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KD Argues Employer's Rights to Remove Racially Insensitive Language Before the 7th Circuit

On January 13, 2021, KD labor and employment litigation partnerKarol Corbin Walker appeared via Zoom before the Seventh Circuit Court of Appeals panel for oral argument, urging the court to reverse a finding that our client unlawfully banned an employee from wearing a vest bearing the slogan "Cellar Lives Matter."

KD co-managing partner Michael Kaufman, Ms. Walker, and labor and employment attorney Taylor Ferris, had filed a Petition in the Seventh Circuit seeking review of a National Labor Relations Board ("NLRB") decision involving an employer's request that an employee remove a safety vest with a handwritten, pro-union phrase that was racially insensitive, inflammatory and offensive. The NLRB had affirmed the Administrative Law Judge's decision, which held that special circumstances did not exist to justify a ban on the slogan, "Cellar Lives Matter." The NLRB determined that the slogan, which co-opted the emotionally charged "Black Lives Matter" phrase, did not appeal to racial or ethnic prejudices. Accordingly, the NLRB determined that our client violated the National Labor Relations Act (NLRA) when it proactively addressed racial insensitivity.

At oral argument, Ms. Walker argued that, given the polarizing nature of the "Black Lives Matter" phrase and movement, the use of the "Cellar Lives Matter" slogan creates special circumstances and could jeopardize employee safety, exacerbate employee dissention, unreasonably interfere with a public image that our client has established or was necessary to maintain decorum and discipline among employees.

We currently await the Seventh Circuit's decision. Oral argument may be heard here.

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