

# ANDREWS AND BEARD CLIENT ALERT

*An E-Newsletter prepared for our clients presenting recent changes in the law.*

*March 8, 2012*

## Court Invalidates Portion of NLRB Poster Rule

Recently, we notified you that the National Labor Relations Board had issued a Rule requiring all Employers to post a Notice of Employee Rights under the National Labor Relations Act. The Rule is scheduled to go in effect next month, when all Employers are required to post a Notice, in a similar manner in which other Labor Law Compliance Notices are posted. If you have not yet made arrangements to bring your workplace into compliance, be sure to contact us soon.

More recently, however, the United States District Court for the District of Columbia has determined that a portion of the NLRB's new Rule is invalid. Various plaintiffs brought actions against the NLRB, alleging that the Board exceeded its authority when adopting the Rule and that it violated the First Amendment rights of those plaintiffs by requiring them to post the poster and communicate messages to which they objected. The Court rejected the First Amendment argument, concluding that the contents of the poster constituted government speech, since the posters provided a message from the government rather than one that should be construed as coming directly from the Employer. Also, the Court concluded that the NLRB did not exceed its statutory authority in requiring Employers to hang such a poster.

More importantly, though, the Court did invalidate two other provisions in the Rule, concluding that the NLRB did exceed its authority with respect to those provisions. The Rule as adopted not only required Employers to hang the poster, but it also declared it to be an unfair labor practice if an Employer failed to do so. In addition, the Rule declared that the statute of limitations would be tolled (i.e. the clock would not start running) during the time that the poster was not hung.

In short, the Court found that the NLRB did not have the power to impose these kinds of penalties with respect to Employers who do not comply with the posting Rule. Certainly, it is not suggested that any Employer not comply with the posting Rule, but it is important to recognize that at least the United States District Court for the District of Columbia has concluded that an Employer will not be penalized so severely for even an inadvertent failure to comply with the Rule.

If you have any questions about the NLRB posting requirement, do not hesitate to contact our office.

