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Your Non-Discrimination Best Practice Checklist

The regulatory environment surrounding non-discrimination in federal contracting has shifted due in large part to the revocation of Executive Order (EO) 11246 via EO 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity". Nonetheless, the fundamental principles of fairness remain intact. Follow this checklist to ensure that your organization remains in compliance.



What Hasn't Changed?

Federal contractors are still required to uphold non-discrimination practices through remaining legislative frameworks. You must:

- ☐ **Continue to uphold your obligations under Title VII of the Civil Rights Act of 1964.**
  - Though EO 11246 has been revoked, the Trump administration's executive orders (including EO 14173) reinforce your Title VII obligations.
  - This applies to all facets of employment, ensuring fair treatment regardless of race, ethnicity, sex, or other protected categories.
- ☐ **Maintain your obligations under VEVRAA and Section 503.**
  - The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) and Section 503 of the Rehabilitation Act remain in effect.
  - Federal contractors are still required to conduct annual affirmative action plans (AAPs) in accordance with both acts.



What Data Should We Collect, and How Should We Use It?

Your data must continue to facilitate an inclusive approach to non-discrimination, preventing any inadvertent bias. We recommend that you:

- ☐ **Collect race, ethnicity, and sex data on all job applicants and employees.**
  - This data allows for effective assessment of whether practices are fair and where improvements may be needed.
  - Some states and local jurisdictions still mandate the reporting of this data, and compliance with these laws remains essential.
- ☐ **Ensure your data collection practices follow the UGESP.**
  - Despite recent agency retreats from the guidance, the methods in the Uniform Guidelines on Employee Selection Procedures (UGESP) are incorporated into Title VII and still apply.
- ☐ **Monitor and analyze your non-discrimination practices.**
  - They should cover all protected groups, including white individuals and males alongside traditionally protected groups like women and racial minorities.
  - Do this for workforce composition across the total talent lifecycle.



What Must We Do Going Forward?

The current administration has new compliance priorities that federal contractors must carefully observe.

- **Be prepared to certify compliance with "all applicable Federal anti-discrimination laws". You will also need to certify that you do not engage in "illegal discrimination".**
  - EO 14173 emphasizes certifying that the business "does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws".
  - Certifying falsely may expose federal contractors to violations under the False Claims Act.
- **Replace placement goals with benchmarks.**
  - Under EO 14173, contractors are encouraged to reconsider the use of placement goals and goal attainment, and instead consider benchmarks.
- **Conduct ethics and EEO compliance training designed to maintain work environments that are free from harassment and discrimination. Affirmity offers the following topics:**
  - Preventing Harassment
  - Preventing Workplace Violence
  - Employment Law Fundamentals
  - Ethics and Code of Conduct
  - Drug and Alcohol Awareness
  - Data Privacy
- **Run DEI Risk Assessments.**
  - Assess potential areas where "illegal DEI" practices may inadvertently creep into organizational strategies or policies.
  - By ensuring DEI efforts are aligned with legal requirements, employers can safeguard against violations and promote a truly inclusive work environment.