LABOR AND EMPLOYMENT LAW
INFORMATION MEMO
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Federal District Court Issues Partial Injunction of DEI Executive Orders

On Feb. 21, 2025, the federal district court for the District of Maryland issued a preliminary injunction partially enjoining two of President Trump's executive orders: *Ending Radical and Wasteful Government DEI Programs and Preferencing* (Jan. 20, 2025)(J20 Order) and *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (Jan. 21, 2025)(J21 Order).

The Court's ruling focused on three provisions of the executive orders:

- The "Termination Provision" of the J20 Order directing federal agencies to terminate "equity-related" grants and contracts;
- The "Certification Provision" of the J21 Order directing federal agencies to require federal contractors and grantees to certify under penalty of the False Claims Act that they do not operate programs promoting DEI that violate discrimination laws; and
- The "Enforcement Threat Provision" of the J21 Order directing the Attorney General to take actions to "deter DEI programs or principles . . . that constitute illegal discrimination or preferences," including drafting a report recommending actions and identifying corporations, higher education institutions or certain other entities for "civil compliance investigations."

The plaintiffs in the case are the National Association of Diversity Officers in Higher Education, the American Association of University Professors, Restaurant Opportunities Centers United, and the Mayor and City Council of Baltimore. The Court ruled that the plaintiffs had demonstrated a likelihood of prevailing on their claims that the J20 and J21 executive orders suffered from an unconstitutional vagueness and that they abridge freedom of speech, among other infirmities. The Court also found that the plaintiffs had demonstrated that the plaintiffs would be irreparably harmed if the executive orders were to be implemented while further judicial proceedings are held to ultimately determine the legality of the executive orders. The Court went on to find that a nationwide injunction was appropriate.

Therefore, the Court issued a preliminary injunction preventing federal agencies from:

- Freezing, terminating or changing the terms of any existing grants or contracts, on the basis of the Termination Provision in the J20 Order;
- Requiring any grantee or contractor to make any "certification" or other representation pursuant to the Certification Provision; and
- Bringing any "False Claims Act enforcement action, or other enforcement action," pursuant to the Enforcement Threat Provision.

Notably, the scope of the injunction issued by the Court was not as all-encompassing as the plaintiffs had requested. The Court expressly declined to enjoin the Attorney General from preparing a report

of recommendations on strategic steps to "encourage the private sector to end illegal discrimination and preferences, including DEI" or from engaging in investigations of potential violations federal anti-discrimination laws pursuant to the Enforcement Threat Provision.

As a result of the Court's ruling, there is less immediate concern that federal grants or contracts will be interrupted on the basis that they fund "equity-related" activities or that a grantee or contractor will be subject to the threat of the False Claims Act for engaging in DEI programs or policies. On its face, the scope of the Court's ruling is quite broad, as it prevents not only False Claims Act actions but also "any other enforcement action."

The ruling is not a final ruling and could be reversed on appeal or altered by the court itself, in whole or in part, as the matter proceeds. Thus, issues raised by the J20 and J21 executive orders are worth reviewing, although some of the immediacy is removed at this time.

In addition, one should not assume that the Court's injunction addresses all legal concerns with respect to DEI programs and policies currently in place. As a general matter, an entity engages in unlawful discrimination when it makes decisions based on an individual's race, color, ethnicity, sex or various other protected characteristics. Despite the Court's preliminary injunction, there remains the risk of liability based on illegal discrimination, even if the illegal discrimination resulted from well-intentioned efforts to increase diversity. Stated another way, some programs and policies may have had compliance issues before the J20 and J21 executive orders and those issues are not affected by the preliminary injunction and should be assessed and addressed if warranted.

As before this latest development, DEI programs, policies and initiatives should be reviewed to ensure their compliance with existing anti-discrimination law. Close attention should also be paid to the rapidly occurring developments against the backdrop of enforcement actions by both federal and state officials, funding and reimbursement implications of the programs and the possibility of private litigation.

Bond continues to follow these and related developments closely. Please contact a Bond attorney in the labor and employment practice or the Bond attorney with whom you normally work, for questions, concerns and tailored consultation.

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