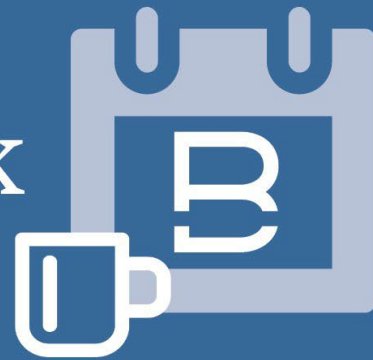


The Work Week

Bassford Remele Employment Practice Group



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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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Eighth Circuit Vacates NLRB Order in Home Depot BLM Apron Case

[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. A summary of the decision can be found [here](#).

On November 6, 2025, the Eighth Circuit Court of Appeals vacated that decision.

In *Home Depot*, the NLRB found that Home Depot violated Sections 7 and 8(a)(1) of the National Labor Relations Act (“NLRA”) when it required an employee at its New Brighton, Minnesota store to remove lettering “BLM” from their mandatory uniform apron, and refused them work until the message was removed. The issue was whether the apron display was “concerted activity ... for mutual aid or protection,” protected by Section 7 of the NLRA, and whether the employer’s dress-code enforcement was justified under the so-called “special circumstances” defense.

The NLRB, in a 3-1 decision, held that the display was protected concerted activity. The employee’s refusal to remove the marking was a “logical outgrowth” of prior protected concerted employee concerns about racial misconduct in the store, and therefore the employer’s directive to remove the message constituted an unfair labor practice.

Rather than definitively resolve the Section 7 protected-activity question, the court assumed that the NLRB was correct on that point, and proceeded directly to the question whether Home Depot’s enforcement of its apron message rule was justified by “special circumstances.” The

court reinforced that there must be an “accommodation” between the employee’s Section 7 rights and protecting management interests. The court held there were, “‘special circumstances [that] justify a prohibition on wearing this kind of message in a customer-facing job at this location during this period of time.”

Home Depot argued three main business justifications. First, the display of “BLM” on the apron could jeopardize employee and customer safety, given the heightened local unrest in the Minneapolis area after George Floyd’s murder. Second, the display could exacerbate employee dissension or customer conflict. Third, the employer has a public image and brand consistency interest. The apron with Home Depot’s logo is recognized by customers and Home Depot reasonably anticipated that allowing individualized political or social-movement messaging might threaten its uniform image and confuse/alienate customers.

The court found that these justifications were grounded in the particular facts of the store, time and place, not simply speculative hypothetical risks. The court concluded that Home Depot met its burden to show special circumstances that outweighed the employee’s Section 7 interests at that time and location. As such, the Court vacated the NLRB’s opinion and remanded it for further proceedings consistent with its opinion.

Considerations for Employers

- Employer Dress Code and Message Regulations

Employers, especially retailers and other customer-facing employers, may have a defensible position in restricting employee apparel or messaging even when the message arguably touches on social or political issues provided there are special circumstances (time, place, nature of business) that legitimize the restraint.

- Location and Timing Context is Critical

The court emphasized that the store’s proximity to George Floyd’s murder site, the local civil-unrest climate, the vandalism of displays and prior theft/looting in the shopping center all contributed to the reasonableness of Home Depot’s belief of risk.

- Concerted Activity Question Remains Open

The decision did not finally decide whether the employee’s apron display and refusal to remove it was protected concerted activity under Section 7 which means the precedent is narrower than the NLRB’s ruling in *Home Depot*.

- Deference to Employer Business Judgment

The court reinforced that an employer's business judgment, not just hindsight, receives some deference in evaluating the "special circumstances" defense. The NLRB must meaningfully balance the employer's legitimate interests with employee rights.

Bassford Remele's Employment group continues to monitor changes in employment-law on a local and national basis. We regularly guide employers through this evolving legal landscape. Please reach out with any questions or if you need assistance.

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