



# Florida's "Stop WOKE" Act Struck Down on Appeal: What Employers Need to Know

Insights

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A recent federal appeals court decision likely puts an end to a two-year battle impacting Florida employers and their workplace diversity, equity, and inclusion training. The 11th U.S. Circuit Court of Appeals ruled on March 4 that the state's Individual Freedom Act — known as the "Stop WOKE" Act — violates the First Amendment. The law was an attempt to restrict the way employers could implement mandatory workplace DEI training programs discussing race, gender, and discrimination. Here's what employers need to know now that the law has been struck down on appeal.

## Quick Refresher

The Individual Freedom Act sought to restrict mandatory workplace trainings that lend credibility to certain concepts on implicit bias and inequality based on protected characteristics (such as race, sex, or national origin). For example, the law prohibited trainings that promote the belief 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.

Although you could still deliver workplace diversity training for your Florida employees, many employers were afraid of unwittingly running afoul of the new parameters. [You can read more details about the act here.](#)

The law was immediately challenged in the courts, and a federal district court judge issued an order preventing the law from ever going into effect. That dispute continued and eventually ended up before the 11th Circuit.

## What Happened on Appeal?

The 11th Circuit found that the Individual Freedom Act is unconstitutional under the First Amendment's free speech protections.

"This is not the first era in which Americans have held widely divergent views on important areas of morality, ethics, law, and public policy," the court noted. "But now, as before, the First Amendment keeps the government from putting its thumb on the scale."

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The court empathized with supporters and opponents of the law. However, by “limiting its restrictions to a list of ideas designated as offensive, the act targets speech based on its content.” Thus, said the court, the Individual Freedom Act is an unconstitutional viewpoint-based restriction on speech. In conclusion, the court said:

Given our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, the answer is clear: Florida’s law exceeds the bounds of the First Amendment. No matter how controversial the ideas, allowing the government to set the terms of the debate is poison, not antidote.

Florida officials may decide to appeal this decision to the U.S. Supreme Court, but we don’t think the Stop WOKE Act is likely to be resurrected.

### **What Does This Mean for Florida Employers?**

Not much has changed. As we reported on earlier, a district court judge had already stopped the law from going into effect. Thus, the 11th Circuit’s decision merely affirmed (and reinforced) the lower court’s decision.

This particular law elicited plenty of questions from Florida employers, and although it was stuck down, it has nevertheless caused many businesses to revise their diversity training programs or otherwise proceed with caution.

Moreover, many employers nationwide have been wondering if their DEI programs are still legal in the wake of a groundbreaking SCOTUS ruling last year that severely restricted higher educational institutions from using race or ethnicity as part of their admissions process.

The legal landscape for DEI programs remains dynamic and will likely see additional challenges in the future. However, programs operating in compliance with state and federal laws remain important business tools to support employee engagement and long-term business success. [Click here to review our six action steps for employers with DEI programs.](#)

### **Conclusion**

We will continue to monitor workplace law developments and provide additional insights as needed. Make sure you are subscribed to [Fisher Phillips’ Insight System](#) to get the most up-to-date information and invitations to our webinars. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Florida offices](#).

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