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EMPLOYMENT Alert

New Rule Imposes Reporting Requirements

On March 24, 2016, the Department of Labor (DOL) adopted a new interpretation of the "persuader rule" under the Labor Management Reporting Disclosure Act of 1959 (LMRDA), which is a statute that imposes reporting requirements on employers and consultants (which includes attorneys) where the consultant is retained to persuade employees regarding union-organizing activity. There is an advice exception to the reporting requirements. For more than 50 years, the DOL interpreted the advice exception to require disclosure only if the attorney or consultant attempted to persuade through direct contact with employees. The new rule changes that interpretation.

Under the rule, effective July 1, 2016, "indirect persuader" services will trigger significant reporting obligations for both employers and their attorneys, regardless of whether there is direct contact with employees. Indirect persuader activities include: (a) providing union avoidance advice and strategies; (b) planning, directing or coordinating activities undertaken by supervisors or other representatives, including meetings and interactions with employees; (c) providing and/or contributing content to material or communications for dissemination to employees; (d) conducting a union avoidance seminar for supervisors or other representatives; and (e) developing or implementing personnel policies, practices or actions for the employer (if the intent is to persuade employees).

Three lawsuits challenging the new rule are pending, and on June 27, 2016, the Northern District of Texas issued a nationwide preliminary injunction blocking enforcement of the rule. However, the final outcome of the litigation and the rule is uncertain. Accordingly, employers and labor consultants and attorneys should prepare to deal with this significant, potential change in the law.

In one of the other lawsuits, the DOL issued a helpful statement clarifying its position that it will not "apply the Rule to arrangements or agreements entered into prior to July 1, 2016, or payments made pursuant to such arrangements or agreements."

Recommendation

Assuming the rule goes into effect, if an employer does not have an agreement in place prior to July 1, 2016, both the employer and its consultant will be required to report indirect persuader activities to the DOL in a public record. The required report must be filed within 30 days of engagement and must identify the consultant, the types of persuader activities, the group of employees or labor organization at issue, and payment dates and amounts. There is also a yearly report that requires an attorney to disclose all "receipts from employers in connection with labor relations advice or services regardless of the purpose of the advice or services."

Therefore, all employers should strongly consider entering into a written engagement agreement with their law firm before July 1, 2016 that specifically references indirect persuader activities to be performed or that could be performed in the future in order to protect your company from these potential reporting requirements.

This alert was prepared by Hand Arendall's Employment and Labor Practice Group. For further information or assistance, please contact Lisa Darnley Cooper or the Labor and Employment Group attorney with whom you normally work.

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