

# The Work Week

Bassford Remele Employment Practice Group



**May 27, 2025**

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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## **DOJ Deploys Civil Rights Fraud Initiative to Monitor DEI Programs**

[Beth L. LaCanne](#)

On May 19, 2025, the U.S. Department of Justice (DOJ) [announced its “Civil Rights Fraud Initiative.”](#) The initiative’s objective is to advance Executive Order 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” and the United States Attorney General’s February 5 memorandum, “Ending Illegal DEI and DEIA Discrimination and Preferences,” utilizing the False Claims Act (FCA).

The FCA is a federal law that imposes liability on individuals or entities that knowingly submit false or fraudulent claims for payment to the federal government. The FCA requires federal contractors and recipients of federal funds to certify compliance with statutes such as civil rights laws. Traditionally, the FCA has been used to combat monetary fraud against the federal government. Under the initiative, the DOJ is expanding the applicability of the FCA’s certification requirement to investigate and bring lawsuits against entities that it believes are falsely certifying compliance with civil rights laws while engaging in discriminatory practices under the guise of DEI.

On the same day as the announcement, the United States Deputy Attorney General issued a [memorandum](#) discussing the initiative. The memo explains that a federal contractor or federal-fund recipient may be liable under the FCA if they “knowingly engag[e] in racist preferences, mandates, policies, programs, and activities, including through diversity, equity, and inclusion (DEI) programs that assign benefits or burdens on race, ethnicity, or national origin.” This language suggests that a DEI policy or program does not violate the law so long as the policy or program does not base decisions regarding benefits and burdens on race, ethnicity, or national origin (*i.e.*, a DEI program that bases decisions on physical capability is unlikely to create a stir at the DOJ).

Using the FCA is a novel approach for investigating unlawful discrimination and identifying non-compliant DEI programs. Time will tell if courts will allow the DOJ to utilize the FCA as an enforcement mechanism

for anything more than fraud. Regardless of its novelty and the uncertainty of the legality of the DOJ's expansion of the FCA, employers—especially those that receive federal funding—should tread carefully and ensure their DEI efforts are legally sound, or face the risk of federal enforcement under the FCA. Under the FCA, liability can include treble damages and steep financial penalties, making potential violations both a legal concern as well as a financial concern.

At Bassford Remele, we monitor the activity of administrative and executive entities to identify activity that may impact employers, and advise on employers' policies and procedures to ensure compliance with state and federal laws and the enforcement by government agencies.

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