

## DOL Provides Important Guidance Regarding “Persuader Rule”

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Earlier this week, the Office of Labor Management Services (“OLMS”) of the U.S. Department of Labor (“DOL”) offered important guidance to employers concerning their reporting obligations under the recently amended [Persuader Rule](#). The position articulated by OLMS offers a meaningful way for employers (and law firms) that enter into appropriate agreements before July 1, 2016—the amended Persuader Rule’s effective date—to avoid the potential obligation to file public disclosure reports concerning identifying payments that employers made in connection with services that will, for the first time, be considered “persuader activity.”

### The New Persuader Rule

On March 24, 2016, the DOL issued its new “Persuader Rule,” which, among other things, requires employers and their advisors (including outside lawyers and consultants) for the first time to file public reports with the DOL disclosing their relationship, including amounts paid/received, for any advice that “indirectly persuades” employees regarding union organizing or collective bargaining. Previously, such reports were required only when a lawyer or other advisor made direct contact with the employer’s employees, regardless of the persuasive purpose of the advice. The new rule provided that it would become effective on April 25, 2016, and would apply only to “persuader” arrangements and agreements, as well as payments (including reimbursed expenses) made on or after July 1, 2016. The rule is presently being challenged in at least three lawsuits.

During the course of litigation, the DOL clarified its position regarding the key dates that impact the agency’s enforcement of the rule. This month, the DOL stated that the new rule does not apply to any agreement between an employer and an advisor entered into before July 1, 2016, in which the advisor agrees to provide “persuader” services on or after July 1, 2016, provided that those “persuader” services would not have otherwise triggered reporting obligations prior to the issuance of the new rule.

## What This Means for Employers

At a recent compliance assistance seminar, OLMS representatives stated that no persuader payment reporting will be required as a result of payments made *after* July 1 so long as those payments are tied to an agreement made *prior* to that date.

This interpretation by OLMS is considerably different from how many envisioned enforcement of the rule when the amendment was issued. Until now, most employers and law firms understood that post-July 1, any agreements or arrangements—as well as any payments related to indirect persuader activity—would trigger reporting, regardless of whether the agreements or arrangements were entered into before July 1. Given this new information, some employers may wish to sign long-term agreements with law firms or consultants now. At this point, it appears that so long as those agreements are made prior to July 1, any payments made under those agreements—even payments made later in 2016 and beyond—will not trigger reporting, according to OLMS.

Entering into agreements with labor counsel prior to July 1 should, given OLMS's announced interpretation, protect advice and assistance provided by counsel from reporting and disclosure to the DOL. It is not necessary that an employer be facing a current threat of union organizing or an existing bargaining obligation for the employer to enter into such a relationship and take advantage of this opportunity to shield itself from future reporting obligations under the new, amended Persuader Rule.

## What Employers Should Do Now

Employers that desire to retain the ability to obtain the types of advice and assistance from their labor counsel that, today, are not subject to reporting but will be under the new, amended Persuader Rule should enter into appropriate agreements with counsel prior to July 1.

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