

# FEDERAL APPEALS COURT SENDS “BLM” CASE BACK TO LABOR BOARD: WHAT THIS MEANS FOR WORKPLACE POLICIES

Insights  
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The 8th US Circuit Court of Appeals just handed employers a significant win today by vacating a National Labor Relations Board (NLRB) decision involving an employee who displayed the letters “BLM” (for “Black Lives Matter”) on their apron. The NLRB had found that a national retailer committed unfair labor practices when it instructed a Minnesota store employee to remove the letters. The 8th Circuit, however, said the Board failed to properly consider whether the employer’s special circumstances justified its dress code. While the court’s ruling is good news for employers, it stopped short of resolving a key question that continues to divide workplaces nationwide: whether displaying “BLM” or engaging in other **political and social speech** constitutes protected concerted activity. Here’s what you need to know about today’s ruling and five steps you should consider taking now.

## Key Developments

- A Minneapolis-area retail store employee wrote “BLM” on their employer-issued apron during the summer of 2020, shortly after the death of George Floyd.
- Managers asked the employee to remove the letters, citing the company’s long-standing dress code, which prohibits political or social messaging unrelated to workplace matters.
- The employee refused to remove the lettering, resigned, and later filed an unfair labor practice charge alleging retaliation for engaging in protected concerted activity.

## Related People



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- An administrative law judge dismissed the charge, finding that the display was a personal expression rather than a group activity connected to working conditions.
- On appeal, the then-Democratic majority NLRB reversed, concluding that the employee's refusal to remove "BLM" was part of a broader effort among co-workers to address racial concerns in the store and therefore was protected activity under Section 7 of the National Labor Relations Act (NLRA).
- The Board ordered the retailer to reinstate the employee and provide back pay.
- On appeal, the 8th Circuit said the Board failed to properly evaluate the employer's "special circumstances" defense. This is a narrow doctrine granting employers flexibility to enforce appearance and uniform rules when legitimate business justifications outweigh employees' alleged protected activity.

### **The Appeals Court's Decision**

The 8th Circuit unanimously found that the Board didn't give enough attention to the balancing test required in cases involving employee insignia or messaging. Even if the employee's activity was protected (though the court did not rule on this issue), the Board failed to properly weigh the special circumstances present at this particular location and moment in time, the court said.

Those circumstances included:

- The store's proximity (less than seven miles) to the site of George Floyd's death.
- Recent civil unrest that led the retail store to temporarily close.
- Heightened tensions and polarized views about the Black Lives Matter movement among both customers and employees.

Given this context, the court found that the employer's decision to enforce its uniform policy was reasonable. The policy was applied consistently, according to the court, barring both "BLM" and "Blue Lives Matter" messages – and management had offered alternative, less politically charged

ways for employees to express support for diversity and inclusion.

The 8th Circuit vacated the NLRB's order and remanded the case for further proceedings, directing the Board to properly balance the competing interests and determine whether special circumstances justified the rule's enforcement. Importantly, the court declined to decide whether the display or refusal to remove "BLM" itself was protected concerted activity.

## What Happens Next?

The case now returns to the NLRB for reconsideration. Assuming President Trump's NLRB nominees are **eventually confirmed**, a Republican-majority Board may follow the reasoning of former Member Marvin Kaplan, who dissented from the original 2024 decision, with the Board likely finding no violation. The remand also gives the agency an opportunity to clarify how far Section 7 extends to politically or socially charged expressions that are not directly tied to working conditions.

For now, however, the issue remains in a gray area. The 8th Circuit's decision provides important validation of uniform and appearance policies applied neutrally, but it does not give employers blanket authority to ban all social or political expressions in the workplace, especially those with a more concrete connection to the workplace.

## A 5-Step Action Plan for Employers to Consider

**1. Revisit your dress code policies.** Confirm that any restrictions on buttons, pins, or messages are written in neutral terms, such as prohibiting "political, social, or religious messages unrelated to workplace matters," and that enforcement is consistent across causes and viewpoints.

**2. Document business justifications.** The "special circumstances doctrine" requires a showing of legitimate business needs, such as maintaining a consistent brand image, avoiding customer disruption, or ensuring safety. Employers should document these considerations in real time when enforcing dress code policies.

**3. Be consistent in application.** The 8th Circuit placed significant weight on the fact that the retailer had also

prohibited “Blue Lives Matter” and similar messages. Selective enforcement may convert a lawful rule into unlawful discrimination.

**4. Train managers to engage, not react.** Even when enforcement is justified, managers should approach these issues with sensitivity. The case highlights how emotionally charged events can quickly escalate if leaders appear dismissive of employee concerns. Involve HR before taking disciplinary steps.

**5. Prepare for continued uncertainty.** Because the 8th Circuit did not decide whether the “BLM” display itself was protected concerted activity, employers nationwide remain exposed to similar challenges. Until the Board or ultimately the Supreme Court clarifies the scope of Section 7 in this context, each situation will require a fact-specific analysis.

## **Conclusion**

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