CLIENT ALERTS & INSIGHTS

Eighth Circuit Clarifies When Employers May Restrict Employees' Social or Political Expression

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On November 6th, 2025, the U.S. Court of Appeals for the Eighth Circuit vacated a National Labor Relations Board (NLRB) ruling that found Home Depot unlawfully terminated a Minnesota employee who refused to remove a Black Lives Matter ("BLM") slogan from their work apron. NLRB v. Home Depot U.S.A., Inc., No. 24-1513 (8th Cir. argued June 11, 2025, decided Nov. 6, 2025). The Court's unanimous decision marks a significant movement in the ongoing debate over how far employees' rights to express social or political messages extend in the workplace, particularly during times of heightened social tension.

The controversy stems from a February 2021 incident at a Minneapolis-area Home Depot, where an employee affixed "BLM" to their work apron as an expression of solidarity with the Black Lives Matter movement. Upon being directed by management to remove the message pursuant to corporate dress code standards, the employee declined to comply and was ultimately discharged.

Home Depot encourages associates to personalize their iconic orange aprons as part of its culture, but within clear limits. The company's dress code prohibits displaying political, religious, or cause-related messages unrelated to workplace matters, ensuring the apron remains a symbol of customer service and brand identity. Any deviations from this policy require prior approval from leadership.

In 2024, the NLRB determined Home Depot violated Section 7 of the National Labor Relations Act (NLRA), which protects employees' rights to engage in concerted activity regarding workplace concerns. The Board concluded the "BLM" message on the employee's apron was connected to broader issues of racial discrimination and working conditions, which therefore constituted protected expression under the Act.

However, the Eighth Circuit took a different view. In its recent decision, the panel held that the NLRB failed to consider the "special circumstances" exception to the general rule that employees may display protected messages on workplace clothing. The judges noted the "BLM" display occurred during an exceptionally alarming period of civil unrest in Minnesota, following George Floyd's murder and the ensuing national protest.

The court agreed with Home Depot's argument that the company's actions were a reasonable business decision intended to maintain a politically neutral environment, safeguard employee safety, and preserve the store's relationship with customers amid a highly charged social climate. In the panel's view, the presence of particular factors amounted to "special circumstances" that supported restrictions on uniform-based expression in the workplace, making this case materially different from routine disputes over employee speech rights.

Notably, the court did not address the NLRB's separate finding that the worker's display constituted "protected concerted activity" - leaving that issue unresolved for now. Instead, it focused on whether Home Depot's actions were lawful under the circumstances, ultimately concluding the company acted within its rights.

Practical Implications

The Eighth Circuit's decision provides guidance-but also a note of caution-for employers operating within its jurisdiction. While the ruling acknowledges context matters in regulating workplace expression, it stops short of granting blanket authority to prohibit social or political messages. Instead, it reaffirms that restrictions must be clearly justified by specific business needs.

This offers several key takeaways for employers:

- **Context Matters:** The court's reasoning relies heavily on the unique timing and local tensions surrounding the incident. Absent similar circumstances, an employer might not be able to rely on the special circumstances exception.
- **Consistency Matters:** Policies regulating employees' expression must be applied even-handedly. Singling out one message or person could invite discrimination claims.
- **Documentation Matters**: If restrictions are imposed, employers should record the legitimate safety operations or customer relations reasons supporting them.
- **Training Matters:** Managers need to understand where lawful policy enforcement ends, and protective employee rights begin.

The Home Depot decision underscores a growing challenge for employers: balancing legitimate business interests with employees' increasing desire to express social or political beliefs at work. As workplaces continue to reflect broader societal debates, maintaining that balance will require sensitivity, clear communication, and a strong understanding of labor compliance.

Employers should continue to monitor legal updates, and as always, consult a Benesch Labor and Employment attorney with any questions regarding interpretation or compliance.