KAMER ZUCKER ABBOTT JOINS NATIONWIDE LAWSUIT AGAINST U.S. GOVERNMENT AS ADMINISTRATION EXPANDS ITS WAR ON PRIVACY

Latest Government Overreach Escalates Attack on American Privacy, Unconstitutionally Forcing Companies to Report Details of Confidential Discussions with Attorneys

New "Persuader Rule" Regulation Expected to Cost As Much As $9 Billion in First Year

Las Vegas – March 31, 2016 – Kamer Zucker Abbott – a member of the Worklaw®Network, a nationwide affiliation of independent law firms practicing labor and employment law – joined in the filing today of a lawsuit against the U.S. Department of Labor and Secretary Thomas Perez to block the federal government's illegal intrusion into private conversations regarding employment, labor and HR matters between attorneys and employers. Under a new Interpretation of current "persuader rule" law released by the Department on March 23, the government will now require vast numbers of employers and attorneys in America to disclose confidential information — including the nature of conversations, copies of representation agreements, the amounts of fees paid, and other details – about employment, labor and HR-related legal matters. The rule requires disclosure of advice provided after June 30, 2016.

"As counselors to the business community here in Nevada we are taking a stand to protect employers' rights to seek advice and assistance in confidence, and keep government out of employer conversations with their attorneys," said Gregory J. Kamer. "Without a doubt, this is the single-most important regulatory threat to every American company today, and we will join in leading the fight to block the government's irresponsible attack on these freedoms."

Under rules in place for decades, based on the bedrock principle of attorney-client privilege, employers have been free to seek legal assistance and consultation on labor and employment matters without fear of government intrusion into private conversations. This new Interpretation will force the disclosure of confidential attorney-client information.

The Interpretation is an election year favor to organized labor, a favor that violates the First Amendment because it is designed to suppress speech that opposes unions. The breadth of the Department's Interpretation means that almost any common employment question or HR advice could trigger disclosure to the government. For instance, under the interpretation, attorneys and employers will now be left questioning whether they have to submit a report to the Department every time the attorneys perform innocuous HR-related activities such as editing an employee handbook, consulting with an employer about an employee complaint, planning an employee-satisfaction survey, or revising content for employees on an employer's website.

If attorneys or employers "guess wrong," the consequences are harsh—jail time and fines for attorneys and employers are possible consequences under the law.

The Department's reinterpretation also violates the Regulatory Flexibility Act, which requires the government to conduct detailed cost-benefit analyses studies of new regulations on small businesses. The Department estimated the impact of its change on small business at $826,000 annually, a figure that the Department of Labor's former Chief Economist, Diana Furchtgott-Roth, calculates as woefully inadequate given the expansive scope of the regulation and impact on vast numbers of employers in America.

"Complying with the proposed rule could cost establishments about $9 billion in the first year and about $5.5 billion in subsequent years, for a ten-year cost of $60 billion," Furchtgott-Roth concluded in a January 2016 report for The Manhattan Institute. "The Department should have examined what the cost would be if all potentially affected employers and advisers were to file. This would have provided an honest assessment of the potential effect of the proposed rule."

The Department's failure to properly take into account how this reinterpretation would impact small business owners is a glaring omission and another reason to set the regulation aside.

Worklaw®Network's lawsuit, Worklaw® Network v. Department of Labor, which was filed in the United States District Court for the District of Minnesota, seeks to stop and overturn the Department of Labor's unconstitutional reinterpretation of the "advice exception" in Section 203(c) of the Labor Management Reporting and Disclosure Act, 29 USC 433(c).

Kamer Zucker Abbott is based in Las Vegas, Nevada with 9 attorneys practicing management-side labor and employment law. It is a member of the Worklaw®Network, a nationwide affiliation of independent law firms practicing management-side labor and employment law, with member firms, attorneys or affiliates in 27 U.S. states. For more details on this matter, contact Gregory J. Kamer at www.kzalaw.com.

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