

New Alabama Law Limits Public Employers' DEI Efforts

By Samia M. Kirmani, Michael D. Thomas & Daniel B. Harris

April 3, 2024

Meet the Authors



Samia M. Kirmani

Principal
(617) 367-0025
Samia.Kirmani@jacksonlewis.com



Michael D. Thomas

Principal
(949) 885-5240
Michael.Thomas@jacksonlewis.com



Daniel B. Harris

Associate

The Alabama Legislature has enacted [2024 Ala. Act 34](#), limiting the diversity, equity, and inclusion (DEI) efforts of state agencies, public universities, and public boards of education. The new law goes into effect Oct. 1, 2024. Although the new law does not apply to private sector employers, employers should track pending DEI-related legislation in Alabama and other states in which they have employees.

Under the new Alabama law, state agencies, universities, and boards of education are prohibited from:

DEI Programs. State entities may not sponsor any DEI program or require any student, employee, or contractor to participate in a DEI program. DEI programs include any program or event where attendance is based on an individual's race, ethnicity, national origin, sex, gender identity, or sexual orientation, unless such event is otherwise required by law.

The Act allows housing, athletic programs, or social organizations to be segregated by sex.

DEI Offices. State entities may not maintain any office, location, or department that promotes DEI programs. It is unclear whether the law prohibits DEI offices that promote DEI activities that are not based on race, ethnicity, national origin, sex, gender identity, or sexual orientation.

Divisive Concepts. State entities may not require any student, employee, or contractor to affirm or adhere to a "divisive concept," to participate in training that advocates such concepts, or to share the person's personal views on such concepts except in an academic setting without endorsement of a particular viewpoint. The law defines "divisive concepts" to include:

1. That any race/color, ethnicity, national origin, sex, or religion is inherently superior or inferior or determines individuals' moral character;
2. That individuals of any race/color, ethnicity, national origin, sex, or religion should be subjected to discrimination or adverse treatment or be assigned or required to acknowledge guilt, complicity, or bias based on race/color, ethnicity, national origin, sex, or religion;
3. That, by virtue of an individual's race/color, ethnicity, national origin, sex, or religion, the individual is inherently racist, sexist, or oppressive, is inherently responsible for past acts committed by others sharing the same characteristic, or should be required to apologize for such acts; and

Related Services

Corporate Diversity Counseling
Diversity, Equity and Inclusion
Higher Education
National Compliance and Multi-
State Solutions

4. That a meritocracy or traits such as work ethic are racist or sexist.

Restrooms. Public universities must segregate all multiple occupancy restrooms based on biological sex.

Funding. State entities may not expend, seek, or accept public or private funds for the purpose of compelling assent to a divisive concept.

Conditioning Enrollment. State entities may not condition enrollment or attendance in any class, training, or orientation based on race or color.

Limitations. Despite the above prohibitions, the Act includes significant caveats. Student, staff, or faculty organizations or associations may still host DEI programs and discussions of divisive concepts, so long as state funds are not utilized. An association is required to publicly identify the sponsor of the program, and a university may provide meeting space, security, registration assistance, and ancillary services for the program on a non-discriminatory basis.

The Act does not prohibit teaching of any topic or historical event “in a historically accurate context.” Further, any employee or contractor involved in orientation or training may respond to questions from participants about divisive concepts.

Specific to public universities, the Act does not prohibit any action necessary to satisfy accreditation requirements or to collect necessary demographic data. Universities may also sponsor recruiting and support programs for individuals of a specific demographic and conduct research and trials related to specific demographics.

The Act does not impose any restrictions on private employers.

Implications for Private Sector Employers

Alabama joins a host of other states passing or considering laws to curb DEI initiatives. A similar Florida measure, dubbed the Florida Anti-W.O.K.E. Act, which prohibited training on similarly defined “divisive concepts,” is under an [injunction](#) imposed by the U.S. Court of Appeals for the Eleventh Circuit. The Alabama law is another example of a state measure designed to curb DEI initiatives. It is likely the law will be the subject of litigation.

Although the new law does not apply to private sector employers, employers nonetheless should review workplace policies and programs for legal compliance under existing state and federal law. Private sector employers also should track pending DEI-related legislation in Alabama and other states in which they have employees.

Contact a Jackson Lewis attorney with questions about the Alabama or similar DEI laws.

©2024 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.