



Employers Received Mixed Message In First Of Three Persuader Rulings

JULY 1 DEADLINE CONTINUES TO LOOM

Insights

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A federal court in Minnesota today sent employers a mixed message about the validity of the controversial new “persuader rule” – the impending regulation that would force attorneys and their clients to report in public records intimate details of their confidential attorney-client and financial relationships. As things stand, the rule will still be effective on July 1, but given the judge’s expressed doubts about the rule’s validity, employers can be all the more optimistic that it might soon be overturned.

New Persuader Rule In A Nutshell

We summarized the issue in a [March 23 Alert](#), but for those unfamiliar with the revisions to the persuader rule, here is a brief summary. In a transparent effort to boost union organizing, the U.S. Department of Labor is seeking to radically broaden the reporting requirements of the Labor Management Reporting and Disclosure Act (LMRDA), a law which requires labor relations consultants to file government reports about arrangements to persuade workers to reject unionization or collective bargaining.

The pending changes would no longer exempt most law firm activity from the reporting requirements. While pure legal advice would still be protected, so long as there is no underlying object to persuade, no longer would tactical consultations with your lawyer about maintaining union-free status be immune from persuader reporting requirements.

Court Sends Mixed Message

Three lawsuits were filed by business and legal associations seeking to block the new rule from going into effect on July 1, 2016. Today, the Minnesota court issued the first of three anticipated decisions. In an encouraging sign, the court stated that employers are likely to prevail eventually in their legal challenge, expressing serious doubts about the rule’s validity. In his own words, the judge concluded that employers “have a strong likelihood of success on their claim that the new rule conflicts with the plain language of the statute.”

Unfortunately, the court refused to grant an injunction that would have blocked the rule from taking effect as scheduled on July 1. The judge did not believe that employers would suffer sufficiently irreparable harm to justify stopping the rule at this early stage.

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What Does This Mean?

Fisher Phillips remains optimistic that employers will eventually claim victory in the persuader battle, especially given the encouraging words of the judge in this case. What we cannot predict, however, is how long this might take. Two other courts – one in Arkansas and one in Texas – might still issue injunctions blocking the rule before the July 1 effective date. Don't be surprised to receive another Alert from Fisher Phillips soon updating you about the additional developments we expect within the next week.

Most importantly, even if the July 1 effective date arrives without a court order blocking the rule, Fisher Phillips will continue to provide traditional labor law services just as before and is fully prepared to guide our clients through the compliance process. You can count on us to stand with you, both in compliance efforts and your dealings with labor unions.

We have developed specific compliance programs in anticipation of the rule going forward and will craft individualized plans with each of our clients to ensure well-coordinated reporting. We encourage you to contact your Fisher Phillips attorney to begin the process of addressing the action steps necessary to protect your interests.

If you have any questions about this matter, or how it may affect your business, please contact your Fisher Phillips attorney.

This Legal Alert provides an overview of a specific new federal court case and regulation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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