



Brian Mumaugh

Senior Partner
303.295.8551
Denver
bmumaugh@hollandhart.com

DOL Issues Final Persuader Rule; Court Challenges Likely To Follow

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On March 23, 2016, the U.S. Department of Labor (DOL) released its highly controversial final persuader rule which expands the reporting requirements of both employers and their hired labor consultants who assist with union-avoidance activities. Legal challenges can be expected to the rule, which is currently set to go into effect on April 23, 2016. If the rule becomes effective, it will apply to consulting agreements, arrangements, and payments made on or after July 1, 2016.

Reporting Required For Indirect Consulting Activities

Under the Labor-Management Reporting and Disclosure Act (LMRDA), employers who hire outside consultants, including lawyers, to help to persuade employees whether or not to join a union or engage in collective bargaining must file a report disclosing that relationship and the fees paid to the consultant. In the past, the DOL took the position that "advice" from a consultant that did not involve the consultant making direct contact with employees did not trigger the reporting requirement. The final rule changes that, making a wide variety of indirect activities reportable. Essentially, the rule covers much of the behind-the-scenes work that lawyers and other consultants typically provide when assisting an employer with a union campaign.

Expect Legal Challenges To Persuader Rule

Business groups and associations are sure to file court challenges seeking to block the final persuader rule. Challenges to the new persuader rule will focus on the rights of clients to preserve the attorney-client privilege, which precludes the very types of disclosure the rule seeks to require. Other challenges through actions by Congress are also possible. Stay tuned for further developments. In the meantime, we are prepared to discuss the rule's effect on your business, where applicable.

If you have questions about this new rule or how it affects your business, please contact me at bmumaugh@hollandhart.com or 303-290-1067.

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