

CMCP CLE Presentation Overview

Summary

The policy pendulum has swung sharply, but investor and talent expectations remain largely the same regarding DEI expectations. DirecTV can preserve inclusive culture and mitigate litigation/regulatory exposure by (i) neutralizing protected-class criteria, (ii) tightening public disclosures, and (iii) embedding DEI oversight in its core compliance architecture.

Federal Policy Reset under “Trump 2.0”

Action	Effect	Compliance Implications
Executive Orders 14151 /14173¹	• Rescinds prior equity mandates and dissolves all DEI/DEIA offices • Commands a “whole of government” campaign to identify the “most egregious” corporate DEI programs • Propose up to 9 civil and criminal matters per sector	Any program that sets, even indirectly, a race or sex-based preference is a target
DOJ /EEOC Joint Technical Guidance²	• Declares that any employment action “motivated whole or in part” by a protected trait can violate Title VII • Rejects higher burden for “reverse-bias” claims • Extends hostile-environment doctrine to some DEI training content	Reverse discrimination class actions are now easier to allege

¹ Exec. Order No. 14110, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” *The White House*, January 21, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/>.

² U.S. Equal Employment Opportunity Commission, “EEOC and Justice Department Warn Against Unlawful DEI-Related Discrimination,” March 19, 2025.

OFCCP Realignment³	The new director will retro-audit historical affirmative-action plans and require contractors to certify they have "wound down" the use of affirmative-action plans.	Contractors and key vendors can drag companies into False-Claims exposure
DOJ Enforcement⁴	DOJ Memo orders litigating divisions to surface § 1981, FCA criminal referrals by July 2025	Companies can expect subpoenas for applicant flow and vendor data.

State & Political Dynamics

- **15-State AG Coalition** threatens Business Roundtable over “racially discriminatory DEI initiatives.”⁵
- **Whistle-blower Shield:** The DOJ/EEOC standard protects any employee with a "reasonable belief" that a DEI program is illegal, expanding retaliation risk.⁶

³ Sheila M. Abron, Jennifer B. Sandberg, and Regina A. Petty, “Trump’s OFCCP Pick Vows to Combat Illegal DEI by Reviewing Prior Affirmative Action Plans: Here’s What Federal Contractors Need to Know,” *Fisher Phillips*, March 27, 2025, <https://www.fisherphillips.com/en/news-insights/trumps-ofccp-pick-vows-to-combat-illegal-dei-by-reviewing-prior-affirmative-action-plans.html>.

⁴ Alston & Bird LLP, “How DOJ Could Pursue Civil and Criminal Enforcement Actions Against Private-Sector DEI/DEIA Programs,” *News & Insights*, February 21, 2025, <https://www.alston.com/en/insights/publications/2025/02/doj-enforcement-private-sector-dei-deia-program>

⁵ Missouri Attorney General’s Office, “Letter to Business Roundtable,” April 15, 2025, <https://ago.mo.gov/wp-content/uploads/2025.04.15-Business-Roundtable-Letter.pdf>

⁶ Steve Kardell, “Section 1981: The Swiss Army Knife for Anti-DEI Litigation,” *Corporate Counsel*, April 5, 2025.

Litigation & Enforcement Trends

Theory	Recent Examples	Implications
§ 1981 Contract Bias	<i>American Alliance v. Fearless Fund</i> (11 th Cir. 2024) enjoins race-exclusive grants. ⁷	Race-exclusive suppliers or content programs may be vulnerable
Title VII Reverse Discrimination	<i>Dill v. IBM</i> (W.D. Mich. 2025) survives a motion to dismiss despite the "background circumstances" hurdle. ⁸	Promotion pipelines and internship programs will likely become targets
Securities / Fiduciary Claims	<i>Florida SBA v. Target</i> (M.D. Fla. 2025) alleges failure to disclose DEI backlash risk. ⁹	Boards that frame DEI as a social pledge may face enhanced litigation risk
Unlawful Promotion Track Quota	<i>Sanders v. United Way of North Carolina, Inc.</i> alleges that promotion-track quota favoring under-represented groups violates § 1981 and Title VII; seeks class damages and injunctive relief.	Demonstrates how DEI criteria can expose companies to employee litigation risk

⁷ *Id.*

⁸ *Id.*

⁹ "TARGET CORP: Issues Misleading Statements to Investors, Suit Says," *Class Action Reporter*, Vol. 27, April 14, 2025, discussing *State Bd. of Admin. of Fla. v. Target Corp.*, No. 2:25-cv-00135 (M.D. Fla. Feb. 20, 2025).

Public Company Response

Behavior	Evidence	Implications
Vocabulary Swap ¹⁰	• S&P-100 filings cut the word “DEI” 55% YoY • Apple and Microsoft pivot to “Talent & Opportunity”	Language alone will not insulate policies, but it lowers headline risk and SEC queries
Minimalist Disclosure ¹¹	BlackRock 2025 proxy deletes all DEI references, rolls staff into “Talent & Culture”	May create a new acceptable baseline for Fortune 500 issuers
Compensation Re-tool ¹²	Willis Towers 2025 survey shows the prevalence of DEI pay metrics down to 57% and trending qualitatively.	Numeric diversity goals now presumptively suspect

Business & Investor Climate

- **Performance Link**—*As you Sow*'s five-year study (1,641 issuers) finds a statistically significant correlation between diversity and eight financial KPIs, including ROE and 10-year TSR.¹³
- **Investor Split** – 98% of Apple and Costco shareholders voted against anti-DEI proposals in 2024, yet anti-ESG activists continue derivative suits.¹⁴

¹⁰ "How Public Companies Are Changing Their DEI Disclosures," *Law360*, March 2025, <https://www.law360.com/pulse/articles/2311609/how-public-companies-are-changing-their-dei-disclosures>

¹¹ *Id.*

¹² Kenneth Kuk, Michael Siu, and Hannah Summers, "Are DEI Metrics in Executive Incentive Plans Gone for Good?" *WTW*, April 8, 2025, <https://www.wtwco.com/en-us/insights/2025/04/are-dei-metrics-in-executive-incentive-plans-gone-for-good>

¹³ <https://www.law360.com/pulse/articles/2313417>

¹⁴ *Id.*