

Trump Outlaws Contractors' 'Divisive' Anti-Bias Trainings

By **Alyssa Aquino**

Law360 (September 23, 2020, 9:03 PM EDT) -- U.S. President Donald Trump late Tuesday prohibited federal contractors from conducting racial sensitivity trainings while partnered with the government in an executive order that looks to cut at the heart of most workplace anti-discrimination trainings.

Trump announced the executive order in a late Tuesday tweet, saying he was broadening a federal government-wide bar on "divisive and harmful sex and race-based ideologies" to sweep in businesses that contract with the government.

"Americans should be taught to take PRIDE in our Great Country, and if you don't, there's nothing in it for you!" he tweeted.

The executive order builds on an earlier White House memorandum blasting federal agencies for holding "divisive, un-American" instructional sessions on systemic racism. In that Sept. 4 communication, the White House instructed agencies to end racial sensitivity trainings.

According to the order, federal agencies will adopt contract language barring private contractors from holding any workplace training "that inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating" during the course of a contract. The order further directs contractors to include that language in subcontracting agreements and purchase orders.

Trump clarified this mandate with a list of concepts that must be struck from any workplace trainings, including "the United States is fundamentally racist or sexist" and that "an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously."

The order also comes with examples of workplace trainings that would now be off-limits. Trump singled out a Treasury Department seminar encouraging employees to avoid color-blind narratives, as well as materials from the Argonne National Laboratories' discussing systemic racism.

According to Trina Fairley Barlow, an employment and government contracts partner in Crowell & Moring LLP, the order covers much of what's seen in workplace bias trainings,

"It's challenging. It would require wholesale changes to what a lot of employers have traditionally viewed as key to anti-discrimination, anti-harassment and anti-bias training," Barlow said on a Wednesday call.

Contractors will have 60 days to get in line with the order, or risk contract termination, debarment and a potential investigation by the U.S. Department of Justice, according to the order.

"There's no question those are some of the most significant penalties ... associated with government contractors," Barlow said, adding that the penalties must be weighed against both federal and state-level anti-discrimination law.

Individuals protected by Title VII of the Civil Rights Act may want the workshops to continue and may view their removal as being discriminatory or creating a hostile work environment. Several local governments have also mandated some kind of anti-discrimination training, Barlow explained.

"I would be surprised if we didn't see some legal challenges to this," Barlow said, noting that a federal court could freeze the order entirely.

Some contractors may take a wait-and-see approach, but that option may be off the table for small businesses, which wouldn't want to be made an example of, Barlow said.

The government is requiring much of its contractors, leaving some to wonder whether the administration is willing to devote the resources to root out these trainings, Barlow said. But considering how specifically Trump describes the banned material, "it looks like someone is willing to do it," she said.

--Editing by Amy Rowe.