

# Legal Boundaries of Workplace Expression: Lessons from the BLM Display Decision

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## Related People

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The U.S. Court of Appeals for the Eighth Circuit vacated and remanded a 2024 NLRB decision that found a hardware giant violated federal labor law by banning a “Black Lives Matter” insignia from a Minnesota employee’s uniform following George Floyd’s death. The general rule is that employers must allow workers to publicize workplace issues on their uniforms. In this case, the Eighth Circuit found that the company met the “special circumstances” exception to that general rule because there was social unrest at the time of the display that justified the company’s action (please note Judge Loken’s quote below). Importantly, the company allowed multiple other uniform messages and actions that promoted racial equality and respect in the workplace that the employee was permitted to use.

The Eighth Circuit's decision is a good reminder to employers that uneven enforcement of dress code policies can expose employers to legal risks. Employers often view dress codes as a simple matter of professionalism or branding, but not enforcing policies on a consistent basis can create legal issues under the National Labor Relations Act (NLRA). Section 7 of the NLRA guarantees employees numerous rights, including the right to engage in protected concerted activities for the purpose of collective bargaining or other mutual aid or protection. That includes wearing buttons, pins, or shirts expressing support for a union or social causes connected with working conditions. If an employer permits certain types of personal expression, like sports team logos or charitable slogans, but bans union or protest-related attire, the employer could run into legal trouble under the NLRA. Employers should review their policies for clarity and ensure managers are applying the policy consistently. For example, if an employer prohibits "BLM" attire, the company should also prohibit slogans such as "The Thin Blue Line." The bottom line is that employers should tread carefully before restricting any workplace-related expression.

Could this be a sign of things to come when General Counsel nominee Crystal Carey is approved by the Senate? It seems likely, as the Eighth Circuit's decision was a blow to efforts by former NLRB General Counsel Jennifer Abruzo's attempts to extend labor law precedents to civil rights protests in the workplace.

**"This was a business decision made to preserve the store's apolitical face to customers and safeguard employee safety in a risk-filled environment,"**  
Judge James Loken wrote for the unanimous panel.

