

Florida's Stop WOKE Act Put on Ice: What This Means for DEI Initiatives

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Governor Ron DeSantis made headlines in 2022 when he signed into law several bills intended to curb a “woke agenda” from “taking over our schools and workplaces.”[1] One of these bills, Stop the Wrongs to Our Kids and Employers Act (better known as the “Stop WOKE Act”), amended the Florida Civil Rights Act to prevent teachings or mandatory workplace activities that suggest that a person is privileged or oppressed based on their race, color, sex or national origin. While the Stop WOKE Act did not prohibit discussion of these topics as part of a training or instruction course, the Act required the material at any such training or course to be given in an “objective manner without endorsement of the topics.”

Provisions and Penalties Under the Act

The penalties for violating the Stop WOKE Act are steep and include injunctive relief, back pay, compensatory damages, and punitive damages of up to \$100,000. Additionally, the Florida attorney general can file a civil action for damages resulting in additional fines. As a result, following the passage of the Stop WOKE ACT, many companies in Florida immediately suspended all diversity, equity, and inclusion (DEI) trainings and activities out of fear of violating the newly passed law.

Judicial Response and Legal Challenges

A federal judge blocked enforcement of parts of the Stop WOKE Act in August 2022, ruling that the law discriminated on the basis of viewpoint in violation of the First Amendment and was impermissibly vague in violation of the Fourteenth Amendment. Florida appealed this decision to the Eleventh Circuit Court of Appeals, which upheld the lower court’s ruling in a strongly worded opinion issued on Monday.

Eleventh Circuit Court of Appeals Ruling

The Eleventh Circuit agreed with the lower court that the Stop WOKE Act infringed on First Amendment rights and went so far as to state, “[b]y limiting its restrictions to a list of ideas designated as offensive, the Act targets speech based on its content and by barring only speech that endorses any of those ideas, it penalizes certain viewpoints – the greatest First Amendment sin.”

Future Implications and U.S. Supreme Court Prospects

Florida's next move is to seek review by the U.S. Supreme Court. However, there is little indication that the U.S. Supreme Court has an appetite for wading into "culture wars." Indeed, two of the three judges involved in this appeal were appointed by President Trump, and the opinion made a point to mention that "[i]ntellectual and cultural tumult do not last forever, and our Constitution is unique in its commitment to letting the people, rather than the government, find the right equilibrium."

The Takeaway

The Stop WOKE Act was placed on life support in August 2022 and was then put on ice by the Eleventh Circuit on Monday. Barring a surprise resuscitation by the U.S. Supreme Court, Florida employers are now free to require employees to undergo mandatory DEI trainings and courses.

[1] <https://www.flgov.com/2022/04/22/governor-ron-desantis-signs-legislation-to-protect-floridians-from-discrimination-and-woke-indoctrination/>.

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