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Florida's Stop the Wrongs to Our Kids and Employees (WOKE) Act (HB 7) Law Text

What Is the "Stop WOKE" Act?

The Stop WOKE Act ("Act") places strict limitations on the topics employers with a presence in Florida can discuss at mandatory diversity, equity, and inclusion ("DEI") workplace trainings and seminars. In addition, it prohibits school instruction in a similar manner (both K-12 schools and public colleges and universities) and creates potential causes of action for school employees, students and parents against schools and school districts. The school-related provisions of the act are beyond the scope of this memo.

Effective July 1, 2022, the Act prohibits employers with 15 or more employees from requiring an employee, as a condition of employment, to participate in training, instruction, or other required activity that "espouses, promotes, advances, inculcates, or compels such individual to believe" the following concepts:

- Members of one race, color, sex, or national origin are morally superior to members of another race, color, sex, or national origin.
- An individual, by virtue of his or her race, color, sex, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
- An individual's moral character or status as either privileged or oppressed is necessarily determined by his or her race, color, sex, or national origin.
- Members of one race, color, sex, or national origin cannot and should not attempt to treat others without respect to race, color, sex, or national origin.
- An individual, by virtue of his or her race, color, sex, or national origin, bears responsibility for, or should be discriminated against or receive adverse treatment because of, actions committed in the past by other members of the same race, color, sex, or national origin.
- An individual, by virtue of his or her race, color, sex, or national origin, should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion [an apparent reference to affirmative action policies, which traditionally benefit Black and Latino students or employees in an effort to offset centuries of racial discrimination.]
- An individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race, color, sex, or national origin.
- Such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by members of a particular race, color, sex, or national origin to oppress members of another race, color, sex, or national origin.

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The Act says that trainings that incorporate these concepts amount to unlawful discriminatory employment actions.

Worth noting, the Act does not prohibit all discussion of the concepts listed above. Instead, it requires that any discussion of the above **concepts is given in "an objective manner without endorsement of the concepts."**

By allowing discussion of the aforementioned concepts but including broad prohibitions, the Act tries to circumvent the possible First Amendment challenges that have been raised against other similar laws and executive orders.

An agency located in Florida with the employee minimum is clearly covered the law. It may also apply to an agency located outside of Florida with a Florida employee because Florida courts have realized that if the employer has the minimum threshold number of employees (15) nationally, and the "injury" occurs in Florida (i.e., a Florida-based employee receives a training in violation of the law), then the Act will apply.

How Is the Act Enforced?

Employees who believe their employers have violated the Act can file a complaint with the Florida Commission on Human Relations (FCHR) within one year of the alleged violation. Aggrieved employees can then pursue an administrative or civil action against their employers under the Florida Civil Rights Act (FCRA) and receive the same legal penalties as they may receive for other discriminatory acts under the FCRA, such as compensatory damages including attorneys' fees, emotional distress, loss of dignity, and other injuries, and punitive damages no greater than $100,000.

How Does the Law Affect Agency Employers?

It appears that agency employers can still pursue their diversity initiatives, move forward with their strategic plans, and require employee attendance at diversity training and instruction sessions that discuss common DEI concepts such as microaggressions, unconscious bias, cultural competence, racial colorblindness, and structural racism. However, agency employers and their legal counsel should review the content and scripts of these trainings to ensure that they are, in fact, objective and do not otherwise run afoul of the new law.

It is also worth noting that the Act does not apply to trainings and discussions of the above concepts that are not required as a condition of employment, even if facilitated by the employer.

Practically speaking, however, whether employers will be able to circumvent the vague prohibition against non-objective presentations remains uncertain. For example, it is easy to envision a

scenario where a trainer intends to cover a topic objectively but a trainee perceives a training or presentation to be advocating for that concept.

How is the Law Different Than the Trump Administration Executive Order on DE&I Training?

In September 2020, President Trump issued an executive order (EO 13950) seeking to prevent government agencies and federal contractors from providing certain types of DEI training to their employees and listed specific prohibited content similar to the Act. Specifically, EO 13950 directed federal contracting officers to include new language in "government contracts" prohibiting federal contractors from using any workplace training that enforced race or sexual stereotyping or "scapegoating" and establishing a "hotline" for reporting complaints that a federal contractor was violating EO 13950 and/or EO 11246.

The Act is broader in scope than EO 13950, and is not limited just to government contractors, federal grant recipients, or those doing business with the state.

Worth noting, EO 13950 was subject to multiple challenges to its constitutionality based on free speech and due process rights before President Biden ultimately revoked it on January 20, 2021, hinting that similar legal arguments may apply to ongoing court challenges of the Act.

What Should Agencies Expect Next With the Act?

As the July 1, 2022 effective date nears, agency employers in Florida with 15 or more employees should prepare for further guidance or court decisions that may clarify details about the scope of prohibited content under the Act.

Unsurprisingly, there already exist legal challenges to the Act. A group of plaintiffs filed suit in the U.S. District Court for the Northern District of Florida in the case of *Falls v. DeSantis*, challenging its constitutionality. The lawsuit argues that employers are entitled to exercise their right to free expression under the First Amendment of the U.S. Constitution and that the Act unlawfully restricts that right. More lawsuits raising similar objections and concerns are expected.