

Diversity, Equity, and Inclusion Guidance for Local Governments

Making Equal Opportunity and Anti-Discrimination Standard Operating Procedure

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Center For Civil Rights
And Equal Opportunity 

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Purpose of DEI Compliance Guidance

The purpose of this guidance is to provide clarity, confidence, and encouragement for public and private sector organizations to sustain their DEI policies, practices, personnel, and programs, that are aligned with best practices for advancing equal opportunity, preventing favoritism and discrimination, and complying with federal anti-discrimination and civil rights laws.

The Current Political Climate Regarding DEI

On January 20th and 21st, Trump signed [Executive Order #14151, “Ending Radical and Wasteful Government DEI Programs and Preferencing,”](#) and [Executive Order #14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,”](#)

Both executive orders have sent the public and private sector into a state of shock and uncertainty regarding the continuation of DEI policies, practices, personnel, training and related programs.

The orders have intimidated public and private sector employers who may be federal contractors, or receive federal funding or grants, by using confusing and threatening language for compliance with federal civil rights and anti-discrimination laws.

The January 20th order #14151, **“Ending Radical and Wasteful Government DEI Programs and Preferencing,”** includes instructions and requirements below for federal government departments and agencies ONLY (not private sector, local or state governments):

- Sec. 1: states the purpose of the order is **to end “forced illegal and immoral discrimination programs, going by the name “diversity, equity, and inclusion” (DEI),** into virtually all aspects of the Federal Government.”
- Sec. 2: requires the federal Office of Management and Budget (“OMB”) to “coordinate the **termination of all discriminatory programs, including illegal DEI** and ‘diversity, equity, inclusion, and accessibility’ (DEIA) mandates, policies, programs, preferences, and activities in the Federal Government. Terminate to the maximum extent allowed by law, all DEI, DEIA, and “environmental justice” offices and positions including “Chief Diversity Officer” positions; equity action plans, initiatives, or programs, equity-related grants or contracts; and all DEI or DEIA performance requirements for employees, contractors, or grantees. Provide a list of federal contractors and grantees who have provided DEI training or DEI training materials to agency or department employees.

The Current Political Climate Regarding DEI (cont.)

The January 21st order #14173, **“Ending Illegal Discrimination and Restoring Merit-Based Opportunity,”** includes instructions and requirements below for federal government departments and agencies. Section 3 applies to any entity receiving federal funding or grants (e.g. federal contractors, state and local governments, public schools, nonprofits):

- Sec. 1: states the purpose of the order is to **end illegal preferences and discrimination**.
- Sec. 2: “orders all executive federal departments and agencies to terminate **all discriminatory and illegal** preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements, and enforce civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities.”
- Sec. 3: terminates illegal discrimination in the federal government and revokes a series of executive orders from previous administrations. **Requires a contract clause requiring federal contractors or grant recipients to comply with not operating DEI programs that violate federal anti-discrimination laws**, and compliance is material to receiving federal funding.
- Sec. 4: **“encourage the private sector to end illegal DEI** discrimination and preferences.” “The heads of all federal agencies, with the assistance of the Attorney General, shall take all appropriate action with respect to the operations of their agencies to advance in the private sector the policy of individual initiative, excellence, and hard work.” Requires the director of OMB to submit a report containing recommendations for enforcing Federal civil-rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI.
- Sec. 7: **“order does not prevent state or local governments**, federal contractors, or federally-funded state and local educational agencies or institutions of higher education **from engaging in First Amendment protected speech.”**

The Current Political Climate Regarding DEI (cont.)

“Illegal DEI vs. Legal DEI”

It is the clear that both executive orders as written, are attacking “illegal DEI” and “DEIA” programs, policies and practices that violate federal anti-discrimination and civil rights laws, not DEI programs that are “legal” and follow best practices to expand equal access, remove barriers to equal opportunity, and prevent favoritism and discrimination.

The executive orders cannot and do not prohibit legal DEI practices and policies and are also protected by First Amendment free speech.

Any public or private sector organization that is providing preferences for a demographic group under a protected class (e.g. race/ethnicity, gender), or mandating quotas for a protected class in any way, (unless under court order) violates federal anti-discrimination and civil rights laws, and is not operating a DEI program, instead they are operating **an illegal discrimination program, and should cease immediately.**

DEI programs that are designed using evidenced-based best practices are legal under federal and state civil rights laws, and current legal precedents. Current relevant caselaw indicates explicit hiring quotas, or making employment decisions based on a protected class (e.g. race/ethnicity, gender) violate Title VII of the Civil Rights Act of 1964 and the 14th Amendment Equal Protection Clause.

There is no court decision that has declared DEI best practices to be inherently illegal.

DEI best practices are necessary to promote fair and inclusive workplaces that measure and monitor equal opportunity, favoritism, meritocracy, and prevent discrimination.

What DEI Policies and Practices are Permissible within a Municipality?

- ☐ Funding a dedicated position responsible for DEI (e.g. diversity officer).
- ☐ Establishing a taskforce or committee to monitor DEI, equal opportunity and compliance with federal anti-discrimination laws.
- ☐ Conducting employee engagement surveys to measure workplace climate, belonging and inclusion, and disaggregating data by demographic group for analysis.
- ☐ Providing DEI job-related training for all new and current employees (trainings should not violate anti-discrimination laws).
- ☐ Establishing Employee Resource/Affinity Groups that provide space for different demographic groups to support each other, but do not exclude protected classes from participation.
- ☐ Developing a written DEI action plan with validated benchmarks and goals (not quotas).
- ☐ Declaring a DEI resolution or charge that states the organization's position and commitment on DEI (protected by First Amendment free speech).
- ☐ Conducting a community satisfaction and experiences survey to identify any disparities between demographic groups.
- ☐ Conducting an organizational DEI Audit, to identify if best practices are present and active, for advancing equal opportunity, preventing discrimination, favoritism, and complying with federal and state anti-discrimination laws.
- ☐ Establishing aspirational goals (not quotas) are protected by First Amendment free speech. (e.g. we want our police force to reflect the community we serve. However, hiring police should not be based on racial or gender preferences to achieve goals.

What DEI Policies and Practices are Permissible within Employment?

- ❑ Developing a recruitment strategy that expands equal opportunity for employment, including outreach to qualified candidates to generate a more competitive applicant pool.
- ❑ Collecting demographic data on applicants and current employees (e.g. race/ethnicity, gender), and separating this data prior to selection decisions.
- ❑ Conducting analysis to identify if disparities exist within employment representation between demographic groups, and the relevant available labor pool.
- ❑ Evaluating and modifying job descriptions for biases, validating qualifications, required skills, and experience, as a valid business necessity for employment.
- ❑ Establishing and standardizing education and experience equivalencies to promote skills-based hiring.
- ❑ Demonstrating good faith efforts to attract an applicant pool reflective of the relevant qualified available labor pool, prior to selection decisions.
- ❑ Demonstrating good faith efforts to have interview panelists with diverse backgrounds and experiences, and providing training to all panelists on how to make objective and fair selection decisions without bias.
- ❑ Developing standardized hiring and promotion practices; including written interview scoring rubrics that define clear competencies and criteria for scoring.

What DEI Policies and Practices are Permissible within Procurement?

- ❑ Developing a recruitment strategy that expands equal opportunity for procurement by conducting outreach to potential bidders, vendors and contractors, including minority and women firms, to generate a more competitive pool of bidders.
- ❑ Collecting demographic data on all bidders, vendors and contractors (e.g. non-minority, minority women business enterprises), and separating this data prior to any contract award decisions (unless required by state agencies or court order).
- ❑ Conducting analysis to identify if disparities exist within representation of minority and women business enterprises, non-minority businesses, and the relevant marketplace of available vendors.
- ❑ Evaluating invitation for bids and request for proposal packages for biases, validating bidder qualifications, required skills, and experience, as a valid business necessity for contract award.
- ❑ Demonstrating good faith efforts to attract a bidder pool reflective of the relevant marketplace and availability of suppliers prior to contract award.
- ❑ Demonstrating good faith efforts to solicit quotes from all businesses, including state certified minority and women business firms (statewide contracts), prior to identifying the lowest responsible bidder for award, to generate more competitive bids.
- ❑ Providing vendor supportive services such as technical assistance, vendors fairs and seminars, (e.g. how to bid, how to register, how to become certified), and obtaining bonding and credit.
- ❑ Encouraging all contractors to demonstrate good faith efforts for the utilization of small businesses, including state certified minority and women business enterprises in bid submissions above a certain dollar amount, based on municipality aspirational goals (not quotas) for underutilization.

What DEI Policies and Practices are Permissible within Service Delivery and Programs?

- ❑ Conducting resident/community surveys to measure and monitor service delivery performance and resident satisfaction of services and programs (e.g. percent of residents satisfied with police and fire)
- ❑ Disaggregating resident/community survey response data by demographic group for analysis (e.g. ethnicity, disability).
- ❑ Collecting voluntary demographic data on resident participation in municipal programs, to measure equal access and opportunity for all stakeholders and residents (e.g. rental assistance, youth program)
- ❑ Conducting resident/community surveys by municipal department, and disaggregating demographic data to measure equal treatment when seeking services, and equal quality when receiving and participating in programs.
- ❑ Conducting resident focus group interviews and surveys to understand resident and stakeholder experiences, including; discrimination and harassment experiences, public accommodation experiences, satisfaction with community cultural events and activities, access to elected officials and municipal meetings, and identifying barriers to accessing municipal services and programs. (e.g. fair housing discrimination complaints by race/ethnicity)
- ❑ Collecting and monitoring data on resident and stakeholder outcomes, including; educational attainment, homeownership, income and poverty levels, unemployment, criminal justice, and health outcomes.
- ❑ Evaluating department policies, practices and budget resource allocation, to identify strengths, weaknesses, opportunities and threats to equal access, equal treatment, and equal quality of all municipal services, facilities and programs.

What DEI Policies and Practices are Permissible within Boards, Committees and Commissions?

- ☐ Developing a recruitment strategy that expands equal opportunity for all residents to become volunteers, including residents from underrepresented demographic groups.
- ☐ Collecting voluntary demographic data on board, committee and commission volunteers (e.g. race/ethnicity), and separating this data prior to any selection decisions.
- ☐ Conducting analysis to identify if significant disparities exist within board, committee, or commission representation between demographic groups, and benchmarking against community Census demographics (not quotas).
- ☐ Evaluating board, committee, and commission volunteer application criteria for biases, validating qualifications, required skills, and experience, as a valid business necessity for volunteer participation.
- ☐ Providing all board, committee, and commission volunteers with training to support the organization's DEI resolution or charge, DEI goals, and federal civil rights, anti-discrimination, and equal opportunity laws.
- ☐ Encouraging and establishing expectations for all board, committee and commission volunteers to become informed and knowledgeable of data and disparities that may infer discrimination, or demonstrate barriers to equal opportunity for all residents and stakeholders within the community and municipal departments, including; equal access to employment and contracting opportunities; services and programs; board and committee positions; and resident and stakeholder experiences within public accommodations (e.g. retail, landlords), by obtaining data disaggregated by demographic group from municipal staff or other validated and credible sources.

About Us

The Center for Civil Rights and Equal Opportunity is a think tank and consulting firm that produces data and reports that measure racial inequality and identifies the systems and structures that sustain racial inequality.

Founded by Bird Guess, CEO of the Racial Equity Group, our team of consultants provide policy analysis and design expertise for public and private sector organizations, as well as training and policy-making tools that measure and monitor discrimination, bias, and advance equal opportunity.

Our mission is to measure, monitor and validate if the United States is a meritocracy and color-blind society.

Our vision is to make advancing equal opportunity and anti-discrimination standard operating procedure within the core operations of public and private sector organizations throughout the United States.

We believe if you don't have data, all you have is an opinion.

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