

EMPLOYMENT SERVICES ALERT

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NLRB's Persuader Rule Permanently Dead

By ***Matthew D. Austin***, Partner

Labor lawyers at Roetzel have [warned clients](#) about the National Labor Relations Board's (NLRB) controversial "Persuader Rules" for five years. However, thanks to a court in Texas that permanently enjoined the rule, we no longer have to worry that it will become law.

The rule would have required financial reporting by employers and their consultants — including attorneys — of any arrangement by which the consultant undertakes activities, directly or indirectly, to persuade employees whether or not to exercise their right to organize and bargain collectively. That's a lot of legalese. In essence, the National Labor Relations Board tried to create a law that, among other things, required the disclosure by labor lawyers of the nature of their relationship with their clients. This rule sought to expose attorney-client privileged information.

According to the court's opinion:

"[T]he New Rule goes well beyond what Congress ever envisioned and presents the classic case of an administrative diktat in search of a problem that the law never sought to solve. In a time of labor relations far removed from the 1950's, the New Rule turns LMRDA on its head and now functionally enjoins the guarantees of confidentiality, loyalty, and candor that are central to the very existence of attorney-client relationships. Though LMRDA expressly exempts from its scope an intent to interfere with the attorney-client relationship, the New Rule breaches that accord by classifying as public the information shared only between attorney and client, creating impossible circumstances of conflict, and transforming lawyers into vending machines of law rather than the confidants, counsellors, and advisors required by the canons.

In its quest for "transparency," the New Rule runs roughshod over the foundations of the legal profession and the fundamental right of everyone to be able to confidentially consult with counsel about anything...."

While the death of the Persuader Rule was likely once President-elect Donald Trump took office, employers and their labor counsel are giving thanks this holiday to the Texas court that upheld the sanctity of the attorney-client privilege.

If you have any questions about the Persuader Rule, please contact one of the listed Roetzel attorneys.

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