



## ALERTS

### Labor And Employment Law Alert - Texas Federal Court Issues Nationwide Injunction Against DOL's Persuader Rule

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On June 27, U.S. District Judge Sam R. Cummings entered a nationwide injunction barring the U.S. Department of Labor (DOL) from enforcing its controversial new persuader regulations. *National Federation of Independent Business et al. v. Perez et al.* The court agreed with plaintiffs that the new persuader regulations threatens employers' rights to secure legal advice concerning union organization.

The new persuader regulations issued by the DOL earlier this year significantly narrowed the scope of the legal advice exemption to the persuader rules. The new rule would have required reporting of monies paid for legal services when those services included "indirect persuasion" activity, including advice on what is to be said to employees in connection with union organizing campaigns as well as communications regarding the status of collective bargaining and contract proposals to rank and file employees.

The court held that new persuader regulations would cause irreparable harm to employers nationwide, which would include:

- Reducing access to full, complete, un-conflicted legal advice and representation relating to unionization campaigns
- Reducing access to training, seminars, information and other advice relating to unionization campaigns
- Burdening and chilling First Amendment rights, including the right to express opinions on union organizing and to hire and consult

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with attorneys

The court also held that the rule would also create conflicts with attorney ethical rules and attorney duty of confidentiality by requiring the disclosure of legal advice from attorneys to clients and the disclosure of attorney-client arrangements and relationships.

In addition, the court found the new rule would conflict with ethical rules of all states regarding attorneys' ethical obligations to maintain client confidences regarding both privileged and unprivileged information. The persuader rule reporting requirement would require the disclosure of confidential information and would invade what every state has deemed as foundational to its administration of justice, namely, attorney-client confidentiality.

The court's order blocks the implementation of the new rule which was to take effect on July 1, 2016, until final resolution of the case or an order from the Fifth Circuit or the U.S. Supreme Court.

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Labor and Employment