

Context Matters: Eighth Circuit Backs Home Depot's Ban on BLM Apron Message Due To "Special Circumstances"

Labor Relations Update on **November 10, 2025**

On November 6, 2025, the Eighth Circuit vacated and remanded a split decision from the National Labor Relations Board ("NLRB" or "Board"), holding that the Board improperly rejected Home Depot's "special circumstances" and business-justification defenses to banning an employee's BLM message on a customer-facing apron.

We previously [covered](#) the factual background of the underlying case and the NLRB's decision, in which the Board held that Home Depot violated the employee's Section 7 rights under the National Labor Relations Act ("NLRA" or the "Act") by restricting the employee's ability to wear the BLM insignia on their work attire.

In *Home Depot U.S.A., Inc. v. NLRB*, Nos. 24-1406 & 24-1513 (8th Cir. Nov. 6, 2025), the Eighth Circuit—in another decision reversing recent NLRB precedent (see other recent decisions [here](#) and [here](#))—emphasized the time, place, and manner of the display, which was near Minneapolis during months of civil unrest following George Floyd's murder in 2020, and concluded that this context justified a narrowly-tailored restriction on a politically-charged message in a customer-facing retail setting.

The Eighth Circuit reasoned that the Board failed to "properly consider [the employee's] BLM apron display in the context of this dispute at this location at this point in time." Namely, the store was close in time and place to where Floyd was murdered and tensions were still high. Indeed, the court held that the Board's conclusion "blinks reality" by ignoring that the BLM lettering was worn "in the midst of several months of protests, counter-protests, and civil unrest across the greater Minneapolis area after George Floyd's notorious murder."

The Eighth Circuit also held that the Board improperly applied precedent on balancing public image interests, effectively barring employers from regulating customer-facing interactions by employees—even when employers have a legitimate interest in how their customers perceive them and they offer employees reasonable alternative insignia pursuant to that interest.

Notably, the Eighth Circuit declined to address Home Depot’s other arguments on appeal, including that the employee’s conduct was not NLRA-protected activity, that its First Amendment rights were violated, and the Board’s remedies were overbroad. The Eighth Circuit also declined to address whether, after *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which we covered [here](#), it owed the Board’s decision a less deferential standard of review.

Takeaways

On its face, the Eighth Circuit’s decision is a reminder that context is key when employers seek to regulate employee work attire and messaging. Employers have more latitude to restrict employee work attire and messaging when done in a moment that, if they do not, could jeopardize personal safety, workplace security, or employer branding. When doing so, employers should be neutral, even-handed and non-discriminatory (especially if multiple instances similarly involve controversial statements).

Employees—union and non-union represented alike—enjoy Section 7 protections when wearing work attire with messages related to workplace issues, such as wages, hours, and other terms and conditions of employment under longstanding U.S. Supreme Court precedent. See *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945). That said, the NLRA permits employers to make business decisions preserving an apolitical workplace with the goal of advancing legitimate interests, such as customer and employee safety, providing that the restrictions are implemented in a non-discriminatory manner.

We will continue to monitor how the Board and federal appellate courts regulate employer restrictions on employee work attire and insignia.

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