

January 28, 2025

Executive Orders Rolling Back DEI May Increase Activism Risk

Last week, the Trump administration issued two [executive orders](#) ending diversity, equity and inclusion (“DEI”) policies within the federal government and mobilizing federal agencies to “combat illegal private-sector DEI preferences, mandates, policies, programs and activities.” The orders intensify the ongoing pushback against DEI initiatives within the private sector and may create new opportunities for activists (and not only those who oppose DEI) to leverage missteps to drive a wedge between management, the board, investors, employees, customers and other stakeholders.

Executive order “Ending Radical and Wasteful Government DEI Programs and Preferencing” terminates all DEI programs within the federal government. Specifically, the order requires the Director of the Office of Personnel Management and the Attorney General to review and revise all federal employment practices, union contracts and training policies to eliminate the consideration of DEI factors, goals, policies, mandates or requirements.

Executive order “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” directs all federal agencies to dismantle private-sector DEI preferences, mandates, policies, programs and activities. The order mobilizes federal agencies to, among other things, develop an action plan that identifies the “most egregious and discriminatory DEI practitioners in each sector of concern,” “strategies to encourage the private sector to end illegal DEI discrimination and preferences” and avenues for litigation and regulatory intervention.

The past year has seen growing pushback against DEI initiatives at companies. With federal resources now being directed to support such efforts, companies—particularly government contractors and those operating in closely regulated industries—should expect heightened scrutiny of their employment practices and DEI-related programs. Risks that are not adequately addressed could result in material legal, reputational and financial repercussions and open the door to economic- and governance-driven activism. Companies would be well advised to consider immediate steps to mitigate the reputational, regulatory and enforcement risks arising from the latest executive orders. Such steps may encompass an evaluation of existing policies, commitments, disclosures and board oversight processes as well as assessing feedback from key stakeholders, including investors and employees.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Scott A. Barshay
+1-212-373-3040
sbarshay@paulweiss.com

Carmen X. Lu
+1-212-373-3619
clu@paulweiss.com

Krishna Veeraraghavan
+1-212-373-3661
kveeraraghavan@paulweiss.com