



Executive Orders, DOGE, DEI, and the Future



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February 20, 2025

EXPECT EXCELLENCE®

Agenda

- About Smith Anderson
- Disclaimers
- The Current State of DOGE
- The DEI Executive Orders
- Additional Federal Contractor Developments
- Questions

Agenda and Disclaimers

About Smith Anderson

- Founded in 1912
- Full-service business and litigation law firm
- 150+ lawyers based in one office in Raleigh
- Our experience crosses national and international markets, with clients located in more than 26 countries and 45 U.S. states
- We serve regional, national and global companies ranging from public companies to start-ups
- We are a member of Ally Law, an association of 70+ law firms in the U.S. and 60 countries

Recent Credentialing Highlights



- More than half of Smith Anderson's 13 *Chambers USA*-rated practices are now ranked in the highest category that the publication awards ("Band 1"). We continue to have more lawyers recognized within the practice of Corporate/M&A than any other North Carolina-based law firm.



- Recognized by 2024 *Best Law Firms* in 48 practice categories and two national ratings in Venture Capital and Land Use and Zoning practices.



- Named to the 2020 BTI Client Service A-Team, recognizing the firm as a leader in client service for five straight years. Also identified by BTI Consulting Group as one of 37 midsize law firms across the United States "punching above their weight" by "bring[ing] the same level of confidence and reliability as the big firms."

Recent Credentialing Highlights



- Named a 2024 “Best Employer in North Carolina” by *Business North Carolina*. The program recognizes the state’s best places to work with the awards program for North Carolina companies that are taking steps to build positive, enduring cultures.



- Named “North Carolina Firm of the Year” five years in a row by Benchmark Litigation®. Also rewarded a “Highly Recommended” ranking for North Carolina, the highest possible rating.



- 82 lawyers recognized in 2025 *Best Lawyers* guide - five lawyers named Raleigh “Lawyers of the Year” and 29 named “Ones to Watch.”

Disclaimers

- General Information Only
- No Legal Advice is Being Offered Here
- “Change is the Only Constant”
- Our Views Might Not Be those of Smith Anderson

The Current State of DOGE

State of DOGE: Data Access, Worker Buyouts Okay?

- Tuesday February 18 - No “irreparable injury” required block of DOGE access of data of OPM or Departments of Education, Labor, HHS, Energy, Transportation and Commerce (State of New Mexico v. Musk, Judge Chutkan)
- Monday February 17 -- No immediate block on DOGE’s ability to access student loan data; no showing that personal information would be misused (University of California Student Association v. Denise Carter, Judge Randolph)
- Friday February 14 -- No TRO preventing DOGE from accessing information from the Consumer Financial Protection Bureau and Departments of Labor and HHS (AFL-CIO v. Department of Labor, Judge Bates)
- Wednesday February 12 - “Buyout” offer to 2 million government employees could proceed. (AFL-CIO v. Ezell, Judge O’Toole)

State of DOGE: Shutdowns, K Terminations Not Okay?

- Thursday, February 13 - TRO issued that:
 - Re-starts obligations of appropriated foreign-assistance funds pending as of January 19, 2025
 - Bars suspensions, stop-work orders, or terminations of grants, agreements or loans in existence as of January 19, 2025
(AIDS Vaccine Coalition v. U.S. Department of State, Judge Ali)
- Thursday, February 13 - TRO issued that:
 - Stops emergency, involuntary evacuations of USAID employees
(American Foreign Service Association v. Trump, Judge Carl Nichols)
- Monday, February 10 - First Circuit Court Order requiring Trump Administration to release federal funds (State of New York v. Trump, Judge McConnell)

State of DOGE: Yesterday

- Wednesday, February 19 -
 - USAID has taken the position that it will not violate the USAID TRO by terminating contracts, grants, and cooperative agreements for convenience or suspending them, if the agreements provide for termination.
 - USAID claims only @70 of 6,824 grants that do not expressly allow for a suspension of stop-work order.
- Tuesday, February 18 - “Radical Transparency About Wasteful Spending”
 - Directs agencies and executive departments to make public to the “maximum extent permitted by law” the details of every terminated program, cancelled contract, terminated grant, or any other discontinued obligation of Federal funds.

Stop Work Orders, Terminations and Suspensions

Federal Contractor Actions to Consider

- Communicate regularly with contracting officers and higher-tier prime contractors
- Review existing federal contracts and grants, and federally funded state contracts and grants, and federal subcontracts for termination and stop work provisions
- If a STO, suspension, or termination increases your costs, prepare for requests for equitable adjustment and claims
- Separate and document your expenses for future use

The DEI Executive Orders

The DEI Executive Orders

- **EO 14170:** Reforming the Federal Hiring Process and Restoring Merit to Government Service
- **EO 14151:** Ending Radical and Wasteful Government DEI Programs and Preferencing
- **EO 14168:** Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
- **EO 14173:** Ending Illegal Discrimination and Restoring Merit-Based Opportunity

Reforming the Federal Hiring Process and Restoring Merit to Government Service

January 20, 2025 - E.O. 14170

Directly governs federal government agencies

- Orders a “reform” of federal hiring to remove impermissible factors “such as one’s commitment to illegal racial discrimination under the guise of ‘equity,’ or one’s commitment to the invented concept of “gender identity” over sex.”
- Orders the development of a Federal Hiring Plan within 120 days that “brings to the Federal workforce only highly skilled Americans dedicated to the furtherance of American ideals, values and interests.”
- Prohibits hiring based on race, sex, religion and prevents the hiring of individuals who are “unwilling to defend the Constitution or to faithfully serve the Executive Branch.”

No private employer or federal contractor action or impacts

Ending Radical and Wasteful Government DEI Programs and Preferencing

January 20, 2025 - E.O. 14151

Directly governs federal government agencies

- Orders a review and revision of all existing federal employment practices, union contracts, and training policies, or programs to remove consideration of DEI or DEIA factors, goals, policies, mandates, or requirements.
- Directs OMB, AG, and OPM to terminate “to the maximum extent allowed by law, all DEI, DEIA, and ‘environmental justice’ offices and positions (including but not limited to ‘Chief Diversity Officer’ positions); all ‘equity action plans,’ ‘equity’ actions, initiatives, or programs, ‘equity-related’ grants or contracts; **and all DEI or DEIA performance requirements for employees, contractors, or grantees.**”
- Requires creation of a list of (1) all agency or department DEI, DEIA, or “environmental justice” positions, (2) **all federal contractors who have provided DEI training or DEI training materials to agency or department employees;** and (3) federal grantees who received federal funding to provide or advance DEI, DEIA, or “environmental just” programs, services, or activities since January 20, 2021.

No private employer or federal contractor action required

Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government

January 20, 2025 - E.O. 14168

- Announces it is “the policy of the United States to recognize two sexes, male and female,”
- “Executive Branch will enforce all sex-protective laws to promote this reality,”
- Provides list of definitions to “govern all Executive interpretation of an application of Federal law and administration policy” including:
 - “Sex” shall refer to an individual's immutable biological classification as either male or female. “Sex” is not a synonym for and does not include the concept of “gender identity.”
 - “Female” means a person belonging, at conception, to the sex that produces the large reproductive cell.
 - “Male” means a person belonging, at conception, to the sex that produces the small reproductive cell.

Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government

January 20, 2025 - E.O. 14168 (*con't*)

- “Gender ideology” replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa, and requiring all institutions of society to regard this false claim as true.
- “Gender identity” reflects a fully internal and subjective sense of self, disconnected from biological reality and sex and existing on an infinite continuum, that does not provide a meaningful basis for identification and cannot be recognized as a replacement for sex.

Ending Illegal Discrimination and Restoring Merit-Based Opportunity

January 21, 2025 - E.O. 14173

Federal Contractors

- Revokes EO 11246 which required covered federal contractors to establish and maintain affirmative action program for women and minorities
- Gives contractors 90-day period (ending 4/21/2025) in which to cease operation of program

Federal contractor action required

Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) and Section 503 of the Rehabilitation Act affirmative action obligations are not revoked

Ending Illegal Discrimination and Restoring Merit-Based Opportunity

January 21, 2025 - E.O. 14173 (*con't*)

US Department of Labor

- Directs OFCCP to immediately cease:
 - promoting diversity,
 - holding federal contractors and subcontractors responsible for taking “affirmative action,” and
 - allowing or encouraging federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.
- USDOL issued Secretary’s Order 03-2025 directs agency to:
 - Cease and desist all investigative and enforcement activity under the rescinded EO 11246 and the regulations promulgated under it, including all pending cases, conciliation agreements, investigations, complaints, and any other enforcement-related or investigative activity.
- To notify all regulated parties with impacted open reviews or investigations that:
 - EO 11246 component of the review or investigation has been closed and
 - Section 503 and VEVRAA components of the review or investigation are being held in abeyance pending further guidance.

Ending Illegal Discrimination and Restoring Merit-Based Opportunity

January 21, 2025 - E.O. 14173 (con't)

Going Forward

- Requires the inclusion of the following in every contract or grant award:
 - A term requiring the contractor to agree that its *compliance in all respects with all applicable federal anti-discrimination laws is material to the government's payment decisions* for purposes of section 3729(b)(4) of title 31, United States Code; and
 - A term requiring such contractor to *certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.*

Federal contractors with DEI/DEIA programs that violate federal anti-discrimination laws will potentially face liability under the False Claims Act for new contracts or under contracts that are modified to include the newly mandated language.

Ending Illegal Discrimination and Restoring Merit-Based Opportunity

January 21, 2025 - E.O. 14173 (*con't*)

Private Employers (including federal contractors)

- Seeks to eliminate *illegal* DEI/DEIA programs
- Charges AG to identify most egregious DEI practitioners in key sectors and develop strategies to end *illegal* DEI through litigation, investigations and enforcement actions

Ending Illegal Discrimination and Restoring Merit-Based Opportunity

January 21, 2025 - E.O. 14173 (con't)

Private Employers (including federal contractors)

- Illegal DEI is not defined, but likely to include:
 - Quotas, preferences, plus factors and set asides for any particular group (e.g., race, sex, protected characteristic).
 - Compensation and incentives tied to achieving diversity hiring metrics or “penalties” for failing to achieve DEI goals.
 - Diverse candidate slate or diverse hiring panel requirements.
 - Closed groups/programs (e.g., mentorship or leadership development programs, employee affinity or resource groups) where participants need to identify with/be a member of a protected class or where activities are segregated by a particular characteristic.
 - DEI/DEIA training materials (including third-party training materials) with attention to content that could be viewed as equity ideology or otherwise discriminatory.

Ending Illegal Discrimination and Restoring Merit-Based Opportunity

January 21, 2025 - E.O. 14173 (con't)

Federal Contractor Actions to Consider

- Review all existing state and federal contracts to determine what, if any, obligations they have related to DEI/DEIA
- Establish ongoing contact with contracting officers
- Review all affirmative action activities, related policies and forms to ensure compliance with EO 14173
 - Discontinue Women and Minorities AAP
 - Continue VEVRAA and Rehab Act AAP
- Modify noncompliant activities, programs, policies, and contracts

Other Orders and Statutes of Interest

Memorandum for the Heads of Executive Departments and Agencies - Advancing United States Interests When Funding

February 7, 2025

Executive Departments and Agencies are directed to review NGO funding to ensure there is alignment of future funding decisions with the priorities of the Administration.

Eradicating Anti-Christian Bias

February 6, 2025 - E.O. 14202

- Establishes Task Force to Eradicate Anti-Christian Bias chaired by Attorney General and consisting of more than a dozen agency heads
- Review policies and activities for “unlawful anti-Christian policies, practices, or conduct by an agency” and provide recommendations
- Provide an initial report within 120 days; Task Force terminates in 2 years unless extended.

Additional Measures to Combat Anti-Semitism

January 29, 2025 - E.O. 14188

- Requires each Executive Department or Agency to report to the President all actions within the authority of the Agency that might be used to curb or combat anti-Semitism.
- Attorney General required to analyze all court cases involving colleges and universities alleging civil-rights violations arising from post-October 7, 2023 anti-Semitism

Ending Radical Indoctrination in K-12 Schooling

1/29/2025 - E.O. 14190

- Requires Secretaries of Education, DoD, and DHS to recommend an “Ending Indoctrination Policy” that includes recommendations to eliminate federal funding or support for “illegal and discriminatory treatment and indoctrination in K-12 schools, including based on gender ideology and discriminatory equity ideology.”
- “Discriminatory equity ideology means an ideology that treats individuals as members of preferred or disfavored groups, rather than individuals, and minimizes agency, merit, and capability in favor of immoral generalizations ...”
- Requires Attorney General to coordinate with state and local officials to “file appropriate actions against . . . teachers who violate the law”

Restoring America's Fighting Force

January 27, 2025 - E.O. 14185

- Directs DoD and DHS to abolish every “DEI office” within DoD and DHS and USCG
- “DEI office” defined to include any office established to influence hiring or employment practices with respect to race, sex, color, or ethnicity, other than through the use of color-blind and sex-neutral hiring processes
- Prohibits DoD and the Armed Forces from promoting “divisive concepts”, “gender ideology”, or theories that “America’s founding documents are racist or sexist”

Prioritizing Military Excellence and Readiness

January 27, 2025 - E.O. 14183

- States that policy of United States regarding the armed forces “is inconsistent with the medical, surgical, and mental health constraints on individuals with gender dysphoria. This policy is also inconsistent with shifting pronoun usage or use of pronouns that inaccurately reflect an individual's sex.”
- Requires DoD to update medical standards for military service to comply with the foregoing policy.
- Requires DoD to issue directives to end identification-based pronoun usage

Federal Recognition of the Lumbee Tribe of North Carolina

January 23, 2025

Directs the Secretary of Interior to consult with the leadership of the Lumbee Tribe and submit a plan within 90 days to the President “to assist the Lumbee Tribe in obtaining full Federal recognition through legislation or other available mechanisms, including the right to receive full Federal benefits.”

NDAA 2025

- § 316, Traditional Contractors Through Dec. 22, 2026 Need Not Disclose Greenhouse Gas Emissions Information as a Condition for Holding DoD Contracts. (For non-traditional contractors this prohibition was made permanent last year.)
- § 824, Extension of Inflation Adjustment or Modification Authority until Dec. 2025
- § 882, Requires DoD to establish process to reverse engineer items for production under certain circumstances

NDAА 2025

- §164, § 839, § 851, § 853, § 1078, § 1082, § 1346, - Restrictions on Contracting, Employment or Procurement for certain foreign corporations
- § 804, § 805, § 861, § 864, Middle Tier of Acquisition for Rapid Prototyping & Fielding
- § 816, § 817, § 818, § 888 - Increased OTA Authority & Tracking of OTA Awards

CMMC - 32 CFR 170.3

- DoD cybersecurity framework that includes third-party certification for systems holding CUI and FCI
- Effective December 16, 2024; May be included in solicitations mid-2025 (DFARS Case 2019-D041, 89 Fed. Reg. 66327)
- 3-year roll out over 4 phases; 2029 for full implementation

CMMC - 32 CFR 170.3

- Broad application : small businesses, commercial item contractors (but not COTS) included
- Flowdown requirements to all subcontractors that process, store or transmit FCI or CUI
- Prime contractor is responsible for ensuring compliance; CO can request waivers
- “Conditional” CMMC status allowed for 180 days, then expect denial of contracts until compliance met

CMMC Guidance Now

- Determine what systems are carrying FCI or CUI
- Decide level of CMMC coverage that will apply
- How compliant are current cybersecurity systems; fill any gaps
- Address CMMC requirements for subcontractors;
- Consider engaging a certified third-party assessor organization (“C3PAO”)
- FAR Case 2017-016: Proposed Rule issued on January 14, 2025 to implement final rule on the Federal CUI Program for federal contractors.

Questions?

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