

DOL Takes Action to Rescind the Persuader Rule

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In March 2016, the Department of Labor (“DOL”) published a revised “Persuader Rule” requiring attorneys involved in union organizational campaigns to file broad public financial disclosures about their own and their law firm’s compensation related to these efforts. Traditionally, persuader activity had to be publically reported only if an attorney communicated directly with a client’s employees regarding union activity. The revision expanded these public reporting requirements to include any advice that “indirectly persuades” a client’s employees regarding union organizing and collective bargaining, even if the persuader had no direct contact with employees. The revisions were aimed at, among other things, discouraging law firms from being involved in organizational campaigns to avoid such disclosures. The revisions, however, also infringed on the attorney-client privilege.

The DOL’s revised Persuader Rule was barred by a permanent injunction on November 16, 2016, when a Texas court expressed concern that attorneys would be forced to violate the attorney-client privilege by disclosing clients’ identities, fee arrangements, and the nature of the advice and services provided. Under President Obama, the DOL appealed this decision but the Trump Administration had not addressed this issue until last week. The DOL now has submitted a proposed rule designed to rescind the Persuader Rule - signaling a clear position change from the previous administration. The new Secretary of Labor, Alexander Acosta, confirmed the change when he publicly announced this rule as a step to rescind the Persuader Rule in an op-ed published in the Wall Street Journal. While the rulemaking process eventually will require soliciting and weighing public comments, the outcome is expected to be the elimination of the Obama-Era Persuader Rule.

For more information on this topic please contact a member of our [Labor & Employment Practice Group](#).

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