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August 11, 2022

On April 22, 2022, Florida Gov. Ron DeSantis signed into law the Individual Freedom Act, also known as the Stop the Wrongs to Our Kids and Employees (WOKE) Act, with an effective date of July 1, 2022. It provides a private cause of action to Floridian employees after exhausting administrative remedies if such employees are required by an employer to participate in any workplace training that promotes various viewpoints concerning race, color, sex or national origin, including critical race theory. Employers must carefully review all required employee trainings – especially trainings discussing race, color, sex or national origin – to ensure that they comply with the broad coverage of this new law.

Key provisions

The Individual Freedom Act amends the Florida Civil Rights Act to add as an unlawful employment practice subjecting an employee as a condition of employment to any training, instruction or other required activity that “espouses, promotes, advances, inculcates, or compels” any of 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.
- 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, 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 committed in the past by other members of the same race, color, sex or national origin.
- Virtues such 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.

The new law does not prohibit discussion of the above concepts as long as any training or discussion of them is given “in an objective manner without endorsement” of the concepts. The law applies to all employers with 15 or more employees and, as with other violations of Florida anti-discrimination law, aggrieved employees may file a private cause of action after exhausting administrative remedies.

Next steps

As noted above, the new law contains a number of broad concepts and terms, including what it means to “espouse, promote, advance, inculcate, or compel” certain beliefs. Further, it is unclear when an employer crosses the line from providing training or discussion in an “objective” manner permitted under the new law to “endorsing” any of the prohibited concepts.

In light of the breadth of the new law, employers with Florida employees should proceed with caution in assessing their employee training programs. Employers with multistate operations also should understand the risks associated with continuing to provide the same training to Florida employees that they offer employees in states with required harassment training laws, such as New York. If employers choose to continue to require the same employee training programs to employees without regard to location, they risk complaints and lawsuits from employees in Florida. However, the new law prohibits only “required activity,” so employers should consider making any current training programs optional for Florida employees while waiting for further guidance.

If you have any questions about the new law, please reach out to a member of the Cooley employment team.

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