



Electronic Alert

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NLRB Decision Means it is Time to Review Uniform Policies

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In August, the National Labor Relations Board (NLRB) issued a decision in *Tesla, Inc., 370 NLRB., 370 NLRB* (2022), that reinstated the rule that an employer's uniform policy that restricts a display of union insignia is presumptively unlawful. Specifically, an employer's uniform policy that, even implicitly, prohibits an employee from displaying union insignia (including union apparel) is unlawful, unless the employer can demonstrate *special circumstances* making the uniform policy necessary. The Board's decision also overturns its 2019 Walmart Stores, Inc. decision regarding union insignia and uniforms.

Special circumstances are not easy to prove. The NLRB has found that an employer demonstrated *special circumstances* in limited situations, including: when the display of union slogans or apparel may jeopardize employee safety, damage machinery or products, exacerbate employee dissension, unreasonably interfere with a public image that the employer has established, or when necessary to maintain decorum and discipline among employees. The *Tesla* decision means that now is a good time for employers to review their employee handbooks and uniform policies to make sure they are following the NLRB's decision.

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