

# What every Florida employer should know about new Stop WOKE Act

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*Florida Governor Ron DeSantis recently signed [House Bill \(HB\) 7](#), the Stop the Wrongs to Our Kids and Employees (WOKE) Act. The measure applies to employers with 15 or more employees and aims to restrict how businesses conduct training on race and sex. It also imposes limits on how public schools can talk about race and gender, which is outside this newsletter's purview.*

### ***What new law says***

HB 7 amends the Florida Civil Rights Act (FCRA) to provide that subjecting a person, as a condition of employment, to training, instruction, or any other required activity that espouses, promotes, advances, inculcates, or compels the individual to believe any of the following concepts constitutes discrimination based on race, color, sex, or national origin:

- 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, and inclusion (DEI).
- 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, 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, collectivity, 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.

### ***Can employers still conduct diversity training?***

Yes. HB 7 doesn't prohibit discussion of the aforementioned concepts as part of a training or instruction course but says the material must be given in an "objective manner without endorsement of the concepts."

### ***Why legislation was passed***

The Stop Woke Act is the strongest legislation of its kind in the nation. Governor DeSantis says, "In Florida, we are taking a stand against the state-sanctioned racism that is critical race theory."

Merriam-Webster defines [critical race theory](#) as "a group of concepts . . . used for examining the relationship between race and the laws and legal institutions of a country and especially the United States." The legislation is very controversial.

## ***New liability for Florida employers***

Any employees who believe they are required to participate in training that espouses any of the prohibited concepts discussed above can file a complaint with the Florida Commission on Human Relations within 365 days of the alleged violation. Then, after exhausting their administrative remedies, they can pursue a civil or administrative action against the employer. Available remedies include injunctive relief, back pay, compensatory damages, and punitive damages up to \$100,000.

The Florida attorney general (AG) also can file a civil action for damages, injunctive relief, and civil penalties not to exceed \$10,000 per violation when the AG has reasonable cause to believe (1) the employer has engaged in a pattern or practice of discrimination or otherwise shown bias in violation of state laws and (2) the conduct raises an issue of great public interest.

## ***How to proceed with DEI training***

If your organization has adopted a mandatory DEI training program, you should consult with experienced employment counsel to determine whether its content may “espouse, promote, advance, inculcate or compel” (i.e., encourage) employees to believe any of the prohibited concepts. If it encourages them to believe any of the banned ideas, then you would be prohibited from making the training “a condition of employment” (meaning mandatory). But you could still offer the trainings on a voluntary basis.

Significantly, HB7 doesn’t prohibit mandatory trainings that mention the concepts discussed above. Rather, it only bans trainings that espouse, promote, advance, inculcate, or compel employees to believe the notions. Thus, instruction given in an “objective manner without endorsement of such concepts” would likely comply with the new law. It’s a very fine line to draw.

If an employee challenges the manner in which the training is conducted, you would have to demonstrate you presented the concepts objectively and didn’t endorse the topics. Obviously, determining objectivity isn’t that clear, thus opening the door to potential claims. One way to reduce potential liability would be to include disclaimers stating:

- Your organization doesn’t endorse any particular concept prohibited by HB 7; and

- The training is purely educational and not intended to compel employees to believe any of the topics discussed.

The disclaimer could be confusing to employees, however, and send mixed messages.

## ***Additional guidance expected***

The state of Florida is expected to issue further regulatory guidance, but its timing is unknown. HB 7 is slated to become effective on July 1, 2022.

## ***Next steps for Florida employers***

- Consider delaying any diversity training until the interpretive regulations are issued;
- Review and remove any policies or publications that conflict with HB 7;
- Make diversity training (if any) voluntary and not mandatory;
- If the training is made voluntary, make it clear those who choose *not* to attend won’t somehow be disadvantaged in their jobs or careers;
- If the training is mandatory, ensure the program is balanced (i.e., taught in an objective manner) and clarifies you aren’t endorsing any of the prohibited concepts; and
- Consider using disclaimers stating your company doesn’t endorse any training or teaching that compels an employee to believe any of the concepts listed in HB 7.

## ***Stay tuned***

Minutes after Governor DeSantis signed HB 7, a group of opponents filed a federal lawsuit challenging HB 7’s constitutionality. Stay tuned! We’ll keep you apprised of any significant developments.

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