



DOL Rescinds Persuader Rule

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On July 17, 2018, the Department of Labor (“DOL”) officially abandoned the “Persuader Rule” by filing a [notice of rescission](#) in the Federal Register. The rescission is expected to become effective on or about August 17, 2018 (i.e. 30 days after the rescission notice is published in the Federal Register). This rescission gives employers and certain legal service providers more certainty as to whether their business dealings are subject to the reporting requirements of the Labor Management Reporting and Disclosure Act (“LMRDA”).

Under the LMRDA, any person who is hired by a company for the purpose of persuading the company’s employees to exercise or to refrain from exercising their Section 7 rights (typically involving efforts to convince employees not to unionize) must file an annual report with the DOL that identifies all payments made to the company. Law firms and labor relations consultants have traditionally been excluded from these reporting requirements under the statute’s “Advice Exemption.” See Section 203(c). The Persuader Rule attempted to eliminate the law firms and labor relations consulting firm exemption by implementing a narrower interpretation of the word “advice.” But now that the Persuader Rule has been rescinded, the DOL is returning to the broader interpretation of the Advice Exemption that essentially exempts legal service providers and labor relations consultants from the LMRDA’s reporting requirements if they refrain from engaging in direct persuasive activity.

In announcing the DOL’s decision to rescind the Persuader Rule in a July 17 [Press Release](#), the DOL quoted the DOL Office of Policy’s Deputy Assistant Secretary, Nathan Mehrens: “For decades, the Department enforced an easy-to-understand regulation: Personal interactions with employees done by employer’s consultants triggered reporting obligations, but advice between a client and attorney did not.” Mr. Mehrens was quoted in the same release as stating, “[b]y rescinding this Rule, the Department stands up for the rights of Americans to ask a question of their attorney without mandated disclosure to the government.”

Readers interested in the genesis of the Persuader Rule and the ensuing litigation contesting its validity can review the following blog posts:

- [DOL Issues New, More Expansive Interpretation of Persuader Rule \(Spencer Fane HR Solutions – June 23, 2016\)](#).
- [DOL’s Persuader Rule Permanently Enjoined on a Nation-wide Basis by Texas District Court – May Be Sign of Things to Come from Other DOL Regulations \(Spencer Fane HR Solutions – November 18, 2016\)](#).

KEY TAKEAWAYS

1. The DOL has officially announced that it does not intend to enforce the “Persuader Rule,” a regulation that required employers and their legal service providers to comply with cumbersome filing and reporting requirements under the LMRDA.
2. Employers potentially impacted by the Persuader Rule should consider meeting with their legal service providers and/or consultants to assess how this regulatory change impacts their business relationship and the type of services that can be offered going forward.

This blog post was drafted by [Brian Peterson](#). He is an Associate in Spencer Fane’s Kansas City, Missouri Office. For more information please visit www.spencerfane.com.

AUTHORS

- [Brian Peterson](#)

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