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Labor and Employment Alert: Federal Court Blocks Enforcement of Department of Labor's 'Persuader Rule'

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CLIENT ALERT | 6.27.2016

A federal district judge in Texas today issued a nationwide injunction prohibiting enforcement of the Department of Labor's (DOL) persuader rule, saying it threatens employers' rights to secure legal advice about union organization. The Texas court is the first court to block enforcement of the rule. In a contrary ruling just last week, a Minnesota federal judge refused to block the rule. A third lawsuit is pending in Arkansas federal court.

The persuader rule, if enforced, greatly expands the reporting requirements under the Labor-Management Reporting and Disclosure Act. The rule took effect April 25, 2016, and applies to any persuader agreement entered into on or after July 1, 2016. It is important to note that these recent rulings are preliminary in nature and not a final determination about the enforceability of the rule.

The different rulings from the Texas and Minnesota courts highlight the uncertainty surrounding DOL's controversial rule. We previously wrote that DOL has interpreted its persuader rule to exclude certain indirect activities, provided there is an agreement or arrangement in place, signed before July 1, 2016, (even if the services and payments occur after July 1). Despite this ruling from Texas, employers would still be prudent to enter into multi-year agreements as a protective measure while the validity of the persuader rule continues to play out in the courts. We will continue to provide updates as they arise.