ACCNJ LEGAL & INSURANCE UPDATE

JULY 2026

GATEWAY PLA LITIGATION UPDATE

In our previous update, ACCNJ started covering the pending litigation between the Gateway Development Commission (Gateway) and George Harms Construction Co. (Harms), stemming from the project labor agreement (PLA) tied to the Hudson River Tunnel Project's New Jersey Surface Alignment contract. On April 20, 2026, the appellate court granted ACCNJ's Motion for Leave to File as Amicus Curiae in Support of Gateway.

ACCNJ's amicus brief maintains that the District Court lacked sufficient factual and legal support to find that Gateway's PLA likely infringed upon Harms' First Amendment rights. The brief argues that ERISA benefit fund contributions cannot legally be used for political purposes and therefore cannot amount to compelled speech. The brief further explains how the PLA does not unlawfully compel association because employees are not required to join or financially support any Building Trades union as a condition of working on the project.

ACCNJ continues to support Gateway's authority to require contractors to execute a PLA with unions affiliated with the Hudson County Building and Construction Trades Council, while excluding the United Steelworkers as a signatory union. Although oral argument had been anticipated for the week of September 21, 2026, Gateway has since filed a motion to dismiss Harms' appeal. ACCNJ will continue to monitor the litigation and keep members informed of any significant developments as the case progresses.

EARLE ASPHALT COMPANY PLA LAWSUIT

On April 30, 2026, the Earle Asphalt Company (Earle) filed a federal lawsuit against the New Jersey Turnpike Authority, Ocean County and Evesham Township, arguing the State's minority construction hiring and PLA regulations violate the US Constitution and prevented them from successfully bidding on government construction projects.

New Jersey requires every contractor and subcontractor on public construction projects to meet state-mandated "targeted goals" for the employment of racial minorities and women across 18 trades. Earle, a non-union "open shop" contractor, argued that these "targeted goals" and reporting requirements act as unconstitutional race- and sex-based hiring quotas that prevent them managing their own workforce. Earle also contends that PLAs require them to hire from specific union locals and make payments to union employee benefit funds in violation of their First Amendment rights.

The lawsuit is in its early stages, and the court has not yet ruled on the merits of Earle's constitutional claims. That said, the court's eventual decision may help clarify the constitutional boundaries of workforce diversity requirements and PLAs on public projects.

DEI EXECUTIVE ORDER IMPOSES MANDATORY CONTRACT CLAUSE ON FEDERAL CONTRACTS

On March 26, 2026, President Trump signed an executive order aimed at diversity, equity, and inclusion (DEI) initiatives among federal contractors. This action builds on prior executive orders, in which the administration focused on DEI programs, citing concerns over rising costs and emphasizing a return to "merit-based" hiring practices. Effective April 26, 2026, the executive order requires federal agencies and their contractors to implement updated contract language certifying that the contractor does not engage in what the Trump administration characterizes as "racially discriminatory DEI."

Accordingly, executive departments and agencies must now ensure "contracts and contract-like instruments, including contractors' subcontracts and subcontractors' lower-tier subcontracts" include the following clause:

In connection with the performance of work under this contract, [the contractor/appropriate party (contractor)] agrees as follows:

1. *The contractor will not engage in any racially discriminatory DEI activities, as defined in section 2 of the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors);*
2. *The contractor will furnish all information and reports, including providing access to books, records, and accounts, as required by the contracting agency pursuant to the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors), for purposes of ascertaining compliance with this clause;*
3. *In the event of the contractor's or a subcontractor's noncompliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor or subcontractor may be declared ineligible for further Government contracts;*
4. *The contractor will report any subcontractor's known or reasonably knowable conduct that may violate this clause to the contracting department or agency and take any appropriate remedial actions directed by the contracting department or agency;*
5. *The contractor will inform the contracting department or agency if a subcontractor sues the contractor and the suit puts at issue, in any way, the validity of this clause; and*
6. *The contractor recognizes that compliance with the requirements of this clause are material to the Government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code (False Claims Act).*

The executive order establishes substantial potential consequences for failing to comply with the proposed clause, including authorizing contracting agencies to cancel, suspend, or terminate contracts and to seek suspension or debarment of contractors or subcontractors who do not comply. Accordingly, contractors and subcontractors should begin to pay close attention to agency-issued guidance and memoranda outlining how the executive order will be carried out, as all existing federal contracts must be amended to include the new clause by July 24, 2026.

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