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Florida's "Stop W.O.K.E. Act" Stopped by Eleventh Circuit

Florida employers are no longer limited by state law prohibiting certain messages in diversity, equity and inclusion (DEI) initiatives. To recap, on April 22, 2022, the Florida legislature passed the Stop W.O.K.E. Act (the Act). The Act forbade Florida employers with 15 or more employees from subjecting any individual, as a condition of employment, to workplace training instruction or any other required activity that promotes or compels an individual to believe a defined list of prohibited concepts, including:

- Members of one race, color, sex or national origin are morally superior to another;
- That an individual is inherently racist by virtue of his or her race, color, sex or national origin;
- An individual's moral character or status as privileged or oppressed is necessarily determined by his or her race, color, sex or national origin;
- An individual bears responsibility for, should be discriminated against, or should receive adverse treatment because of actions committed in the past by other members of the same race, color, sex or national origin;
- An individual bears personal responsibility for and must feel guilt, anguish or other forms of psychological distress because of actions committed in the past by other members of the same race, color, sex or national origin in which the individual played no part; and
- Virtues such as merit, excellence, hard work, fairness, neutrality, objectivity and racial colorblindness are racist or sexist or were created to oppress members of another race, color, sex or national origin.

Immediately, the Act was challenged in the courts. A federal district court judge issued an order preventing the law from going into effect, Florida appealed, and the case eventually landed before the 11th Circuit Court of Appeals for review.

In its opinion, the 11th Circuit determined the Act was unconstitutional under the First Amendment. The court reasoned that because the Act restricts a list of ideas

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that Florida designated as offensive, it targeted *speech* based on its content. By barring speech that endorses any of those ideas, "it penalizes certain viewpoints—the greatest First Amendment sin."

As a result, Florida employers' DEI efforts are no longer subject to the Act's restrictions. Nevertheless, challenges to DEI programs will likely continue to increase under other laws, such as Title VII of the Civil Rights Act of 1964. Considering these challenges, employers should ensure any DEI programs are lawfully implemented. If you have any questions about the Florida law or whether your programs are compliant with federal law, please contact Robert S. Driscoll or your Reinhart attorney.

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