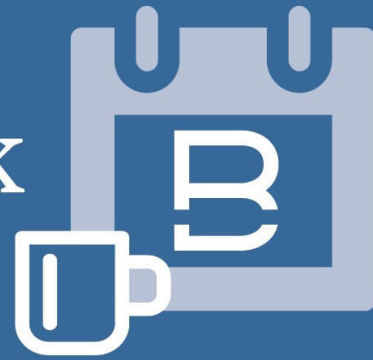


The Work Week

Bassford Remele Employment Practice Group



February 26, 2024

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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NLRB Rules Employee's "Black Lives Matter" Marking on Home Depot Apron Was Protected

[Michael J. Pfau](#)

On February 21, 2024, the National Labor Relations Board ("NLRB") issued a decision holding that an employer violated the National Labor Relations Act ("NLRA") when it discharged an employee for refusing to remove the hand-drawn letters "BLM" from their work apron.

[The Decision](#)

At a Home Depot store in New Brighton, Minnesota, the employee began wearing the "BLM" marking in August 2020, and sometime after that, began talking to co-workers and supervisors about subjects such as ongoing discrimination and harassment at the store. Several other employees at the same store also displayed "BLM" markings on their work aprons at about the same time. The district manager informed the employee that the markings were against dress code, and that the employee could not work in the store with such markings. The employee resigned the next day.

Section 7 of the NLRA protects employees when they "engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157. To be protected by Section 7, employee activities must be both "concerted" and engaged in for the purpose of "mutual aid or protection." *See, e.g., Morgan Corp.*, 371 NLRB No. 142, slip op. at 2-3 (2022).

In its ruling, the NLRB said that the worker's refusal to remove the "BLM" marking from their uniform was considered to be "concerted" and "for mutual aid or protection" because of earlier protests by workers at the store about racial discrimination. The NLRB also held that Home Depot applied its dress code and apron policy to restrict the employee's Section 7 activity. Finally, the NLRB determined that Home Depot constructively discharged the employee because it conditioned the return to work on removing the "BLM" marking from their apron and, rather than submitting to the unlawful condition, the employee resigned.

In addition to reinstating the worker, the NLRB ordered Home Depot to pay back pay and compensate the employee for any adverse tax consequences. The NLRB also ordered that the store must stop prohibiting its workers from taking part in “protected concerted activities,” such as wearing a “BLM” marking on an apron.

A Lesson for Employers

The NLRA is a crucial piece of legislation designed to safeguard the rights of both employees and employers, ensuring fair labor practices and fostering constructive labor-management relations. As an employer, understanding and adhering to the NLRA is essential for maintaining compliance and fostering a positive work environment. It is critical for employers to understand the NLRA so as to avoid prohibited employer practices such as interfering with, restraining, or coercing employees in the exercise of their NLRA rights. It is equally important to understand these rights to avoid implementing policies that could reasonably be construed to restrict an employee’s NLRA rights, such as Home Depot’s use of the dress code did.

At [Bassford Remele](#), we regularly advise and counsel employers on updating policies and handbooks to remain compliant with changing laws and rulings. Please feel free to reach out if you need any assistance in developing a proactive plan to ensure future compliance.

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