



The Current DEI Legal Landscape

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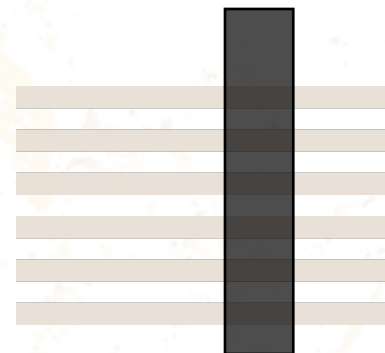
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From *SFAA v. Harvard* to January 20

- The 2023 admissions decision changed the legal landscape around DEI.
- Although the decision was aimed at admissions policies, the logic of the decision and Justice Gorsuch's concurrence made it clear that the ramifications would likely be broader.
- After the decision, some state attorneys general and Republican congresspeople (e.g., Sen. Tom Cotton) warned companies and law firms about their DEI practices.
- Some states considered (and passed) anti-DEI legislation.
- Legal advocacy groups challenged DEI in contracting, fellowship programs, and employment practices, with varying success.

Executive Orders & DOJ Guidance

- On January 20 and 21, 2025, the Trump Administration issued three executive orders explicitly taking aim at DEI programs.
- These orders do the following (among other things):
 - Require agencies to identify federal contractors and grantees who received DEI funding;
 - Eliminate DEI in federal grants and contracts;
 - Requires explicit affirmation and certification.
 - Revoke previous EOs relating to DEI;
 - Change the federal contracting and subcontracting process; and
 - Encourage the abandonment of DEI in the private sector.
- On February 6, 2025, DOJ issued a Memorandum stating its Civil Rights Division will “investigate, eliminate, and penalize illegal DEI and DEIA preferences, mandates, policies, programs, and activities in the private sector and in educational institutions that receive federal funds.”

Additional Developments

- Federal agency statements and guidance (e.g., DoT, FCC, DOJ)
- FY 2025 DHS Terms and Conditions (March)
- Attorneys General statements in support of DEI
 - Discrimination is still illegal
 - DEI best practices are not illegal
- *National Association of Diversity Officers in Higher Education v. Trump*
 - District of Maryland
 - Nationwide injunction – stayed during appeal
- EEOC Law Firm Investigations
- EEOC Technical Guidance
- NEA v. Dept. of Ed (D. NH, April 24, 2025)



QUESTIONS?



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Chris Hart is an experienced civil litigator and human rights lawyer. As co-chair of Foley Hoag's DEI Solutions Practice, Chris has counseled numerous organizations across a wide variety of industries on their DEI practices and policies, and has conducted investigations relating to internal practices. Chris is also widely sought after as a speaker to provide his insights on the DEI landscape.