

DOL's Persuader Rule Unlawful; Permanently Enjoined

November 16, 2016 | [Labor And Employment](#)



**Gerald F.
Lutkus**

Of Counsel
(Retired)

A federal court judge in Texas has granted summary judgment in a case contesting the legality of the Department of Labor's (DOL) new Persuader Rule. The effect of the summary judgment ruling is to declare the rule to be unlawful and unenforceable. The ruling was made in a suit brought by 10 states and several business associations. In a [brief order](#), U.S. District Judge Sam R. Cummings wrote "The court is of the opinion that the Department of Labor's persuader advice exemption rule ... should be held unlawful and set aside." The ruling further noted that "The court's preliminary injunction preventing the implementation of the rule should be converted into a permanent injunction with nationwide effect." The court's preliminary injunction ruling is currently on interlocutory appeal before the Fifth Circuit Court of Appeals. If the Fifth Circuit has not ruled on the interlocutory appeal prior to Jan. 20, 2017, presumably the Trump administration will withdraw the appeal of the preliminary injunction ruling and allow Judge Cummings' permanent injunction to stand, thus invalidating the rule. The new rule would have dramatically expanded employers' disclosure requirements to the federal government concerning their activities in union-organizing campaigns. Significantly, the rule also extended these reporting obligations to law firms conducting what the rule called "persuader activities." Many, including Judge Cummings in his initial preliminary injunction ruling, asserted that these reporting obligations would require waiver by law firms of their attorney-client privilege.

RELATED PRACTICE AREAS

Labor and Employment
Labor Relations

RELATED TOPICS

Persuader Rule