The Future of Diversity and Inclusion Training: The OMB Memo Prohibiting Certain Training in the Federal Government

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On September 4, 2020, Russell Vought, the director of the Office of Management and Budget (OMB), issued an agency-wide memo regarding diversity and inclusion training in the federal workforce. The OMB memo states:

It has come to the President’s attention that Executive Branch agencies have spent millions of taxpayer dollars to date “training” government workers to believe divisive, anti-American propaganda.

For example, according to press reports, employees across the Executive Branch have been required to attend trainings where they are told that “virtually all White
people contribute to racism” or where they are required to say that they “benefit
from racism.” According to press reports, in some cases these training [sic] have
further claimed that there is racism embedded in the belief that America is the land
of opportunity or the belief that the most qualified person should receive a job....The
President has directed me to ensure that Federal agencies cease and desist from
using taxpayer dollars to fund these divisive, un-American propaganda training
sessions.

The memo further states that the OMB “will shortly issue more detailed guidance on
implementing the President’s directive.”

Workplace diversity and inclusion training opportunities have increased as
employers grapple with responses to the COVID-19 pandemic and to social unrest.
Employers are deciphering the memo’s impact on current and future workforce
training and development programs.

**Who Is Covered?**

The memo applies to all federal agencies. The memo states that “all agencies should
begin to identify all available avenues within the law to cancel any such contracts
and/or to divert Federal dollars away from these un-American propaganda training
sessions.” It is unclear whether this directive applies to private sector employers
that are federal contractors or subcontractors. Additional guidance, presumably, will
more fully address who is covered. Notably, on September 22, 2020, President
Trump signed an [executive order](#) that addresses diversity-oriented training for
federal contractors and subcontractors. This memo and the September 22, 2020,
executive order should be read together as they cover different entities, define
terms differently, and involve different compliance and implementation processes.

The OMB memo and the president’s executive order, however, do not cover private-
sector employers (that are not federal contractors or subcontractors) and they do not
cover other state or local public-sector employers.

**Which Training Topics Are Prohibited?**

Prohibited topics in this memo include any training on:

**Critical race theory**

The memo does not define the term “critical race theory,” but it seemingly adopts a
definition of “critical race theory” that may view legal institutions as inherently
racist. This definition, however, does not align with some legal scholars’ version of
the theory according to which effective and culturally appropriate training does not
promote or endorse a negative perception of white individuals generally.

**White privilege**

The memo does not define the term. But it specifically targets the idea of “white
privilege,” which is generally understood as the concept that certain individuals
have a set of advantages as a function of their race that others in the same social,
political, and economic spaces do not have. According to some, white privilege is different in that the advantaged person who may benefit from the racial privilege is not necessarily racist or prejudiced and may be unaware of the existence of the privilege.

“Inherently racist or evil” races, ethnicities, and countries

Finally, the memo prohibits “any other training or propaganda effort that teaches or suggests either (1) that the United States is an inherently racist or evil country or (2) that any race or ethnicity is inherently racist or evil.” It is unclear what this particular directive means, and the OMB memo does not specifically identify any existing training programs in the federal sector. This statement appears to characterize what some define as “antiracism training” as more than the typical diversity training, although it remains unclear what training concept, specifically, is encompassed in this definition.

How Does the Memo Impact Existing Federal Diversity and Inclusion Initiatives?

Ethics and training officers within federal agencies

Until the OMB issues future guidelines, federal sector trainers and facilitators may wish to examine and revise any diversity and inclusion training that includes or incorporates the topics above. However, this does not mean that training about cultural awareness and implicit or unconscious bias is prohibited.

Training vendors that bid on government contracts

Private sector training contractors and subcontractors that provide training to federal agencies may see their diversity and training materials subject to preapproval scrutiny. Again, it is unclear how this process might work. In the interim, federal sector training vendors may wish to proactively review the scope of their training contracts to determine what, if any, modifications must be made.

What Are the Mechanisms for Enforcement?

The memo is a directive but not a formal executive order. Accordingly, it is unclear how the OMB intends to enforce it.

What Is the Impact on State and Local Governments?

Many states have laws requiring certain training, such as antiharassment training, diversity and inclusion, and workplace respect. Employers in those states could find themselves in violation of those applicable laws should they cancel mandated training.

What Are the Legal Implications for Employers?

Despite their training obligations, employers are still required to follow federal and
state discrimination laws. The Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin by public and private sector employers. Without appropriate training, workplaces may be at risk that employees’ conduct will rise to the level of unlawful conduct prohibited by statute.

**General Diversity and Inclusion Training Perspectives**

In light of this memo and the current social climate, many federal and private sector employers today are evaluating their existing training programs. Good diversity and inclusion training programs are designed to educate and promote discussion and understanding, not to denigrate or divide. Some of the best diversity and inclusion training includes discussions of concepts like unconscious bias and privileges that every person possesses in one form or another. This type of training can promote workplaces that are more comfortable for more people, thus reducing low morale and turnover while increasing productivity.

Employers may wish to review their diversity training to consider:

- Including broad topics such as training foundations;
- Ensuring that the training reflects and aligns with the company’s core values;
- Communicating expectations at the outset and being clear about the training topics that will be covered (and, by implication, those topics that will not be covered);
- Defining the terminology that will be used in training-related communications to ensure all have a common understanding, including those who may be less familiar with the diversity content-area or academic research; and
- Retaining trainers who are culturally competent and understand how to facilitate difficult conversations on topics that are uncomfortable for many employees from diverse backgrounds.

Employers that have an existing diversity and inclusion training program and those that are contemplating such a program may want to consider the impact of the OMB memo and what further considerations may be warranted.


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