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ALERT

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THE END OF AN ERA FOR OFCCP:
President Trump Issues Executive Order
Revoking Biden's Diversity, Equity, and Inclusion Rules
And Axing Affirmative Action

By Betsy Dorminey

January 20, 2025, will certainly go down in history as a major policy pivot-point. Among the many Executive Orders (EO) President Trump issued on his first day in office was [one](#) revoking his immediate predecessor's day-one EO instituting diversity, equity, and inclusion (DEI) goals and also President Lyndon B. Johnson's 1965 affirmative action mandate, [EO 11246](#).

DEI must DIE. On President Biden's first day in office, January 20, 2021, he issued [EO 13985](#), "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." Federal departments and agencies were directed to "redress inequities" through a systematic approach to reaching allegedly disfavored minorities (very broadly defined) and underserved communities. While couched in the language of justice and fairness, DEI rapidly became associated with identity politics and preferences, and speech-stifling programs focused on theories of systemic racism. (In a preemptive stroke, President Trump also immediately suspended all federal employees working in DEI programs, with pay, to ensure that activities and initiatives undertaken to advance these policies would cease immediately.)

Adieu, Affirmative Action. Like President Biden's EO on DEI, President Johnson's EO requiring Federal departments, agencies, and contractors to engage in affirmative action to ensure an inclusive workforce was draped in the language of equal opportunity but rapidly became negatively associated with race-and sex-and, by amendment, disability-conscious quotas. The Office of Federal Contracts Compliance Programs (OFCCP) was established within the U.S. Department of Labor to enforce EO 11246, and had substantial enforcement authority through

regulations, investigations, lawsuits, and fines. Between 2014 and 2024 USDOL collected over \$260 million from employers for OFCCP violations. Employers who received federal contracts valued at over \$10,000 were required to complete extensive annual Affirmative Action Plans (AAP) identifying their employees by race and gender and were subject to statistical analysis to justify their demographics. With the stroke of a pen, President Trump put OFCCP out of business.

In truth, the writing has been on the wall for quite some time. The Supreme Court's 2023 decision in *Students for Fair Admissions v. Harvard* presaged the end of differential treatment based on race by finding that affirmative action in college admissions based on race violated the U.S. Constitution. As Justice Roberts had observed in a 2007 opinion, "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." It was only a matter of time before the Supreme Court's decision on college admissions would be applied more broadly.

What does this mean for employers? This is the end of an era. Employers who have been subject to the AAP requirements can safely shelve those documents. No more letters, goals, or extensive statistical analysis is necessary to justify one's hiring practices. Any ongoing prosecutions for OFCCP violations are likely to be suspended and probably dismissed. Employers can cease under federal law to maintain applicant flow logs documenting the race and sex of would-be workers to demonstrate a fair correlation between those who apply and are hired (a tricky proposition, at best, since so many Americans can claim the right to check more than one box on the self-identification forms).

Does this mean that from now on employers can run roughshod over workers and applicants, engaging in blatant discrimination? Certainly not. Discrimination on the basis of protected factors, like race, color, age, sex, and disability; and protected conduct, like whistleblowing, remains contrary to many other laws. The Equal Employment Opportunity Commission (EEOC) can and will prosecute violators, and individuals can file suit after they complete the EEOC process. OSHA will continue to investigate cases of alleged retaliation against workers who raise safety concerns. But OFCCP appears to be over.

Corporate America's move away from DEI programs actually began prior to the executive orders. For example, in 2023 Amazon changed the title of its

President of Global Diversity, Equity and Inclusion (DEI), to Vice President of Inclusive Experiences. Wal-Mart, Meta, and McDonald's also announced changes to de-emphasize DEI. While most workers – and employers -- believe that equal employment remains important, the DEI acronym unfortunately has become associated with making individual employment decisions on the basis of race or sex. The trend is away from using the terms DEI or affirmative action towards a focus on inclusiveness or removing barriers to equal employment opportunity. The goal is to ensure that recruitment draws from the biggest and broadest talent pool, using fair and systematic tools to evaluate individual candidates on their merits. Many efforts in this regard are supported not only by the law, but by the public and by employees. Even the Society for Human Resource Management (SHRM) has steered away from the DEI term and focused on making workplaces more inclusive instead.

The lesson to employers is that while affirmative action plans may no longer be required by law, there are alternative programs, such as broadening applicant pools for hiring, that can and should be used to promote true equal employment opportunity rather than basing individual employment decisions on one's race or sex.

Questions? Need more information? Call Elizabeth Dorminey at (404) 365-0900.

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