

## **Proposed DOL rule could require employers report agreements with their attorneys**

By Steven W. Suflas and Timothy R. Mulliner

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The Department of Labor has asked for public comment on a proposed rule that would significantly affect reporting requirements for agreements with labor relations consultants, including attorneys. The Labor-Management Reporting and Disclosure Act requires employers and consultants to report any agreements that, directly or indirectly, are intended to “persuade employees” with regard to their collective bargaining rights. The proposed rule would severely narrow the exception to those reporting requirements by redefining the term “advice” given to employers.

Until now, the Labor Department has broadly interpreted this “advice” exception to include any activity that does not involve direct contact between the consultant or attorney and employees. The DOL’s new interpretation would narrow the definition of advice to “an oral or written recommendation regarding a decision or a course of conduct.” If the attorney’s actions go beyond ensuring compliance with the law and are deemed to have the objective of persuading employees, those actions must be reported. The following are a few examples cited by the DOL under the proposed rule:

- An attorney’s revisions to a proposed letter to employees would trigger reporting requirements if those revisions went beyond advice regarding the exercise of the employer’s legal rights and instead enhanced the persuasive message of the letter.
- A seminar presented by a law firm would trigger reporting requirements if, for example, it involved the training of supervisors to conduct individual or group employee meetings in a manner that would persuade employee behavior.
- If an attorney’s actions involve both “advice” and the persuasion of employees, the advice exemption would no longer apply. The DOL’s new interpretation would require reporting “in any situation where it is

impossible to separate advice from activity that goes beyond advice.”

Employers and attorneys are encouraged to review [76 Fed. Reg. 36,178](#) regarding this significant change of interpretation and other changes to LMRDA, including mandatory electronic filing, detailed reporting requirements to describe a consultant agreement, and changes to the relevant forms. The deadline for public comment on the proposed rule is August 22, 2011.

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