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フロリダ州、雇用主に職場DEIトレーニングの見直しを義務づける新たな法律を制定

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Practices: 雇用／労働法／福利厚生

EXECUTIVE SUMMARY

On April 22, 2022, Florida Governor Ron DeSantis signed into law the “Stop WOKE” Act (HB 7) (the “Act”), which amends the Florida Civil Rights Act (“FCRA”) and imposes restrictions on the content that public and private employers may use in workplace trainings related to race, color, sex and/or national origin. The Act could have significant implications for employers who currently cover or intend to cover topics such as structural racism, privilege and implicit bias within Diversity, Equity, and Inclusion (“DEI”), anti-discrimination, anti-harassment, and other such workplace trainings. The Act shall become effective July 1, 2022.

The Act makes it an unlawful employment practice for covered employers (public and private Florida employers with 15 or more employees) to “subject” any Florida employees to mandatory training or instruction which espouses or promotes belief in the following prohibited concepts:

1. Members of a particular race, color, sex, or national origin are morally superior to members of another race, color, sex, or national origin;
2. An individual, by virtue of his or her race, color, sex, or national origin, is inherently racist, sexist or oppressive, whether consciously or unconsciously;
3. An individual’s moral character or status (privileged or oppressed) is determined by his or her race, color, sex, or national origin;
4. Members of one race, color, sex, or national origin cannot and should not attempt to treat others without respect to their race, color, sex, or national origin;
5. 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;
6. 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; and

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7. An individual, by virtue of his or her race, color, sex, or national origin, bears personal responsibility for and must feel guilt, anguish or other forms of psychological distress because of actions in which the individual played no part, that were committed in the past by other members of the same race, color, sex, or national origin.

While the language of the Act is broad, it makes clear that employers may still require trainings geared towards promoting DEI awareness and preventing discrimination in the workplace so long as they are "given in an objective manner without endorsement of the concepts." For instance, workplace trainings may still cover topics such as microaggressions, implicit bias, cultural competence, racial colorblindness, and structural racism so long as the topics are taught or discussed in an objective manner and cannot be construed as "compelling, promoting or advancing beliefs tied to prohibited concepts under the Act."

It is important to note that the Act does not appear to apply to voluntary trainings and discussions on the otherwise prohibited concepts, even if such trainings or discussions are facilitated by the employer.

An employee who believes his or her employer's trainings violate the Act may file a complaint with the Florida Commission on Human Relations ("FCHR") within a year of the alleged conduct, and subsequently, potentially file an administrative or civil lawsuit under the FCRA for damages including compensatory damages for mental anguish, loss of dignity, and other such injuries, along with attorney's fees and punitive damages capped at $100,000.

Shortly after the Act was signed, a lawsuit challenging its constitutionality was filed in U.S. District Court for the Northern District of Florida (*Falls v. DeSantis*). Among other things, the lawsuit alleges that employees are entitled to exercise their right to free expression under the First Amendment of the U.S. Constitution. The lawsuit remains pending at this time and may be followed by other similar actions.

In the interim, employers with operations and/or employees in Florida, should take preparatory action to comply with the Act. Florida employers who conduct DEI and other such trainings independently or through vendors are recommended to consult with counsel as to the content and specific presentation of such trainings and any related workplace policies to ensure that they are compliant with the Act. Likewise, multi-state employers with Florida operations need to be aware that a company-wide approach to trainings on these topics could unwittingly result in unlawful employment practices and damages, which warrants independent review of mandatory trainings for Florida employees.

Please contact Naureen Amjad or any member of the Employment, Labor and Benefits Group with any questions.

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