View in browser

DEI Task Force Update

September 11, 2026

Gibson Dunn's Workplace DEI Task Force aims to help our clients navigate the evolving legal and policy landscape following recent Executive Branch actions and the Supreme Court's decision in *SFFA v. Harvard*. Prior issues of our DEI Task Force Update can be found in our DEI Resource Center.

Key Developments

On September 8, the accreditation council of the American Bar Association ("ABA") voted 10-6 to repeal Standard 206, a longstanding requirement that law schools "demonstrate by concrete action a commitment to diversity and inclusion." The requirement has been under scrutiny after President Trump issued Executive Order 14279 ("Reforming Accreditation to Strengthen Higher Education"), which called for the termination of "unlawful discrimination by American law schools" "under the guise of accreditation standards" and ordered the Secretary of Education to "assess whether to suspend or terminate the Council's status as an accrediting agency under Federal law." Voting was anonymous, although some of the 10 members of the ABA's accreditation council who voted for repeal stated that their intention was to preserve the ABA's accreditation authority.

On September 3, the U.S. Department of the Treasury and the Internal Revenue Service released proposed regulations that would deny tax-exempt status under Section 501(c)(3) to any private school that considers race, color, or national or ethnic origin in admissions, scholarships or loans, athletics, or any other "school-administered or school-supported program." The proposal specifies that prohibited discrimination includes race- and national origin-based discrimination "for any purpose," regardless of the intent behind the practice. In particular, the Treasury proposes to delete the provisions of Rev. Proc. 75-50 that have, since 1975, assured schools that policies favoring racial minority groups in admissions, programs, and financial assistance do not constitute discrimination when designed to promote a school's nondiscriminatory policy. The Treasury estimates that the rule "may affect the 18,000 private elementary, secondary, and post-secondary schools in the United States that currently qualify for tax exempt status and the 750,000 students attending these schools who may qualify for scholarships allocated on the basis of racial, ethnic, or national identity." The proposed regulation specifies that schools may still "take actions or adopt policies intended to eliminate prejudice and discrimination" by race-neutral means, and the preamble identifies geography, family income, first-generation status, hardship, military family status, and academic achievement as permissible criteria—suggesting that correlation with race alone does not trigger loss of exemption. Comments are due November 3, 2026. The rule would apply to taxable years beginning after May 31, 2027. For more information, please see our September 8 client alert here.

On August 25, Attorney General Todd Blanche announced that the Department of Justice ("DOJ") and Deloitte reached a settlement in relation to a False Claims Act ("FCA") investigation into the company. Under the settlement, Deloitte agreed to pay $21.5 million in exchange for resolution of allegations that the company "fail[ed] to comply with anti-discrimination requirements in its federal contracts" due to practices the United States contends "discriminat[ed] against employees and applicants on the basis of their race or sex." Specifically, the government alleged that "Deloitte took race or sex into account when making hiring, promotion, and staffing decisions to achieve progress toward non-public race and sex-based workforce composition goals," including by "tracking progress toward [] demographic goals," "evaluat[ing] [Deloitte's senior management], in part, based on their contributions to helping Deloitte achieve its workforce composition goals," "sett[ing] goals pertaining to the demographics of employees staffed to federal contracts," and "offer[ing] certain training, mentoring, leadership, development programs, educational opportunities or resources, and/or similar opportunities only to certain employees, with eligibility limited on the basis of race or sex." Deloitte denies the allegations made against it. This marks the second DOJ DEI-related FCA settlement, following IBM's $17 million settlement in April 2026.

On August 21, the Department of Labor implemented a number of revisions to the regulations implementing Section 503 of the Rehabilitation Act of 1973 in light of President Trump's Executive Order ("EO") 14173 ("Ending Illegal Discrimination and Restoring Merit-Based Opportunity"). Specifically, the DOL rescinded certain regulations applicable to federal contractors and subcontractors regarding affirmative action for individuals with disabilities under Section 503, including the section that required federal contractors to allow applicants to "self-identify" as disabled. It also rescinded the requirement that contractors collect and document various metrics (including hiring data) about applicants who self-identify as disabled. Finally, the Department also rescinded previous regulations which required contactors to conduct utilization analyses with the goal of achieving "7 percent of employment of qualified individuals with disabilities for each job group in the contractor's workforce." The rule goes into effect on September 21, 2026.

On August 17, the Department of Justice's Civil Rights Division ("DOJ") announced it is opening a compliance review into the College of William and Mary to determine whether its scholarships and student benefits include racial criteria that violate Title VI of the Civil Rights Act of 1964. In its announcement, the DOJ cited a number of scholarships, including some advertised for "future education leaders of color" and for law school applicants who attended Historically Black Colleges and Universities as undergraduates. In a press release, Assistant Attorney General Harmeet K. Dhillon said that "[w]e will find out if scholarships or other student benefits at William & Mary favor applicants of certain races. The Department will not turn a blind eye to race-based preferences, however they are packaged or portrayed by universities."

On August 12, the Office of Legal Counsel ("OLC") issued a memorandum opinion for the General Counsel of the National Science Foundation ("NSF"), which concludes that three NSF programs—the Improving Undergraduate STEM Education: Hispanic-Serving Institutions program ("IUSE: HSI"), the Alliances for Graduate Education and the Professoriate program, and the Louis Stokes Alliances for Minority Participation program—may no longer be administered because of their race- and sex-based criteria, which the OLC says are unconstitutional. The OLC specifically opined that the programs—which account for about $104 million of the $938 million that Congress recently allocated to the NSF for STEM education—fail both prongs of strict scrutiny. Relying on the U.S. Supreme Court's 2023 decision in *SFFA v. Harvard*, the OLC memorandum explains that, in its view, the only relevant "compelling interest" that would justify "race-based government action" with respect to the programs is "remediating specific, identified instances of past discrimination that violated the Constitution or statute." According to OLC, the programs' authorizing statutes lack such a compelling interest because they do not include "findings about specific, identified instances of past discrimination" and only provide "general assertion[s] of past discrimination" or generalized "statistical disparities." The OLC opinion also finds that certain programs failed to engage in a "narrow tailoring" of their race- or sex-based considerations and, in the case of the IUSE: HSI program, "employ[ed] a per se impermissible racial quota." In addition, the OLC memorandum identifies two other programs as having unconstitutional aspects, but ultimately finds that the programs may continue if they are changed to exclude race- or sex-based considerations. Those programs are (1) Advanced Technological Education ("ATE"), which directed the NSF to prioritize applications that included outreach plans and goals for recruiting and enrolling women and other underrepresented populations in STEM, and (2) the ADVANCE Program, which was authorized in 1980 to increase women's participation in scientific and technical fields.

On August 7, Haverford College and Jews at Haverford, an advocacy group consisting of students, faculty, alumni, and parents, reached a settlement to resolve their litigation stemming from claims that Haverford's handling of antisemitism allegations violated Title VI of the Civil Rights Act of 1964. The details of the settlement were not made public in court documents. According to a statement from Haverford President Wendy Raymond, however, Haverford will undertake several actions to combat antisemitism on campus including: (1) enacting a revised Honor Code that removes language that could be perceived as distinguishing between students on the basis of identity-group "status"; (2) updating Haverford's masking policy to require those who choose to wear a mask to confirm their identity upon request; (3) including information regarding Haverford's nondiscrimination policy in Admissions materials; (4) clarifying that Haverford's Civil Rights Director has exclusive jurisdiction over the school's adjudication of and response to claims alleging antisemitic conduct; (5) affirming that campus events sponsored by or on behalf of those identified as Jewish and/or Israeli and advertisements for the same are entitled to effective security; and (6) clarifying that criticism of Zionism when used as a proxy for discriminatory behavior toward an individual or group based on their membership in a protected class violates Haverford policy. The case is *Jews at Haverford et al. v. The Corp. of Haverford College*, No. 2:24-cv-02044 (E.D. Pa.).

Media Coverage and Commentary

Below is a selection of recent media coverage and commentary on these issues:

- **The Associated Press, "Civil rights agency moves to drop subpoena action against Nike in DEI-related investigation" (August 12, 2026)**: The Associated Press's Alexandra Olson reports that the Equal Employment Opportunity Commission ("EEOC") has dropped its subpoena enforcement action against Nike, telling a Missouri federal court that Nike has now provided information and documents responsive to its subpoena, leaving "no remaining controversy." The investigation stemmed from a complaint that EEOC Chair Andrea Lucas filed in May 2024, alleging that the company was discriminating against white employees in light of Nike's own public disclosures regarding mentorship and diversity programs, data showing more minorities in leadership ranks, and a stated goal of 35% racial and ethnic minority representation in its corporate workforce by 2025. Olson reports that the subpoena sought years of employment data, including layoff-selection criteria, information regarding how Nike tracks and uses worker race and ethnicity data, and information on allegedly race-restricted development programs.

- **Law360 Employment Authority, "EEOC Says Univ. Fired Black Manager Over DEI Complaint" (August 12, 2026)**: Law360's Anne Cullen reports that the EEOC sued Washington University in St. Louis, alleging that the university retaliated against a Black senior program manager at the medical school after she filed a discrimination charge. According to Cullen, the underlying charge concerned a mandatory DEI training that required the complainant and other participants to be assigned to separate virtual breakout rooms based on their race. The EEOC alleges that the complainant's duties were reassigned after she filed her charge, and that her position was later eliminated. Cullen notes that this suit follows similar EEOC enforcement actions that seek to curtail "allegedly unlawful DEI programs," including suits recently filed against Coca-Cola Beverages Northeast and the New York Times.
- **Law360, "Missouri Seeks To Block Minority Contracting Program" (August 12, 2026)**: Law360's Madeline Lyskawa reports that the state of Missouri is seeking a preliminary injunction to block Kansas City's minority and women business enterprise ("MWBE") program. Lyskawa reports that the MWBE program began in 1996 and sets annual citywide goals for contracting with minority- and women-owned businesses. According to Lyskawa, the state argues that the program is unconstitutional for treating contractors differently based on race, and that its racial quotas and preferences cannot be justified without evidence of prior government discrimination.
- **Bloomberg Law, "Education Department Wins Second Chance to Explain DEI Survey" (August 12, 2026)**: Bloomberg Law's Brian Dowling reports that a federal judge in the District of Massachusetts has declined to vacate the Education Department's new admissions data survey, which remains paused. The plaintiffs, a group of state attorneys general and educational institutions, claim that the government's survey exceeds the Education Department's statutory authority, that it violates the Paperwork Reduction Act and the E-Government Act, and that it was proposed and

adopted arbitrarily and capriciously. Judge F. Dennis Saylor IV declined to vacate the survey due to concerns about judicial overreach, forum-shopping, and separation of powers. According to Dowling, the Department's survey seeks seven years of applicant-level data concerning race, income, parental education, test scores, and GPA from colleges and universities, in an effort to determine their compliance with the U.S. Supreme Court's 2023 decision in *SFFA v. Harvard*, which struck down race-based affirmative action in college and university admissions. Following the judge's order, Dowling reports that the Education Department now has until September 11, 2026, to justify the survey.

- **The Associated Press, "Researchers, advocates rail against government's efforts to end workforce data collection" (August 11, 2026)**: The Associated Press's Claire Savage and Alexandra Olson report that more than 20 speakers testified at an EEOC public hearing regarding the agency's proposal to eliminate its annual collection of workplace demographic data. The EEOC voted 2-1 last month to stop collecting the data, arguing that the requirement may encourage discriminatory practices. Savage and Olson report that most of the testifying speakers opposed the change, with civil rights groups and researchers calling the data crucial for identifying systemic discrimination and tracking progress for women and racial minorities in the workplace.

- **Bloomberg, "Almost All Top US Companies Had Board Diversity Rules. Now Most Are Gone" (August 11, 2026)**: Jeff Green and Daniela Sirtori of Bloomberg News report that the use of diversity criteria for selecting corporate board members has gone from near-universal to uncommon among large US companies in the past three years. According to Green and Sirtori's reporting, a recent analysis found that 61 of the S&P 100 companies have eliminated explicit diversity criteria for board members since 2023. Green and Daniela Sirtori report that these policy changes have accelerated over the past two years in response to the Trump administration's elimination of DEI programs across the federal government, as well as its attempts to curb such programs in higher education and the private sector. They further report that the percentage of companies requiring diverse slates for board member selection has decreased from 58 to 12 percent in the past year.

- **Bloomberg Law, "Anti-DEI Group Files Bias Charge With EEOC Against Big Law Firms" (July 30, 2026)**: Bloomberg Law's Tobi Raji reports that the conservative advocacy group Americans for Equal Opportunity ("AEO") filed a second EEOC discrimination charge against Sponsors for Educational Opportunity ("SEO"), a nonprofit that places incoming law students in summer internships, and against 14 law firms participating in SEO's Law Fellowship program. As Raji reports, the charge alleges that SEO selected fellows on the basis of protected characteristics, including race, national origin, and religion, in violation of Title VII. According to Raji, AEO filed the charge on behalf of its members who applied unsuccessfully to the fellowship. AEO alleges that SEO has adopted "seemingly neutral language" while still giving preference to applicants based on legally protected characteristics. At the time of Raji's reporting, neither SEO nor the 14 law firms had commented on the charge.

Case Updates

Below is a list of updates in new and pending cases:

1. Employment discrimination and related claims

- ***Diemert v. City of Seattle, et al.*, No. 2:22-cv-01640 (W.D. Wash. 2022), on appeal at No. 25-01188 (9th Cir. 2025)**: On November 16, 2022, the plaintiff, a white male, sued his former employer, the City of Seattle, alleging that the City's diversity initiatives, which allegedly included mandatory diversity trainings involving critical race theory and encouraging participation in "race-based affinity groups, caucuses, and employee resource groups," amounted to racial discrimination in violation of Title VII and the Fourteenth Amendment. The plaintiff also alleged that he had been subjected to a hostile work environment. On February 10, 2025, the court granted the City's motion for summary judgment, holding that a reasonable juror could not find the City's diversity initiatives created a hostile work environment or that the plaintiff experienced discrimination or retaliation. On February 24, 2025, the plaintiff appealed to the Ninth Circuit. The Ninth Circuit heard oral argument on April 23, 2026.
    - **Latest update**: On July 31, 2026, the Ninth Circuit ordered both parties to file supplemental briefs addressing (1) whether the plaintiff-appellant has Article III standing to pursue his equal protection claim, and (2) whether there is a genuine dispute of fact as to whether the City classified employees based on race. In his supplemental brief, the plaintiff-appellant argues that the City classified employees based on race when it designed trainings for employees of particular races, identified employees who could or should attend trainings based on race, excluded or discouraged employees from participating in trainings because of race, and directed employees to affinity

groups organized around racial identity. The City argues that plaintiff-appellant lacks standing because he was not personally denied the benefit of the challenged trainings and was not required to attend any of the trainings. The City further argues that the plaintiff-appellant's claims for declaratory and injunctive relief could not redress his alleged harm, as he is no longer employed by the City. Finally, the City argues that it did not engage in racial classification because its trainings and affinity groups were voluntary, did not exclude anyone, and were not associated with any substantial benefit or burden.

2. Challenges to statutes, agency rules, executive orders, and regulatory decisions

- ***Walls v. Sanders*, Case No. 4:24-cv-00270 (E.D. Ark. 2024)**: On April 12, 2024, Arkansas teachers, students, and the Arkansas NAACP filed an action challenging Section 16 of the LEARNS Act, which prohibits the teaching of certain concepts associated with "Critical Race Theory." The plaintiffs alleged that Section 16 violates the First and Fourteenth Amendments by chilling speech, discriminating on the basis of viewpoint, and disproportionately targeting Black students and educators. The suit followed the Arkansas Secretary of Education's decision to revoke approval of AP African American Studies based on alleged violations of Section 16. On December 20, 2024, the court held the defendants' motion to dismiss in abeyance with respect to claims involving: (1) public high school teachers' Free Speech rights; (2) public high school students' Free Speech rights; (3) public high school teachers' Due Process rights; and (4) as-applied Equal Protection claims concerning African American teachers and students.
    - **Latest update**: On August 5, 2026, the court granted the defendants' motion to dismiss the as-applied equal protection claims, holding that although Section 16 might discriminate against certain ideas, "[d]iscriminating [against] ideas is not the same as discriminating against people, and the Equal Protection Clause is about discriminating against people." The court declined to rule on the vagueness claims and ordered additional briefing on justiciability-related questions.
- ***Landscape Consultants of Texas Inc., et al. City of Houston, et al., No. 4:23-cv-3516* (S.D. Tex. 2023):** The Landscape Consultants of Texas and other plaintiffs sued the City of Houston and related entities, challenging its government contracting set-aside program for "minority business enterprises" as violating the Fourteenth Amendment and Section 1981. On November 29, 2024, the plaintiffs and the defendant Midtown

Management District filed cross-motions for summary judgment. The City of Houston filed its own motion for summary judgment on November 30, 2024, contending that the plaintiffs lack standing and that the programs satisfy the requirements of the Equal Protection Clause.

- **Latest update**: On July 28, 2026, the court entered judgment in favor of the plaintiffs, permanently enjoining the implementation of the City of Houston's Minority, Women, and Small Business Enterprise Program and Midtown Management District's Minority, Woman, and Disadvantaged Business Enterprise Policy on the grounds that they violate the Equal Protection Clause of the Fourteenth Amendment. The court held, as a matter of first impression, that the constitutional framework articulated in *SFFA v. Harvard* (which struck down race-based affirmative action in college and university admissions) applies to race-conscious municipal public contracting programs. The court found that the City had failed to identify specific instances of past discrimination in its public contracting program and had not proven that the program satisfied strict scrutiny. The court also rejected the City's argument that the claim was moot in light of a new ordinance that allowed vendors to meet contract participation goals through race-neutral alternatives "such as subcontracting with small or veteran-owned businesses," reasoning that the new ordinance still mandated race-based contract goals and increased a subcontracting requirement as to minority-owned businesses. The court similarly found that Defendant Midtown Management District's Minority, Woman, and Disadvantaged Business Enterprise Policy violates the Equal Protection Clause of the Fourteenth Amendment by discriminating on the basis of race.

3. Actions against educational institutions

- ***Do No Harm, et al. v. David Geffen School of Medicine at UCLA, et al.*, Case No. 2:25-cv-04131 (C.D. Cal. 2025)**: On May 8, 2025, Do No Harm, Students for Fair Admissions, and a rejected applicant filed a class action complaint against the David Geffen School of Medicine at UCLA, UCLA, and the Regents of the University of California, along with numerous individual defendants including regents, university administrators, and admissions committee members. The plaintiffs allege that UCLA Medical School unlawfully uses race as a factor in admissions decisions in violation of Section 1983, Title VI, Section 1981, and California's Unruh Civil Rights Act. The complaint also alleges that the University shut down an internal investigation into its admissions practices by requiring admissions committee members to sign nondisclosure agreements and refusing to assure cooperating witnesses they would not face retaliation. On December 23, 2025, the plaintiffs filed a second amended complaint, omitting claims under the Unruh Act and instead raising only federal claims under Title VI, Section 1981, and Section 1983. On February 24, 2026, the United States filed an intervenor complaint, alleging that the defendants violated the Equal Protection Clause of the Fourteenth Amendment by intentionally engaging in racial balancing that confers preferences in admissions without a legitimate governmental purpose. On March 16, 2026, the plaintiff-intervenor and the defendants filed a joint stipulation of dismissal without prejudice as to the individual defendants. On March 20, 2026, defendant Regents of the University of California filed an answer to the complaint, denying all claims and asserting various affirmative defenses, including lack of standing. On July 14, 2026, the United States filed a first amended complaint that added additional breach of contract and Title VI claims.

- **Latest update**: On July 31, 2026, the defendants filed a motion to dismiss the United States' Amended Complaint-in-Intervention. The defendants contend that: (1) the United States cannot claw back funds already paid to UCLA under DOJ grants because Title VI limits the United States to forward-looking relief; (2) the United States cannot seek to terminate grants that have no plausible nexus to the alleged Title VI violations; (3) the United States fails to state a breach-of-contract claim, as it does not plausibly allege that UCLA Medical School's compliance with Title VI was a contractual obligation or material term of the DOJ's grants to UCLA; and (4) the United States is not permitted, "by either ordinary contract principles or Congress's Spending Clause authority," to engage in rescission and restitution of federal grant awards. On August 14, 2026, the United States filed an opposition to the defendants' motion to dismiss, arguing that: (1) the United States raises sufficient facts regarding UCLA Medical School's alleged discrimination to state a violation of Title VI; (2) contract law applies to grants under Title VI and permits retrospective relief; (3) Title VI compliance is material to the DOJ's contracts with UCLA Medical School; and (4) Title VI applies University-wide such that UCLA Medical School's alleged "violations of Title VI jeopardize federal financial assistance at the entire university, not just the school of medicine or the admissions office."

- ***Fowler v. Emory University*, No. 1:24-cv-05353 (N.D. Ga. 2024)**: On November 21, 2024, a former Emory University employee sued the university, alleging that the Vice Provost for Career and Professional Development discriminated against white employees in investigations, discipline, hiring, and promotions. The plaintiff asserts employment discrimination claims arising from "unlawful race, gender, and age discrimination and retaliation" in violation of Title VII, the Age Discrimination in Employment Act, and Section 1981. On December 3, 2025, Emory moved for summary judgment, arguing that the plaintiff failed to adduce any evidence, direct or circumstantial, that Emory acted with discriminatory intent, that Emory presented sufficient evidence in support of its legitimate, nondiscriminatory, and nonretaliatory reason for terminating the plaintiff—specifically, that the plaintiff violated Emory policy by circumventing hiring protocols—and that the plaintiff failed to present evidence creating a genuine issue of material fact as to whether the non-discriminatory reason for his termination was pretextual. On January 21, 2026, the plaintiff filed an opposition, arguing that the record supports a prima facie case of discrimination because he was treated worse than Black colleagues and because his supervisor had a stated preference for employees of color. He also asserted that the record suggests his firing was pretextual because it was not done according to policy.

    - **Latest update**: On July 13, 2026, the Magistrate Judge filed a Final Report and Recommendation that Defendant's Motion for Summary Judgment be granted, which was submitted to the District Court without objection on August 3, 2026. First, the Magistrate determined that the plaintiff's age discrimination claim cannot succeed because his supervisor already decided to terminate his employment before soliciting the summary at issue. Second, the Magistrate found that the plaintiff could not succeed on his sex and race discrimination claims because (1) although it was clear plaintiff's supervisor disliked him, a reasonable jury could not find that this dislike was connected to his sex; and (2) the plaintiff and his Black colleague were not similarly situated as they held different ranks, had different tenures, and had different disciplinary histories. Lastly, the Magistrate found that although a jury could find that the plaintiff's supervisor was not truly motivated by the plaintiff's hiring protocol violation when terminating his employment, a reasonable jury could not find that the real reason was race or sex discrimination.

- ***Wang v. University of Pittsburgh et al.*, No. 2:20-cv-01952 (W.D. Pa. 2020), on appeal at No. 25-1816 (3d Cir. 2025)**: On December 16, 2020, a former employee filed this action against the University of Pittsburgh, the University of Pittsburgh Medical Center, and other individual defendants, alleging that the defendants violated Sections 1983 and 1981, Title VII, and the Pennsylvania Human Relations Act ("PHRA") by removing him as Director of the Clinical Electrophysiological Program after he published an article criticizing DEI considerations in the cardiology workforce. On December 21, 2021, the district court dismissed the plaintiff's discrimination, whistleblower, defamation, and Section 1983 claims, reasoning that the plaintiff failed to allege action under a policy or by policymakers, and that the challenged conduct was not state activity. On March 29, 2024, the defendants moved for summary judgment, arguing that the plaintiff's claims under Section 1981, Title VII, and the PHRA failed because he did not engage in protected activity and could not establish a causal connection between any purported protected activity and an adverse action, and because the defendants had legitimate, non-retaliatory reasons for removing him from the role. The defendants further argued that the plaintiff's Section 1983 claims failed because the plaintiff could not demonstrate a deprivation of federal rights by a defendant acting under color of state law. On March 26, 2025, the court granted the defendants' summary judgment motion in full, finding that the University of Pittsburgh was not involved in any alleged adverse actions, that the plaintiff's removal from the role did not constitute state action, and that his comments during a private meeting with individual defendants did not constitute protected activity. On April 24, 2025, the plaintiff appealed the dismissal and summary judgment rulings. Briefing on appeal concluded on November 3, 2025. Oral argument was heard on March 2, 2026.
    - **Latest update**: On July 7, 2026, a three-judge panel of the Third Circuit affirmed in part, reversed in part, and remanded the lower court's motion to dismiss and summary judgment rulings, allowing most of the plaintiff's defamation and retaliation claims to proceed. As the Third Circuit reasoned, "[a] culture that cancels instead of counsels sacrifices persuasion at the altar of power." To start, the court affirmed dismissal of the plaintiff's First Amendment retaliation claim under Section 1983, holding that the hospital system, physician practice, and the individual defendants were acting as hospital employees rather than state actors when they removed the plaintiff from his job. The court also affirmed dismissal of the defamation claims against the journal's editor and publisher for failure to plead actual malice. At the same time, the court reversed the

dismissal of the plaintiff's defamation claims against two individual defendants, the publishing association, the university, and the hospital system, reasoning that the truth of the defendants' challenged statements (that the article was "racist" and "pseudo-scholarly" and that the retraction rested on "many" misstatements) could not be resolved at the pleading stage, and that the plaintiff plausibly pleaded actual malice where the speakers denounced the plaintiff's article. The court also reversed summary judgment as to the plaintiff's Title VII, Section 1981, and PHRA retaliation claims, holding that the plaintiff's criticism of racial preferences was protected opposition; that his demotion, the ban on contacting fellows, residents, and students, and the hostile environment his superiors supported were non-trivial adverse actions; and that genuine disputes remained on causation and pretext. Finally, the court revived the plaintiff's Title VI retaliation claim against the hospital system, which the court held receives federal funds to employ residents and fellows, and granted him leave to amend as to the university.

Legislative Updates

- **Missouri H.B. 2003**: On June 30, 2026, Missouri's House Bill 2003 was signed into law after a partial veto by Missouri Governor Mike Kehoe. The bill sets forth appropriations for the state's Department of Higher Education and Workforce Development for fiscal year 2027 and includes a provision prohibiting the use of state funding for contracts, programs, or positions within higher education institutions that are "focused solely on diversity, equity, and inclusion, or similar initiatives."
- **North Carolina S.B. 558**: On June 24, 2026, North Carolina's Senate Bill 558, the "Eliminating 'DEI' in Public Higher Ed" Act, took effect. The law prohibits public institutions of higher education from teaching so-called "divisive concepts," defined to include the concept that "[t]he rule of law does not exist but instead is a series of power relationships and struggles among racial or other groups." The law affects instruction and programming at public colleges and universities across the state.

The following Gibson Dunn attorneys assisted in preparing this client update: Jason Schwartz, Mylan Denerstein, Anna McKenzie, Cynthia Chen McTernan, Zakiyyah Salim-Williams, Molly Senger, Katherine Smith, Cate Harding, Cate McCaffrey, Anna Ziv, Benjamin Saul, Amy Pan, David Offit, Olympia Karageorgiou, Simon Moskovitz, Teddy Okechukwu, Beshoy Shokralla, Angelle Henderson, Lauren Meyer, Kameron Mitchell, Taylor Bernstein, Jerry Blevins, Chelsea Clayton, Sonia Ghura, Samarah Jackson, Shanelle Jones, Elvys Morales, Allonna Nordhavn, Felicia Reyes, Eric Thompson, Laura Wang, Duncan Taylor, Sam Moan, Shreya Sarin, and Rachel Schwartz.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Labor and Employment practice group, or the following practice leaders and authors:

Jason C. Schwartz – Partner & Co-Chair, Labor & Employment Group
Washington, D.C. (+1 202-955-8242, jschwartz@gibsondunn.com)

Katherine V.A. Smith – Partner & Co-Chair, Labor & Employment Group
Los Angeles (+1 213-229-7107, ksmith@gibsondunn.com)

Mylan L. Denerstein – Partner & Co-Chair, Public Policy Group
New York (+1 212-351-3850, mdenerstein@gibsondunn.com)

Zakiyyah T. Salim-Williams – Partner & Chief Diversity Officer
Washington, D.C. (+1 202-955-8503, zswilliams@gibsondunn.com)

Molly T. Senger – Partner, Labor & Employment Group
Washington, D.C. (+1 202-955-8571, msenger@gibsondunn.com)

Greta B. Williams – Partner, Labor & Employment Group
Washington, D.C. (+1 202-887-3745, gbwilliams@gibsondunn.com)

Cynthia Chen McTernan – Partner, Labor & Employment Group
Los Angeles (+1 213-229-7633, cmcternan@gibsondunn.com)

Anna M. McKenzie – Partner, Labor & Employment Group
Washington, D.C. (+1 202-955-8205, amckenzie@gibsondunn.com)