
Department of Labor Issues New Reporting Requirements for Persuader Activity

By Daniel J. Bretz, Thomas P. Brady / Mar 24, 2016

Today, the U.S. Department of Labor (DOL) published a controversial new regulation regarding "persuader" activities. The new regulation increases the scope of reporting requirements for employers, attorneys and labor consultants. These professionals may now have to file public reports describing their financial and contractual arrangements relating to such activities. The regulation goes into effect on July 1, 2016.

Persuader activities are generally defined as activities designed to persuade, influence or educate employees who are considering union representation. According to the DOL, this regulation will make persuader activities, and the money spent on such activities, transparent to employees and the public. Commentators have argued that the rules will make professionals and consultants reluctant to provide guidance to employers who are responding to union organizational campaigns.

Currently, persons who provide "advice" to employers without direct contact with employees are exempt from contractual and financial reporting. This means that attorneys and consultants typically do not have to file publicly available documents showing their income and describing the nature of the work they performed. For 54 years, the DOL interpreted the "advice exception" to exclude arrangements where a labor consultant or attorney prepared strategies, speeches, documents and other campaign material. So long as the consultant or attorney did not *directly present* the materials or speeches to the employees, they did not have to file persuader reports.

However, the new regulation greatly expands the scope of who must report and what must be reported. Under the new regulation, reporting is not only triggered when there is direct contact or communication with employees, but also when there is *no direct contact*.

The regulation requires a report from a consultant who undertakes the following activities with *no direct contact with employees* but "*with an object to persuade*":

- planning, directing, or coordinating **activities undertaken by supervisors** or other employer representatives, including meetings and interactions with employees;
- **providing material or communications** to the employer, in oral, written, or electronic form, for dissemination or distribution to employees;
- **conducting a seminar** for supervisors or other employer representatives; or
- **developing or implementing personnel policies**, practices, or actions for the employer.

Under the new regulation, attorneys and labor consultants still do not have to file reports if they only provide "advice" to employers where there is no object to persuade. For example, no report is required if an attorney revises persuasive materials created by the employer solely in order to ensure the material's legality. However, if the lawyer modifies the material to enhance the persuasive effect of the material, a report is required.

We advise employers to consult with a labor attorney prior to July 1, 2016, the effective date of the regulation. Until then, attorneys will have more flexibility in developing materials and training managers in responding to union campaigns.

If you have any questions about the new persuader rule, please contact Thomas P. Brady at (313) 965-8291 | tbrady@clarkhill.com, Daniel J. Bretz at (313) 965-8356 | dbretz@clarkhill.com or another member of Clark Hill's Labor and Employment Practice Group.