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Texas Attorney General Issues Lengthy Anti-DEI Legal Opinion

Services

Labor & Employment

Workplace Diversity, Equity, & Inclusion

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On January 19, 2026, the federal Martin Luther King Jr. holiday, Texas Attorney General Ken Paxton issued a lengthy opinion titled "Diversity, Equity, and Inclusion in Texas," addressing the legality of Diversity, Equity, and Inclusion (DEI) initiatives in both the public and private sectors. Attorney General Paxton takes the position that decades of DEI-related frameworks are unconstitutional, particularly those that take race or sex into account in hiring, contracting, or appointments.

The opinion devotes substantial attention to private employer practices, specifically warning that many DEI initiatives may run afoul of Title VII of the Civil Rights Act of 1964 ("Title VII"), Section 1981 of the Civil Rights Act of 1866 ("Section 1981"), and the Texas Commission on Human Rights Act ("TCHRA").

It identifies several common DEI practices that could trigger liability, including:

Demographically based workforce representation goals and quotas,

Diverse slate policies (requiring certain demographics in candidate pools or interviews),

Diversity fellowships or race/gender-based hiring programs,

Tying compensation or bonuses to DEI-related metrics,

Identity-based employee resource groups, mentoring, and training,

Supplier diversity programs (preferring vendors based on race or gender) and

Diversity-related governance (e.g., Chief Diversity Officers, DEI offices, board committees overseeing DEI).

According to the opinion, "the mere existence of a DEI policy, in isolation, may not impose liability under Title VII." Nonetheless, it indicates that if such policies are utilized in employment decisions or result in the limitation, segregation, or classification of employees or applicants in a manner that denies them opportunities, they may conflict with federal and state anti-discrimination laws. This includes practices like setting demographic hiring targets, requiring a certain number of minorities on boards, mandating diverse interview panels, tailoring job postings to specific groups, or linking pay and promotion to DEI-related metrics.

Notably, the opinion emphasizes that even "self-segregation" by employees, such as participation in identity-based resource groups, may raise legal concerns if it results in exclusion or disparate treatment. Additionally, the opinion explains that practices such as structured interview requirements, internships, fellowships, pipeline programs, and targeted recruitment efforts may be considered unlawful employment actions under Title VII if they explicitly favor or exclude individuals based on race or sex.

The opinion further cautions that DEI training programs could create a hostile work environment under Title VII or the TCHRA if they involve ongoing stereotyping, negative generalizations, or expectations of discriminatory treatment, especially if any race is repeatedly portrayed negatively. It points out that while simply requiring diversity training is not enough to create such an environment, the way the training is conducted matters. According to Paxton, whether DEI training amounts to a hostile work environment depends on the content, context, and implementation of the training.

The opinion also addresses potential liability under Section 1981 of the Civil Rights Act, which guarantees equal contractual rights regardless of race. It warns that policies limiting contracting opportunities based on race, such as competitions or fellowships open only to certain racial groups, may violate federal law. The same risk applies to any denial of jobs, internships, or promotions based on race, or any unequal treatment in the terms and conditions of employment or contracts.

Finally, the opinion points out that DEI initiatives may conflict with federal and state securities laws if companies fail to adequately disclose the risks these programs pose to investors. Those risks include the potential for anti-discrimination lawsuits, customer backlash, boycotts, or stock price declines. The opinion cites a recent federal case where a company's general risk disclosures were deemed insufficient because they did not specifically address the risks posed by DEI-related marketing campaigns. Therefore, according to the opinion, simply providing general risk disclosures may not be sufficient if they do not specifically address the unique risks posed by DEI policies.

Texas employers should know that the Paxton opinion does not overturn or change existing law, nor does it create new law. While not legally binding, it signals a heightened enforcement posture and provides a roadmap for potential legal challenges to corporate DEI initiatives in Texas. It may also influence how Texas courts interpret state anti-discrimination law, given the persuasive weight often afforded to Attorney General opinions. Therefore, private employers should carefully review their DEI policies and practices to ensure compliance with Title VII, the TCHRA, and Section 1981, and employers should consider the potential for increased scrutiny of DEI-related programs in the future.

Contact us

If you have questions or would like to discuss how common practices could violate federal or state anti discrimination laws, please contact Erik Eisenmann, Kevin Koronka, Ayissa Maldonado, or your Husch Blackwell attorney.