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July 01, 2022

Florida Bans Mandatory WOKE Workplace Activities

Some employers in Florida will be prohibited from requiring their employees to attend activities that promote or otherwise endorse certain concepts related to race and sex beginning July 1, 2022. Specifically, the Stop Wrongs to Our Kids and Employees Act (Stop WOKE Act) (HB 7), which passed earlier this year, amends the Florida Civil Rights Act to create a new basis for an employment discrimination claim.

Prohibited Activities for Covered Employers

The new law, which applies to employers with 15 or more employees companywide, makes it an "unlawful employment practice" to require employees to attend any activity that "espouses, promotes, advances, inculcates, or compels" an individual to believe eight concepts related to race and sex, including the following:

- 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.
- 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, 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.

Importantly, this law only applies to *mandatory* activities. Thus, employers of any size are still permitted to offer activities related to the prohibited concepts so long as attendance is completely voluntary and there are no consequences for employees that choose not to attend.

Implications for Diversity Trainings and Events

Without any judicial interpretation, the broad language of the Stop WOKE Act makes it difficult to discern whether all diversity, anti-racism, and anti-harassment trainings will be prohibited. The law does provide that its prohibitions "may not be construed to prohibit discussion" of the above-listed concepts "provided such training or instruction is given in an objective manner without endorsement of the concepts." However, it is unclear how broadly courts will interpret this provision, and to what extent an employer may be liable for merely addressing these concepts as part of its annual diversity training. For example, if an employer presents factual information about systemic racism and an employee, by their own accord, feels "guilt" or "anguish" about this concept, the law does not clarify whether or not the employer may be held liable.

Enforcement

Since the law amends the Florida Civil Rights Act, an employee alleging that their rights have been violated under these new provisions must first exhaust administrative remedies. This includes filing a charge with the

Florida Commission on Human Relations (the Commission) within one year of the alleged act. If the Commission determines that there is reasonable cause to believe that discrimination occurred within the statutorily permitted investigation period, the employee may file a civil action within one year of the Commission's determination. If found liable, the employer may be legally responsible for damages up to \$100,000. The Florida attorney general may also bring civil actions against employers for damages, with fines not to exceed \$10,000 per violation.

Takeaways for Employers

Immediately after the law was signed, a lawsuit was filed in the U.S. District Court for the Northern District of Florida challenging the constitutionality of the law and seeking a preliminary injunction, which was ultimately denied. A different lawsuit has since been filed specifically challenging the law as it relates to employers. With July upon us, employers should speak with experienced legal counsel to determine whether they should edit or proceed with their planned activities. The determination of whether a proposed activity or training may violate the new law depends on multiple factors.

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