

# Legal Update

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## APPELLATE COURT REJECTS UNION POSTER REQUIREMENT

By Seth A. Stern

The United States Court of Appeals for the District of Columbia recently struck down a National Labor Relations Board (NLRB) rule requiring businesses to display posters informing employees of their rights under the National Labor Relations Act (NLRA), including their right to unionize.

The rule was scheduled to take effect in April, 2012 but, as we reported [at that time](#), it was placed on hold pending the appellate court's decision. The appellate court decided this month that the requirement violated a provision of the NLRA protecting employers' right to express or disseminate views regarding labor issues as long as the expression does not include a "threat of reprisal or force of promise of benefit." The court analogized to the First Amendment and held that because employers' right to speak encompasses a right to refrain from speaking, the NLRB could not compel employers to display the poster. The rule would have treated an employer's failure to display the poster as an unfair labor practice demonstrating an anti-union animus.

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