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DEI Alert

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DEI trainings and the STOP Woke Act: An update

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A Florida federal court's preliminary injunction halting the state's STOP Woke Act adds to discord surrounding DEI trainings.

What's the Impact?

- This ruling indicates that the larger fight over what companies can and should say in their DEI trainings will continue
- Employers must continue to be vigilant and nuanced in their approach to DEI issues

A few months ago, we spoke about some of the complexities employers face in offering DEI training to their employees, particularly in light of the enactment of Florida's STOP Woke Act. Enacted on July 1, the STOP Woke Act expanded the definition of unlawful employment practices to include requiring employees to attend a training or any other activity that promotes certain forbidden concepts because of an individual's race, color, sex, or national origin, including:

- Moral superiority or privilege based on race, color, sex, or national origin
- Conscious or unconscious bias because of an individual's race, color, sex, or national origin
- Guilt, anguish, or responsibility for past discrimination based on an individual's race, color, sex, or national origin
- A belief that members of a race, color, sex, or national origin cannot or should not attempt to

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treat others with respect or that they should be discriminated against

- Notions of merit, fairness, and racial colorblindness are racist or sexist

Today, the Northern District of Florida entered a preliminary injunction prohibiting the Florida Attorney General, and the commissioners of the Florida Commission on Human Relations (FCHR) from taking any steps to enforce the STOP Woke Act until otherwise ordered.

The plaintiffs regularly held diversity, equity, and inclusion (DEI) trainings for its employees that used terms and concepts such as racial bias, white privilege, systemic oppression, and intersectionality and filed suit to challenge the enforceability of the law, which would require them to change the language and substance of their DEI trainings. The plaintiffs argued that the restrictions were unconstitutional, while the state argued it has a compelling interest in preventing employers from "foisting speech that the [s]tate finds repugnant on captive audience of employees."

The court sided with the plaintiffs, finding that the prohibitions of the Act regulate speech and violate the First Amendment of the Constitution. The court reasoned that "it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail. If Florida truly believes we live in a post-racial society, then let it make its case. But it cannot win the argument by muzzling its opponents."

What's next?

While the court entered its preliminary injunction today, this particular case and the larger fight over what companies can and should say in their DEI trainings will continue. This litigation is far from settled—the court also denied the defendants' motion to dismiss today. More broadly, concepts of DEI, discrimination, privilege, bias, and intersectionality will continue to prove to be complex but necessary conversations for employers as they work to strengthen their workplace cultures. Employers will need to continue to be vigilant and nuanced in their approach to DEI issues from a legal, cultural, and business perspective.

Nixon Peabody's DEI Strategic Services Team will continue to monitor developments. Learn more about our three-phased approach to help clients: (1) assess current efforts, (2) address challenges, and (3) guide long-term success.

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