

New Guidance for Federally Funded Entities Regarding Discrimination

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On July 29, 2025, Attorney General Pam Bondi, published a memorandum (the “Memo”) to all federal agencies providing guidance on how recipients of federal funds can prevent unlawful discrimination. The Memo offers insight into the Department of Justice’s broad legal interpretation of existing federal anti-discrimination protections and its enforcement priorities. The following non-exhaustive list highlights what the Memo deems as potentially unlawful discriminatory practices by federally funded entities.

Preferential Treatment Based on Protected Characteristics

- **Race-exclusive scholarships or programs.** Programs establishing scholarships for specific racial groups or reserving spots in internships, mentorship programs, or leadership initiatives for racial groups.
- **Preferential hiring or promotion practices.** Policies that prioritize admitting, hiring, or promoting “underrepresented” individuals of a protected group and bypass qualified candidates who are not “underrepresented.”
- **Access to Facilities or Resources Based on Race or Ethnicity.** Initiatives designating a “safe space” or lounge exclusively for persons of a specific racial or ethnic group.

Using Proxies to Provide Preferential Treatment

- **“Cultural Competence.”** Screening applicants based on “cultural competence,” “lived experience,” or “cross-cultural skills,” to evaluate racial or ethnic backgrounds.
- **Geographic or Institutional Targeting.** Adopting recruitment strategies which target specific geographic areas, institutions, or organizations based on their racial or ethnic composition, not other legitimate factors.
- **Overcoming Obstacles” Narratives or “Diversity Statements.”** Requiring statements about diversity or obstacles an individual overcame to identify and advantage candidates with experiences inextricably tied to a specific racial or ethnic groups.

Segregation Based on Protected Characteristics

- **Raced-Based Trainings.** Separating training participants by race for specific sessions.
- **Segregating Facilities or Resources.** Designating spaces for use by specific groups based on protected characteristics (such as “BIPOC-only”), even if the space is technically open to all. (Inapplicable to singles sex facilities segregated based on biological sex to protect privacy/safety).
- **Race-Based “Diverse Slate” Policies in Hiring.** Requiring interviewees to be from a specific racial group, setting racial benchmarks or mandating demographic representation in candidate pools.
- **Sex-Based Selection for Contracts.** Implementing a policy prioritizing contract awards to women- or minority-owned businesses.

DEI Training Programs

- **Trainings that Promote Discrimination Based on Protected Characteristic.** Requiring training that includes statements stereotyping individuals based on protected characteristics, such as “all white people are inherently privileged” and “toxic masculinity.”

To assist with compliance, the Memo suggests creating programing that focuses on skills and qualifications and discontinuing those designed to achieve influence representation in certain demographics; eliminating diversity quotas; and establishing strong anti-retaliation procedures and practices. Employers, among other institutions receiving federal funds, whose programs do not comply with federal anti-discrimination laws or who knowingly fund a third party's unlawful program or practice may lose grant funding and face other legal consequences.

Entities receiving federal funds should evaluate their existing policies and practices to evaluate compliance with the guidelines outlined in the Memo.

If you have any questions about the topics discussed in this article, please contact **Gymmel M. Trembly** at gtrembly@vedderprice.com or any Vedder Price attorney with whom you have worked.

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