

DOL Persuader Rule: Going, Going, Gone

In 2016, a Texas District Court permanently blocked the DOL from implementing and enforcing the Obama administration’s final “persuader” rule. The final rule would have required employers and their labor relations advisors to disclose publicly agreements and arrangements that had long been exempt from reporting under the Labor-Management Reporting and Disclosure Act. On July 18, the DOL formally rescinded it, leaving in place the reporting requirements as they previously existed.

Background

The Labor-Management Reporting and Disclosure Act (LMRDA) requires unions, employers, and labor relations consultants to publicly disclose information about certain financial transactions, agreements, and arrangements related to union organizing and collective bargaining. Under the LMRDA’s so-called “advice exemption,” reportable activities carved out the services of a labor relations consultant who gives, or agrees to give, advice to an employer. For decades, reporting those fees and arrangements was required only if the employer’s labor relations consultants and attorneys communicated directly with the employer’s non-supervisory employees.

In 2016, the Obama administration issued a final persuader rule that altered the DOL’s long-standing interpretation of the advice exemption. The rule expanded disclosure requirements to include indirect persuader activity, requiring employers and their labor relations advisors to report agreements and arrangements that had long been exempt from reporting under the LMRDA. A Texas federal judge issued a nationwide preliminary injunction blocking enforcement before the rule could be applied, and subsequently converted the preliminary injunction to a permanent one. (See our *FYI Alert* from [November 17, 2016](#).)

Last year, the DOL took the first step to rescind the controversial 2016 rule, issuing a Notice of Proposed Rulemaking to formally roll back the regulations established in the final rule. (See our [June 20, 2017](#) *For Your Information*.) In the meantime, the DOL has continued to enforce the interpretation of the advice exemption that predated the rule.



DOL Rescinds 2016 Persuader Rule

On July 18, the DOL took the final deregulatory action, issuing a [final rule](#) rescinding the 2016 persuader rule effective August 17. In a news [release](#) announcing the withdrawal, the DOL cited the 2016 rule's impingement on attorney-client privilege and incompatibility with the law and client confidentiality as the chief reasons for the rollback. The final rule cited the additional regulatory burdens and costs associated with the 2016 rule and the allocation of departmental resources to other priorities as further reasons for the action.

The rescission leaves in effect the reporting requirements as they existed before the 2016 persuader rule. The forms and instructions available on the DOL website and currently used by filers also predate that rule.

In Closing

The DOL's 2016 persuader rule was never implemented or enforced as it was blocked by court order just days before it was slated to take effect. The DOL's action completes the formal rescission process.

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