



Over the past year, several states have rolled out plans to defund diversity, equity, and inclusion (DEI) efforts. While these initiatives are focused on state agencies and state-funded higher education, they may cause concern for private employers.

DEI has many definitions, but broadly, the phrase is often used to describe policies or practices that promote representation, equitable treatment, inclusion, belonging, recruitment, and retention of diverse individuals. DEI efforts often focus on valuing different backgrounds in the workplace, including age, ability, gender, race, ethnicity, national origin, veteran status, sexual orientation, gender identity, and religion.

These efforts have come under attack in many quarters as multiple lawmakers have employed various tactics, including rolling back broad environmental, social, and governance (ESG) initiatives by corporations as well as restricting teachers from teaching broad historical topics in their classrooms. Current anti-DEI initiatives focus

on defunding DEI programs in higher education or prohibiting the use of DEI policies in hiring decisions. Below are snapshots from some of the 19 states that have introduced or passed anti-DEI legislation.

- **Arizona.** Proposed legislation would prohibit public entities from requiring employees to "engage in a diversity, equity and inclusion program," spending public funds on DEI programs, contracting with a company that "participates in a diversity, equity and inclusion program," conducting a DEI program, or hiring employees dedicated to DEI programs.
- **Florida.** Proposed legislation would prohibit public colleges from requesting "political loyalty tests" as a condition of employment, admission, or promotion. "Political loyalty tests" include requesting a person commit or make a statement in support of DEI. Proposed legislation would prohibit the creation of DEI offices, the use of "critical race theory rhetoric, or other forms of political identity filters" in hiring or promotion, and the use of state funding on DEI or critical race theory programs.
- **Iowa.** Proposed legislation would prohibit state agencies and governmental entities from using certain concepts related to racism and sexism in mandatory DEI trainings and public higher education institutions from spending any funding on DEI officers, which includes "any effort to promote or promulgate trainings, programming, or activities designed or implemented with reference to race, color, ethnicity, gender identity or sexual orientation."
- **Kansas.** The budget bill, passed on April 6, 2023, includes an amendment prohibiting state funding for applicants, employees, students, or contractors of public higher education institutions to "endorse any ideology, including the ideology of diversity, equity or inclusion," or to provide a diversity statement.
- **Missouri.** Proposed legislation prohibits state licensing entities for professional and occupational licenses from requiring applicants to be subjected in any way to "DEI ideologies or materials."
- **Montana.** Proposed legislation prohibits requiring state employees to complete DEI-related training or activity as a condition of employment.
- **Oklahoma.** Proposed legislation states higher education institutions cannot fund, promote, sponsor, or support any DEI office or any office that funds, promotes, sponsors, or supports any initiative or formulation of DEI and further prohibits "political tests," including diversity statements, from being used in the hiring process of public higher education institutions.
- **Texas.** In February, the office of Texas Governor Greg Abbott released a memorandum warning state agencies and public universities that the use of DEI initiatives in hiring is "inconsistent with the law" and that hiring cannot be on any other basis than "merit." In response, public universities have paused or are reviewing the use of DEI policies in hiring. Proposed legislation would prohibit higher education institutions from funding DEI offices, mandating diversity statements for admission or employment, or hiring DEI staff. Further proposed legislation would prohibit the consideration of race or ethnicity in higher education admissions, governmental employment, and governmental contracting. A proposed budget bill would ban colleges and universities from using state funds on DEI initiatives.

Takeaways

The bulk of anti-DEI efforts is focused on state agencies and higher education institutions. However, private employers should take note of these efforts as well as broader attacks on ESG initiatives. To the extent that these state laws affect contracting with state agencies and higher education institutions, private employers should be aware of those effects. In addition, increased politicization of these programs raises the risk that individuals may seek to bring claims against their employers should those individuals believe that employment decisions are the result of DEI efforts. Many strategic and effective DEI efforts remain on the right side of the legal line, but employers should review their current DEI programs to manage external risks.

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