

ALERT

Federal Court Enjoins Enforcement of Key Diversity Training Limits in Executive Order 13950

December 30, 2020

WHAT: The U.S. District Court for the Northern District of California has issued a preliminary injunction barring the Government from enforcing portions of Executive Order (EO) 13950, Executive Order on Combatting Race and Sex Stereotyping. The injunction covers EO 13950 sections that imposed limits on diversity and inclusion training by federal contractors (Section 4) and federal grantees (Section 5). The court found these restrictions infringed on the plaintiffs' rights under the Free Speech Clause of the First Amendment and were too vague to provide notice of the prohibited conduct, violating the Due Process Clause of the Fifth Amendment. The injunction applies nationwide.

WHEN: The district court issued the preliminary injunction on December 22, 2020.

WHAT DOES IT MEAN FOR INDUSTRY: Federal contractors and grantees are not subject to EO 13950's restrictions on diversity training for now. The Office of Federal Contract Compliance Programs (OFCCP) has posted a message that the agency "is complying" with the preliminary injunction as applied to contractors and "will publish more information soon."

Although preliminary, the injunction seems likely to last past the upcoming transition to the Biden Administration, which increases the likelihood that EO 13950 will be withdrawn before ever being enforced. (It is also possible that the district court will issue a permanent injunction before any withdrawal.) To be sure, OFCCP created a Frequently Asked Questions page that asserted EO 13950's

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restrictions on diversity and inclusion training are also encompassed by EO 11246's longstanding requirements for equal employment opportunity and affirmative action by covered contractors. But under the circumstances, it seems unlikely OFCCP will follow this alternative path to enforcing the training restrictions in the near future, given how the district court has ruled on EO 13950's substance.