AG Bondi Issues DEI Memo to Support False Claims Act Enforcement

Sandra L. Musumeci, Gregory C. Pruden

August 8, 2025

On July 29, 2025, U.S. Attorney General Pam Bondi issued a memorandum titled "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination," which follows up on President Trump's Executive Order 14173 that, in part, directs the Government to explore the False Claims Act ("FCA") as a tool to police DEI programs among recipients of federal funds, including contractors, universities, and healthcare organizations. We analyzed the Executive Order upon its release.

Broadly, the Memo takes the view that any decision to hire, promote, or provide training or support programs in any part because of membership in protected classes illegally discriminates against those outside that protected class. According to AG Bondi, "purportedly benign labels, objectives, or intentions" are immaterial and will not protect a program from DOJ's scrutiny or excuse unlawful discrimination. More specifically, AG Bondi asserts that labeling a program as promoting goals "such as 'DEI,' 'Equity,' or other euphemistic terms does not excuse unlawful discrimination" based on protected characteristics. Nor would "facially neutral criteria" like "cultural competence" or "lived experience" if the underlying goal remains to advantage those with certain protected characteristics over others. The Memo asserts that such practices may violate Titles VI, VII, or IX of the Civil Rights Act or the 14th Amendment. The Memo also notes that enforcement action might be based on retaliation against individuals who "object to or refuse to participate in discriminatory programs, trainings, or policies."

The Memo places federal fund recipients on notice that DOJ may argue their "support [of] third-party programs that discriminate"—*i.e.*, doing business with entities who employ DEI programs—is also unlawful. Liability based upon third-party programs is fundamentally more difficult for the Government to establish, but the viability of such claims is likely to depend on the specific language of the relevant contracts or funding programs.

Finally, the Memo takes the position that failing to preserve "sex-separated intimate spaces and athletic competitions" violates Title IX.

There are two key takeaways.

First, the Memo does not and cannot make conduct illegal. Courts, not DOJ, decide whether DEI or similar programs violate federal law. The Memo does no more than place the public on notice of the Government's litigating position and enforcement priorities. (Indeed, the Memo itself acknowledges that its directives are "non-binding suggestions to help entities comply with federal antidiscrimination laws and avoid legal pitfalls.") If DEI programs are not unlawful discrimination, then they cannot be the basis for a false statement of compliance with antidiscrimination laws.

Second, the Memo is still relevant to evaluating both scienter and materiality under the FCA. Even were a court to find a federal funding recipient's DEI program technically violated antidiscrimination laws, the FCA is a fraud statute, requiring both a knowing or reckless false statement and materiality to the Government's payment decision. Each of those elements provides a separate opportunity to defeat an FCA claim brought by the Government. With this Memo, DOJ seeks to eliminate any ambiguity as to how it views these issues, and thereby limit defendants' ability to argue a lack of scienter or materiality. By placing the public on notice of exactly what it will argue is illegal, DOJ seeks to combat putative defendants' arguments that they were not at least reckless in representing that their DEI programs complied with the law, or that the programs were irrelevant to a payment decision.