President Trump Revokes 60-Year-Old Executive Order Requiring Affirmative Action in Federal Government Contracting

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On January 21, 2025, President Trump signed a sweeping executive order titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." Trump's Executive Order (EO), among other things, revokes Executive Order 11246 signed by President Johnson in 1965, which, for the past 60 years, required federal contractors and subcontractors to engage in affirmative action for women and minorities. In its latest budget request, the Department of Labor (DOL) estimated that these affirmative action obligations applied to 25,000 firms with 120,000 establishments, covering 20% of the U.S. workforce.

Trump's EO directs the Office of Federal Contract Compliance Programs (OFCCP) – the agency within the DOL that is responsible for implementing Executive Order 11246 – to immediately cease:

- Promoting "diversity";
- Holding Federal contractors and subcontractors responsible for taking "affirmative action"; and
- Allowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.

Trump's EO states that contractors "may" (but are not required to) continue complying with the existing affirmative action requirements under Executive Order 11246 for up to 90 days, or until April 20, 2025. Of course, federal contractors and subcontractors are still prohibited from considering race, gender, and other protected characteristics when making employment decisions under Title VII of the Civil Rights Act and related federal and state laws. Accordingly, federal contractors and subcontractors will continue to be subject to enforcement actions by the EEOC and

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other state civil rights agencies.

Trump's revocation of Executive Order 11246 eliminates a significant compliance obligation and administrative burden for federal contractors and subcontractors relating to women and minorities. Importantly, it does *not* affect federal contractors and subcontractors' obligations under two federal statutes aimed at protecting veterans and individuals with disabilities – the Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA) and Section 503 of the Rehabilitation Act of 1973. Because VEVRAA and Section 503 are federal statutes – not executive orders – federal contractors and subcontractors must continue complying with their anti-discrimination and affirmative action obligations for protected veterans and individuals with disabilities.

On January 23, 2025, the OFCCP emailed subscribers to its mailing list, acknowledging Trump's EO and federal contractors and subcontractors' obligation to continue complying with VEVRAA and Section 503. The OFCCP stated that "additional information regarding OFCCP's current activities will be forthcoming in the upcoming weeks."

Frost Brown Todd will continue to monitor developments in this area. Federal contractors and subcontractors should consult their legal counsel for guidance on how to proceed with their affirmative action programs.

If you have any questions about Trump's EO or the impact of the Trump administration on the OFCCP, please reach out to the authors or any member of Frost Brown Todd's Labor and Employment Practice Group.

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Frost Brown Todd has a dedicated team closely monitoring the significant policy changes and their impact on businesses. We are committed to keeping our clients informed as these changes take effect and new information emerges. Visit our resource page for insight into the latest developments and their implications for business and industry.

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