

Navigating DEI in the US

Guidance to Danish companies doing business in the US with the US Federal Government

The new administration in the US has adopted several presidential orders seeking to end illegal discrimination. This can impact the DEI efforts and policies of private companies and organizations – especially if they do business with the US federal government, including US embassies abroad.

The orders require suppliers and subcontractors to the US Government to sign declarations stating their compliance with federal anti-discrimination law with regards to DEI.

The anti-discrimination legislation that companies must comply with in the US has not changed. The orders are still subject to interpretation and legally unclear. Issues in question are still a 'moving target' and subject to a risk-assessment. Companies must weigh how cautious they want to be.

Danish Chamber of Commerce encourage Danish companies to remain cautious. We follow this issue closely and we strive to update our members on any relevant new developments. If you are met with a demand from the US Government, you are always welcome to reach out to us to discuss.

If you are met by such a demand, we advise the following:

- Seek legal advice from your own company's HR partner or US legal counsel to assess your exposure before signing any declaration. Your signature will be subject to the False Claims Act
- Review the language and content of your existing DEI policies, including local policies. The Civil Rights Act prohibits discrimination based on race, color, religion, gender, and national origin.
- Consider updating language when appropriate. Many DEI-terms can be reframed in more neutral terms to the same effect.
- If you do make changes, consider carefully how these are motivated internally and externally. These issues often draw significant attention and can be polarizing. Be prepared for questions.
- Be true to yourself and ensure that your policies, actions and leadership communication still reflect your values as a company and your commitment to all employees.

¹The False Claims Act (FCA) is a U.S. federal law that combats fraud against the government. It allows individuals and the government to sue entities that knowingly submit false claims.

Things to avoid:

- Having employee programs or groups that are not open to all employees regardless of their background.
- Setting explicit DEI-targets or KPIs for hiring, compensation or other benefits.

Guidance to Danish companies doing business in Denmark with the US Federal Government

The U.S. Embassy in Denmark has asked several of its Danish suppliers to sign a declaration titled “Certification Regarding Compliance with Applicable Federal Anti-Discrimination Law.” In this declaration, companies are requested to confirm that they are in full compliance with all applicable U.S. federal anti-discrimination laws and that they do not operate any programs promoting Diversity, Equity, and Inclusion (DEI) that would violate such laws.

In a public statement, the U.S. Embassy has clarified that these requests should not be interpreted as an attempt by the United States to impose its laws on Danish businesses. According to the embassy, U.S. federal anti-discrimination laws generally do not apply to foreign companies operating outside the United States.

Furthermore, there will be no verification process to determine whether companies are, in fact, in compliance with U.S. legislation. By signing the declaration, companies are merely asked to self-certify that they are following the rules.

If you are met by such a demand, we advise the following:

- As part of your company’s risk assessment, consider whether you wish to sign the declaration. The U.S. Embassy has stated that no U.S. law in this area applies to Danish companies operating in Denmark.
- If you do sign, consider carefully how this action is motivated internally and externally. These issues often draw significant attention and can be polarizing. Be prepared for questions.
- Be true to yourself and ensure that your policies, actions and leadership communication still reflect your values as a company and your commitment to all employees.

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