



Nov 22, 2016

Categories:
[Publications](#)

Authors:
[Thomas V. Williams](#)

Department of Labor's Justifications For New Persuader Rule Not Persuasive: Court Permanently Halts Implementation

On November 16, 2016, in *National Federation of Independent Business, et al. v. Perez*, a federal court in Texas put a halt to the Department of Labor's (DOL) new Persuader Rule, entering a nationwide permanent injunction against DOL implementation. The new Rule would have required disclosure of a wide range of information whenever employers hired an attorney to assist in union avoidance efforts, even if the lawyer did not have direct contact with employees.

Under Section 203 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), employers are required to file a report with the DOL whenever they hire third-parties, including attorneys, to "directly or indirectly" persuade employees not to unionize. The third party hired to persuade the employee is also required to file a report with the DOL. In the reports, employers and third parties must disclose highly sensitive information, including the terms and conditions of the agreement to provide the union avoidance consulting services as well as the nature of the activities engaged in under the agreement.

Section 203, however, also includes a specific exemption for third parties giving "advice" to employers facing unionization efforts. Since 1962, the DOL interpreted Section 203's "Advice Exemption" with a bright-line test: if the third party had no direct contact with employees and the employer was free to accept or reject the third party's recommendations, no report was required. The DOL routinely found that a lawyer's preparation of speeches and other union avoidance documents on behalf of the employer were exempt as "advice."

In July 2016, the DOL's new Persuader Rule abruptly changed this 50-year old understanding. The new Rule declared that "advice"

would not include any “persuader activities, *i.e.*, actions, conduct, or communications by a consultant on behalf of an employer that are undertaken with an object, directly or indirectly, to persuade employees concerning their rights to organize or bargain collectively.”

In entering the permanent nationwide injunction, the Northern District of Texas held that the DOL’s regulation flew in the face of the plain language of the LMRDA’s “Advice Exemption,” violated the First Amendment, and threatened attorney–client confidentiality, among other defects.

A federal court in Minnesota in June – in a separate case challenging the new Persuader Rule – had also ruled against the government but declined to make its injunction nationwide. Both the Texas and Minnesota federal courts found the DOL struggled “mightily to define as non–advice activity that any reasonable person would define as advice.”

After the recent Presidential election, it is likely the new Trump Administration will decline to pursue any appeals of the court’s ruling, and will also likely begin efforts to withdraw the new rule.

For more information on the Persuader Rule and the recent nationwide injunction halting its implementation, please contact [Thomas V. Williams](#), [Raymond D. Neusch](#), [Steven T. McDevitt](#) or any other member of Frost Brown Todd’s [Labor and Employment practice group](#).

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.