Florida Gov. Ron DeSantis signed the Individual Freedom Act — or the Stop WOKE Act — into law in April.
Big Brothers Big Sisters of Northeast Florida used to send staff members to training on diversity, equity, and inclusion. When they returned, those employees would train other staff members and volunteers based on what they learned. But that can’t happen anymore, says CEO Sara Alford.

“That would be a risky proposition,” she says.

That’s because of a new Florida law that goes into effect July 1. The Individual Freedom Act — or the Stop WOKE Act, as its proponents call it — restricts efforts to address race, gender, or national origin that are often discussed in diversity, equity, and inclusion training. It bans the discussion of unconscious bias and many forms of systemic racism in training, certification, or any other activity that is required as a condition of employment or certification. Violations of the law could lead to lawsuits with penalties of up to $100,000.

Because of the law, Big Brothers Big Sisters of Northeast Florida this month decided that it will need to set aside money to bring in a human-resources person regularly to deliver training that complies with the law.

Rather than finding training that will help the group further its mission, Alford is trying to think of ways to ensure that employees know these sessions are not required and won’t have an impact on their employment if they opt out. Alford’s walking a fine line: She’s trying to find ways to comply without losing the important benefits gained from these programs.

At the group’s Monday meetings, her employees often talk openly about events in the world or thorny problems with the young people they serve, some of which touch on race, gender, or national origin, areas outlined in the law. Those talks — where important strategies are often developed — might violate the new law and may need to be curtailed. “I worry that not having those organic conversations may limit our capacity to do those things to our best,” she says.

Like nonprofits across the country, increasing numbers of organizations in Florida sought out diversity training in the wake of 2020’s racial-justice protests. The sessions became so popular that groups couldn’t find local experts and needed to bring in trainers from out of state, says Sabeen Perwaiz, CEO of the Florida Nonprofit Alliance.
Now nonprofits across the state are struggling to understand how the new law will affect their work. The alliance is fielding concerned inquiries and recently hosted a webinar on compliance with the law. “People are nervous,” Perwaiz says. “What will give them the opening to get sued? Can an employee who’s upset about something else utilize this law to get back at their employer?”

**Prohibited Topics**

The law is vague in some areas and subjective in others, which can make it hard for even the best-intentioned employer to comply with it, says James Poindexter, a labor and employment attorney with the firm Delegal and Poindexter. It amends Florida’s Civil Rights Act and prohibits discussing a broad range of ideas in mandatory training. The law applies to any business, nonprofit, school, or other entity with more than 15 employees in the state and should also apply to the Florida-based employees of an organization of that size regardless of its location, Poindexter says. He points out that no one knows exactly how the law will be applied until it goes into effect and is enforced and challenged.

Groups that plan to discuss complex issues involving structural racism, unconscious bias, colorblindness, and even the difference between equity and equality could be in violation of the law unless it’s clear that the training is not required and there is no penalty for skipping it, Poindexter says.

If a training is mandatory, organizations cannot espouse or promote the idea that people are either privileged or oppressed because of their race or sex or that concepts such an objectivity, neutrality, or colorblindness are racist or sexist or were created by members of a race to oppress others. Mandatory training or other required activities are also in violation of the law if “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.”

This standard is a real concern, Poindexter says. “I’m not familiar with any other area of the law where you can obtain damages from someone just because of a subjective feeling based on your testimony alone.”

He says organizations’ best defense is to document every training they do. They may want to record meetings and make sure there is an agenda. They may also want to make training more of a presentation than a discussion so they can control what material is covered and the language that is used. If employers make documented efforts to avoid breaking the law, that can help them in court, Poindexter says.

The law is unlikely to touch off an immediate torrent of lawsuits. Before suing, an employee must file a complaint with the Florida Commission on Human Relations, which will determine whether there is reasonable cause to believe that the employer violated the law. Someone can only sue if the commission
finds in that person’s favor. The Florida attorney general can also bring a civil suit against groups and seek damages of up to $10,000 per violation.

The press office for Governor Ron DeSantis, a supporter of the bill who signed it into law in April, did not respond to multiple requests for comment.

‘I Can’t Control Your Feelings’

The law is already facing a legal challenge in federal court on the grounds that it violates the First Amendment because it curtails employers’ and educators’ speech. On Monday, the judge in that case denied the plaintiffs’ request for a preliminary injunction that would have stopped the law from going into effect. Tammy Hodo, president of All Things Diverse, a company that conducts DEI training, is one of the plaintiffs in the suit. She says that if the law goes into effect, she would not be able to conduct training in Florida. “It would have to be so tailored that it wouldn’t be impactful,” she says.

Hodo says she would need to remove or change much of the content, including a unit on implicit bias. For example, she says she would not be able to discuss affinity bias — people’s tendency to favor others who come from a background similar to theirs — when discussing the hiring process.

She also says the law would prohibit discussing facts about race in America — redlining by banks, which made it impossible for Black people to borrow money to buy homes in many areas, the vast racial wealth gap, and other results of structural racism.

Making training voluntary is a poor solution, Hodo says. “Those who need it the most tend not to be in the room when that happens.”

Nirupa Netram, CEO of Lotus Solutions, another business that provides diversity training in Florida, says she will have to do a close read of her materials to make sure they comply with the law.

Because the law touches on so many areas commonly mentioned in DEI training, Netram says she will likely submit her materials in advance to the general counsel of any organization requesting training to make sure that the group is comfortable with them. But she is puzzled by how she can ensure that no one in a session is upset by the material. “If you begin to feel responsible, how do I control that?” she asks. “I can’t control your feelings.”

Foundation Response

Some groups are struggling to figure out how to move forward. “We’re here to do the right thing, and we’re not trying to break the law,” says Kerry-Ann Royes, CEO of the YWCA South Florida. “We want to keep the
lights on and the doors open, and we want to make sure that we’re respectful of the feelings of our entire community.”

The organization, which does diversity workshops for its staff and for other organizations in South Florida, is turning to pro bono lawyers to understand the impact of the law. Royes says that as the group does workshops, it will review the materials to make sure they align with the law. She says that she will see that people are attending optionally and give them breaks to leave if they want to. There are drawbacks to making DEI training optional, she says. But on the other hand, people are not always receptive to information they are forced to receive.

She, too, is concerned about the provision on psychological distress. “The nature of this work leads to uncomfortable moments and uncomfortable revelations for everyone, regardless of race,” Royes says. “Some of the things that you’re going to hear and see — because of the history of it and the outcomes of it — they’re not fun.”

Many Florida grant makers are working with their lawyers to figure out how to comply with the law and waiting to see how the law will be implemented, says Ashley Dietz, CEO of the Florida Philanthropic Network. She says foundations don’t want to shy away from difficult conversations and are continuing their equity work but want to better understand how to tailor materials and discussions.

“My biggest concern is that we don’t want this bill to have a chilling effect on the language that’s used going forward because it is so critically important,” she says.

The network had a lawyer from the Florida ACLU speak to grant makers about the law. Dietz says some grant makers have reached out to their grantees about the law.

The Florida Blue Foundation, for example, last year made grants to three groups in the state to do health-equity training for health-care providers. It is making sure the training materials comply with the law and that training is voluntary. In a separate grant this spring, it also funded the UF Health Jacksonville’s Center for Health Equity and Social Justice. That group is in the planning stages of its programs, and, according to the foundation’s spokeswoman, it is going through a similar compliance process with that grantee.

“We don’t want to lose all the progress that has been made,” Dietz says. “I think everyone’s trying to figure out what does this mean for my organization? How do we pivot and still make this really important?”

Censorship Concerns

While some nonprofits are doing their best to comply, others have been publicly critical of the law. The ACLU of Florida has opposed it since the bill was introduced in the legislature.
“It really is a government censorship bill,” says Kara Gross, legislative director at the ACLU of Florida. “It’s the government censoring discussions about race and gender.”

She says employers offer diversity, equity, and inclusion training for many reasons, including because they make workplaces function better. She says that because the law is sometimes confusing and contradictory, employers are uncertain of what they can and cannot say — and that may cause them to stop discussing race, gender, and other identity issues entirely.

“Any time that the government is censoring what can and cannot be discussed in a work force or in a classroom, it’s incredibly troubling,” Gross says. “We don’t want our government dictating what can and cannot be said.”

Nadine Smith, executive director of Equality Florida, also sees the law as government censorship. She says the law, together with another law prohibiting discussions about sexuality in schools, is designed to make LGBTQ young people and parents invisible and erase “honest conversations about race.”

Smith says that Equality Florida will continue to create a safe space for its staff and encourage companies and other organizations to do the right thing.

Says Smith: “We’re prepared to fight this in court.”

We welcome your thoughts and questions about this article. Please email the editors or submit a letter for publication.

EXECUTIVE LEADERSHIP

DIVERSITY, EQUITY, AND INCLUSION

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