

Labor Department: Changes to Interpretation of Advice Exemption Apply Only to Agreements, Arrangements Entered Into After July 1

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The United States Department of Labor published its final rule relating to “persuader” activity under the Labor-Management Reporting and Disclosure Act on March 24, 2016. Under the DOL’s new interpretation, employers/clients as well as consultants/attorneys would be required to report to the DOL all arrangements in which an “object” (directly or indirectly) of the services provided by the consultant/attorney is to persuade employees about the manner of exercising the employees’ “right to organize and bargain collectively through representatives of their own choosing” under federal labor law. (For details, see our article, [DOL’s Rule Redefining LMRDA ‘Advice Exception’ and Expanding Types of Activities Considered Persuasive, Reportable is Finalized – Effective Late April 2016.](#))

The final rule is to take effect on April 25, 2016. Nevertheless, the final rule stated that it would be applicable only to arrangements and agreements (and payments associated therewith) entered into on or after July 1, 2016. It was unclear whether the final rule would require reporting for arrangements and agreements entered into *between* April 25, 2016, and July 1, 2016, if the payment was made after July 1.

The DOL has clarified its position on this issue. In connection with one of the lawsuits against the DOL challenging the overall validity of the final rule, the agency in a status report filed with the court stated:

The Department 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. Consequently, under the Rule no employer, labor relations consultant, or other independent contractor will have to report or keep records on any activities engaged in prior to July 1 that are not presently subject to reporting, or file the new Forms LM-10 or LM-20 (revised pursuant to the Rule) for any purpose prior to July 1.

Jackson Lewis will continue to monitor and provide updates as new information becomes available on the rule and the lawsuits challenging its validity. We provide clients with the full range of workplace law advice and representation, including on any matters under the National Labor Relations Act. If you have questions about the new rule or any related matters, please contact the attorneys listed or the Jackson Lewis attorney with whom you regularly work.

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