



Federal Contractors and Diversity and Inclusion Training

On September 22, 2020, President Trump issued an Executive Order (the "Order") stating that companies doing business with the federal government ("Federal Contractors") are barred from promoting race or sex stereotypes or scapegoating in their training programs which create divisiveness in the workplace.

Any contracts entered into on or after November 22, 2020 must contain the following provisions:

1. Workplace training for employees may not include any of the following concepts:
 - a. one race or sex is inherently superior to another race or sex;
 - b. an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
 - c. an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex;
 - d. members of one race or sex cannot and should not attempt to treat others without respect to race or sex;
 - e. an individual's moral character is necessarily determined by his or her race or sex;
 - f. an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by others of the same race or sex;
 - g. any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or
 - h. meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.

NOTE: This would appear to eliminate any aspect of a training program that discusses white privilege or unintentional bias. The Equal Employment Opportunity Commission ("EEOC") has indicated that it will be issuing training guidelines that comply with this Order.

2. A Federal Contractor must send a notice to those labor unions or representatives of workers with which it has a collective bargaining agreement or other contract or understanding advising them of its commitments under the Order. A copy of the notice must also be posted in conspicuous places available to employees and applicants for employment.

The Office of Federal Contract Compliance Programs ("OFCCP") will, within 30 days, publish a request for information seeking information from Federal Contractors, subcontractors, and employees of Federal Contractors and subcontractors about the training, workshops, or other similar programming provided to employees. Federal Contractors and subcontractors will also be asked to provide copies of any training, workshop, or similar programming related to diversity and inclusion. The OFCCP will also request information about the duration, frequency, and expense of such activities. Presumably, the OFCCP will be reviewing the materials for compliance with the Order and conducting investigations.

The OFCCP will create a hotline and investigate complaints it receives. Any Federal Contractors who violate this Order may have their contracts cancelled and may be barred from doing future business with the federal government. Additional monetary and non-monetary sanctions could also be imposed.

The future of the Order is uncertain as it is likely to be challenged in court. Also, if Biden wins the election, the Order is expected to be rescinded. In the meantime, however, Federal Contractors should comply with the Order by taking the following steps:

1. Identify any federal contracts that are scheduled to be updated or go into effect on or after November 21, 2020. These contracts must contain provisions required by the Order.
2. Review any training programs, affirmative action plans and employee communications to determine if they contain prohibited language. Any review should take into consideration anticipated guidance from the EEOC, if available. Based on the review, steps may need to be taken to update the materials. Federal Contractors should consider consulting with an attorney to ensure compliance with the Order.
3. Ensure that any training is performed by individuals who understand the restrictions required by the Order and ensure that discussions during the training, to the extent possible, do not cross the line.
4. Review state and local nondiscrimination requirements to determine if there is a conflict. If there is a conflict, the Federal Contractor should obtain legal advice.
5. Document steps taken to comply with the Order in the event of an audit or an investigation by the OFCCP.

The Wagner Law Group will be monitoring this situation closely to keep you informed. In the meantime, please direct any questions to [David Gabor](#), [Katherine Brustowicz](#), or [Virginia Peabody](#).

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