



LABOR AND EMPLOYMENT LAW ALERT

DOL Persuader Rule Permanently Blocked by Federal Court

On November 16, 2016, a federal district court judge in Texas permanently blocked the U.S. Department of Labor's revised "Persuader Rule," which would have required third-party law firms and other consultants to disclose publicly any work they do for private sector employers in connection with union organization efforts. The same judge had previously blocked the rule on a temporary basis this past June.

Prior to the Department of Labor's revisions, the long-standing "Persuader Rule" required private sector employers and consultants to disclose publicly engagements entered into for the purpose of assisting employers with union avoidance efforts. If the consultant had no direct contact with employees, however, the engagement was exempted from the rule's reporting requirements under the "advice" exception.

The revised rule, however, would have required: (1) employers to report annually any agreements that have the object of dissuading employees from supporting unions ("persuader activities agreements"); (2) consultants to report such persuader activities agreements within 30 days of their establishment; and (3) consultants who enter persuader activities agreements to report payment from employers for all "labor relations advice and services," regardless if there was any direct contact with employees. This change was expected to have the biggest effect on management-side law firms, which had previously been spared from the consultant reporting requirements under the "advice" exception.

Back in June 2016, U.S. District Court Judge Sam Cummings temporarily postponed the enactment of the revised rule, holding that the Department of Labor likely exceeded its authority in implementing the rule. Further, he saw a likelihood of success on claims that the new rule violates free-speech and association rights, including the long-recognized First Amendment right to hire and consult an attorney. The judge ordered the permanent ban on the rule, citing these same reasons.

The result is that both private sector employers and their consultants (including law firms) have nationwide reprieve from the revised rule for the foreseeable future. While the Department of Labor may appeal the District Court's decision, such an appeal may not come, if at all, until a new Secretary of Labor has been appointed under the incoming administration of President-elect Donald Trump.

The November 16th decision is currently cited as: *National Fed'n of Indep. Bus. v. Perez*, Case No. 5:16-cv-00066-C (N.D. Tex. Nov. 16, 2016).

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