

## How Companies Can Reduce Risk of DEI-Related Enforcement Actions

Published by *Bloomberg Law*

January 19, 2023

Highlighting how companies' diversity, equity, and inclusion (DEI) initiatives are drawing heightened government scrutiny, Katten attorneys predict a rise in government enforcement actions alleging fraud in DEI initiatives and outline several steps to mitigate the risk of investigations. This article, published by *Bloomberg Law*, was written by Johnjerica Hodge, partner and chair of Katten's Corporate and Social Governance and Investigations group, Litigation partner Danette Edwards, White-Collar Litigation partner Ryan Meyer, and Litigation associate Ifedapo Benjamin.

Government interest in environmental, social, and governance (ESG) matters increased during the past year, according to the article, noting that "all signs indicate that government investigations in this space will increase in scope and number." DEI-related investigations primarily implicate the S of ESG. As companies have focused on strengthening their DEI-efforts, government scrutiny of such efforts has followed and several agencies have instituted a range of investigations.

"In each case, authorities investigated a company's DEI initiative and alleged that program was used as a tool to commit fraud," according to the article. For example, the New York attorney general's office embarked on a multi-year investigation into allegations of fraud in connection with diversity requirements for a public schools project. A 2022 settlement with one of the project's contractors, which included a six-figure monetary fine, represents the latest in the AG's enforcement campaign "that has produced settlements with 10 companies and garnered more than \$1.3 million in fines and penalties," according to the article.

The article explains that a government investigation can trigger a range of repercussions for companies – such as massive monetary penalties, reputational harm, and disruption to overall DEI efforts. Accordingly, "it is essential that companies take steps to insulate their DEI-related controls from significant weaknesses and prevent a mismatch between stated DEI initiatives and actual practices."

The article offers several steps that companies can take to reduce the risk of government investigations targeting their DEI efforts:

- assess new DEI programs to identify weaknesses in controls and areas for improvement;
- ensure personnel are in place at all levels within a company to help support and effectuate announced DEI programs;
- develop a confidential reporting mechanism to encourage employees to submit reports regarding diversity issues and lapses; and
- conduct periodic audits to assess compliance with DEI policies among all relevant personnel.

"[How Companies Can Reduce Risk of DEI-Related Enforcement Actions](#)," *Bloomberg Law*, January 19, 2023

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