

How Should Employers Prepare for Florida's "Individual Freedom" or "Stop WOKE Act"

On April 22nd, 2022, FL Governor, DeSantis, signed House Bill (HB) 7, dubbed the "Stop the Wrongs to Our Kids and Employees (WOKE) Act," into law, which the governor said will prevent kids from learning to "hate our country or to hate each other" and stop companies from forcing employees to attend "CRT-inspired training and indoctrination."

While many commentators are focused on the act's anticipated effect in academic spaces, for our purposes here, the focus will be on the fact that this law makes it illegal for Florida employers to require employees to undergo training that includes concepts regarding race, sex, religion, or national origin.

[According to the FL Governor's webpage:](#) HB 7 protects civil rights in employment and K-20 education by specifying that subjecting an employee or student to a required activity that promotes, advances, or compels individuals to believe discriminatory concepts constitutes unlawful discrimination

The Statute:

Concepts constituting unlawful discrimination include:

- That members of one race, color, national origin, or sex are morally superior to members of another race, color, national origin, or sex.
- A person by virtue of their race or sex is inherently racist, sexist, or oppressive.
- A person's moral character or status as privileged or oppressed is determined by race, color, national origin, or sex.
- A person, by virtue of their race, color, national origin, or sex should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion.

Notably, the statute goes on the state: Paragraph (a) (summarized above) "may not be construed to prohibit discussion of the concepts listed therein as part of a course of training or instruction, **provided such training or instruction is given in an objective manner without endorsement of the concepts.**"

"The bill would be enforced in the same manner as Florida's existing employment civil rights protections. A person who believes his or her rights were violated may file a complaint with the Florida Commission on Human Relations within 365 days of the alleged violation and then, in most cases, pursue a civil or administrative action. Remedies available under the law include injunctive relief, back pay, compensatory damages, and punitive damages (not to exceed \$100,000).

The Florida attorney general is also empowered to bring civil actions for damages, injunctive relief, and fines not to exceed \$10,000 per violation when the attorney general has cause to believe an employer engaged in a pattern or practice of discrimination or otherwise engaged in discrimination that violates the law and raises issues of "great public interest," [Morgan Lewis LawFlash](#)



Challenges were filed last week. For example, Tammy Hodo, the president of a consulting firm that provides diversity and anti-bias training to educational institutions, law firms, and others joined with educators as plaintiffs in a federal suit. The suit claims violations of the U.S. Constitution's First and 14th Amendments. The plaintiffs are seeking a judgment that the recent rules and laws are unconstitutional and an **order stopping Florida from enforcing them.**

BUT, IN THE MEANTIME, WHAT DOES THAT MEAN TO EMPLOYERS IN THE STATE?

The consensus is that employers may still offer DEI training in FL. Barry Postman of Cole, Scott & Kissane, an experienced Florida Employment Defense Law Firm, said, *"As with any newly signed piece of legislation, time will tell as to what impact, if any, it will have in the workplace or in the Court system. With that said, the way the new law is written, even a well-intended employee training platform can be found to be a violation of the Stop WOKE Act. It is suggested that employers update their current policies and training to ensure that everything is in compliance."*

They should consider several key ideas:

1. Consider making the training voluntary. If you do so, be careful that those who choose not to attend are not somehow disadvantaged in their jobs or their careers.
2. Consider reviewing training material to make certain the concepts are present "objectively". Training that presents the prohibited concepts objectively, without the endorsement of the concepts presented in the training, would likely pass muster under the bill.
3. Consider providing clear disclaimers that the company does not endorse any training or teaching that compels an employee to believe any of the concepts listed in Florida HB 7. Keep in mind, however, that you need to deliver on the disclaimers.

WHAT ARE THE INSURANCE IMPLICATIONS?

The good news for employers who purchase Employment Practice Liability Insurance (EPLI) is that the statute specifically describes any violations as acts of "discrimination." Therefore, claims brought by employees alleging an employer violated the act should be covered under an EPLI policy.

Will the insurance industry respond to the potential for an increase in employment litigation in Florida? Perhaps. We will have to wait and see if this causes an increase in rates and/or a change in the limits offered to an employer with a significant presence in Florida.

If you have any questions about these or other EPLI issues, please reach out to our team at ManagementLiability@BaldwinRiskPartners.com



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