Employment Law Alert: Department of Justice Issues Guidance on Unlawful DEI Programs

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On July 29, 2025, the Office of the Attorney General issued a memorandum, Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination (hereinafter, the "Guidance"), to recipients of government funding regarding Diversity, Equity, and Inclusion ("DEI") programs. The Guidance follows a series of directives issued by the Trump administration addressing DEI efforts, and provides insight as to how the Department of Justice ("DOJ") will apply federal law when evaluating the programs and practices of federal funding recipients.

Although the Guidance applies, on its face, to federal contractors, the Guidance urges all employers – both public and private – "to review all programs, policies, and partnerships to ensure compliance with federal law, and discontinue any practices that discriminate on the basis of a protected status."

In material part, the Guidance provides employers with several examples of unlawful discriminatory practices and policies including but not limited to:

- Unlawful preferential treatment, such as: race-based scholarships or programs; preferential hiring or promotion practices; and access to facilities or resources based on race or ethnicity;
- Unlawful proxies, such as: "cultural competence" requirements; geographic or institutional targeting; "diversity statements" or "overcoming obstacles" narratives;
- Unlawful segregation, including race-based training; and segregation in facilities or resources;
- Unlawful use of protected characteristics, including race-based hiring policies; sex-based selection in contracts; and
- Unlawful DEI training programs.

Additionally, the Guidance identifies recommended "Best Practices" employers can implement to ensure compliance and reduce risk of violations of federal anti-discrimination laws. These practices include, but are not limited to:

- Establishing transparent anti-retaliation procedures and preparing reporting mechanisms;
- Avoiding exclusionary training programs, eliminating diversity quotas, and prohibiting demographic-driven criteria in policies; and
- Ensuring inclusive access to workplace programs to all qualified individuals regardless of protected characteristics; among others.

In light of the Guidance, employers that receive federal funding, in particular, must review their programs, policies, and partnerships to ensure compliance with federal law and avoid unlawful DEI practices. In addition, private employers are advised to review the examples and recommendations provided in the Guidance when evaluating DEI-related programs to ensure such initiatives do not include practices that the DOJ states are unlawful.

Morse's Employment Law Team has significant experience with respect to all matters relating to compliance with antidiscrimination laws. Please contact the authors of this alert if you have questions.