EEOC Issues New Technical Assistance Documents Related to DEI

On March 19, 2025, the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (DOJ) released two technical assistance documents focused on educating the public about unlawful discrimination related to diversity, equity and inclusion (DEI) in the workplace: a one-page technical assistance document, **"What To Do If You Experience Discrimination Related to DEI at Work,"** and a question-and-answer technical assistance document, **"What You should Know About DEI-Related Discrimination at Work."** EEOC Acting Chair Andrea Lucas emphasized that these technical assistance documents will help employees know their rights and help employers take action to avoid unlawful DEI-related discrimination.

In the technical assistance documents, the EEOC emphasized that DEI is a broad term not defined in Title VII and noted that under Title VII, DEI initiatives, policies, programs or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee's or applicant's sex, race or another protected characteristic. The EEOC further noted that Title VII protects employees, potential and actual applicants, interns and training and apprenticeship program participants.

The documents provide some examples of employer actions **that might create DEI-related claims,** including:

- **Limiting, Segregating and Classifying.** Separating employees into groups based on race, sex or another protected characteristic when administering DEI or other trainings or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources. Limiting membership in workplace groups like Employee Resource Groups (ERG) or other employee affinity groups, to certain protected groups (including by making available company time, facilities or premises, and other forms of official or unofficial encouragement or participation).
- **Disparate Treatment.** Discriminating against applicants or employees in the terms, conditions or privileges of employment, including hiring, selection for interviews (including placement or exclusion from a candidate "slate" or pool), access to or exclusion from training (including training characterized as leadership development programs), internships (including those labeled as "fellowships" or "summer associate" programs"), mentoring/sponsorship programs, access to workplace networking/networks, etc.
- **Retaliation.** Retaliating against employees who oppose DEI programs or trainings. Reasonable opposition to a DEI training may constitute a protected activity if the employee provides a fact-specific basis for his or her belief that the training violates Title VII.
- **Harassment.** Harassment during DEI training which, depending on the facts, may lead to a colorable hostile work environment claim.

Additional key takeaways from the documents:

- **Reverse discrimination.** The EEOC's position is that there is no such thing as reverse discrimination, noting that there is only discrimination. The EEOC does not require a higher showing of proof for so-called reverse discrimination claims. It applies the same standard of proof to all race discrimination claims, regardless of the race of the victim.
- **No business necessity exception for DEI programs.** The EEOC noted that Title VII allows employers to raise a bona fide occupational qualification (BFOQ) as an affirmative defense in very limited circumstances to excuse hiring or classifying any individual based on religion, sex or national origin. However, the EEOC emphasized that Title VII does not provide any diversity interest exception to these rules, noting that no general business interest in diversity and equity (including perceived operational benefits or customer/client preference) has ever been found by the Supreme Court to be sufficient to allow race-motivated employment actions.
- **No excuse for DEI-related considerations of race, sex or other protected characteristic.** For there to be unlawful discrimination, race or sex (or any other protected characteristic under Title VII) does not have to be the sole reason for an employer's employment action or the but-for (deciding) factor for the action. Under Title VII, an employment action is still unlawful even if race, sex or another protected characteristic was only one factor among many contributing to the employer's decision or action.
- **Covered entities under Title VII.** Title VII applies to employers with 15 or more employees, employment agencies (including staffing agencies), entities that operate training programs (including on-the-job training programs) and labor organizations (like unions). Additionally, employers can be liable for the actions of their agents, such as staffing agencies and recruiters.

Bond continues to follow these and related developments closely. Please contact Adam P. Mastroleo, Anthony A. Levitskiy or the Bond attorney with whom you normally work, for questions, concerns and tailored consultation.

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