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LABOR & EMPLOYMENT ISSUES

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EIGHTH CIRCUIT REVERSES NLRB ON HOME DEPOT'S RESPONSE TO DISPLAYS OF "BLACK LIVES MATTER" ON EMPLOYEE UNIFORMS

The United States Court of Appeals for the Eighth Circuit held that the National Labor Relations Board ("NLRB" or "Board") "improperly evaluated" Home Depot's rule restricting political slogans on employee uniforms, siding with the home improvement giant in a dispute over a "Black Lives Matter" insignia. In 2024, the NLRB had held that Home Depot violated federal labor law when it enforced its policy on political slogans and constructively terminated an employee from their position at a Minnesota store for displaying "Black Lives Matter" on his uniform. The Eighth Circuit vacated and remanded the decision. The case is *Home Depot U.S.A. v. NLRB*, No. 24-01406 (8th Cir. Nov. 11, 2025).

The Home Depot at issue is in New Brighton, Minnesota, just seven miles from where George Floyd was murdered by Minneapolis police. Home Depot had a policy in place that disallowed employees from displaying "religious beliefs, causes, or political messages unrelated to workplace matters." The policy also required that employee dress "not present a safety hazard." After several incidents involving another employee who was eventually terminated for racially motivated discriminatory conduct and two occasions upon which a display in the breakroom celebrating Black History Month was vandalized, the employee at issue in this case displayed "Black Lives Matter" on their orange apron partly in response to what they saw as inadequate store responses to these incidents. Rather than remove the slogan as directed to by supervisors, the employee resigned.

Reversing the decision of an Administrative Law Judge, the Board had concluded that the employee engaged in activity that was protected by Section 7 of the National Labor Relations Act ("NLRA" or "Act"), specifically in refusing to remove the slogan. The Board held that there was a "direct relationship" between the employee's workplace complaints about Home Depot's lackluster response to incidents of racial animosity in the store and their refusal to remove "BLM" from the apron, which thus was a "logical outgrowth" of the other concerted activities.

The Court disagreed, determining that Home Depot had not disparately applied its policy and that its response was a valid "business decision made to preserve the store's apolitical face to customers and safeguard employee safety in a risk-filled environment." The decision represents a blow to efforts by the Biden-era NLRB General Counsel, Jennifer Abruzzo, to safeguard civil rights protests in the workplace with existing labor protections.

NEW YORK EXPANDS THE
NEW YORK CITY EARNED SAFE AND SICK TIME ACT

On October 25, 2025, the New York City Earned Safe and Sick Time Act ("ESSTA") was amended with multiple alterations to the requirements of the Act that will go into effect in February of 2026. The ESSTA was enacted by the City to ensure that there were regulations overseeing the amount of safe and sick leave allotted to its workers. Two of the bigger impacts from these amendments will come from the amendment granting an additional 32 hours of unpaid leave to new employees upon hire and to all employees at the beginning of each benefit year and the amendment stating employers must comply with a broader range of reasons for which employees can use their allotted time under the ESSTA.

The first big change coming to the ESSTA is that employers must give employees a minimum of 32 hours of unpaid time when an employee is hired and to all employees at the beginning of each benefit year in one lump sum. There are no requirements to acquire these hours or any period before they can be used, as soon as the new benefit year begins these hours will be given to the employees and can be used as soon as they want. In addition to the new 32-hour rule, the ESSTA amendments also require at least 20 hours of paid prenatal leave to be given to employees as well.

The other big change coming in these amendments is the expanded list of categories of reasons that employees can use their safe and sick time for, in addition to the original list seen in the ESSTA. The newly permitted reasons for using safe and sick time include allowing employees to take time who are caregivers to take care of a care recipient, giving time to those who have been or their family member has been the victim of workplace violence, and allowing an employee to take time to attend/prepare for a legal proceeding or hearing relating to benefits or housing for the employee or a family member. This expanded list will allow employees to use their now extended number of hours for a broader range of issues or needs.

With these amendments going into effect in just over three months on February 22, 2026, it will be important for employers in New York City to review and, if necessary, amend their policies to reflect these new requirements in the New York City Earned Safe and Sick Time Act.

SENATE REPUBLICANS UNVEIL SWEEPING LABOR "REFORM" BILLS

On November 10th, Senator Bill Cassidy, M.D. (R-LA), chair of the Senate Health, Education, Labor, and Pensions Committee unveiled a slate of bills that would amend federal labor laws.

Senator Cassidy's Worker Reforming Elections for Speedy and Unimpeded Labor Talks Act would require secret ballot elections and eliminate card-check elections when workplaces are voting on unionization. Additionally, two-thirds of the proposed bargaining unit would have to vote in an election, not the current 30%. This Act would stop decertification campaigns until after a first contract is reached, instead of the current rule which allows decertification petitions to take place a year after a union wins certification. The decertification window to file a decertification petition with the National Labor Relations Board ("NLRB") would be expanded from 30-days to 90-days.

The Fairness in Filings Act would require evidence as part of unfair labor practice filings, allow charged parties to review evidence submitted, and create penalties for frivolous filings of fines up to $5,000.

The Union Members Right To Know Act requires unions to regularly provide workers with a summary of their rights to object to dues being spent on political activism, and require workers to opt-in for their dues to be used on political spending.

The NLRB Stability Act would bind the NLRB to federal precedent, limiting its independence. The Put American Workers First Act would make it an unfair labor practice to unionize or hire undocumented immigrants. The Protection on the Picket Line Act would make disciplinary action against an employee for "abuse" or "harassment" in the course of protected activity legal if there is no causal connection between the discipline and a worker's protected activity.

The Worker Privacy Act would limit the information employers give to unions in eligible voter lists. The list would now include the employee's name and only one additional form of contact information – telephone number, email, or mailing address to be chosen by the employee in writing. It will also be an unfair labor practice for a union to "fail to protect" employee personal information such as selling the information to a third-party or using information for political activism, unless the worker voluntarily provides that information to the union.

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