

# The Final Persuader Rule: What Employers Need to Know

Despite the fact that a nationwide injunction has been issued to temporarily block the Department of Labor's ("DOL") Final Persuader Rule ("Final Rule"), employers should act now to ensure they are protected if and when the injunction is lifted.

As a recap, Section 203(b) of the Labor Management Report and Disclosure Act of 1959 ("LMRDA") requires employers and their labor relations consultants (including legal counsel) to report agreements and arrangements entered into with the purpose of persuading the employer's employees concerning the employees' rights to union representation and bargain collectively. Prior to the Final Rule, employers and consultants were required to report arrangements only where the consultant directly communicated with employees to persuade them regarding organizing or collective bargaining.

However, under the Final Rule, employers and their consultants will now be required to report both direct and *indirect* communications and persuasive activities carried out by the consultant, including: (1) planning, directing or coordinating interactions with employees by supervisors or other employer representatives; (2) drafting, revising or providing to employers materials or communications in oral, electronic or written form for dissemination or distribution to employees; (3) conducting or holding seminars on labor-management relation matters that involve assisting the employer-attendees in developing antiunion tactics and strategies; and (4) developing or implementing personnel policies or actions for the employer with the purpose of persuading employees regarding their rights to exercise union representation and bargain collectively.

While these new requirements were intended to apply to arrangements and agreements made on or after July 1, 2016, the United States District Court for the Northern District of Texas temporarily blocked the DOL's enforcement of the Final Rule.

However, the court's temporary injunction may be just that—*temporary*. Employers should act now to ensure their persuader activities are protected from disclosure if and when the injunction is lifted. The DOL has clarified that the Final Rule will not apply to agreements or arrangements, including multiyear arrangements entered into before July 1, 2016, for labor relations services to be

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performed in the future. **Accordingly, to avoid future reporting requirements, employers should consider entering into long term agreements, covering representation in current and future union organizing campaigns and other labor relations services by June 30, 2016.**

If you have any questions about this material or would like to protect the disclosure of your future persuader activities, please immediately contact your Reinhart attorney.

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