company's practices, please contact Brian Selchick (BSelchick@cullenllp.com) at (518) 788-9426 or Nicole Donatich (NDonatich@cullenllp.com) at (516) 396-9116.

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