

## Texas District Court blocks DOL's Controversial New "Persuader Rule"

Article By:

Labor and Employment Department Honigman

---

On June 27, 2016, a federal district court in Texas issued a nationwide preliminary injunction blocking implementation of the U.S. Department of Labor's (DOL) new "persuader rule." That new rule would have required employers and their lawyers and other advisers to file reports with the DOL concerning labor relations advice and services provided in responding to union organizing activity. The reports would have to detail the nature of those services and the amount paid for those services. The reports would be available online to the public, including unions. The court in *National Federation of Independent Business v. Perez* found that the new rule exceeded the DOL's authority and violated the U.S. Constitution.

The federal Labor Management Reporting and Disclosure Act (LMRDA) defines persuader activity as "direct or indirect activity that is intended to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing." An example of direct activity is conducting a meeting with employees to convince them not to support a union. An example of indirect persuader activity is an employer using a consultant to conduct union avoidance seminars with supervisors. There is an advice exemption which the DOL had interpreted to exclude reporting on indirect persuader activity by law firms, consultants and other advisors. The new persuader rule would have required reporting for a wide array of indirect persuader activities, including training supervisors on labor management relations matters, preparing materials for employers to distribute to employees, and developing or implementing personnel policies or actions for an employer with an object to persuade employees. For more than 50 years, the DOL did not require reporting for those activities when they were performed by a lawyer.

For now, the injunction blocks implementation of the new rule and will not require employers and their lawyers to file reports with the DOL. Employers and consultants still must report direct persuader activity. Penalties for violating the reporting requirement include fines and possible prison time. In addition to the case in Texas, there are two other federal court challenges to the new rule that are still pending.

National Law Review, Volume VI, Number 192

Source URL: <https://natlawreview.com/article/texas-district-court-blocks-dol-s-controversial-new-persuader-rule>