

Habinsky in Law.com: Why Smile Policies Could Be a Litigation Risk

December 11, 2025 Jason Habinsky

PRACTICES Labor and Employment

Haynes Boone Partner [Jason Habinsky](#) spoke with *AmLaw Litigation Daily* about whether smile policies from employers could create issues under the National Labor Relations Act.

Read an excerpt below.

Employers adopting policies related to smiling and demeanor have to apply them equally and be mindful of whether it effects some people differently, including people on the autism spectrum who have difficulty smiling, said Habinsky. In addition, employers must consider whether smiling and demeanor policies create an issue under the National Labor Relations Act, Habinsky said. That act regulates the right of individuals in the workplace to express their opinions about terms and conditions of employment.

An employer who disciplines or terminates an employee for not smiling can find itself accused of disciplining an employee for having an issue with a condition of employment, he said.

“An employer has the right to determine what's important for its business and what is a bona fide occupational qualification of the job,” Habinsky said. “There has to be a balancing test as to whether something like smiling in a service industry is important, and if it is, balance that with the potential risks of applying it in a way that could be unlawful.”

Companies adopting such policies must ensure that managers are trained to apply it, he said.

“If an employer determines that it's important for their business to have a policy like this, then it is also just as important for them to understand how to apply it, and that means applying it in a way where it's a legitimate priority of the business, versus targeting someone who may be in a protected category,” Habinsky said.

[Read the full Law.com article here.](#)