

insights

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A victory for attorney-client confidentiality: DOL takes formal steps to rescind controversial persuader regulation

In March 2016, the DOL issued a new regulation that greatly expanded the obligations of employers and their attorneys to publicly file sensitive information regarding so-called "persuader activity." Under the regulation, employers and their attorneys would both have been required to make these disclosures if attorneys provided standard advice regarding what can and should be said during a union election campaign. Even the generally pro-union leaning American Bar Association opposed the regulation; its former President Bill Robinson, III, testified before a congressional panel that he had "serious concerns" that the new rules would compromise attorney-client confidentiality. Just days before the regulation was scheduled to go into effect, a federal judge in Texas issued an injunction blocking its enforcement.

The Obama Department of Labor officials promptly appealed that ruling, but proceedings had been delayed pending President Trump's appointment of new Secretary of Labor. Last week, in [an editorial published in the Wall Street Journal](#), Labor Secretary Acosta announced that the DOL would withdraw the new regulation. The DOL formally made this proposal on Monday, May 22.

Assuming the new regulation is fully rescinded, the law will remain as it has been for the last 50 years. Employers will be free to obtain advice as to how to persuade employees with respect to unionization without publicly disclosing the advice or the amount paid. Disclosures will only be required for persuaders who communicate directly with employees.

If you have any questions about this development or dealing with unions or other concerted activity by employees, contact the Thompson Coburn labor and employment lawyer of your choice.

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