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Anti-DEI Shift Arrives at DOL Contractor Office Under New Chief

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- Director to target past data submissions for alleged bias
- Promises review of agency's remaining enforcement authority

The new leader of the Labor Department's federal contractor watchdog has signaled the Trump administration's intent to use what's left of the office's power to target diversity, equity, and inclusion initiatives.

An introductory message [sent March 24](#) by President Donald Trump's newly appointed director of the Office of Federal Contract Compliance Programs, Catherine Eschbach, that was obtained by Bloomberg Law, puts companies with federal contracts and the attorneys who advise them on formal notice of the pivot.

The DOL office formerly tasked with policing for race and sex bias among contractors and ensuring affirmative action plans are operational will now, Eschbach wrote, examine those plans with a new goal to root out "longstanding unlawful discrimination."

The memo is a stark indication of the Trump administration's redirection of the contractor watchdog's mission, [an agency whose workforce](#) it also plans to shrink by nearly 90%.

"I would say it's unsurprising in its shock value at this point," said Dan Altchek, a management-side attorney with Saul Ewing LLP.

The memo's reference to recent US Supreme Court rulings that curbed both [agencies' regulatory authority](#) and the [use of affirmative action](#) in higher education admissions also signal Trump could try even deeper cuts to the office's power.

Most of the OFCCP's work prior to the current Trump administration was "out of step, if not flat out contradictory, to our country's laws," Eschbach's memo said.

Following Trump's [Jan. 21 rescission of Executive Order 11246](#), which underpinned the agency's authority to audit federal contractors for potential pay or hiring discrimination and check their compliance with affirmative action obligations, the OFCCP only retained the power to monitor for bias against disabled workers and veterans.

Former Morgan Lewis & Bockius LLP litigator Eschbach has vowed to "closely" review the statutory authority for any investigations brought under those laws, Section 503 of the Rehabilitation Act and the Vietnam Era Veterans' Readjustment Assistance Act.

Larger Effort

The roadmap outlined by Eschbach, combined with efforts already taken by the Trump administration to go after DEI programs, like at the Equal Employment Opportunity Commission, indicates an increased risk for companies that have implemented any form of diversity efforts, employment attorneys say.

"This internal memo from the new director of OFCCP is one additional manifestation of that risk," said Matthew Camardella, an attorney at Jackson Lewis P.C., "So if you've been audited in the last few years, it's a good time to take a look at what the agency has in its possession and to see whether or not that creates risk for you in the context of a broader assessment of DEI programs."

In light of the Supreme Court's landmark 2024 ruling in *Loper Bright Enterprises v. Raimondo*, which overturned a long-standing legal doctrine directing courts to defer to an agency's reasonable interpretation of ambiguous laws, Trump's new OFCCP director questioned in her memo whether EO 11246 was ever "legally viable."

A successful court challenge finding EO 11246 created regulatory overreach would add a significant obstacle to the eventual restoration of the order, which before January had been in place since the 1960s.

Eschbach's messaging also indicates an appetite to scrutinize the agency's remaining work to enforce anti-discrimination laws for veterans and disabled workers, employment attorneys say, with a focus on whether the agency's actions to correct discrimination have gone beyond what the law permits.

One example could be the OFCCP's ability to obtain monetary relief on behalf of victims of discrimination under its remaining authorities, Camardella said.

"There's a question as to whether or not the statutes authorize that type of remedial action, or whether or not the OFCCP's authority is limited to contractual remedies, so suspension or cancellation of a contract or contract damages, as opposed to obtaining damages for individuals," Camardella said.

Eschbach also indicated she plans to apply the principles in *Students for Fair Admissions v. Harvard*, which curtailed race-based affirmative action in higher education, to the agency's workplace discrimination work.

Conservatives have often argued that the case should apply in a workplace scenario, but employment attorneys said that would have no real impact because affirmative action programs in employment are focused on recruitment efforts, not hiring decisions.

"There's been a lot of debate about that decision," said Christy Kiely, a partner at Seyfarth Shaw LLP. "What complicates things, is that the term affirmative action means fundamentally different things in education than it always has under the OFCCP, the policies at issue in the *Fair Admissions* case explicitly involve the consideration of race in decision making, and the OFCCP has never allowed that."

Agency Data

Attorneys representing federal contractors said they were alarmed by Eschbach's suggestion that the agency will be pouring through contractors' prior submissions of affirmative action plans to the agency for signs of discriminatory practices.

[Earlier this month the EEOC and Department of Justice](#) released a technical assistance document explaining that the agencies interpreted certain DEI plans as discriminatory "if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee's race, sex, or another protected characteristic."

That posture, along with Eschbach's message, has attorneys cautioning federal contractors who were

required to maintain affirmative action plans with the OFCCP that they could be facing new scrutiny from the agency.

“Contractors who’ve been submitting affirmative action plans pursuant to legal requirements were acting under an understanding of what was lawful and what has been lawful for many, many years now,” said Altchek. “We’re potentially talking about a lot of federal contractors facing a lot of exposure for conduct that everyone understood to be legal.”

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