

March 2016

LABOR & EMPLOYMENT LAW ALERT

USDOL RULE EXPANDS REPORTING REQUIREMENTS FOR EMPLOYERS ENGAGING "PERSUADERS" TO ADDRESS UNIONIZATION

On March 23, 2016, the U.S. Department of Labor ("DOL") issued its new "persuader" rule which substantially expands reporting requirements to the DOL for employers who enter into agreements with consultants and attorneys for services relating to persuading employees with respect to their bargaining and union representation rights. The new rule preserves the historical requirement that employers report "direct" persuader activities (e.g., when it engaged consultants or attorneys for face-to-face contact, to directly communicate or meet with employees to persuade them against unionization), and enlarges its reach to also require reporting of "indirect" persuader activities -- where the "object" of the engaged consultant or attorney is to persuade employees concerning their rights to organize and bargain collectively.

The DOL's broadening of the persuader rule requires employers to report on their Form LM-10 the existence of agreements with, and payments made to, consultants and attorneys they engage to provide advice on union organizing efforts, even if such consultants or attorneys had no direct contact with employees, and even if the employer did not act on such advice. This marks a complete departure from the former rule, which did not require employer reporting of agreements or payments to those who merely provided advice to employers on how to communicate with their employees. Accordingly, while certain activities remain outside the new rule (e.g., there is no employer reporting requirement for engaging consultants or attorneys who merely engage in collective bargaining on behalf of an employer, represent an employer before the National Labor Relations Board or provide advice on general employer practices or to ensure legality of an employer's persuader materials), a broad range of "indirect" persuader activities will require employer reporting, including:

- Planning, directing, or coordinating supervisors or managers to meet or interact with employees;
- Providing materials or communications to the employer (in any form) for dissemination or distribution to employees;
- Conducting a seminar for supervisors or other employer representatives; and
- Developing or implementing personnel policies or actions.

The DOL's new persuader rule takes effect on April 25, 2016 and will be applicable to arrangements, agreements and payments made on or after July 1, 2016.

We are available to provide counsel and guidance concerning these issues, as well as other management labor and employment law concerns. For additional information, please contact one of the attorneys named below or the attorney with whom you have a primary relationship.

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This information is provided as a public service to highlight matters of current interest and does not imply an attorney-client relationship. It is not intended to constitute a full review of any subject matter, nor is it a substitute for obtaining specific legal advice from appropriate counsel.

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