

THE ZAPPIA LAW FIRM

A PROFESSIONAL CORPORATION

— Labor & Employment Law —

SPECIAL UPDATE

PUBLIC AND PRIVATE EMPLOYERS

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United State Department of Labor Issues Final “Persuader” Rule

Last week the United States Department of Labor (DOL) finalized its much-anticipated “persuader” regulation, requiring employers and legal consultants to report any arrangement to persuade employees either directly or indirectly regarding the right to organize or bargain collectively.

The Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) requires employers and legal consultants to report to the DOL any time they engage a consultant to persuade employees “directly or indirectly” regarding the right to organize or bargain collectively. If an employer fails to comply with any of the LMRDA’s reporting requirements, they could face jail for a year and a \$10,000 fine. The LMRDA, however, has always had an exemption which carved out an exception for “advice,” meaning that employers were only required to disclose the hiring of outside firms for union elections when the consultants, often lawyers, were going to make direct contact with employees.

The new rule, which goes into effect on July 1, 2016, closes this long-standing loophole by limiting the definition of “advice” to oral and written recommendations, thereby subjecting more types of arrangements to the disclosure requirements of the LMRDA. As a result, employers who engage attorneys to assist in organizing campaigns will now have to file publicly available reports with the DOL detailing all labor work, regardless of whether it is considered “persuader activity” or not, that the law firm performs for the employer.

The new rule will provide employees with information about the use of labor relations consultants by their employers and allows workers to know whether the messages they are hearing are coming directly from their employer or from a paid, third-party consultant.

Supporters of the new rule believe that full disclosure of persuader agreements will give employees the information they need to make informed choices. This information should, in turn, result in better decisions about how workers pursue their rights to organize and bargain collectively. Detractors, however, claim that the new rule “will chill employer free speech and make it harder for small business owners to navigate a host of complex labor rules.”

It must be noted however, that the new rule still imposes no restrictions on what employers may say or do when faced with a union organizing campaign, and still does not regulate employers’ speech or conduct.