

Rubenstein & Stover: The implications of Trump's order on race and sex stereotyping

MICHAEL
STOVER
Commentary



LAURA
RUBENSTEIN
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White privilege, systemic racism and implicit bias. These phrases are in the national spotlight. We read about them in the news and discuss them with family, friends, and co-workers. Some of us may have even been part of a workplace training where these terms were discussed.

“White privilege,” coined in 1988 by Dr. Peggy McIntosh, described it as being an invisible system where being born white is advantageous in a society that favors white people. One example was having the ability to walk into a store without being suspected of shoplifting.

Systemic racism is the set of institutional, cultural and interpersonal practices within a society that tend to put one group in a better position to succeed resulting in disparate treatment over a period of time. Examples can be found in education, housing, banking, and the legal system.

According to the Equal Employment Opportunity Commission (EEOC), “implicit bias” is social behavior driven by learned stereotypes that operate automatically in our interactions with others. These implicit associations harbored in our subconscious cause us to have feelings and attitudes about other people based on skin color, hair style, gender, age, disability, and appearance.

Over the past decades, the EEOC, researchers, and private employers have touted the benefits of training workers on these topics.

Remember in 2018 when Starbucks closed all of its stores to conduct implicit bias training after two Black men in Philadelphia were arrested for sitting at a table without ordering? Starbucks' then-CEO ex-

plained that, “The promise of America will not be achieved if it's only available to those who have the right color skin or the right ZIP code.”

Trump's executive order

However, a Sept. 22, 2020, Executive Order from President Donald Trump put the brakes on certain types of diversity and inclusion trainings conducted for federal agencies, contractors and grant recipients. The order addressed the subject of race and sex stereotyping.

It states, “it shall be the policy of the United States not to promote race or sex stereotyping or scapegoating in the Federal workforce ... and not to allow grant funds to be used for these purposes. In addition, Federal contractors will not be permitted to inculcate such views in their employees.”

The order defines stereotyping as means “ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or sex.” Scapegoating means “assigning fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex. It similarly encompasses any claim that, consciously or unconsciously, ... members of any race are inherently racist....”

Effective Nov. 21, 2020, all government contractors must include a provision that they shall not use any workplace training that “inculcates” in its employees any form of race or sex stereotyping or scapegoating, including the concepts that: (a) one race or sex is inherently superior to another race or sex; (b) an individual, by virtue of his or her

race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously; (c) an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; (d) an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex; (e) any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or (f) meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.

In addition, contractors must include these new anti sex/race stereotyping/scapegoating provisions in every lower tier subcontract or purchase order, to bind their subcontractors and vendors. Government contractors are also required to send a notice (forthcoming from the contracting officer) to each labor union advising of the contractor's commitments under the executive order that must be posted conspicuously in the workplace.

Failure to comply with the executive order, or with any related rules or regulations, may result in the contract or funding being canceled, terminated, or suspended rendering the contractor ineligible for further federal government contracts and other sanctions.

Clearly, penalties for noncompliance are severe. Federal agencies, grantees, contractors, subcontractors, should immediately scrutinize their current contracts, policies and training materials and ensure they are consistent with this executive order. Your future funding may just depend on it.

Laura L. Rubenstein, Esq., and Michael Stover are partners at the law firm of Wright, Constable & Skeen, LLP in Baltimore. Rubenstein practices management-side employment law and Stover is a surety and construction lawyer.