

Department Of Labor Greatly Expands The Scope Of Employer Reporting Obligations Related To Union Organizing Campaigns

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On March 24, 2016, the United States Department of Labor (DOL) published its new Persuader Rule, which significantly changes the nature of the individuals and entities who are required to report as to whether they provided assistance to employers regarding matters involving union representation and union avoidance activities. The Rule, which will go into effect on July 1, 2016, requires employers and their hired consultants to report to the federal government any activities involving: 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. Significantly, while the prior rule did not require the reporting of activities performed by lawyers generally protected by the attorney-client privilege, the new Rule now expressly includes much of the behind-the-scenes assistance that lawyers and other consultants typically provide to employers. The reports will require public disclosure of detailed financial information relating to the specific types of services and activities rendered. Labor organizations will likely use this new information to gain an upper-hand when seeking to organize an employer's workforce. Punishment for failure to comply includes civil penalties and criminal charges. The new Rule exempts agreements by which the consultant or lawyer merely

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provides “advice” to the employer, which is defined as “recommendations regarding a decision or course of conduct,” and any agreement that involves only the provision of legal services. Because the exemption is narrow, it may prove to be of little use in the context of union organizing and ultimately require reporting. Challenges to the Rule have been filed in federal courts on behalf of employer and attorney groups in Arkansas, Minnesota, and Texas.