

CLIENT ALERT

Guidance Issued on Executive Order Banning Unconscious Bias Training

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Two weeks after President Trump issued an [“Executive Order on Combating Race and Sex Stereotyping,”](#) which bans federal contractors from utilizing training that “inculcates in its employees any form of race or sex stereotyping,” the Department of Labor’s Office of Federal Contract Compliance Programs has issued its first guidance on the EO.

Notably, the guidance clarifies that unlawful “race or sex scapegoating” under the EO includes “any claim that, consciously or unconsciously, and by virtue of their race or sex,” people are inherently racist or inherently sexist. The guidance also explicitly states that “[u]nconscious or implicit bias training is prohibited to the extent it teaches or implies that an individual, by virtue of his or her race, sex, and/or national origin, is racist, sexist, oppressive, or biased, whether consciously or unconsciously.” Because this principle is a concept frequently included in unconscious and implicit bias training, the OFCCP’s guidance suggests that many training programs historically offered by federal contractors could now be viewed as a violation of the EO.

The guidance also announces that the Department of Labor is in the process of drafting a Request for Information (RFI), to be issued by October 22, 2020, which will seek information from contractors and their employees regarding training, workshops and similar programming in order to determine whether they violate the EO. The current guidance does not detail the deadline or process by which the responses to the RFIs must be submitted.

The guidance further clarifies that EO 13950 became effective immediately when signed on September 22, 2020, but that its requirements apply to contracts entered into on or after November 21, 2020. Importantly, however, the guidance makes clear that the OFCCP may also investigate complaints of sex and race stereotyping pursuant to its existing authority under [EO 11246](#). This caveat suggests that contractors’ diversity and inclusion training programs could become the subject of an OFCCP investigation, even if the requirements of EO 13950 have not yet been incorporated into their contracts. Finally, the guidance announces the establishment of both telephone and email hotlines that individuals and “groups” – an undefined term – may use to report concerns of “race and sex stereotyping and scapegoating.”

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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