

K&L Gates Webinar Recording Link and Chat Record

14 March 2025

Recording Link: <https://klg.webex.com/klg/ldr.php?RCID=6458a02744c80f771643dcd841467506>

Chat Record:

from Craig E. Leen (K&L Gates) to everyone: 11:07 AM

Please include any questions here in the chat.

from Tremaine Maebry to everyone: 11:12 AM

Since EOs are not laws (but carry the force of laws) what exactly is the unlawful activity for engaging in these initiatives if you are not a federal agency?

from Craig E. Leen to everyone: 11:13 AM

The unlawful activity would still be assessed by a court under federal antidiscrimination law, so no preferences, quotas, or exclusions based on race, gender, or other protected status; these EOs also indicate that anti-DEI will now be an enforcement priority of the federal government

from Renee Scalzi to everyone: 11:14 AM

So, with this EO how would this affect AAP requirements?

from Craig E. Leen to everyone: 11:14 AM

It ends them for women and minorities, they continue for disability and veterans

from Leann Walsh (K&L Gates) to everyone: 11:14 AM

Renee, Craig will also discuss how the EO affects AAP requirements at the last portion of the presentation in more detail.

from Renee Scalzi to everyone: 11:15 AM

Thank you both!

from Leann Walsh to everyone: 11:18 AM

Casey, we are encouraging all employers to work with their counsel and do a DEI audit of policies and procedures, including handbooks, to confirm whether language should be revised or wording should be changed. I will talk more about DEI audits in my portion of the presentation.

from Ferry Eden Lopez (K&L Gates) to everyone: 11:19 AM

Casey - You would need to balance any adjustments with state law protections to ensure that any changes does not run afoul with state law.

from Renee Scalzi to everyone: 11:20 AM

Will we be getting a copy of the slides?

from Leann Walsh to everyone: 11:21 AM

Yes, I believe they will be shared by Feeding America to all of the attendees after the presentation concludes.

from Tremaine Maebry to everyone: 11:24 AM

When you talk about race -conscious preferences or programs I thought the SC narrowly applied this to universities and colleges.

from Leann Walsh to everyone: 11:26 AM

The Supreme Court decision about race-conscious preferences and programs (such as giving someone "plus factors" due to certain personal characteristics) did apply to higher education, both that type of conduct has always been unlawful in the employment arena.

from Tremaine Maebry to everyone: 11:26 AM

Thank you

from Triada Stampas she/her, Fulfill to everyone: 11:29 AM

Are you aware of any food banks having to sign the kind of attestation you've discussed?

from Triada Stampas she/her, Fulfill to everyone: 11:30 AM

*sorry, certification

from Leann Walsh to everyone: 11:32 AM

I am not yet but I understand that many food banks may not be direct federal contractors, and contractors signing new contracts have been the first targeted it seems in requests for certifications.

from Tremaine Maebry to everyone: 11:32 AM

Curious why haven't the courts or legal advocates talk more about the First Amendment violations given the strict scrutiny applied to chilling FA speech?

from Leann Walsh to everyone: 11:34 AM

The preliminary injunction in Maryland was largely based on the First Amendment. The court found it too chilling because "illegal DEI" is not defined in the executive orders, and the attorney for the government would not or could not provide a definition of the concept in the court hearing.

from Ferry Eden Lopez to everyone: 11:34 AM

The First Amendment was part of Maryland federal court's consideration in issuing the preliminary injunction

from Tremaine Maeby to everyone: 11:35 AM

Thank you.

from Eli Butler to everyone: 11:46 AM

How would one prove there was or was not "illegal DEI" taking place? for example, if an organization hires a transgender applicant, how could they prove they were hired because they were qualified for the role?

from Charles - FAKH to everyone: 11:46 AM

As I'm understanding it, the EOs are centered around employment. If we're making program delivery decisions based on food insecurity rates amongst different races, ie we're focusing a food box program for people of color in X county because their food insecurity rate is the highest in our service area. Will that draw the same scrutiny as employment practices?

from Triada Stampas she/her, Fulfill to everyone: 11:48 AM

How does this translate to nonprofit governance? We have a board-level Equity & Access Committee that is responsible for equity-centered board practices and oversight

from Fleurian Filkins to everyone: 11:48 AM

If an agency partner is engaging in discriminatory behavior (e.g., discriminating against LGBTQ+ people), are there any legal concerns with ceasing partnership with them currently? Especially wondering how that might apply to faith-based partners who justify discrimination based on their faith.

from Trisha Cunningham to everyone: 11:49 AM

Will insurance companies face pressure to no longer provide same sex domestic partners insurability?

from Rosie to everyone: 11:49 AM

Would parental leave and breastfeeding policies be examples of employment benefits limited to individuals in certain protected groups?

from Trisha Cunningham to everyone: 11:49 AM

Should volunteer nonprofit boards not have diversity goals?

from Jenny Moore to everyone: 11:50 AM

How can we print out this chat?

from Ferry Eden Lopez to everyone: 11:51 AM

Eli - it would be very fact intensive, looking into the factors that are considered in the interview and applicant selection process, the qualifications of the candidates, whether you are asking for protected category characteristics as part of the application process, etc.

from douglas nadjari to everyone: 11:52 AM

a copy of the deck would be appreciated

from Jenny Moore to everyone: 11:56 AM

Is this being recorded?

from Leann Walsh to everyone: 11:57 AM

I believe the training is being recorded and that the deck will be circulated.

from Erin Pulling to everyone: 11:57 AM

Leann mentioned being cognizant of statements made re. @BlackLivesMatter etc. Any statement would have been made prior to these EOs. Regardless, are you recommending any publicly available communications get removed even though it was years ago? Or just "de-indexing" which limits searchability?

from Leann Walsh to everyone: 11:58 AM

Trisha, we would encourage employers even with unpaid board positions to work with counsel on whether to continue any diversity goals.

from Christina Martínez she/her to everyone: 11:59 AM

Hi all - we will send the recording and deck to all who registered for the webinar. We will also post the materials on HungerNet, for those of you with access.

from Leann Walsh to everyone: 11:59 AM

Rosie, yes parenting-related benefits are policies that we sometimes see issues relating to gender discrimination, so we would encourage you to review those with counsel. For example, if you provide parental leave only to women or if you provide longer leave to "primary" caregivers, those types of policies may be challenged as unlawful and there have been many cases on those topics.

from Leann Walsh to everyone: 12:01 PM

Erin, we are seeing different clients take different approaches with historic public statements on DEI. It can depend on the volume of content at issue, the nature of the content, and the risk level for the organization (e.g., do they believe they are a high profile target for a government investigation and/or are they a federal contractor). I will note that the AFL letter identifying organizations in a letter to the federal government for investigation, they were citing public statements from a few years back.

from Heather Buoniconti to everyone: 12:02 PM

For job postings, how would language preferences and pay differentials be interpreted?

from Leann Walsh to everyone: 12:03 PM

Heather, if job postings indicate that you prefer individuals from certain groups or that you pay individuals differently based on legally protected characteristics, we would encourage you to discuss that with counsel as those may result in flags.

from Trisha Cunningham to everyone: 12:04 PM

How about organization involvement in PRIDE parades or employee use of pronouns in their signatures?

from Charles - FAKH to everyone: 12:09 PM

That's helpful. Thanks

from Mark Bordeau to everyone: 12:13 PM

can you put quotes and say a % of board members must be a certain type of religion or the CEO must be a certain type of religion?

from Fleurian Filkins to everyone: 12:16 PM

Thank you

from Trisha Cunningham to everyone: 12:24 PM

Very helpful - thank you.

from Eli Butler to everyone: 12:25 PM

thank you so much we appreciate you!

from nicole lamboley to everyone: 12:25 PM

thank you

from Tai McIntosh to everyone: 12:25 PM

Thank you all!

from Maja Henkel to everyone: 12:25 PM

Thank you!

from Michael Guerra to everyone: 12:25 PM

Thanks everyone. Super helpful.

from Charles - FAKH to everyone: 12:25 PM

Thank you very much. It was incredibly helpful

from Mark Bordeau to everyone: 12:25 PM

thank you!

from Megan Middleton to everyone: 12:25 PM

Thanks you.

from Jenny Moore to everyone: 12:25 PM

Thank you!

from Stacey Andernacht to everyone: 12:25 PM

Thank you, very helpful information!

from L.J. Katt Brown to everyone: 12:25 PM

thank you so much for your time and sharing your expertise

from Jeaneal Byrd to everyone: 12:25 PM

Thank you

from Chelsea Sladek to everyone: 12:25 PM

Thank you so much, great information.