



# Transportation Law Alert

**SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY**

**U.S. DEPARTMENT OF LABOR PUBLISHES ITS FINAL “PERSUADER”  
REGULATION**

On March 24, 2016, the U.S. Department of Labor published its final “persuader” regulation, expanding the reporting requirements of employers who use consultants (including attorneys) for union avoidance purposes. Historically, employers were required to submit publicly accessible reports to the DOL when hiring consultants to communicate directly with employees in an attempt to persuade employees to reject unionization. The new persuader regulation, which will apply to all consultants engaged or used after July 1, 2016, expands the reporting requirement to indirect persuader activities such as helping managers persuade workers, providing materials to employers to persuade workers, conducting union avoidance seminars, and developing personnel policies to persuade workers. For example, reporting will be required when employers use consultants to plan employee meetings or develop scripts for managers to follow in meetings, assist in communications to employees, develop personnel policies designed to persuade employees, and identifying employees for targeting.

The DOL, in its [Fact Sheet](#) summarizing the regulation, highlights the regulation as creating transparency. The DOL, however, also makes its support for unionization clear by identifying the need to increase wages and suggesting it can more easily be accomplished “when working people band together and raise their voices.” Similarly, the Teamsters union has hailed the new regulation as putting a stop to employers’ historic ability to have consultants “do the dirty work of union-busting and intimidating employees” and then “wash their hands of the whole thing.”

The new [persuader regulation](#) plainly places an obstacle in the path of employers who oppose unionization. Although the new regulation does not expressly prohibit persuader activities, it requires employers to file publicly available reports identifying consultants used by the employer, the activities involved, and the fees paid to the consultant. The public reporting obligation, itself, has widely been acknowledged as a deterrent to the use of consultants, as employers are naturally averse to publicizing financial and operational information that may be

used not only by unions, but also by competitors. Further complicating the analysis is the potential for confusion as to when an attorney's advice on a legal issue associated with a campaign may blend into nonexempt, and therefore reportable, persuader activities. Such confusion could lead to regulatory violations for failure to report, and it may even discourage employers from engaging in counsel altogether.

It remains to be seen whether the DOL's final persuader regulation will be challenged in court prior to implementation. Employers should nevertheless evaluate their labor relations and union avoidance plans and activities in light of the new persuader regulation to ensure compliance. For more information on the new persuader regulation and its potential effect on the workforce, please contact Jim Hanson ([jhanson@scopelitis.com](mailto:jhanson@scopelitis.com)) or Jack Finklea ([jfinklea@scopelitis.com](mailto:jfinklea@scopelitis.com)) at 317-637-1777, or Don Vogel ([dvogel@scopelitis.com](mailto:dvogel@scopelitis.com)) at 312-255-7200.