

DEI & Employment Considerations for 2025

PRESENTED BY

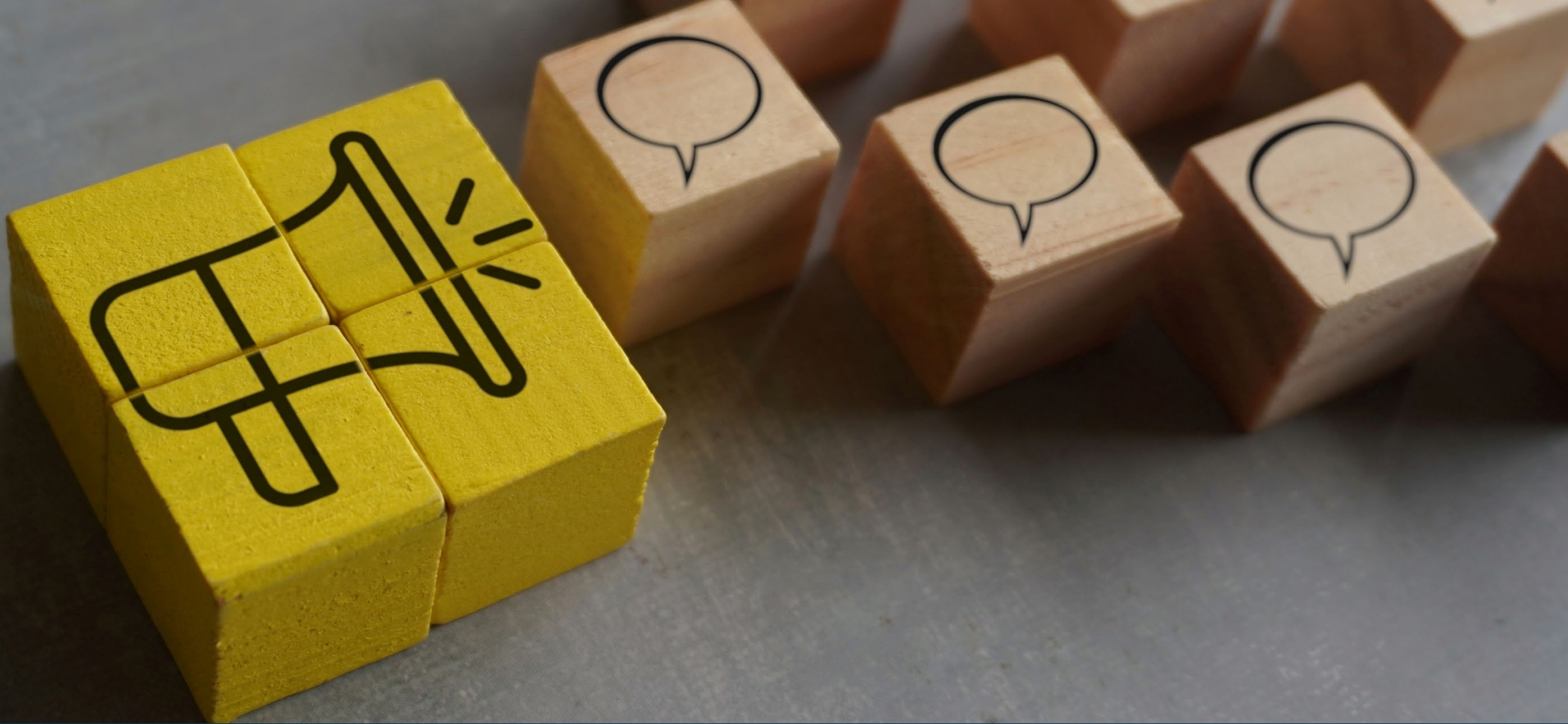
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FOR

44th Annual Civil Service Conference

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Framing the Conversation

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Federal Focus on DEI

- Status
- Practical guidance

Washington State

- Status
- Practical guidance



DEI in 2025: What Has Changed



DEI in 2025: What Has Changed

- Dramatic change in Federal position and approach regarding DEI
- Executive Orders focused on DEI
- Scrutiny on DEI programs by US Attorney General, DOJ, and EEOC



DEI in 2025: Executive Orders Focused on DEI

Executive Order: Ending Radical and Wasteful Government DEI Programs and Preferencing

- Rescinded Biden-era pro-DEI orders
- Ordered all federal agencies to end any form of DEI programming and shutter DEI departments
- Ordered termination of all “equity-related” grants and contracts

Status: No broad injunction in place; Individual legal challenges are ongoing

Executive Order: Ending Illegal Discrimination and Restoring Merit-Based Opportunity

- Rescinded many earlier EOs regarding DEI, including requirement for federal contractors to give equal opportunity in hiring and to submit affirmative action plans
- Added DEI certification requirements for all federal contracts and grants
 - Will make it difficult for recipients to defend against DEI-related False Claims Act cases
 - Carefully review required certifications
- Announced intention to eliminate DEI programs that constitute “illegal discrimination and preferences” in private sector

Status: No broad injunction in place; Individual legal challenges are ongoing

DEI in 2025: EEOC and US DOJ

- Joint guidance based on Title VII of Civil Rights Act of 1964
- When DEI programs considered unlawful
 - Prohibition against disparate treatment based on protected class in all aspects of employment
 - Hiring, firing, promotion, demotion, compensation, benefits, access to training, access to mentoring, internships, selection for interviews, job duties and work assignments
- Promise to aggressively scrutinize DEI programs

DEI in 2025: US DOJ Memo



- July 29, 2025: US DOJ Memorandum to Federal Agencies; applies to “recipients” of federal funding
 - Important for all entities subject to federal civil rights laws
- Another signal of aggressive enforcement posture toward initiatives that rely in any way on protected characteristics
- Beware of “proxies” for protected characteristics
 - Criteria like “cultural competence” or “lived experience”
 - Need to document rationale to support certain facially neutral criterion
- Criteria should be “demonstrably related” to legitimate “non-discriminatory” objectives

DEI in 2025: EEOC update

- EEOC has been without quorum since January
- 2nd Republican EEOC commissioner just confirmed; Quorum (3) restored; 2 Republicans
- EEOC may now vote on major policy changes and litigation
- Expectation that litigation will challenge DEI programs

Status: EEOC currently closed because of lapse in its appropriation



DEI in 2025: What Has Not Changed

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- The law – Federal (Title VII) and State (WLAD) – still prohibits employment discrimination
 - Federal (Title VII): race, color, religion, sex, or national origin
 - State (WLAD): age, sex, marital status, sexual orientation, gender expression or identity, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, disability or use of a trained guide dog or service animal by a person with a disability

DEI in 2025: What Has Not Changed

- I-200 (RCW 49.60.400): State shall not discriminate against or grant preferential treatment to any individual or group on basis of race, sex, color, ethnicity, or national origin in public employment, public education, or public contracting
- WA Supreme Court: *Parents Involved in Community Schools v. Seattle School Dist., No. 1* (2003): “We hold that the open choice plan's use of a racially cognizant tie breaker does not violate [RCW 49.60.400](#). The School District's open choice plan does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin as meant by law. To the extent the tie breaker is race conscious, it furthers a core mission of public education; to make available an equal, uniform and enriching educational environment to all students within the district.”

DEI in 2025: What Has Not Changed

- If you had a DEI program before January 20, 2025, that complied with Federal and State law, it still does
 - Be sure the program does not use race, sex or any other protected class as a consideration in any employment decisions
- State of Washington's priorities and enforcement approaches
- Plaintiff's employment attorneys looking for opportunities

DEI in 2025: What Has Not Changed

- Well-designed DEI programs do not violate the law
 - Ensure inclusive access to programs, resources and activities
 - Training programs should be designed to welcome participation from all individuals
 - Use job-related qualifications and ensure selection decisions are grounded in demonstrable skills, qualifications, or experience directly tied to performance

DEI in 2025: What Has Not Changed

- Employers may hire based on organizational needs
 - *Worth repeating:* Use job-related qualifications and ensure selection decisions are grounded in demonstrable skills, qualifications, or experience directly tied to performance
- Example: language requirements given populations organization serves



DEI in 2025: What Now?

Be a barge



DEI in 2025: What Now?



Review all policies and programs to ensure legal compliance



Treat all employees with dignity and respect



Training is more important than ever



Carefully review any certifications required for federal funds

Questions?

Thank you.



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