

Overview of the Department of Justice's DEI Guidance & Recommended Compliance Strategies

On July 30, U.S. Attorney General Pam Bondi released [guidance](#) clarifying how federal antidiscrimination laws apply to programs—especially those labeled as diversity, equity, and inclusion (DEI)—that may result in unlawful discrimination. The memo outlines examples of potentially discriminatory practices and provides nine recommended and non-binding best practices to help federal funding recipients, including contractors and grantees, stay compliant and avoid legal risks.

While directed at federal agencies, this guidance is highly instructive for recipients of federal funds, including contractors and grantees, seeking more clarity around policies and practices that the Trump Administration views as “illegal discrimination.” See [Executive Order \(EO\) 14173](#), *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*.

This document provides an overview of DOJ's guidance and concludes with Trendline's considerations and strategic recommendations.

Overview of DOJ Guidance

Centered on Existing Anti-Discrimination Laws

The guidance relies on existing laws prohibiting discrimination based on race, sex, national origin, religion, and other protected traits, including:

- Title VI and Title VII of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1972
- Equal Protection Clause of the Fourteenth Amendment

Identifies Potentially Unlawful Practices

The DOJ provides a non-exhaustive list of four categories where policies and practices may involve unlawful discrimination.

- **Preferential Treatment Based on Protected Traits:** Favoring individuals based on race, sex, or similar characteristics—such as through race-based scholarships, hiring priorities, or segregated spaces—is generally unlawful unless narrowly justified.
- **Use of Proxies for Race or Sex:** Neutral-sounding criteria may be illegal if used to favor or exclude protected groups. Examples identified by DOJ include: “Cultural competency” or “lived experience” requirements; Targeted recruitment based on community demographics; Diversity statements or narratives emphasizing identity-based adversity
- **Segregation by Race or Sex:** Programs, trainings, or facilities separated by race or biological sex (e.g., dorms or lounges) typically violate federal law.

- **Discriminatory or Hostile Training Programs:** DEI trainings that stereotype, exclude, or penalize participants based on protected traits may constitute unlawful discrimination or harassment.

DOJ's Nine Recommended Best Practices

1. **Ensure Inclusive Access:** Programs should be open to all qualified individuals.
2. **Establish Objective Criteria and Qualifications:** Base selection on clear, relevant skills—not vague criteria like “cultural competency.”
3. **Prohibit Demographic Criteria:** Programs must not use explicit or indirect demographic targets (e.g., “underserved geographic areas” or “first-generation students”) to achieve outcomes or influence representation based on race, sex, or other protected groups.
4. **Justify & Document Criteria:** Ensure all selection methods are legitimate and unrelated to protected characteristics.
5. **Audit Neutral Policies to Avoid “Proxy” Risks:** Review facially neutral policies and practices for any potential “proxy” effects to ensure they are not functioning as unlawful stand-ins for protected characteristics or considered targeting areas or groups to achieve race or sex-based outcomes.
6. **Eliminate Diversity Targets and Quotas:** Avoid race- or sex-based targets or quotas in hiring, admissions, or selection processes. Replace “diverse slate” rules with merit-based approaches.
7. **Keep Trainings Neutral & Inclusive:** All training programs should be inclusive, free from segregation, and must not promote stereotypes or compel ideological affirmations or confessions to personal biases or privileges tied to protected traits.
8. **Include Nondiscrimination Clauses in Contracts:** Include nondiscrimination clauses in grants and contracts and require compliance from third parties receiving federal funds.
9. **Whistleblower Protections:** Establish clear anti-retaliation policies. Provide safe, accessible ways to report discrimination concerns. Include policies in handbooks, codes of conduct, and program materials.

Considerations and Strategic Recommendations

While the guidance creates no new legal requirements and represents only the DOJ's interpretation of existing antidiscrimination laws without binding authority, it effectively provides a comprehensive roadmap for what the Trump administration considers "illegal DEI" practices, signaling enforcement priorities that will likely influence politically aligned EEOC Commissioners and federal agency enforcement and decision-making.

Most significantly, the emphasis on whistleblower protections creates a powerful enforcement mechanism that may encourage individuals to leverage the guidance as the basis for False Claims Act cases, aligning with the government's established strategy of using whistleblower-driven enforcement to compel compliance with [EO 14173](#). Success will require balancing legal compliance with organizational culture preservation through careful policy design and implementation.

Top Considerations for Employers and Federal Contractors & Grantees

- **No New Legal Requirements:** The guidance reflects the DOJ's interpretation of antidiscrimination laws. It is not binding and does not create new law or requirements.
- **Signals DOJ's Interpretation of "Illegal DEI" or "Illegal discrimination:"** Provides a roadmap for what may be considered "illegal DEI" by the Trump administration, including politically aligned EEOC Commissioners.
- **Emphasis on Whistleblower Protections:** Underscores whistleblower rights, which may encourage them to use the guidance as leverage for establishing a case under the False Claims Act, which the Trump Administration has previously prioritized as an enforcement tool to encourage compliance with EO14173.

Recommended Actions

- **Advance inclusive practices** that satisfy federal law while maintaining diversity and inclusion commitments where permissible.
- **Establish change management strategies** including developing communication strategies to address internal concerns about policy shifts.
- **Conduct comprehensive audits** of diversity programs, recruitment practices, and training curricula to ensure compliance with federal civil rights laws.
- **Implement Objective Criteria Standards:** Replace subjective metrics with measurable, job-relevant qualifications.
- **Establish clear documentation standards** for all selection and program criteria, especially for criteria that may raise concerns around proxies.
- **Develop incident response protocols** for whistleblower complaints, investigations, and compliance monitoring.