

# Persuader 101

Understanding the Impact  
of DOL Proposed Rules  
on Companies' Access to  
Professional Advice

# Basic Unionization Process

1

A “unit” of employees talks with organizers about becoming unionized. Employees are asked to sign “authorization cards” to demonstrate their interest in the union.

2

If organizers collect enough signed cards, the union submits the cards to the NLRB in a request for an election.



“Unit” of Employees



Union Organizers



National Labor Relations Board



Secret-Ballot Election

3

The NLRB holds a secret-ballot election at the worksite. If the majority of submitted ballots are marked “yes,” then the entire unit is unionized.

# Employer's Right to Communicate

1

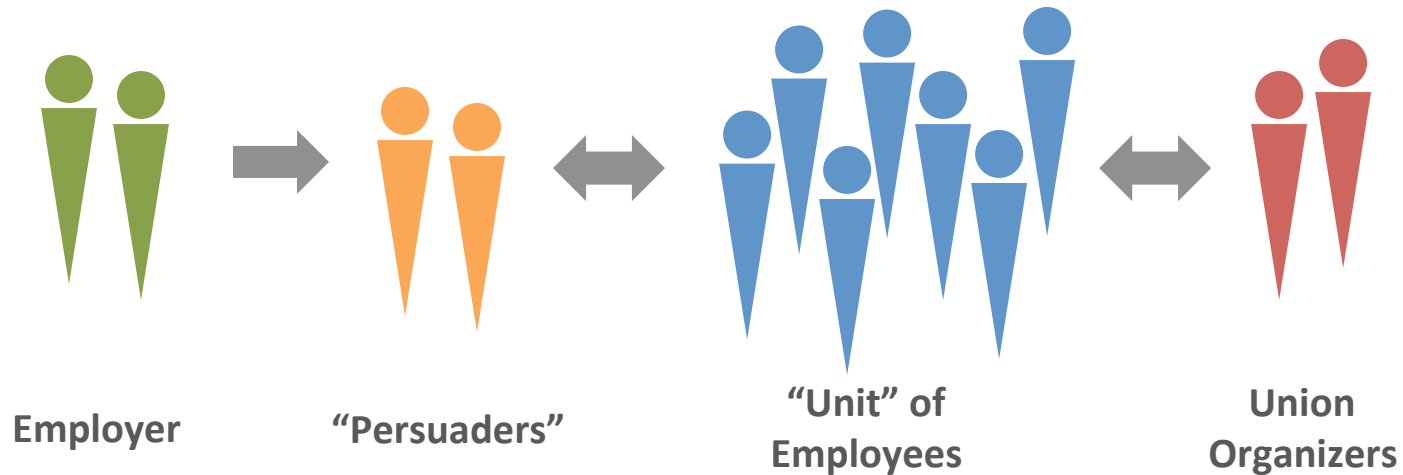
To ensure that employees get accurate and balanced information about unionization, employers have the right to communicate with their workforce. This is done within specific guidelines established by the NLRB.



# Use of “Persuaders”

1

Sometimes – because of a lack of staffing, a lack of experience, or other reasons – employers may retain outside consultants to communicate directly with employees. In labor law terminology, these consultants are called “persuaders.” This communication too is governed by strict NLRB guidelines.



# Disclosure Rules on “Persuaders”

Since 1959, rules governing “persuaders” are very strict, and require the submission of detailed disclosure forms to the U.S. Department of Labor (DOL)



“Persuaders”



Employer

1

Within 30 days of being retained, “persuaders” must file disclosure forms and attach copies of any agreements signed with the employer.

2

Within 90 days of the end of their fiscal year, “persuaders” must file financial reports detailing how much they were paid for all clients, what they did, and how much they paid each of their employees or contractors.

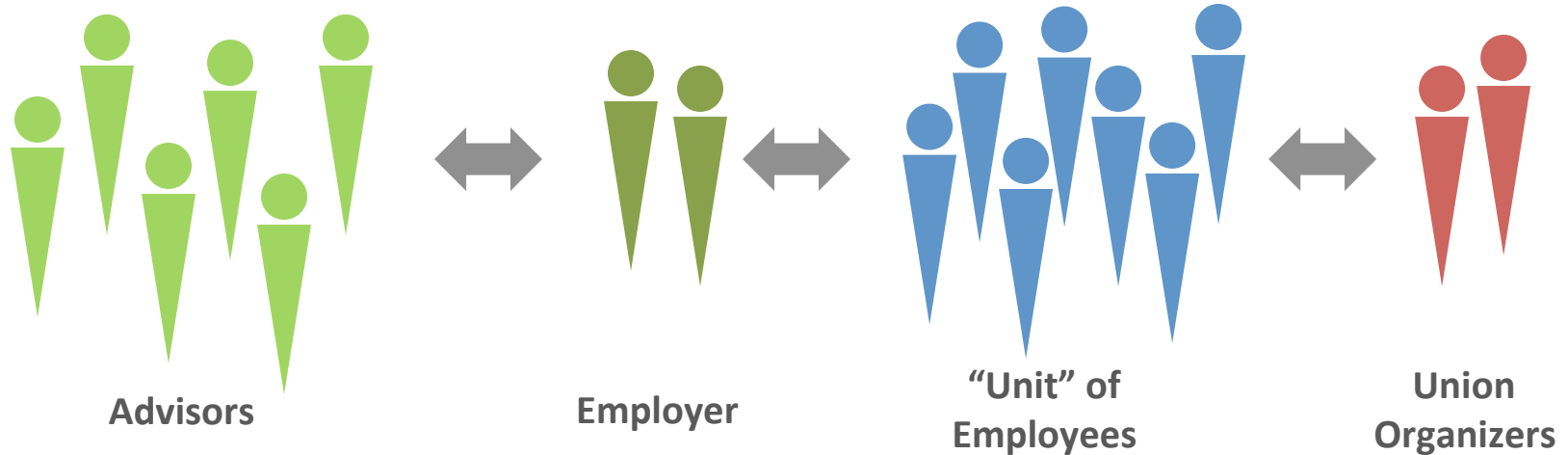
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Within 90 days of the end of their fiscal year, employers too must file detailed financial disclosures about payments to “persuaders.” All disclosure documents are public.

# Right to Confidential “Advice”

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Employers historically have been able to get advice from consultants and advisors without triggering “persuader” restrictions. Advisors often include attorneys, benefits consultants, employee survey companies, communications consultants and others.



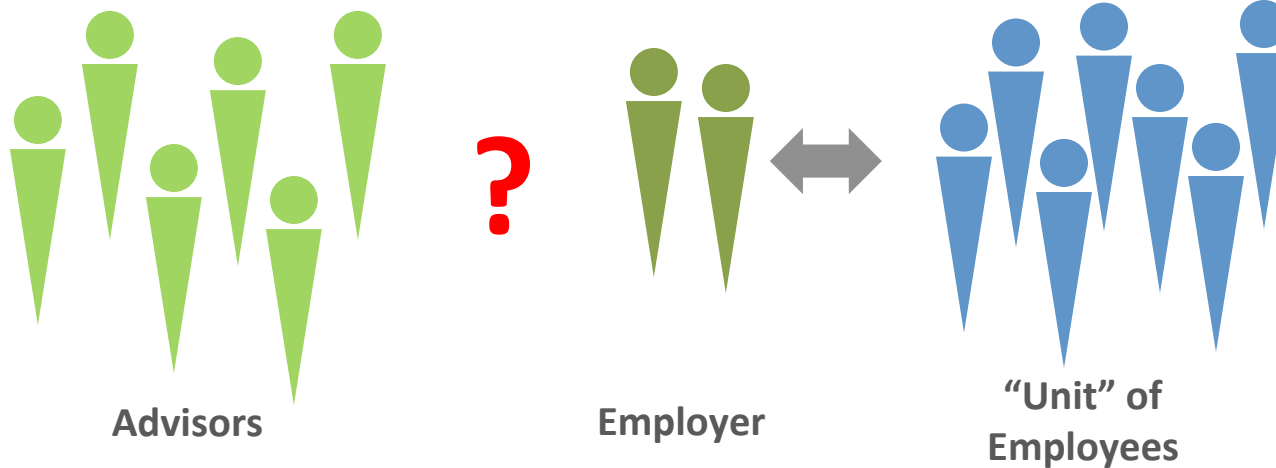
2

In situations involving unions, general guidelines for advisors include that they offer advice – which the employer may or may not accept – and that the advisors do not communicate directly with line-level employees.

# Changing the Rules

1

DOL is proposing to include advisors under the persuaders' disclosure rules, even in situations that don't involve union issues.



2

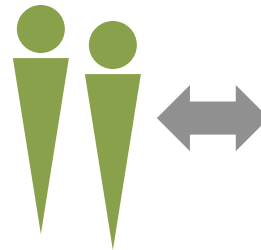
Triggering thresholds are sweeping and vague, and create attorney-client and other confidentiality concerns because of the disclosures. Employers and advisors face significant financial and criminal penalties for non-compliance.

# Ultimate Outcome

- 1 The rule's **vague and confusing requirements** creates uncertainty and the **risk of criminal sanctions** for companies.



Advisors



Employer



"Unit" of Employees

- 2 Therefore, many employers – particularly smaller businesses – may simply forego legal and other assistance, potentially **creating greater risk of non-compliance with other laws and regulations**.



# Day-to-day Concerns

Many everyday situations may now unexpectedly trigger disclosure requirements, such as:

- 1 A PR consultant writing a CEO speech for an employee meeting.
- 2 A benefits consultant helping a company update its health and retirement offering.
- 3 A polling firm conducting an employee-engagement survey.
- 4 An attorney reviewing changes to a company's employee handbook.
- 5 A consultant teaching supervisor-improvement courses.
- 6 A trade association providing education and resources to member companies on employment-related issues.
- 7 A consultant helping to organizing an employee-appreciation event.

... and many more possibilities.

# Conclusion

1. Time-tested “persuader” disclosure rules **remain fully adequate for DOL purposes** – reports are detailed and timely, and current processes are understood
  - DOL has not disclosed what – if anything – they will do with the deluge of new information
2. Expansion of disclosure to “*advice*” creates **confusing array of everyday situations** that require complicated record-keeping and disclosure
3. Demand for detailed disclosure creates **serious attorney-client confidentiality and other concerns**
4. Cumbersome and confusing regulations will drive many employers – particularly small businesses – to forego advice and assistance, potentially creating **greater non-compliance problems with other laws and regulations**