

Unpersuasive: Federal Judge Invalidates DOL's New Persuader Rule

Article By:

Evan Mix

Jason W. Kearnaghan

James R. Hays

On November 16, 2016, a federal district judge in **Texas** barred the **Department of Labor** ("**DOL**") from enforcing its new so-called "**Persuader Rule**." The rule, which would have imposed broad disclosure requirements on employers responding to union-organizing campaigns, has been mired in controversy since it was proposed in 2011. In April, Sheppard Mullin wrote about [the changes the final rule would have made](#); in June, we covered [a proposed carve-out for legacy agreements](#) between employers and third-party advisors.

The new Persuader Rule, which would have taken effect in July 2016, has been so controversial because it appeared to require employers to disclose information not only about third-party consultants trying directly to affect employees' decisions whether to unionize, but also about third-party consultants—including outside lawyers—who had no direct contact with employees at all. The rule would have required any covered employer or third party consultant, on pain of criminal prosecution, to disclose (1) the identity of any outside lawyer or other consultant; (2) the goals, terms, and conditions of the arrangement; and (3) the activities performed and to be performed by the consultant. Many feared that the rule would have been used to force employers to disclose information protected by the attorney-client privilege.

This week, a collection of states and business groups, including the state of Texas, persuaded the Hon. Sam R. Cummings of the Northern District of Texas that the new Persuader Rule went too far. Judge Cummings converted a preliminary injunction issued in June 2016 to a permanent injunction prohibiting the DOL from enforcing the rule as drafted. The court ruled that the proposed regulation exceeded the DOL's authority under the Labor Management Reporting and Disclosure Act by requiring employers to report information specifically protected from disclosure by the Act.

Business groups and employers are cheering Judge Cummings's ruling. But the court also opined, when it issued its preliminary injunction, that the DOL's current rule is underinclusive; assuming the ruling is not overturned on appeal, employers should be prepared to respond if the DOL tries to change the Persuader Rule again.

The case is ***National Federation of Independent Business v. Perez***, Case No. 5:16-cv-00066 (N.D. Tex. Nov. 16, 2016).

Copyright © 2025, Sheppard Mullin Richter & Hampton LLP.

National Law Review, Volume VI, Number 322

Source URL: <https://natlawreview.com/article/unpersuasive-federal-judge-invalidates-dol-s-new-persuader-rule>