

Florida's "Stop WOKE" Act and Its Potential Impact on DEI Training

Labor & Employment Workforce Watch

WRITTEN BY

Kevin D. Kelly | Kendal J. Hendrickson

Florida Governor Ron DeSantis recently signed [Florida House Bill 7/Senate Bill 148 \(HB7\)](#), also known as the "Stop WOKE Act," that will place strict limitations on the topics Florida employers can discuss at diversity, equity, and inclusion ("DEI") trainings and seminars. [According to Governor DeSantis](#), WOKE stands for "Wrongs to Our Kids and Employees."

DEI training is becoming more common in the workplace. Many companies, particularly Fortune 500 companies, offer or require DEI training for employees. One of the main goals of DEI training is to create a welcoming workplace that respects employee differences and gives a voice to traditionally underrepresented populations. Another main goal is to affirmatively address biases and prejudices within organizations, including those that are inherent or inconspicuous.

The Stop WOKE Act will require Florida employers to consider more carefully the content of their DEI and other non-discrimination training sessions. The Act prohibits employers with 15 or more employees from requiring an employee to participate in any form of training 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 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.

Importantly, the Act does not prohibit all discussion of the concepts listed above, but rather requires that any discussion of the concepts be presented in “an objective manner without endorsement of the concepts.” By allowing discussion of concepts but prohibiting endorsement of these concepts by employers, the Act attempts to minimize potential First Amendment challenges to the law, but it remains to be seen whether the distinction between objective presentation and endorsement is a distinction that can be navigated by employers in practice. It is easy to imagine scenarios where a trainer who legitimately intends to cover a topic objectively is nevertheless perceived by a recipient of the training to be advocating for that concept.

Given the hot-button issues involved in the law and its speech-related restrictions, it is likely to be the subject of court challenges, and it will be interesting to see how courts navigate the intersection between the governmental right to regulate the workplace and Constitutional restrictions on governmental intrusion into free speech. For instance, courts have consistently found that federal and state laws prohibiting discrimination in the workplace restrict verbal acts of harassment that denigrate an employee’s race, sex, or other protected characteristics, and thus there is well-established precedent for governmental regulation of certain types of workplace speech. Until there is greater clarity regarding this law, however, Florida employers beginning in July 2022 (the effective date of the law) will need to carefully scrutinize the content of any mandatory DEI or non-discrimination training to avoid running afoul of the Act’s prohibitions. Florida employers should note that the Act restricts the content of mandatory training sessions but does not restrict the content of training that employees attend on a purely voluntary basis.

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