DOJ's Civil Rights Fraud Initiative Raises False Claims Act Risk for Federal Grantees

On May 19, 2025 the U.S. Department of Justice (DOJ) announced a sweeping initiative that could significantly alter how civil rights laws impact recipients of federal funds including colleges, universities, hospitals, and government contractors. In **the memo**, the DOJ announced its Civil Rights Fraud Initiative, which aims to use the False Claims Act (FCA) to investigate and pursue violations of civil rights laws.

Traditionally used to combat fraud in defense contracting, healthcare billing, and pandemic relief, the FCA may now be leveraged as a tool to police noncompliance with civil rights laws for any entities that have previously certified that they are in compliance with those laws as a condition of receiving federal funds.

Enforcement Strategy

At its core, the memo signals a shift in enforcement priorities: civil rights compliance is no longer just a regulatory expectation—it may now be framed as a potential fraud issue with serious financial and reputational consequences.

According to the memo, the DOJ will scrutinize whether recipients of federal funds "certify compliance with civil rights laws while knowingly engaging in racist preferences, mandates, policies, programs, and activities." It specifically cites DEI (Diversity, Equity, and Inclusion) initiatives as possible sources of exposure. Among the examples the DOJ highlights as potentially actionable under the FCA:

- encouraging antisemitism or failing to protect Jewish students;
- allowing men into women's bathrooms; and
- requiring women to compete against men in athletics.

Such language suggests that politically charged and culturally contentious issues—especially around race and gender identity—could become flashpoints for future FCA investigations or lawsuits.

The Role of Whistleblowers

One notable aspect of the initiative is its emphasis on encouraging whistleblowers—private individuals who can bring FCA lawsuits on behalf of the federal government and share in any recovery. These *qui tam* provisions have long been a hallmark of the FCA's effectiveness in healthcare and defense contracting enforcement. But applied to civil rights, this incentive structure raises significant concerns.

Unlike agency-led investigations, whistleblower suits can be filed by individuals who may have a political, ideological, or financial interest in challenging DEI programs or similar initiatives. The risk is that this new application of the FCA could become a legal avenue to challenge diversity or inclusion policies under the guise of fraud, rather than through the traditional civil rights litigation framework.

Legal Hurdles Remain

Despite its potentially sweeping implications, the DOJ's new approach is likely to face serious legal and practical hurdles.

The FCA is not a general enforcement mechanism for all regulatory violations. To succeed in an FCA case, the government (or a whistleblower bringing the suit as a "relator") must show that:

- a false or fraudulent claim was submitted for payment or approval;
- the entity knowingly made a false statement or certification; and
- the false statement was material to the government's decision to disburse funds.

These elements are not easily met in the context of civil rights compliance. It is not enough that an institution failed to live up to certain civil rights principles. The government (or relator) must prove that the specific representation made in the funding application was false, that the institution knew it was false, and that the falsehood was central to the government's funding decision.

Practical Implications for Recipients of Federal Funds

Despite these challenges, the risks are real and institutions should take this policy shift seriously. Colleges, universities, research hospitals, and federal contractors should consider taking the following steps:

- **Review Certification Language:** Many federal funding applications include boilerplate certifications that the recipient complies with Title VI, Title IX, Section 504 of the Rehabilitation Act, and other nondiscrimination laws. Institutions should review what exactly they are certifying and ensure internal policies and practices align.
- **Assess Compliance Programs:** Institutions should revisit how they monitor and document compliance with civil rights laws. That includes examining DEI programs for consistency with federal law and evaluating whether current procedures adequately address and respond to complaints of discrimination or harassment.
- **Audit High-Risk Areas:** Restrooms, athletics, admissions, and disciplinary policies may become focal points under this initiative. These areas could now trigger financial liability under the FCA if certifications are called into question.
- **Prepare for Whistleblower Scrutiny**: Institutions should recognize that compliance risk may now come from disgruntled employees, students, or ideological opponents. Clear documentation and internal complaint processes can help mitigate exposure before it escalates into litigation.
- **Coordinate Across Legal, Compliance, and DEI Functions**: Legal and compliance teams should be in regular communication with DEI offices and student affairs departments. Aligning institutional values with enforceable obligations is more

important than ever.

Conclusion

For institutions that receive federal funds, it's no longer enough to treat civil rights compliance as a box-checking exercise. Certifications carry legal weight, and the government (and private relators) are watching closely.

Now is the time to conduct proactive reviews, strengthen internal processes, and ensure that well-intentioned programs are backed by solid legal and compliance foundations.

What's Next?

We would be happy to assist you in addressing any questions. Please reach out to:

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