

FYI[®] Alert

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Texas Court Permanently Blocks DOL Persuader Rule

On June 28, a Texas District Court issued a preliminary injunction blocking the DOL from implementing and enforcing its new “persuader” rule. The rule would have required employers and their labor relations advisors to publicly disclose agreements and arrangements that had long been exempt from reporting under the Labor-Management Reporting and Disclosure Act. Yesterday, the court concluded that the rule is unlawful and permanently blocked enforcement.

Background

The so-called “persuader” rule requires public disclosure by employers and their labor advisors of certain agreements or arrangements related to union organizing and collective bargaining. The Labor-Management Reporting and Disclosure Act (LMRDA) carved out an “advice exemption” to the disclosure requirements, requiring reporting of fees and arrangements only if the employer’s labor relations consultants and attorneys communicated directly with the employer’s non-supervisory employees.



On March 24, the DOL issued a final persuader rule altering its long-standing interpretation of the advice exemption. The final rule expanded disclosure requirements to include both direct and indirect persuader activity and cover arrangements, agreements and payments made on or after July 1, 2016.

Legal Challenge

Trade associations promptly filed a legal challenge, seeking to invalidate the DOL’s new persuader rule. On June 28, Senior District Court Judge Sam R. Cummings of the Northern District of Texas concluded in *National Federation of Independent Business et al. v. Perez, et al.* that “the new rule is defective to its core because it entirely eliminates the LMRDA’s Advice Exemption” and issued a nationwide preliminary injunction blocking its enforcement. (See our [June 29, 2016 FYI Alert](#).)

In subsequent proceedings, the business groups joined by a 10-state coalition — including Texas, Alabama, Arkansas, Indiana, Michigan, Oklahoma, South Carolina, Utah, West Virginia and Wisconsin — asked the court to convert the preliminary injunction into a permanent nationwide injunction. Among other things, they argued that the rule would have required attorneys to reveal to the DOL information protected by attorney-client privilege, and it

violated the LMRDA, constitutional free speech and due process guarantees, as well as the Regulatory Flexibility Act.

On November 16, Judge Cummings agreed and [granted](#) the trade associations' and intervening states' motions for summary judgment. Stating that the DOL's revised Persuader Advice Exemption Rule "should be held unlawful and set aside," the court entered a permanent nationwide injunction against its implementation.

Comment. The Obama administration previously appealed the grant of the preliminary injunction to the 5th Circuit Court of Appeals. According to a [news release](#) from the Texas attorney general's office, the summary judgment ruling makes that appeal moot.

In Closing

The DOL's persuader rule was preliminarily blocked just days before it was slated to take effect on July 1. With today's court ruling, the preliminary injunction has now been converted into a permanent nationwide injunction blocking its implementation and enforcement.

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