

The New Face of DEI

by Amanda M. Breemes, Littler Mendelson P.C.

Diversity, equity and inclusion initiatives are undergoing a profound transformation as administration scrutiny intensifies and employers recalibrate their approaches. For organizations across the United States, especially large employers, the conversation has shifted from expansion to compliance, risk mitigation and strategic adaptation.

A major catalyst for this shift has been the federal government's evolving enforcement posture. In 2025, the Trump administration moved quickly to redefine the legal boundaries of workplace DEI. Within days of the second inauguration, two sweeping executive orders signaled a new era. One targeted "illegal DEI" programs within federal agencies, while another required federal contractors and grant recipients to certify that their DEI initiatives do not violate anti-discrimination laws. These directives also dismantled long-standing frameworks, fundamentally altering the compliance landscape.

The ripple effects have been widespread. According to Littler Mendelson's Workplace Policy Institute Survey, 71% of U.S. employers reported being impacted by DEI-related policy changes in the administration's first year. Among large organizations with 10,000 or more employees, the impact rose to 86%. At the same time, enforcement risk has become a central concern. The Department of Justice's Civil Rights Fraud Initiative uses the False Claims Act to investigate DEI-related violations among recipients of federal funds, raising the stakes considerably. In Littler's survey, 35% of respondents cited unlawful DEI practices as their top enforcement concern, climbing to 53% among large employers.

Regulators are also offering increasingly specific guidance on what may cross legal lines. The Equal Employment Opportunity Commission and the Department of Justice have emphasized that DEI programs must not limit, segregate or classify employees based on protected characteristics. This principle applies broadly, extending beyond hiring and promotion decisions to trainings, mentoring opportunities and workplace programming.

A key area of focus is employee resource groups, also known as affinity groups. These groups, often organized around shared identities or experiences, have long been central to corporate DEI strategies. However, current EEOC guidance makes clear that limiting membership in ERGs, Business Resource Groups or similar programs to specific protected classes can constitute unlawful discrimination. Even separating employees into distinct groups for programming, regardless of whether those groups receive identical content or resources, may present legal risk if the separation is based on race, sex or another protected trait.

As a result, employers are rethinking how these groups function. Open access is now critical. Membership, events and benefits tied to ERGs must be genuinely available to all employees, both in policy and in practice. Additionally, organizations are prioritizing equal funding and consistent support across groups, recognizing that separate but equal structures are insufficient under current interpretations of anti-discrimination law.

Beyond ERGs, the guidance reinforces a broader principle that opportunity must be universal. Employers are encouraged to provide training and mentoring that equip workers of all backgrounds with the skills, experience and access necessary to perform well and advance into leadership roles. Similarly, workplace networks, often key drivers of career mobility, must be equally accessible rather than informally limited to certain groups.

Despite the heightened scrutiny, this moment does not signal the end of DEI. Instead, it reflects a shift toward a more disciplined approach. Courts are expected to continue shaping how these rules are applied, using established anti-discrimination standards to evaluate claims. In the meantime, employers are balancing compliance obligations with workforce expectations, recognizing that inclusive cultures remain critical for attracting and retaining talent.

As organizations navigate this shifting landscape, the path forward is clear: Compliance and inclusion must go hand in hand. The next face of DEI will be defined not by narrowing efforts, but by designing programs that expand access, strengthen fairness and stand up to legal scrutiny, ensuring every employee has an equal opportunity to participate, grow and succeed.



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Arizona Employers Cannot Sleep on Seismic Changes in Drug Rescheduling Initiated by the Federal Government

by J. Alexander Dattilo, Ogletree Deakins

On December 18, 2025, President Trump issued Executive Order 14370 that directed the Attorney General to expedite rescheduling marijuana from a Schedule I to a Schedule III Drug. On April 23, 2026, Acting Attorney General Todd Blanche then issued a "Final Order" that reclassified all FDA-approved medications containing marijuana and marijuana products authorized under a state medical marijuana program as a Schedule III Drug. This classification acknowledges that the substance has medical value if taken under a licensed medical professional's supervision.

On April 18, 2026, President Trump issued Executive Order 14401, titled "Accelerating Medical Treatments for Serious Mental Illness," which directed federal agencies to expedite research, review and approval of psychedelic drugs like psilocybin (also known as "magic mushrooms") as potential treatments for serious mental health conditions. This Executive Order could result in the same rescheduling of psilocybin and other psychedelic drugs within months.

Although these are federal executive orders, they are likely to have significant impacts on Arizona employers' drug testing requirements, accommodation practices and company policies, especially if the state legislature is emboldened to enact additional legalization regulations.