

## BALLARD ROSENBERG GOLPER & SAVITT, LLP

### BALLARD ROSENBERG GOLPER & SAVITT, LLP

#### MANAGING PARTNER

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#### YEAR FIRM WAS FOUNDED

1986

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#### AWARD MENTIONS OR RANKINGS

- Best Lawyers In America (15 years)
- Los Angeles Super Lawyers Listing (every year since inception)
- U.S. News Best Law Firms

#### AREAS OF PRACTICE

Labor and Employment law on behalf of management:

- Labor Management Relations (Union organizing, collective bargaining, arbitrations)
- Employer Preventive Advice and Problem Solving
- Employee Handbooks and employer policies
- Employer Defense in Wage-hour compliance class actions and Private Attorney General Act (PAGA) lawsuits
- Employer Defense in Wrongful Termination and Discrimination lawsuits
- Mergers & Acquisitions labor counsel
- Government Agency Investigations
- Employment Contracts
- Independent Contractor Agreements
- Trade Secrets & Unfair Competition Claims
- Labor Law Compliance Audits

# The Current State of DEI in the Workplace

By RICHARD ROSENBERG

**UPON ENTERING OFFICE**, President Trump issued a pair of Executive Orders instructing federal enforcement agencies to take an aggressive stance towards the Diversity, Equity, and Inclusion (DEI) programs of government contractors and private employers. Since then, the Equal Employment Opportunity Commission (EEOC) and the Department of Justice (DOJ) have issued new guidance clarifying how common workplace DEI practices could violate Title VII, the federal law prohibiting employment discrimination. To mitigate legal risk, employers with DEI programs/policies should audit compliance with these new requirements.

Area of Concern	What the Guidance Says	Action Required
Exclusionary Activities	Separating employees, restricting access to company activities (like events or facilities), or limiting membership in affinity groups based on protected characteristics (race, gender, etc.) is likely unlawful discrimination.	Open all affinity groups and company-sponsored activities to all employees. Avoid separating employees by protected class during training or programs.
DEI Training Content	Trainings that paint any specific demographic group in a negative light (e.g., calling any group "racist" or an "oppressor") can contribute to a hostile work environment, especially when combined with post-training employee commentary.	Immediately vet all DEI training content. Ensure it focuses on inclusion and diversity of thought/experience, rather than blaming or stereotyping any group.
Discrimination Claims	The EEOC views all discrimination claims equally, applying the same standard whether the claimant is part of a majority or minority group.	Treat all complaints of discrimination seriously and apply a consistent, non-biased investigation process.
Protected Opposition	Employees can claim they are engaging in legally "protected activity" when opposing a DEI training.	To mitigate retaliation claims, focus communications on respectful dialogue and ensure training is legally sound.

Corporate DEI programs are not per se "illegal DEI," but they should be reviewed to ensure compliance with the Administration's announced enforcement priorities. Hiring and promotion decisions should focus on merit and refrain from using quotas or designating any position for specific protected classes; job postings must use neutral language. All DEI messaging should focus on creating a climate of inclusion and facilitating a diversity of viewpoints, backgrounds, and experiences, rather than elevating any protected class over others.



*Richard Rosenberg is partner at Ballard Rosenberg Golper & Savitt, LLP.*