

Department Of Labor Aims To Rescind ‘Persuader Rule’; Comments Due Aug. 11

July 10, 2017 | [Department Of Labor, Labor And Employment](#)

Last month, the U.S. Department of Labor (DOL) submitted a notice of proposed rulemaking intended to rescind what is known as the “persuader rule.” We previously [reported](#) that the persuader rule, which was first published in 2016 during the Obama administration, was controversial and had been tied up in litigation for months; at the end of 2016, a federal court stopped it from being enacted. The rule would have required employers to publicly disclose certain relationships with labor relations consultants, including the identity of any outside attorneys or consultants that may affect employees’ rights to engage in protected activity, the terms of any such engagement, and the activities to be performed by the attorney or consultant.

There is a 60-day comment period for the proposed rescission of the persuader rule and all comments must be received by the DOL no later than Aug. 11. Many companies were primarily concerned that the rule would test the limitations of the attorney-client privilege and the privacy of consultant relationships protected by the Labor-Management Reporting and Disclosure Act (LMRDA). Luckily for employers, the U.S. District Court for the Northern District of Texas issued a nationwide injunction in November 2016 to prevent the rule from going into effect. The Texas court found that the persuader rule exceeded the DOL’s rulemaking authority because it required employers to report relationships and information that was explicitly protected from disclosure by the LMRDA.

The DOL’s [notice](#) of rulemaking offers various reasons for its decision to rescind the rule; namely, that the persuader rule expanded reporting requirements “by requiring the reporting of employer-consultant agreements under which the consultant undertakes activities that do not involve direct contact between consultants and employees.” Such a rule is inconsistent with the LMRDA, which states that no report is required for services of a consultant, including an attorney, simply by agreeing or giving advice to an employer.

RELATED PRACTICE AREAS

Labor and Employment
Labor Relations

RELATED TOPICS

LMRDA
Persuader Rule