DOJ drafting DEI whistleblowers

Bounty program pays workers to report issues

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USA TODAY

Blow the whistle, get paid.

A Justice Department bounty program that incentivizes employees to blow the whistle on their employers comes as the Trump administration intensifies its crackdown on diversity, equity and inclusion initiatives.

The Trump administration is investigating major companies under the False Claims Act, a federal law the Justice Department uses to take action against contractors alleged to have defrauded the government and recoup substantial damages.

Last year, the Justice Department established a task force to investigate federal contractors for alleged violations of the law. It said last week it has seen a 'rapid increase' in whistleblower complaints filed in recent years.

Deputy Assistant Attorney General Brenna Jenny's office is prioritizing anti-discrimination cases across a broad range of industries. Some of those probes were brought to the DOJ's attention by whistleblowers, Jenny said in February at a Federal Bar Association event.

Grassroots activism has also seen a surge in insiders leaking details about corporate DEI programs. Prominent DEI critic Robby Starbuck routinely bragged about his network of tipsters who helped him mount pressure campaigns that named and shamed corporations into canceling their programs.

Sometimes these whistleblowers use covert tactics, including hidden cameras. The America First Legal advocacy organization, which peppered corporate America with discrimination complaints, has used that footage.

Getting 'ordinary people with access and knowledge to quasi-investigate and flag policies and practices for the government' is central to the Justice Department's strategy, Elizabeth Bieber, Austin Evers and Jennifer Loeb, lawyers with the Freshfields law firm, wrote in the Harvard Law School Forum on Corporate Governance in July.

'We're already seeing the wheels in motion. DOJ is trawling actively for complainants and whistleblowers,' they said.

IBM settlement

The stakes got even higher in April when IBM agreed to pay $17 million to resolve claims its DEI programs violated the False Claims Act. It marked the first settlement since the Justice Department formed a 'Civil Rights Fraud Initiative' to crack down on DEI using anti-fraud law.

Now corporations are bracing for an uptick in whistleblower-driven lawsuits.

'I suspect we'll see more whistleblower actions given that the DOJ is strongly encouraging them,' David

Glasgow, executive director of the Meltzer Center for Diversity, Inclusion and Belonging at the NYU School of Law, told USA TODAY.

What's in it for employees? They can pocket 15% to 25% of the proceeds, Glasgow said.

'Knowing that any employee in their business could take it upon themselves to sue means that organizational leaders have an incentive to be cautious,' he said.

Contractors on notice

Corporations have become more cautious since President Donald Trump swept into office on campaign promises to restore fairness in the workplace by eradicating 'woke' DEI policies he claims harm men and White Americans.

One of his first executive orders required federal contractors to certify that they do not operate 'any programs promoting DEI that violate any applicable Federal anti-discrimination laws.'

Fearing lawsuits and the loss of government contracts, dozens of the nation's largest companies, from McDonald's to Facebook owner Meta, rolled back diversity programs.

Pressure to align with the president's agenda has only increased in recent months. In March, Trump signed another executive order requiring federal agencies to prohibit discriminatory DEI practices. Under that directive, the DOJ has been tasked with expediting review of these cases.

Employees to drive actions

Enforcement will likely be driven by employees, according to Phelps Dunbar lawyers A. Brian Albritton and Raquel Ramirez Jefferson.

'Disputes over how such programs operate in practice create fertile ground for whistleblower allegations that compliance was misrepresented,' they wrote in April. 'The order effectively converts internal DEI disagreements into potential [False Claims Act] fact patterns, particularly where contractors have certified compliance as a condition of payment.'

Among the trouble spots for corporations: setting goals based on race or sex, tying bonuses to achieving demographic targets, and offering training or mentorship opportunities only to employees of a certain race or sex.

Lawyers think these practices may be legally defensible in some cases, but corporations have too much at stake to find out. Defendants in False Claims Act litigation could be on the hook for three times the damages the government alleges, not to mention the potential loss of federal contracts worth millions or billions.

Craig Leen, a partner in the K&L Gates law firm's labor, employment and workplace safety practice and the former director of the Office of Federal Contract Compliance Programs, said most federal contractors have shut down DEI programs that might land them in hot water with the Trump administration and replaced them with anti-discrimination programs.

'Do I think we will see a lot more whistleblowers in the employee ranks? Yes, I do,' Leen said. 'But I also think we are going to see a lot less programs that are problematic.'

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for Diversity, Inclusion and Belonging at

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Corporations have become more cautious since President Donald Trump swept into office on campaign promises to eradicate 'woke' DEI policies. Andrew Harnik/Getty Images

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