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# Practical Guidance for Nonprofits

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## Responding to Recent DEI Executive Orders



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# Today's Agenda



- Introduction to Public Counsel's Community Development Project
- DEI(A/ B) Programs and Initiatives
- Important Civil Rights Laws
- Trump Administration's Executive Orders and their Impacts on Nonprofits with DEI programs
- Steps Nonprofits Can Take in Response to the DEI Executive Orders
- Q&A and Helpful Resources

The Community Development Project provides free legal assistance to qualifying low-income entrepreneurs and nonprofit organizations that share our mission of serving low-income communities and addressing issues of poverty within Los Angeles County.



# DISCLAIMER

Public Counsel's Community Development Project is part of a coalition of organizations offering strategic resources to help California-based organizations better understand the legal landscape following the Supreme Court's Students for Fair Admissions case and the January 2025 DEI Executive Orders in order to support race conscious programming.

This presentation is intended as a general overview of the issues involved in promoting equity initiatives and for informational purposes only. It is not intended to provide you with specific legal advice. This presentation should not be construed as all-inclusive, nor as the provision of legal services to any individual or entity.

**Attending this presentation does not create any lawyer-client relationship.**



# DEI Programs and Initiatives

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DEI is simply giving all people fair access to opportunity so they can build their own American Dream - **American Pride Rises**

- Diversity, equity, and inclusion (DEI) or DEIAB (accessibility, belonging) are organizational frameworks that seek to promote the fair treatment and full participation of all people, particularly groups who have historically been underrepresented or subject to discrimination based on identity or disability.
- Diversity, equity, and inclusion—represent three interconnected values that individuals and organizations have worked to institutionalize through DEI frameworks, such as equal access to quality education, the ability to fully participate in our economy, and the right to contribute to social policy through voting.
- For more than 248 years, the DEI movement has been at the center of progress in our nation, advancing policies and initiatives that expand opportunity and pushing our nation to live up to its highest ideals – from Reconstruction to movements for civil rights, labor rights, women’s rights, disability rights and more.



# Important Civil Rights Laws

Equal Protection + Due Process	Title VI	Title VII
<p>Requires each state to provide equal protection under the law to all people, and prohibits state and local governments from depriving persons of life, liberty, or property without a fair procedure.</p>	<p>Prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.</p>	<p>Prohibits employment discrimination based on race, color, religion, sex and national origin.</p>
Section 1981	Unruh*	FEHA*
<p>Protects against racial discrimination in contracts. It applies to employment, banking, and other economic relationships.</p>	<p>Protects California residents from discrimination by businesses, including housing and public accommodations. It applies to discrimination based on protected characteristics.</p>	<p>FEHA is a comprehensive set of laws that prohibit discrimination and harassment in employment and housing based on protected characteristics.</p>

\*Specific to California -based nonprofit organizations or those with programmatic activities in California

# The Legal Landscape Before January 20, 2025

## SFFA - 2023

In June 2023, the Supreme Court struck down affirmative action in college admissions, ruling that race-conscious admissions were unconstitutional because they no longer regarded race solely as a positive factor, as certain groups' admission rates were adversely affected.

The court decided that race could not be an explicit factor in college admissions, but felt that an applicant's discussion of their experience and life circumstances, including with race, was permissible as part of a holistic review process.

This decision significantly altered the landscape of college admissions, requiring institutions to seek alternative ways to achieve diversity.

## Fearless Fund Case - 2024

This case involves legal challenges to programs designed to fund and support businesses owned by women of color.

Essentially, the Plaintiffs argued that programs that offer benefits/services only to a specific race through contracts violate Section 1981 of the Civil Rights Act.

The case was settled by the Defendant, who ended its grant program for Black women-owned businesses (which they were already set to end) and made some changes to their website and other public-facing materials.

The result in this case does not mean DEI programming is unlawful and does not indicate how successful a lawsuit of this kind would be in California.

## California's Changing Climate

California's robust civil rights laws are being used to challenge and potentially dismantle programs or initiatives aimed at promoting diversity and equity.

This is occurring through lawsuits that claim these programs, intended to combat discrimination and social inequity, negatively impact certain historically privileged groups.

For instance, lawsuits have been filed in California against businesses and organizations that provide services and/or programs to marginalized and at-risk communities.

This has created a complex shifting legal environment in California, and eroding social progress made through legislation and advocacy.

# Executive Orders and the Emerging Landscape for Racial and Social Justice since January 20, 2025



# EO 14151

## “Ending Radical and Wasteful Government DEI Programs and Preferencing”

January 20, 2025



- Seeks to end DEI programs and offices across the federal government. It requires that all federal government DEIA related mandates, policies, programs and preferences be eliminated.
- Requires federal government agencies, departments, and contracts to reward “initiative, skills, performance, and hard work” in hiring instead of DEI.
- Federal agencies have also been instructed to ensure that federal DEI activities in operation prior to November 4, 2024 have been discontinued.

# EO 14170

## “Reforming the Federal Hiring Process and Restoring Merit to Government Service”

January 20, 2025



- Seeks to end DEI-related hiring practices in the federal government.
- Mandates the development of a Federal Hiring Plan that bases recruitment for federal positions on a job candidate’s commitment to American ideals and the Constitution.
- Prevents the hiring of individuals based on their race, sex, or religion, and mandates decreasing government-wide time to hire, utilizing modern recruitment technology to support recruitment and selection, and improving communication with candidates to provide greater clarity on application status and explanations of hiring decisions where appropriate.

# EO 14173

## “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”

January 21, 2025



- Seeks to end illegal preferences and discrimination.
- Orders all executive departments and agencies to terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements.
- Rescinds affirmative action requirements for federal contractors.
- It requires federal contractors to certify that they do not operate any DEI programs that violate federal anti-discrimination laws and acknowledge that complying with these laws is material to the government’s payment decisions for purposes of the False Claims Act.
- Requires federal agencies to create strategic enforcement plans targeting illegal DEI programs in the private sector.

# EO 14168

## “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”

January 21, 2025



- Federal agencies have been directed to remove all statements, policies, regulations, forms, communications, or other internal and external messages related to LGBTQ+ equity or work with LGBTQ+ people and communities.
- Agencies have been directed to change any forms that require an individual's sex to list only male or female. They are prohibited from requesting gender identity.
- Directs the Executive Branch to enforce all sex-protective laws under the lens of two sexes.
- Directs government-issued identification documents to only recognize two sexes.
- Prohibits federal funds to be used to promote gender ideology.
- Requires all agencies to remove all references that promote gender ideology.

# Injunction Issued February 21, 2025



- On February 21, 2025, a federal judge issued a nationwide injunction against the DEI Executive Orders, holding that they were too uncertain, undefined, constituted viewpoint discrimination, and therefore violated the First and Fifth Amendments.
- The injunction 1) blocks the federal government from requiring that organizations with federal contracts certify that they do not operate DEI programs that violate federal anti-discrimination laws and from bringing enforcement actions based on these certifications; and 2) blocks the federal government from bringing enforcement actions against private sector organizations based on EO 14173.
- The injunction does not stop the U.S. Attorney General from preparing a report on the potential investigation of major organizations allegedly engaging in illegal discrimination and preferential practices and formulating a strategic enforcement plan. It also does not stop federal agencies from bringing enforcement actions against organizations with DEI programs based on existing civil rights laws.

**The federal government has appealed the preliminary injunction.**

# What does this mean for equity programming ?

- Effective DEI practices that support equal opportunity, combat biases and promote inclusion are lawful and help ensure legal compliance.
- The DEI Executive Orders do not change long-standing federal and state civil rights laws, and nonprofits may continue to express their commitment to DEI as this speech is protected by the First Amendment.
- Legal issues may arise depending on how a nonprofit's DEI initiatives are carried out.

# What do the DEI Executive Orders mean for nonprofit organizations?



- At this time, it is unclear how the federal government will enforce federal civil rights laws and whether the DEI Executive Orders will ultimately be deemed lawful.
- We may also see an increase in lawsuits filed by private individuals against nonprofits based on alleged failure to comply with state and federal civil rights laws.
- The DEI Executive Orders do not change long -standing federal and state civil rights laws, and nonprofits may continue to express their commitment to DEI as the First Amendment protects this speech.
- However, legal issues may arise depending on how a nonprofit's DEI initiatives are carried out. Nonprofits should carefully assess their DEI programs and policies.

What steps should  
nonprofits take in  
response to the DEI  
Executive Orders?



# Determining Risk Tolerance



## Understanding Legal Risk vs. Legal Liability

**Legal Risk** is the chance you may be sued. Legal risk is heightened through non-compliance with laws, regulations, or contracts.

**Liability** is the legal responsibility to pay for damages caused to another person or entity. It can arise from accidents, contracts, or intentional actions. You become legally liable when you are sued and the court finds you responsible.

*Each organization will make decisions based on its size, activities, funding sources, and tolerance for legal risk and liability.*

# Ensure Compliance with State and Federal Civil Rights and Employment Laws

Analyze your website, public-facing communications, programs, services, and organizational governance policies

Use an open, inclusive, and multi-faceted selection process for any contracts, grants, programs, and services to reduce legal risk

Review your organization's non-discrimination statement

Adopt programs and policies that are open to everyone

Indicate that your organization is an equal opportunity employer

Provide equal access to professional development, training, mentorship, and other aspects of employment to everyone you hire



# Ensure Compliance with State and Federal Civil Rights and Employment Laws

Focus on “individual merit, aptitude, hard work, and determination” in hiring decisions. Encourage applicants to share their experiences with race/ identity as part of a holistic review process

Track applicants’ demographic information to understand the effect of your organization’s hiring practices and lessen disparities

Recruit widely to attract applicants from various backgrounds

Add eligibility requirements that are not based on protected categories, but can encourage applicants to share lived experience with race, gender, identity and discrimination

Create standardized, objective criteria to assess applicants



# Comply with State and Federal Tax Exemption Laws



Adhere to your mission	Operate consistently with your governing documents
Avoid private inurement	Do not participate in political campaigns on behalf of (or in opposition to) any candidate for elected public office
Any work to influence legislation should be an insubstantial part of your activities	Comply with contractual requirements
Make sure that your organization is up to date with state and federal tax-exempt filing requirements	Follow state and federal laws related to fundraising

# Best Practices for Organizational Communication and Compliance

Board members should act in the organization's best interests and fulfill their legal duties of care and loyalty

Ensure communications are accurate and do not create risk of defamation and fraudulent misrepresentation

Maintain internal policies for conflicts of interest, whistleblowers, and record retention

Properly manage any conflicts of interest

Honor any restrictions that donors place on contributions

Review your finances

Maintain adequate insurance

Verify that any income that your organization generates advances the nonprofit's mission



# Best Practices for Organizational Communication and Compliance

Consider identifying beneficiaries through a private process rather than accepting unsolicited applications

To the extent possible, provide unconditional gifts instead of contracts

Avoid quotas and job placements limited by protected categories

If your programming is open to all, make that explicit

Keep an eye on the evolving landscape



# We must continue to address racial, social, and economic (in)equity in our communities

- Programs that advance and promote racial and gender justice help to ensure that everyone, regardless of their background, has equal access to opportunities, feels valued, and can contribute their unique perspectives.
- *We urge nonprofits to not withdraw from their critical work to advance equity. Maintaining a focus on achieving racial and gender equity is even more critical in this moment when our progress and communities are under attack.*
- Remedying inequality benefits impacted communities, the economy, and the nation as a whole.



# Questions?

# Resources

## American Pride Rises DEI Talking Points

[https:// docs.google.com/document/d/1Is0RbU0VWrBv7JKPERM4GwXOe5UvYxI9dvv3NNN3hRI/edit?tab=t.0](https://docs.google.com/document/d/1Is0RbU0VWrBv7JKPERM4GwXOe5UvYxI9dvv3NNN3hRI/edit?tab=t.0)

## Building Movement Project FAQs

[https:// email.buildingmovement.org/hubs/FAQ%20Nonprofits%20in%20the%20New%20Landscape.pdf](https://email.buildingmovement.org/hubs/FAQ%20Nonprofits%20in%20the%20New%20Landscape.pdf)

## Democracy 2025 Response Center

[https:// www.democracy2025.org/response-center](https://www.democracy2025.org/response-center)

## Lawyers Committee For Civil Rights Investing in Racial Equity Resource

[https:// www.lawyerscommittee.org/wp-content/uploads/2025/03/LC\\_Investing\\_in-Racial-Equity\\_F-1.pdf](https://www.lawyerscommittee.org/wp-content/uploads/2025/03/LC_Investing_in-Racial-Equity_F-1.pdf)

## Meltzer Center DEI Case Tracker

<https://advancingdei.meltzercenter.org/>

## National Council of Nonprofits - The Impacts of the Recent Executive Orders on Nonprofits

[https://www.councilofnonprofits.org/files/media/documents/2025/chart\\_executive-orders.pdf](https://www.councilofnonprofits.org/files/media/documents/2025/chart_executive-orders.pdf)

## Public Counsel DEI EOs FAQ

[https://publiccounsel.org/wp-content/uploads/2025/03/DEI\\_EOs-FAQ-3-4-2025.pdf](https://publiccounsel.org/wp-content/uploads/2025/03/DEI_EOs-FAQ-3-4-2025.pdf)

# Thank you!

If your nonprofit needs legal assistance, or if you have further questions about these topics, please contact:

Public Counsel's Community Development Project  
**(213) 385 -2977, ext. 200**

Apply for our services online:

<https://publiccounsel.org/programs/community-development-project/get-help/>

