

JUNE 28, 2016

FEDERAL COURT HALTS ENFORCEMENT OF DOL “PERSUADER RULE”

Back in April, Hall Render **reported** that the U.S. Department of Labor (“DOL”) published its so-called “Persuader Rule.” The DOL’s new rule has generated a heated outcry from employer groups and attorneys. Litigation followed and, on June 27, 2016, a federal district court in Texas issued a **temporary nationwide injunction**, preventing the DOL from enforcing the new rule. The court’s 90-page order outlines the DOL rule, the NLRB’s election process and the role of attorneys and advisors in that process. The court concludes that the DOL’s Persuader Rule was arbitrary and capricious and would infringe on free speech and adversely affect a lawyer’s ethical duty to protect client confidences. Ultimately, the plaintiffs will likely prevail in their overall challenge to the rule.

WHAT THE RULE WOULD REQUIRE

The Persuader Rule, now enjoined, would require employers and their hired consultants (including attorneys) to file reports when the consultants directly persuade workers or when the consultants acts in one of the following four categories.

1. Plan, direct or coordinate managers to persuade workers
2. Provide persuader materials to employers to disseminate to workers
3. Conduct union avoidance seminars
4. Develop or implement personnel policies or actions to persuade workers

Under the Persuader Rule, as examples, employers and consultants will have to report any of the following activities: planning or conducting employee meetings; training supervisors or employer representatives to conduct meetings; coordinating or directing the activities of supervisors or employer representatives; establishing or facilitating employee committees; drafting, revising or providing speeches; developing employer personnel policies designed to persuade employees; and identifying employees for disciplinary action, reward or other targeting. The rule was to apply to all arrangements, agreements and payments made on or after July 1, 2016.

CIVIL AND CRIMINAL LIABILITY

The reports would require detailed financial and other information relating to the specific types of persuader activities provided. Failure to file the reports could result in civil penalties and criminal charges.

HEADS UP

Even though the Persuader Rule has been halted, litigation will continue until the legal effect of the rule is finally determined. In the meantime, private employers, their advisors and attorneys should be aware that even under the previous rule there are, and continue to be, certain reporting obligations if persuasive activity is made directly to employees.

We will be following the course of the litigation. In the meantime, if you have any questions, please contact Steve Lyman at slyman@hallrender.com, Bruce Bagdady at bbagdady@hallrender.com, Sevilla Rhoads at srhoads@hallrender.com or your regular Hall Render attorney.

Reference: **National Federation of Independent Business, et al v. Thomas Perez, Secty. of Labor**, (U. S. District Court, Norther District of Texas, June 27, 2016).