

The South May Rise Again Someday, But Not In Your Workplace

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The recent debate over the South Carolina State House's flying of the Confederate flag has stirred up a great deal of controversy. Most Americans believe the flag is a symbol of bigotry and oppression and demanded the immediate removal of the symbol of the Confederacy. A small vocal minority of Americans, however, have rallied around the Stars and Bars, claiming it stands not for racism, but instead for Southern heritage and pride. Many in this group of supporters, both in the South and around the country, have defiantly taken to displaying the flag or wearing it on their clothing. Regardless of your personal feelings about the legacy of the Confederate flag, employers would be well-advised to make sure employees do not display it in their workplace on their clothing or at their work stations, or even in their cars (or *on* their cars if Bo and Luke Duke are your employees). The EEOC has repeatedly taken the position that display of the Confederate flag can be evidence of unlawful harassment, no different than displays of swastikas, nude photos or nooses. Moreover, several circuit courts have held that display of the flag can be significant in supporting an employee's hostile work environment claim. Review your company's discrimination and harassment policy. It likely contains language that prohibits offensive pictures, symbols and words from being displayed in the workplace – and if it doesn't, talk with your employment attorney about adding such language. You can use this language to enforce the removal of the Confederate flag from your workplace, and you can discipline and even fire an employee who refuses to comply. Even if it is not offensive to the wearer or bearer, it almost certainly is offensive to others in the workplace, and you'll promote workplace harmony and avoid costly harassment claims if you act quickly to remove it.

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