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UPDATE: Texas Federal Court Permanently Enjoins U.S. Department of Labor “Persuader Rule” Requiring Law Firms and Other Consultants to Disclose Work Performed for Employers on Union Organization Efforts

As an update to our prior alert, on November 16, 2016, a federal judge in Texas issued a permanent injunction blocking the U.S. Department of Labor’s (“DOL”) “persuader rule” – a preliminary injunction had been granted this past June.

In rendering the permanent injunction, the court adopted the reasoning of its prior June 27, 2016 decision that granted a nationwide preliminary injunction on the rule. In the earlier decision, the court held that a temporary injunction was appropriate because the parties challenging the rule were likely to succeed on the merits of their claim for the following reasons:

1. the rule exceeds the DOL’s authority under the Labor Management Reporting and Disclosure Act (LMRDA) since it conflicts with the plain language of that statute;
2. the rule violates the Administrative Procedures Act;
3. the rule is arbitrary and capricious and an abuse of the DOL’s discretion;
4. the rule violates employers’ Constitutional rights to free speech and association by reducing access to legal advice and representation; and
5. the rule creates conflicts with Texas’ and other states’ attorney rules of ethics.

The preliminary injunction is currently on appeal before the Fifth Circuit Court of Appeals. No appeal has been filed to date on the permanent injunction, but it is anticipated that the Court of Appeals will maintain the injunction.

We will keep you apprised of further developments on the matter. Of course, if you have any questions, please feel free to contact P&A’s Labor and Employment Law Department.

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