

Persuader Predicament

News

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The July 2013 issue of *InsideCounsel* quoted Tampa Partner Steve Bernstein in the article “Persuader Predicament.” The publication reported on a proposed rule pending in the Department of Labor that could force outside counsel to choose between client confidentiality and legal compliance. The Labor Management Reporting and Disclosure Act (LMRDA), passed in 1959, requires disclosure of fees paid to and services provided by “persuaders,” consultants hired to influence employees not to unionize. Lawyers traditionally have been exempt as long as they didn’t directly communicate with employees, under a provision known as the advice exemption. The proposed rule changes the advice exemption so any lawyer who drafts, revises or provides a persuasive employee communication for a client could be deemed a persuader, even if he has no direct contact with employees. Steve commented: “For 50 years, our obligation as attorneys has been pretty well established. The understanding is that so long as we don’t deal directly with employees who are called on to decide on representation, fees are exempted from disclosure under the advice exemption. Almost any activity undertaken by counsel whose end result is persuasion is now reportable.”

Steve was also quoted by the *Wall Street Journal* on the same issue in the July 15 article “Senate Filibuster Ban Would Pave Way for Obama Labor Nominees.” He noted that the proposed “persuader” rule threatens confidentiality rules that lawyers must follow. “I think it has the real potential to discourage employers from engaging legal counsel at a time when it’s more important than ever.”

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Steven M. Bernstein

Regional Managing Partner and Labor Relations Group Co-Chair

813.769.7513

Email