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Are The Rules Changing For Employer Dress Codes And Union Insignia?

February 15, 2021 | [Labor And Employment, Unions And Union Membership, National Labor Relations Board](#)



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In today's modern world of brand identity and imaging, the ability to wear union insignia in the workplace is often at the forefront of labor relations. In this regard, the general rule has always been that an employer cannot prohibit union insignia in the workplace absent "special circumstances," even where the employer requires employees to wear uniforms or other designated clothing. However, the application of the general rule to nondiscriminatory uniform policies now appears to be under review.

The National Labor Relations Board announced an [invitation](#) for the submission of briefs on the question of whether an employer violates the National Labor Relations Act when it consistently enforces a nondiscriminatory uniform policy that allows employees to wear union insignia (e.g. buttons, pins, stickers) on their uniform but prohibits the wearing of t-shirts with union logos (or other logos or emblems). The NLRB seeks input on the appropriate standard of review to be applied to similar cases going forward.

The underlying case involves Tesla's dress code requiring production associates to wear black cotton t-shirts with the Tesla logo and prohibiting them from wearing similar shirts with union logos (or other logos) in place of their Tesla t-shirt. Production associates are able to freely wear union stickers and hats. Tesla argues the normal "special circumstances" test applied is not

applicable in this instance because the t-shirt requirement allows for other means of displaying union insignia.

Needless to say, the invitation for the submission of briefs on this issue indicates that a majority of the current NLRB may be open to revisiting the standard applied to employer uniform requirements where other means of displaying union insignia are available.

While the lone Democratic appointee on the Board dissented to this invitation, the current Board is comprised of a majority of Republican appointees until later this summer. Given that the deadline to submit briefs on this issue is March 30, 2021, there is a very real possibility that the current Board could issue its decision before President Biden can appoint a Democratic majority to the Board. Either way, given the importance of this issue for employers, this case will definitely be one to monitor going forward.