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Federal DEI Guidance Requires Immediate Review of Workplace Programs

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On July 29, 2025, the U.S. Attorney General issued comprehensive guidance clarifying that Diversity, Equity, and Inclusion ("DEI") programs must comply with federal antidiscrimination laws and that DEI programs are not exempt from Title VI, Title VII, Title IX, and other civil rights laws that prohibit discrimination based on race, sex, color, national origin, or religion.

Under the guidance entities that receive federal funding or that are otherwise subject to federal antidiscrimination laws, including educational institutions, state and local governments, and public and private employers, must ensure that their programs and activities comply with federal antidiscrimination laws and do not discriminate on the basis of race, color, national origin, sex, religion, or other protected characteristics - no matter the program's labels, objectives, or intentions.

The guidance identifies several practices as unlawful, including race-exclusive scholarships, preferential hiring based on protected characteristics, segregated training sessions, and the use of proxies like "cultural competence" or "lived experience" when used to advantage certain racial or ethnic groups.

The Attorney General's Memo contains the following interpretations of law:

1. Race-based or sex-based preferences are prohibited – Employers cannot prioritize candidates for hiring, promotion, or training based on race, sex, or other protected characteristics. This includes "diverse slate" requirements that mandate specific racial or gender representation in candidate pools.
2. Segregated programs violate federal law – Training sessions, employee resource groups, or mentorship programs that exclude participants based on race or ethnicity are unlawful. All workplace programs must be open to all qualified employees.
3. "Neutral" criteria may still be problematic – Requirements for "cultural competence," "cross-cultural skills," or overcoming specific obstacles may violate federal law if used as proxies to favor certain racial or ethnic groups.

4. Third-party programs require scrutiny – Employers must ensure that vendors, contractors, and other third parties receiving federal funds through them also comply with antidiscrimination laws.

5. Retaliation protections apply – Employees who object to or refuse to participate in potentially discriminatory DEI programs are protected from adverse employment actions.

The Attorney General's Memo is consistent with the Administration's prior pronouncements on DEI programs and measures and contains both a list of unlawful practices and a list of suggested best practices for employers.

These interpretations are likely to be litigated and may ultimately face Supreme Court review.