



Top Takeaways
February 2026

The Institute is committed to keeping our members informed regarding cutting-edge developments. Below are the top highlights from Tuesday's February 17th Member Roundtable with Institute Leaders Nita Beecher, David Fortney, Laura Mitchell and Mickey Silberman.

Please share these key takeaways with your internal leaders. The replay of the February 2026 Roundtable is located [here](#). Members will need to log in for full access.

Highlights

- **EEO-1 Report Release.** Laura explained that OFCCP had just [informed](#) federal contractors that it would be releasing their 2026 to 2020 EEO-1 Reports as a result of the litigation by Center for Investigative Reporting. The reports will be placed on the OFCCP's [FOIA website](#). The group discussed the limited options for contractors to challenge the release of the reports.
- **EEOC Subpoena Enforcement Actions.** Nita noted that EEOC with its new quorum is filing numerous subpoena enforcement especially around allegation that white men were discriminated against by corporations. Most recently it filed a subpoena enforcement action against [Nike](#) alleging discrimination against white men based on a Commissioner's Charge filed in 2024 by now Chair Andrea Lucas. With a subpoena enforcement action EEOC is able to publish information about an investigation which it could not otherwise reveal under Title VII.
- **Court Decisions on EO 14173.** Mickey discussed the two latest decisions on the constitutionality of EO 14173. The 4th Circuit upheld the constitutionality of the EO while in oral arguments the 7th Circuit demanded the government provide a definition of "illegal DEI" so federal grantees know to what they are certifying.
- **FTC Letter to Law Firms on Mansfield Certification.** Nita noted that the FTC sent a [letter](#) to 42 major law firms, expressing "serious concerns" about their participation in DEI-based Mansfield Certification programs, raising issues that "collusion or unlawful coordination on DEI metrics" violated anti-trust laws. The letter did not ask the law firms to respond unlike EEOC's letters to the firms. The letter claimed that participation might also violate other federal statutes.
- **Disparate Impact and State Developments.** Mickey reminded members that although President Trump had directed federal agencies such as DOJ and EEOC not to pursue cases based on the disparate impact theory. The focus should be on whether there was intentional discrimination instead. Now seeing states responding to the ban by refocusing on disparate impact and in the case of New Jersey and New York codifying them into state law. Disparate impact theory is still viable under both federal and state law and will be pursued by plaintiffs counsel.

Member Roundtable Meeting: March 17th at 2 pm Eastern. Please click [here](#) for the zoom information.

Webinars – Always complimentary to all members. Registration information is located [here](#).