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Legal Uncertainties for Businesses Due to Trump’s DEI Ban

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In his first week in office, President Donald Trump signed executive orders ending diversity, equity, and inclusion programs in federal agencies.¹ Trump has told business leaders and politicians that his “administration has taken action to abolish all discriminatory diversity, equity, and inclusion nonsense.”² The reason stated in the executive order was that DEI programs are “dangerous, demeaning, and immoral,” which “violate the text and spirit of our longstanding Federal civil-rights laws” and “undermine our national unity, as they deny, discredit, and undermine the traditional American values of hard work, excellence, and individual achievement in favor of an unlawful, corrosive, and pernicious identity-based spoils system.”³ This is a significant rollback of policies designed to promote equal opportunity in the workplace. Beyond the federal government, this decision has major implications for businesses; many now face legal uncertainty and difficult decisions regarding their DEI initiatives.

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¹ Nina Tran, *President Trump eliminates DEI programs. Here's What That Means for Historical Black Colleges*, GREENVILL NEWS (Jan. 27, 2025), <https://www.greenvilleonline.com/story/news/local/greenville/2025/01/27/trump-ends-illegal-and-immoral-dei-programs-what-does-dei-mean/77936024007/>.

² Niall Stange, *The Memo: Trump Goes Full Bore Against DEI*, THE HILL (Jan. 24, 2025), <https://thehill.com/homenews/administration/5104168-trump-attacks-diversity-equity-inclusion/>.

³ Lori Rubin Garber, Lauren P. Carboni & Byron J. McLain, *How Risky Are DEI Programs Under Trump 2.0?*, FOLEY (Jan. 28, 2025), <https://www.foley.com/insights/publications/2025/01/how-risky-dei-programs-under-trump-2-0/>.

DEI programs originated from the Civil Rights Act of 1964, which barred employment discrimination based on race, color, sex, religion, and other criteria.⁴ This initiative gained momentum after the 2020 murder of George Floyd, an African American man wrongfully murdered by a Minneapolis police officer who pressed his knees into the back of Floyd's neck for more than nine minutes, even after Floyd lost consciousness.⁵ This spurred the "largest protest movement in U.S. history," with up to 26 million people in the U.S. participating in demonstrations.⁶ As a result, businesses and institutions across the U.S. strongly emphasized diversity, equity, and inclusion.⁷ However, the Trump administration has recently moved to eliminate federal DEI programs, arguing that they are "illegal and immoral."⁸

All the agency leaders were ordered by the U.S. Office of Personnel Management (OPM) acting director, Charles Ezell, to place all employees of DEIA offices on paid administrative leave.⁹ Additionally, they were directed to take down websites and social media accounts, cancel training, and terminate any contractors related to DEIA work.¹⁰ The agencies are required to submit a written plan for layoffs of employees working in DEIA offices by January 31.¹¹

This action extends beyond the federal government. The Attorney General is required to identify and investigate major corporations, nonprofits, and universities with endowments over \$1 billion for potential DEI-related violations of federal law.¹² Currently, many prominent companies such as Meta, Target, and Walmart have rolled back their diversity program as DEI has become "so politically charged."¹³ However, not all

⁴ Megan Cerullo, *What has DEI — Diversity, Equity and Inclusion — Done for U.S. Workers and Employers?*, CNN (Jan. 28, 2025), <https://www.cbsnews.com/news/dei-diversity-equity-inclusion-corporate-programs/>.

⁵ *George Floyd, Racism and Law Enforcement (in English and en Español)*, ADL (June 1, 2020), <https://www.adl.org/resources/tools-and-strategies/george-floyd-racism-and-law-enforcement-english-and-en-espanol>.

⁶ *Id.*

⁷ Kelsey Minor, *Three Years After George Floyd's Murder: Where Is DEI Now, and What Have Companies Learned?*, CNN (Feb. 10, 2023), <https://seniorexecutive.com/three-years-after-george-floyds-murder-where-is-dei-now-and-what-have-companies-learned/>.

⁸ Cerullo, *supra* note 4.

⁹ Andrea Hsu, *Trump Calls DEI Programs 'Illegal.' He Plans to End Them in the Federal Government*, NPR (Jan. 23, 2025), <https://www.npr.org/2025/01/23/nx-s1-5271588/trump-dei-diversity-equity-inclusion-federal-workers-government>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Phillip M. Bailey, *Donald Trump Takes Aim at Diversity Initiatives, Bedrock Civil Rights: 5 Takeaways*, USA TODAY (Jan. 26, 2025), <https://www.usatoday.com/story/news/politics/2025/01/26/trump-dei-takeaways/77883358007/>.

¹³ Lisa Stiffler, *Costco, Amazon, Microsoft Chart Their Own DEI Paths as Trump Targets Diversity Efforts*, USA TODAY (Jan. 27, 2025),

companies are backing away. Some companies have stayed firm with their DEI initiatives in the new Trump era. For example, Costco has pushed back against a challenge to its diversity efforts.¹⁴ Costco shareholders voted by 98 percent to reject the political pressure to reconsider or abandon the company's policies supporting DEI.¹⁵

Republican attorneys general from 19 states have called out Costco to abandon its DEI efforts.¹⁶ In a letter on January 27 to CEO Ron Vachris, the AGs state that the retailer is "clinging to DEI policies that courts and businesses have rejected as illegal."¹⁷ The Republican officials instructed Costco to let them know within 30 days whether it would get rid of its DEI policies and if not, explain why so.¹⁸

The executive order lacks clear definitions of what constitutes a DEI initiative that violates existing federal civil rights laws, creating uncertainty for businesses. It is unclear how strongly the executive order will be enforced, as the administration has yet to provide further details. Given the risk of investigations, lawsuits, and penalties, many companies may opt to scale back or eliminate their DEI programs rather than engage in costly legal battles to defend them.

<https://www.geekwire.com/2025/costco-amazon-microsoft-chart-their-own-dei-paths-as-trump-targets-diversity-efforts/>.

¹⁴ Bill Press, *You Can Get Anything at Costco, Including DEI*, THE HILL (Jan. 28, 2025), <https://thehill.com/opinion/5109686-costco-rejects-trump-dei/>.

¹⁵ *Id.*

¹⁶ Kate Gibson, *Republican Attorneys General Call Out Costco for Maintaining DEI Policies*, CBS (Jan. 28, 2025), <https://www.cbsnews.com/news/costco-dei-policy-diversity-equity-inclusion/>.

¹⁷ *Id.*

¹⁸ *Id.*