

PERSUADER RULE—THE GOOD, BAD AND UGLY

“Indirect Persuasion”

Planning, directing, coordinating Managers

- Interviewing managers
- Coaching communicators
- Drafting campaign calendar
- Planning meetings

Providing persuader materials

- Drafting any communication
- DOES include any communication developed for employees (written, online, video, etc.)
- Does NOT include off-the-shelf communications drafted

Providing seminar for supervisors

- For supervisors or “other representatives”
- Related to how or what to communicate to employees – “object to persuade”
- Strictly legal advice NOT reportable (TIPS vs. FOE – can you really separate them?)
- NOT multi-employer, public seminars

Developing/implementing personnel policies or actions

- Policy to change someone’s opinion – “object to persuade”
- Union-free statement, always – other policies case by case
- Targeting individual employee based on union support

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What types of agreements are exempt?

- No “object to persuade”
- Counsel *exclusively* on legally permitted communication, legal compliance
- Review of communication (vs. drafting)
- Seminars that don’t train attendees on “anti-union tactics or strategies” for use by supervisors or representatives
- Surveys, vulnerability assessment for “union proneness” (push surveys DO trigger)
- Off-the-shelf (OTS) material (custom, or choosing most persuasive DO trigger)
- Associations can provide OTS materials or newsletters for all members (customization, newsletter to employees DO trigger)

REPORTING NON-PERSUADER ACTIVITY

DOL position: report *all* labor advice (even *non-persuasion*) in year report triggered

8th Circuit (*Rose Law Firm*) says only report persuader activity; 4th, 5th, 6th and 7th Circuits agreed with DOL position in past

DOL says LM21 form to be revised in September 2016

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THE DETAILS

Who does the rule apply to?

**Any outside consultant
or attorney**

Not limited to labor relations experts (could be PR, benefits, government affairs) – trigger is “object to persuade”

Does NOT apply to bona fide employee

What else is new?

Electronic filing

Checklist for detailing activities

Employer must provide EIN number

Effective Date: July 1, 2016