Blog Post

A Sliding Door to the Future of Healthcare Enforcement: Will We Soon See DEI-Based False Claims Act Settlements in Healthcare?

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The U.S. Department of Justice's (DOJ) first False Claims Act (FCA) settlement under its new Civil Rights Fraud Initiative offers key insight for federal contractors, federal funding recipients and healthcare providers. Under the settlement reached in April 2026, International Business Machines Corporation (IBM) agreed to pay over $17 million to resolve allegations that it violated the FCA through discriminatory diversity, equity, and inclusion (DEI) employment practices. The settlement signals a new paradigm for FCA enforcement: the DOJ will use the FCA's treble damages, statutory damages, whistleblower bounties, and anti-retaliation protections to police how federal contractors and federal funding recipients manage their workforces.

What Is the Civil Rights Fraud Initiative?

One of President Trump's first initiatives in his current administration, Executive Order 14173 ("Ending Illegal Discrimination and Restoring Merit-Based Opportunity"), directs federal agencies to include in every contract or grant award a term requiring contractors and grant recipients to agree that compliance with federal anti-discrimination laws is material to the government's payment

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decisions. EO 14173 also includes section 4(b)(v), which encourages government agencies to seek out litigation opportunities to further the policies stated therein. Although the EO does not expressly mention the FCA, the subtext harkens back to certain FCA-specific procedural mechanisms like government "intervention" in pending litigation.

The government quickly clarified any ambiguity that may have existed regarding the intersection between EO 14173 and the FCA. A few months after Trump signed EO 14173, the DOJ published a Memo that formally announced its Civil Rights Fraud Initiative. This initiative takes the enforcement position that private industry may violate the FCA if they receive federal funds and falsely certify compliance with civil rights laws while knowingly engaging in DEI programs that foster preferences, mandates, policies, programs, or other activities that assign benefits or burdens based on race, ethnicity, or national origin.

The IBM settlement comes on the heels of Trump's more recent March 2026 Executive Order 14398 ("Addressing DEI Discrimination by Federal Contractors"). EO 14398 requires federal agencies to ensure that their contractors agree to contract language prohibiting the contractors from engaging in "racially discriminatory DEI activities." EO 14398 defines "racially discriminatory DEI activities" as disparate treatment based on race or ethnicity in the recruitment, employment, contracting, program participation, or allocation or deployment of a contractor's resources.

What Did IBM Allegedly Do?

The settlement resolves allegations that IBM knowingly submitted false claims and knowingly made false statements by certifying compliance with anti-discrimination requirements under federal law. Despite such certifications, IBM allegedly maintained the following practices, dating back to January 2019, which the government alleged

discriminated against employees and applicants for employment:

- using a “diversity modifier” tying bonus compensation to demographic targets, which caused employees to take race, color, national origin, or sex into account when making employment decisions;
- using “diverse interview slates” and “diverse sourcing” that altered interview eligibility based on race, color, national origin, or sex;
- developing race and sex demographic goals for business units and taking race, color, national origin, or sex into account when making employment decisions to achieve progress with respect to such goals;
- limiting access to training, mentoring, and leadership development programs on the basis of race, color, national origin, or sex; and
- allocating costs for these practices to its federal contracts and seeking reimbursement for such costs under those contracts.

How Does the DOJ’s False Certification Theory Work?

According to the DOJ, IBM purportedly submitted false claims by certifying compliance with anti-discrimination provisions in its federal contracts, notwithstanding the employment practices outlined above. This government’s theory effectively turns employment discrimination claims into FCA violations, which carry statutory damages of up to $28,618 per claim, plus treble damages, attorneys’ fees, and other associated risks.

The DOJ’s allegations rest on existing anti-discrimination law — namely, Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, religion, sex, and national origin, and the Federal Acquisition Regulation (FAR), and FAR clause 52.222-26, which prohibits federal contractors from discrimination against employees

or applicants for employment on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin.

What Does This Mean for Federal Contractors and Federal Funding Recipients?

The Qui Tam Factor

The FCA's *qui tam* provision allows private persons to file a lawsuit alleging FCA violations on behalf of the government and collect a share of any monetary recovery. In announcing its Civil Rights Fraud Initiative, the DOJ "strongly" encouraged insiders with knowledge of discrimination by federal funding recipients to consider filing a *qui tam* action under the False Claims Act. In so doing, the administration is attempting to weaponize the federal contractor workforce to achieve a policy goal. Federal contractors and federal funding recipients should be aware that enforcement of the discriminatory DEI employment practices may arise from private persons within the organization, not just DOJ enforcement.

The Anti-Retaliation Wildcard

The FCA also prohibits employers from retaliating against employees, contractors, or agents who take steps to further an FCA action or stop an FCA violation. To prevail on a retaliation claim, employees, contractors, or agents must show that they were engaged in protected activity, their employer knew of the protected activity, and their employer retaliated against them because of that activity. Protected activity for this purpose means a lawful act in furtherance of an FCA action or an effort to stop one or more FCA violations. Persons subject to retaliation are entitled to reinstatement, double back pay with interest, and compensation for any special damages, including litigation costs and attorneys' fees. Protected activity under the FCA anti-retaliation provision may include investigations,

inquiries, testimonies, or other activities concerning an employer's violations of the FCA.

Heading into a questionable economic environment, federal contractors and federal funding recipients could face pressure to conduct a reduction in force. Yet, caution should be exercised when terminating employees because inadvertently terminating an employee who has raised concerns about diversity-linked compensation or hiring practices could give rise to an anti-retaliation claim.

Cooperating with DOJ

In its press release, the DOJ praised IBM for making "early disclosures of facts relevant to the government's investigation gathered during IBM's independent investigation, including information to assist in the calculation of damages and penalties." Further, the DOJ highlighted that IBM "also undertook voluntary remedial measures, including the termination and/or modification of various programs and practices at issue." Such cooperation likely influenced the $17,077,043 settlement amount.

Application to Healthcare Providers

The U.S. Department of Health and Human Services (HHS) recently proposed revisions to its Assurance of Compliance form (Form HHS 690) that would add a specific reference to the FCA "in light of compliance constituting a material condition of receipt of federal funds." Form HHS 690 must be completed by Medicare Part A providers, such as hospitals, as a part of the Medicare enrollment process or upon a change of ownership. The form certifies compliance with federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and Section 1557 of the ACA. Adding the reference to compliance constituting a material condition of the receipt of federal funds could make it easier for the DOJ or *qui*

tam relators to assert FCA claims premised upon violations of federal anti-discrimination laws stemming from DEI programs.

At a minimum, healthcare providers ought to be watching enforcement of this administration's DEI initiatives *vis a vis* federal contractors with an appropriate lens because those enforcement initiatives likely will travel to the healthcare space soon.

What Should Federal Contractors and Federal Funding Recipients Do Now?

- Conduct a privileged compliance review of all DEI-related policies, compensation structures, and hiring protocols — particularly those linking pay to diversity metrics or limiting program eligibility by race or sex.
- Assess retaliation risk before workforce decisions. Evaluate whether affected employees have engaged in protected activity under the FCA's anti-retaliation provision.
- Monitor regulatory developments, including contracting agency guidance on EO 14173 and EO 14398.
- Evaluate cooperation strategies if compliance issues are identified.

Key Takeaway

The DOJ's settlement with IBM outlines the types of DEI activities that the DOJ will target through its Civil Rights Fraud Initiative. It also makes clear that the DOJ will pursue federal contractors and federal funding recipients for activities that occurred prior to the beginning of the second Trump administration. If you have questions about what this means for your organization, Akerman attorneys stand ready to assist.

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