



Labor & Employment ADVISORY ■

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Department of Labor Issues Final Rule Regarding Union Persuader Transparency

Last week, the U.S. Department of Labor (DOL) issued a final rule that requires employers to report agreements they have made with outside consultants to craft anti-union messages to workers. As a general matter, the Labor-Management Reporting and Disclosure Act (LMRDA) requires disclosure of financial transactions and administrative practices of labor organizations and employers, including when employers engage outside labor relations consultants to persuade employees about their union activities or to supply certain information to the employer. Prior to the controversial “persuader rule,” the “advice exemption” in Section 203(c) of the LMRDA excluded from the reporting requirements circumstances where labor relations consultants provided advice but did not have direct contact with employees. With the adoption of the persuader rule, this exemption will be narrowed, and employers will now be required to report even indirect communications between labor relations consultants and employees regarding their collective bargaining rights.

“Workers should know who is behind an anti-union message. It’s a matter of basic fairness,” stated U.S. Secretary of Labor Thomas E. Perez. “This new rule will allow workers to know whether the messages they’re hearing are coming directly from their employer or from a paid, third-party consultant. Full disclosure of persuader agreements gives workers the information they need to make informed choices about how they pursue their rights to organize and bargain collectively.”

Employers should be particularly mindful of concerns that the new reporting requirements will infringe on the attorney-client privilege between companies and their outside counsel by expanding the kinds of union-related activities that must be reported to include many activities that outside counsel frequently perform for their clients in connection with union organizing, such as advising employers on issues relating to the proper definition of the bargaining unit, procedures relating to decertification of a union and blocking charges filed by unions. While the DOL asserts that the final rule will not affect the attorney-client privilege or the relationship between companies and their outside counsel, critics of the rule remain doubtful. Furthermore, employers without in-house legal departments to assist with the LMRDA’s requirements should expect onerous paperwork associated with the new reporting rules.

The persuader rule goes into effect on April 25, 2016. Legal challenges to the rule are expected. Specifically, critics of the rule anticipate lawsuits seeking to block the regulation on the basis that it inappropriately interprets the LMRDA, improperly interferes with the confidential relationship between attorneys and their clients and infringes on First Amendment rights.

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