

# WHAT EMPLOYERS NEED TO KNOW ABOUT THE IMPACT OF FLORIDA'S INDIVIDUAL FREEDOM ACT ON DIVERSITY TRAINING

Insights  
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Florida Governor Ron DeSantis recently approved the [Individual Freedom Act](#), which has also been dubbed the "Stop WOKE" Act and sets parameters on workplace diversity training programs that discuss race, gender, and discrimination. Notably, the constitutionality of the bill is already being challenged in court, and a ruling may be issued before the law takes effect on July 1. In the meantime, employers in Florida should consider reviewing their programs for potential conflicts ahead of the effective date. What do you need to know about the state's new law and how it impacts workplace diversity training?

## Limits on Employee Training

The bill amends the Florida Civil Rights Act (FCRA) to prohibit employers from requiring employees to attend training, instruction, or any other activity that promotes the belief that any of the following eight concepts constitutes discrimination based on race, color, sex, or national origin:

1. That members of one race, color, sex, or national origin are morally superior to members of another race, color, sex, or national origin;
2. That an individual, by virtue of their race, color, sex, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
3. That an individual's moral character or status as either privileged or oppressed is necessarily determined by their race, color, sex, or national origin;

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**Marisol Ruiz**

Associate

813.769.7515

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4. That 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;
5. That an individual, by virtue of their 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. That an individual, by virtue of their race, color, sex, or national origin, should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion;
7. That an individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of their race, color, sex, or national origin; or
8. That 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.

Any mandatory training that encourages, promotes, or endorses these concepts may constitute discrimination based on race, sex, national origin, or color. Notably, you will be allowed to provide mandatory training to employees if it is delivered in an objective manner without endorsing any of the above eight concepts. In other words, you can still deliver workplace diversity training for your Florida employees if it does not promote certain beliefs, including that someone is inherently racist or sexist based on their own race or gender or that they are responsible for historical events that were committed in the past by other people of their same race or gender.

You should recognize [the many benefits of an effective diversity, equity, and inclusion program](#) and explore the options that work best for your company. Doing so requires an assessment of employee concerns and company goals, as well as taking care to ensure that you do not unwittingly run afoul of relevant workplace laws.

## **Enforcement and Penalties**

An employee may file a complaint with the Florida Commission on Human Relations within 365 days of the alleged violation if they have reason to believe that an employer has engaged in discriminatory behavior that violates the Individual Freedom Act. They may also pursue administrative actions or civil lawsuits requesting injunctive relief, compensatory damages, and even punitive damages (not exceeding \$100,000).

Furthermore, the Florida Attorney General may bring civil actions against employers for damages, injunctive relief, and civil penalties (of up to \$10,000 per violation) when the Attorney General has reason to believe an employer engaged in discriminatory behavior in direct violation of the Individual Freedom Act.

### **Key Takeaways for Employers**

This bill will apply to public employers and private employers with at least 15 employees. Note that employers that are federal contractors may have competing obligations under existing contracts and regulations from the Office of Federal Contract Compliance Programs, so you should check with your attorney before making any changes to your training programs.

Since the new law may expand civil liability exposure for covered employers, you should thoroughly review your mandatory employee trainings – particularly those with an emphasis on diversity, equity, and inclusion or discrimination and unconscious bias – where employees may be asked to reflect on any race or gender-based privileges they may have.

Therefore, before implementing or continuing mandatory training, be sure to work with counsel to develop a compliant program that is properly tailored to the unique aspects of your workplace culture. Counsel will be able to provide guidance about incorporating disclaimers into employee training, instruction, or other mandatory activities to emphasize that the employer prohibits any and all forms of discrimination, the training is provided to inform employees about the employer's anti-discrimination policies, the training does not encourage any of the eight identified concepts, and the training is not intended to force any employee to believe the concepts discussed.

Lastly, employers should be cautious when disciplining or terminating an employee based on their objection or refusal to participate in mandatory training that involves this new law. Because the provisions in this bill are amendments to the FCRA, the right of action would be the same as for other claims of discrimination. Unlawfully disciplined or terminated employees could file a charge of discrimination and potentially have a right to sue in court.

## **Conclusion**

We'll continue to monitor applicable developments going forward, so please make sure you are signed up for the [Fisher Phillips Insight System](#) to receive the latest news. For more information, contact your Fisher Phillips attorney, the author of this Insight, or an attorney in one of [our Florida offices](#).