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Federal Court Stops “Persuader Rule” With Nationwide Temporary Injunction

The U.S. Department of Labor’s new “Persuader Rule,” designed to hinder employers’ union-avoidance efforts, will not go into effect, as scheduled, on July 1, 2016. A federal District Court in Texas issued a **nationwide**, temporary injunction yesterday, June 27, stopping the new Rule. The Texas injunction decision is not a final ruling on the future of the Persuader Rule. The injunction is only temporary, and could be reversed by the U.S. Fifth Circuit Court of Appeals or the U.S. Supreme Court. The Texas court’s ruling, however, joins a similar ruling by a federal court in Minnesota. Both courts found that the new Persuader Rule is, almost certainly, invalid. And, a third legal challenge is pending in Arkansas.

What this means

The DOL’s new Persuader Rule was about to impose onerous reporting requirements whenever an employer engages a labor lawyer or consultant, on or after July 1, 2016, to assist the employer to communicate lawfully with employees about staying free from unions. The Persuader Rule would even burden employers who seek help in communicating lawfully with employees already represented by a union. The nationwide scope of the Texas Court’s injunction, however, means that, for as long as the injunction remains in place, employers across the United States will remain free to obtain this help and advice in communicating with employees about unions without becoming subject to the Persuader Rule’s reporting requirements.

The Texas court’s ruling also increases the likelihood that the new Persuader Rule will never be enforced. Although its decision is not final, the Texas Court identified compelling legal grounds for overturning the Persuader Rule. The Court credited testimony offered by Frost Brown Todd Member and former President of the American Bar Association, William T. (“Bill”) Robinson III, establishing

that the Persuader Rule improperly undermines employers' rights to confidentiality with their lawyers. The Court went on to find that the Persuader Rule contradicts the federal statute it was intended to enforce, violates employers' constitutional rights to freedom of speech and association, and is arbitrary and capricious. These legal challenges will be difficult for the DOL to overcome if and when it seeks to lift the injunction.

Conclusion

The DOL's Persuader Rule remains a serious concern for employers. The Texas Court's temporary injunction may merely delay enforcement of the Persuader Rule. The Court's well-reasoned 86-page decision, however, combined with the similar ruling from a federal court in Minnesota, offers real hope that the federal courts will rescue employers from the DOL's regulatory overreach.

If you have any questions about the Persuader Rule, please contact [John Lovett](#), [Ray Neusch](#), or any attorney in Frost Brown Todd's [Labor and Employment Practice Group](#).

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