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THE HIGH COSTS OF PROPOSED NEW LABOR-LAW REGULATIONS

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This spring, the U.S. Department of Labor (DOL) is expected to issue a new interpretation of the “advice” exemption to the Labor Management Reporting and Disclosure Act. The Labor Department’s new interpretation would require businesses to disclose the names of any attorneys or consultants from whom they seek advice regarding union-organizing activities.

In so doing, the administration will sweep away over 50 years of precedent and contravene the express language and intent of the law originally passed by Congress. The cost of the proposed rule could be in the billions of dollars—many multiples of the administration’s own, much lower, estimate, which notably (and perhaps conveniently) falls below the level required for mandatory cost-benefit review. By compromising companies’ ability to seek advice on compliance with federal labor law, the proposed rule would jeopardize firms’ as well as workers’ statutory rights. By raising the cost of doing business in America, the proposed rule would drive some businesses offshore and discourage others from locating here, harming economic growth.

This paper looks first at the text and history of the “persuader rule,” which the administration is trying to rewrite without adequate attention to the full costs and implications of doing so and in a way that advances the interests of organized labor. Next, the paper places the administration’s position in context, by exploring the decline in

SUMMARY OF DIRECT COSTS

The proposed rule could cost the economy between \$7.5 billion and \$10.6 billion during the first year of implementation, and between \$4.3 billion and \$6.5 billion per year thereafter. The total cost over a ten-year period could be approximately \$60 billion. This does not include the indirect economic effects of raising the cost of doing business in the United States.

private-sector unionization and the Obama administration's extraordinary efforts to reverse that decline. The paper then explores the proposed rule's likely costs, which could exceed the Labor Department's estimate by a factor of 10,000. Finally, the paper offers conclusions and policy recommendations.

LEGAL CONTEXT: STATUTORY AND REGULATORY BACKDROP

The Labor Department's June 2011 proposal to require businesses to report any contact with advisers on union-related issues derives from the Labor-Management Reporting and Disclosure Act of 1959, Senate Bill 1555 (the "Act" or "LMRDA"). The law's broad objective was to improve transparency in the unionization process by establishing uniform reporting requirements for unions and employers, as well as for hired consultants who make presentations directly to firms' employees. For 50 years, consistent with the clear text of the statute and its legislative history, the Department of Labor has not required firms to report the names of advisers who did not interact directly with employees. The Obama Labor Department seeks to change this.

Statutory text. Section 203 of the Act provides a general labor-consultant disclosure rule as well as an express exemption to that rule. Under Section 203(b), consultants who enter into agreements with employers to "undertake activities" directly or indirectly intended "to persuade employees to exercise or not to exercise . . . the right to organize and bargain collectively," or

to provide employers with information on employees involving labor disputes, are required to report this information to the Labor Department.¹ Section 203(c) exempts from this reporting requirement various activities, including the providing of "advice" to firms on labor-related issues: "Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer."²

Legislative history. The Report of the Senate Committee on Labor and Public Welfare on the Act (S. 1555) clarified that the statute was not intended to require disclosure of legal and labor-relations-consultant agreements: "The committee did not intend to have the reporting requirements of the bill apply to attorneys and labor relations consultants who perform an important and useful function in contemporary labor relations and do not engage in activities of the types listed in section 103(b) [now 203(b)]."³

To clarify this intent, Senator Barry Goldwater (R-Ariz.) proposed the express exemption in Section 203(c) in the form of an amendment to the bill, invoking employers' need to get good legal advice on labor issues. Senator John F. Kennedy (D-Mass.) welcomed the amendment, though he questioned its necessity—because he felt the intent of the provision itself was so clear. On the floor of the Senate, Kennedy said, "There is no doubt in my mind that the bill which was originally drafted by lawyers adequately protected them. Therefore, I do not feel that the amendment offered by the Senator from Arizona is wholly necessary. But in order that there may be no question about it I will accept the amendment."⁴

The reason that Senator Kennedy initially thought that the amendment was superfluous becomes clear in the context of the legislative backdrop underlying the rule. From 1957 to 1960, the United States Senate Select Committee on Improper Activities in Labor and Management held the so-called McClellan hearings, which focused in part on a consulting

firm headed by a Nathan Shefferman from Chicago. Mr. Shefferman employed about 35 consultants who often concealed their true identities. They would go to towns where union activity was taking place and form antiunion employee committees, pose as employees and argue against the union, and spy on union meetings and activities. These “consultants” would then report the information gleaned on union-organizing activities back to Mr. Shefferman. They had direct employee contact, and the middlemen, as they were called, concealed their true identities from the employees.

Thus, in legislative context, the relevant disclosure rule in the LMRDA was designed to force employers to reveal the identities of such consultants and to expose fees paid to them, so that employees would know the source of their information. Some of these consultants may have been attorneys, but they never acted as attorneys to advise employers. The Goldwater/Kennedy agreement that led to the exemption in Section 203(c) was not particularly controversial at the time, since no one ever envisioned the reporting being applied to lawyers in the practice of law.

Historical agency interpretation. Since 1962, except for a brief period in 2001, Section 203(c) was taken to mean that firms did not have to report the names of advisers to the Labor Department if these individuals had no contact with employees. This was affirmed in a 1989 memorandum by assistant secretary for Labor-Management Standards Mario A. Lauro, Jr., who wrote: “[A] usual indication that an employer-consultant agreement is exempt is the fact that the consultant has no direct contact with employees and limits his activity to providing to the employer or his supervisors advice or materials for use in persuading employees which the employer has the right to accept or reject.”⁵

The Obama Labor Department’s proposed new interpretation. The Labor Department is now arguing that regulations need to be changed so that the names of all consultants are reported. The department

states that “the distinction between activities properly characterized as ‘advice’ and those that go beyond ‘advice’ has not been made clear,” especially when the employer relays material written by an adviser directly to his employees.⁶ The department concludes that “it is fair to infer that reporting is required when a person engages in persuader activities, whether or not advice is also given.”

The Labor Department’s reasoning not only sidesteps the express language of the Section 203(c) exemption but also turns the rationale for the Act’s disclosure rule on its head. In 1959, the drafters of the Act were concerned that employees might be misled if information was given to them by a third party without the employees knowing that it was sponsored by the employer. The proposed Labor Department rule, in contrast, requires the disclosure of third parties hired by employers whose advice may inform employers’ own direct communications with employees even when the employer’s sponsorship for the ideas conveyed to employees is self-evident.

POLITICAL-ECONOMIC CONTEXT: DECLINING UNION MEMBERSHIP AND THE OBAMA ADMINISTRATION’S RE- SPONSE

Two key facts are essential to understanding the economic and political context of the Labor Department’s proposed new interpretation: the steady decline of union membership in the United States; and the Obama administration’s efforts to reverse this trend.

Declining union membership. Union membership is declining steadily in the United States, as can be seen from Figure 1. In 1983, 20 percent of American workers belonged to unions. Between 2000 and 2008, union membership declined by a full percentage point, from 13 percent to 12 percent of the labor force. Membership declined by another percentage point, to 11 percent of the labor force, during President Obama’s first term.⁷ Only 6.6 percent of private-sector workers belonged to unions in 2014, down from 16.5 percent in 1983.

With union membership down, unions are eager to sign up new members in order to swell their ranks, replenish their treasuries, fund staff salaries, and infuse new money into union-sponsored pension plans, many of which are underfunded. The persuader rule would assist them in this effort.

Obama administration actions. The Labor Department’s proposed new LMRDA interpretation is consistent with previous pro-labor actions taken by the Obama administration. Whether by coincidence or not, the department first proposed the new rule in June 2011, six months after the so-called Employee Free Choice Act (EFCA) failed to pass the Democrat-controlled 111th Congress in 2009–10.

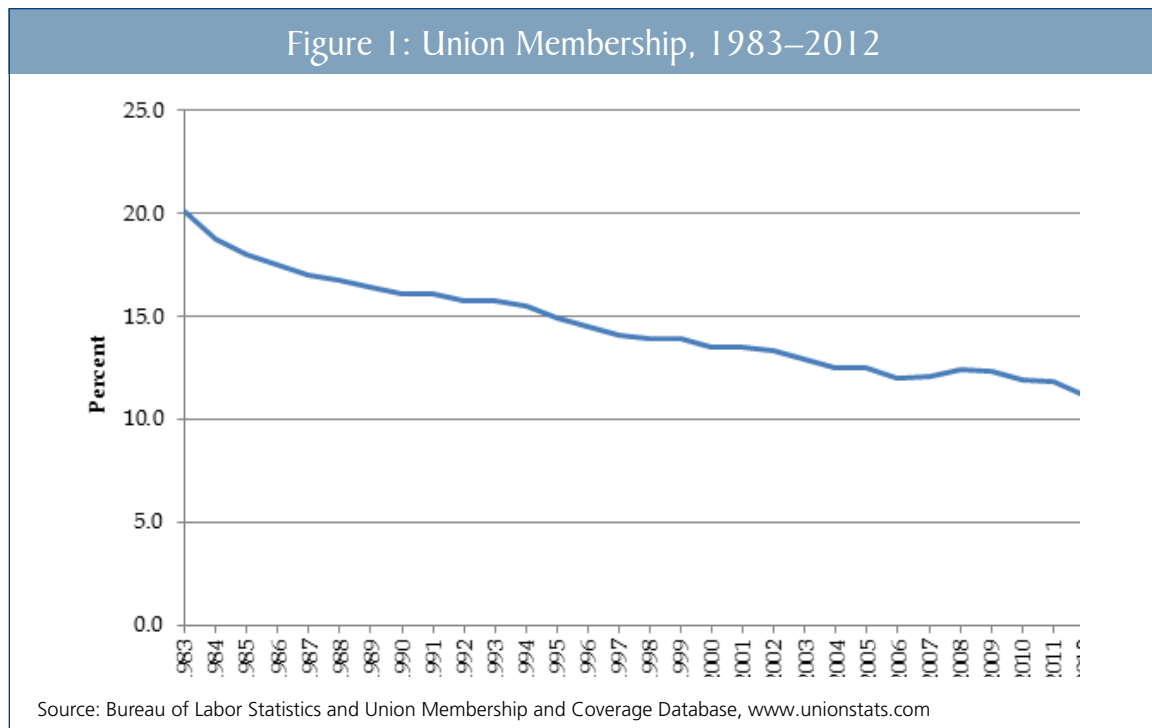
The EFCA would have taken away workers’ right to a secret ballot in elections, as has been required since the 1935 National Labor Relations Act, and allowed workers to choose to join unions by checking a card circulated and retained by the union—hence the popular name “card check.” It also would have imposed mandatory arbitration for contract disputes between unions and newly unionized firms.

Unions hoped for the passage of the EFCA in order to shore up their shrinking base. Card check ran into opposition, however, because it opened the possibility of union intimidation: organizers could have visited workers at home, and they would know who signed and who refused.

With the failure of the EFCA, the Obama administration took other steps to support organized labor. In April 2011, the National Labor Relations Board’s (NLRB) acting general counsel, Lafe Solomon, investigated Boeing for opening a plant to build Dreamliner aircraft in South Carolina rather than in Washington State, the site of an existing plant. (The case was dropped in December 2011 after the machinists’ union settled with Boeing.)

The NLRB, an independent agency whose governing board is appointed by the president, has issued many new rules. One, on August 30, 2011, later overturned by the courts, required employers to post a notice informing workers of the right to unionize (but not the right to decertify a union).⁸ A second rule, known as “quickie elections,” reduced the time for a workplace

Figure 1: Union Membership, 1983–2012



election for union representation from an average of 38 days to an average of 15 days after the union filed a petition, leaving little time for the employer to communicate with the employees about unionization issues. A third rule, known as “micro-unions,” has allowed portions of companies to be represented by different unions, so that shoe sellers in a department store could be represented by one union and perfume sales assistants by another union.

Finally, in January 2012, the president invoked his recess-appointment power to appoint three NLRB officials while the Senate was still technically in session—appointments subsequently declared unconstitutional by the U.S. Court of Appeals for the D.C. Circuit.⁹

COSTS OF THE PROPOSED RULE

A change in the interpretation of the LMRDA advice rule would have a substantial effect on the cost of doing business in America. Employers would have to study the new rule to determine if they needed to fill in the forms. Many firms would need to file, whether or not their employees were considering joining a union, because they receive advice on a regular basis. The indirect costs would include making it more difficult for employers to get advice when unions attempt to organize a workforce.

Direct costs. We do not know much about the extent to which firms now seek advice, and knowing the amount of advice demanded is necessary to calculate the costs of the proposed rule. Moreover, given the intent of the proposed rule to foster a more pervasive and aggressive union-organizing effort, the current degree of reliance on expert advice may be an inadequate basis for calculating costs. In the face of more widespread and aggressive unionization efforts, the number of firms desiring advice could increase markedly; it is that prospective number that is relevant to the cost analysis.

The department’s estimate. Despite the increase in regulations from the NLRB, the Labor Department calculated that the entire burden of the rule would be \$826,000 annually, based on the number of firms that would be expected to complete the form and the time that it would take these firms to complete it.¹⁰ When laws change, firms often need to consult legal counsel, which is not accounted for in the department’s calculation of the burden.

To arrive at this cost, the department assumed that it would receive forms from only 3,414 employer firms (Form 10) and 2,601 advising firms (Form 20). Employers would spend two hours per year completing Form 10, and advisers would spend one hour completing Form 20. The department does not provide a cost estimate for firms completing the required Form 21, although instructions for the form estimate the reporting burden to be 35 minutes per response.¹¹

The department’s cost estimate is too low. The department has underestimated the number of entities that will file the forms as well as the time that it will take firms to comply with the regulations, for reasons that are discussed in Appendix 1. 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.

Independent estimate of direct costs. Table 1 shows our calculations, which are described in detail in Appendix 1. We calculate paperwork costs for Form 10, Form 20, and Form 21 potential filers, and provide a low time-scenario estimate and a high time-scenario estimate.

We estimate that the total burden for the first year would be between \$7.5 billion and \$10.6 billion. The subsequent annual costs amount to between \$4.3 billion and \$6.5 billion. The total cost over a ten-year period could be approximately \$60 billion.

This brings the cost of the proposed rule well over the \$100 million level that requires the agency to perform

a cost-benefit analysis. The department calculated no benefits from the proposed rule.

Indirect costs. The department did not take into account negative indirect effects of the proposed rule. These include firms making errors and poor decisions because they do not ask for advice. Some advisory firms may leave the advisory business, some may lose business, and some may close or consolidate. We do not add estimates of these costs—but the qualitative existence of such costs is noteworthy.

The proposed rule reduces companies' ability to get advice on complex legal issues. When unions want to organize workplaces, firms are limited in the measures that they are allowed to take. Some measures are known as "unfair labor practices" and are not permitted. Firms need advice as to what constitutes an "unfair labor practice" so as to be able to comply with the law.

For an indication of some of these costs, consider what would happen if the Labor Department required documentation of any attorneys consulted for sex-discrimination cases, and released the names of all the attorney's other clients. This would lead to a reduction in the use of advisers in sex-discrimination cases and far more errors on the part of firms. The result could actually be harm to the victims of sex discrimination that the law sought to protect.

This discouragement of the use of expert counsel in legally complex situations has effects that reach further than those employers who seek advice as to how to approach union organization. Law and human-resources firms that provide assistance construed as persuasive under the proposed rule will be required to disclose information concerning all labor-relations-related services that they provide. This will include client names, transaction amounts, and general descriptions of the services provided.

In other words, if a lawyer offers advice on a single "persuasive action" for a single firm, he will need to

disclose information about all client relationships regardless of whether those other relationships included persuader services, or even services specifically concerning unionization issues. All labor-relations advice seekers would be revealed and use of such services discouraged.

The potential to appear as a named client of a law firm and have that relationship reported due to an interaction having nothing to do with one's own business makes engaging legal counsel on labor matters less attractive in general. It opens the way for union campaigns not only against individual companies but also against the law firms that help them and the firms' other clients. The disclosure requirement would make it possible for organizing drives to stigmatize, and thus inhibit, the firms that provide strategic and legal advice to firms. It discriminates against small businesses, which do not have the in-house staff of large corporations to provide legal and other expert advice. As the American Bar Association (ABA) noted in its comments on the proposed rule to the Labor Department, these far-reaching reporting requirements "could very well discourage many employers from seeking the expert legal representation that they need," which "might have the unintended consequence of increasing the number of employers who, without advice of counsel, would engage in unlawful activities."¹²

Because all labor-relations advisory relationships could become collateral damage under this new interpretation, the proposed rule will spur a contraction of economic activity in the market for legal counsel on all labor-related issues, not merely union elections. As a result, employers will be more likely to behave in an illegal manner, unintentionally infringe on workers' rights, and incur costs for litigation. The lack of legal-advice services provided will result in much more costly interactions for all involved.

Furthermore, firms are facing new NLRB and DOL rules this year. These rules need to be explained by

legal professionals. In addition to the aforementioned rules on quickie elections and micro-unions, the agencies are issuing rules and guidance that change the definitions of independent contractors and joint employers.

The NLRB is already working with the Labor Department to ensure that the new reporting requirement is fulfilled. Now, when a law firm represents a firm before the NLRB, the NLRB (an independent agency) sends the name over to the Labor Department (an executive branch agency), and the Labor Department contacts the lawyer to ask if he should be filing reporting forms.

Finally, the indirect costs of the proposed rule include the lost productivity and drag on economic growth from a loss of labor-market flexibility and from a loss of jobs to overseas competitors. No other industrialized country requires disclosure of the names of law firms offering labor advice.

CONCLUSION

Legal and ethical rules prevent firms from revealing their clients without prior permission. There are many good and honest reasons why confidentiality between a lawyer and a client is preferred. The government is chilling the free exercise of citizen rights when it seeks to invade the confidentiality of the attorney-client relationship.

Firms can receive private advice if their CEO is charged with embezzlement or sexual harassment, or if charged with malpractice or tax fraud. But if any firm wants to know how to deal with a union-organizing drive, or any other union issue, the new interpretation would make all dealings public.

This paper has described the effects of the Labor Department's new interpretation of the "advice" exemption of the Labor Management Reporting and Disclosure Act. This rule would require any company that gets advice about unionization—legal advice,

public-relations advice, or even advice on improving premises to make employees happier—to make public the names of these advisers. These advisers would then have to make public a list of their existing clients on any labor-related issue.

The Labor Department's new interpretation runs counter to the clear text of the statute enabling the regulation in question, its legislative history, and 50 years of precedent interpreting it. The new rule would discourage law firms from offering advice on labor issues to employers and would make it more difficult for employers to get legal advice.

Complying with the proposed rule could cost establishments about \$9 billion in the first year and about \$5.4 billion in subsequent years, for a ten-year cost of \$60 billion. These are funds that could be used for expansion of investment and hiring more workers. At a minimum, the department should revisit its estimate that the rule will cost \$826,000 annually. The department assumes that a small number of firms will spend about one to two hours a year completing the new forms. However, most of the cost of compliance will come from learning about the new rule and preparing the information to be recorded on the form. The learning and preparation time are not included in the department's estimate. The explosion of costs with alternate assumptions shows that the department needs to provide a more credible, research-based estimate of compliance times and numbers of affected entities.

Our costs do not include the effects of less flexible labor markets, which will lead to fewer firms locating in the United States and some potentially going offshore. If the persuader rule becomes final, the United States would be the only country where firms would not be permitted to receive private legal advice about union matters. At a time when National Labor Relations Board regulations are changing and increasing in complexity, the persuader rule will hurt the employment of the workers whom the administration purports to represent.

APPENDIX I: CALCULATION OF COMPLIANCE COSTS

To arrive at the \$826,000 annual cost estimate of the persuader rule, the Department of Labor assumed that it would receive forms from only 3,414 employer firms (Form 10) and 2,601 advising firms (Form 20). Employers would spend two hours per year completing their Form 10, and advisers would spend one hour completing their Form 20. The department does not provide a cost estimate for firms completing the required Form 21, although instructions for the form estimate the reporting burden to be 35 minutes per response.¹³

By any standard, the department's cost estimate is too low. The department has underestimated the number of entities that will file the forms as well as the time that it will take for firms to comply with the regulations.

Take the number of filers, for instance. This number of employers, 3,414, represents less than 1 percent of the number of establishments of enterprises with 50 or more employees. To put the department's number in perspective, there were a total of 5.7 million firms, composed of 7.4 million establishments, in the United States in 2010, the latest year available for these data.¹⁴

The total number of advising firms estimated by the department, 2,601, is far below the number of human-resources consulting firms, 7,932, and labor-law-firm establishments, 19,041.¹⁵

Then take the number of hours that it takes to fill in the forms. True, some small employers and advisers might spend only two hours and one hour, respectively, per year physically filling in the forms. But even the smallest employers and advisers would likely spend far more time working on how to fill out the forms and creating and compiling the data files from which to complete the forms.

A parallel is the effort required to keep up with tax-deductible expenses. Firms do not carry around all the data needed to complete the tax return. They have to set up record-keeping systems and make daily entries of information that can then be tallied quickly and accurately at the end of the year. Just as with complying with tax laws, the potential information system costs of this rule are immense.

A more realistic assessment of the costs of these new forms to business would estimate a higher number of hours per firm, since businesses will need to spend time each year determining whether they are obligated to file.

Table 1 shows our calculations. We calculate paperwork costs for Form 10, Form 20, and Form 21 potential filers, and provide a low time scenario and a high time scenario.

In performing these calculations, we use a wage of \$104.33 per hour, which is equal to the median hourly wage of a chief executive increased by 30 percent to account for benefits.¹⁶

YEAR 1

The United States has 2.2 million enterprises with five or more employees, consisting of 3.8 million establishments. Of these, 1.7 million were establishments of enterprises with 50 or more employees, and 1.2 million establishments were part of enterprises with more than 500 employees.¹⁷

We assume that each establishment will spend two hours on the low end, or four hours on the high end, becoming familiar with Form 10 in the first year. This is the basis for our range of costs.

Additionally, we assume that 50 percent of establishments associated with enterprises with 500 employees or more will spend \$2,500 on legal counsel; 10 percent of establishments under enterprises with between 50 and 499 employees or more will spend \$2,500 on legal counsel; and 5 percent of establishments under enterprises with between five and 49 employees will spend \$2,500 on legal counsel.

These assumptions are very favorable toward the government in the absence of real data on take-up rates. The take-up rate is so critical to the analysis that it is unwise for the government to proceed here without the research necessary to establish a credible estimate of the take-up rate.

The United States has 6,195 human-resources consulting firms, made up of 7,932 establishments. According to Martindale-Hubbell, there are 301,129 law-firm establishments, of which 19,041 practice labor law.¹⁸

We assume that the human-resources consulting establishments and the labor-law practices will spend 100 hours on Form 20 familiarization and 100 hours on Form 21 familiarization in the first year. This time is for multiple practitioners to learn the rule and for the firm to create and maintain the records for accurately completing the forms. This is an investment in future client work and is not directly billable to the firms.

YEAR 2 AND SUBSEQUENT YEARS

In the second and subsequent years, we assume that the same percentage of the 3.8 million establishments will spend \$2,500 on legal counsel. We assume that every establishment devotes between half an hour and one hour to Form 10; that those establishments associated with enterprises with 50 or more employees spend an additional 1.5 to 3 hours; and that those of enterprises with 500 or more employees spend an additional 14 to 28 hours. These incremental increases by enterprise size are included to account for the additional complexity and larger numbers of advisers consulted at larger firms.

For the advisory firms that have to complete Forms 20 and 21, we assume that the 7,932 human-resources consulting establishments and the 19,041 labor-law practices will spend 50 hours each learning about the new law and attending meetings and training seminars. Once again, this training is separate from billable hours.

We add the annual cost to the first year's initial familiarization cost to calculate the total burden for the first year, which is between \$7.5 billion and \$10.6 billion. Subsequent annual costs are between \$4.3 billion and \$6.5 billion.

Appendix Table I: Familiarization Costs for First Year

	Type of Enterprise	Number of Establishments	Hours per Establishment	Wage	Paperwork Burden per Establishment	Paperwork Burden (millions)
Form 10	5 or more employees	3,813,802	2 to 4	\$104.33	\$208.66 to \$417.32	\$796 to \$1,592
	<i>Subtotal Form 10 hours cost</i>					<i>\$796 to \$1,592</i>
		Number of Establishments	Establishments Seeking Legal Counsel	Cost	Legal Burden	Legal Burden (millions)
	5–49 employees	2,081,250	104,063	\$2,500	\$260,156,250	\$260
	50–499 employees	556,130	55,613	\$2,500	\$139,032,500	\$139
	500 or more employees	1,176,422	588,211	\$2,500	\$1,470,527,500	\$1,471
	<i>Subtotal Form 10 legal costs</i>					<i>1,871</i>
<i>Subtotal Form 10 costs</i>					<i>\$2,666 to \$3,462</i>	
Form 20		Number of Establishments	Hours per Establishment	Wage	Paperwork Burden per Establishment	Paperwork Burden (millions)
	Human-Resources Firms' Establishments	7,932	100	\$104.33	\$10,433	\$82
	Law Firms' Establishments	19,041	100	\$104.33	\$10,433	\$199
	<i>Subtotal Form 20 costs</i>					<i>\$281</i>
Form 21		Number of Establishments	Hours per Establishment	Wage	Paperwork Burden per Establishment	Paperwork Burden (millions)
	Human-Resources Firms' Establishments	7,932	100	\$104.33	\$10,433	\$82
	Law Firms' Establishments	19,041	100	\$104.33	\$10,433	\$199
	<i>Subtotal Form 21 costs</i>					<i>\$281</i>
Familiarization Total Cost						\$3,228 to \$4,024
Total First-Year Cost (familiarization + annual compliance cost)						\$7,566 to \$10,551
Source: Author's calculations and U.S. Census Bureau, Statistics of U.S. Businesses, 2010 Annual Data (detailed employment less than 500 employees), http://www.census.gov/econ/subs ; and Martindale-Hubbell, law-firm search, http://www.martindale.com/Find-Lawyers-and-Law-Firms.aspx?s=2						

Appendix Table 2: Annual Compliance Costs for Subsequent Years

	Type of Enterprise	Number of Establishments	Hours per Establishment	Wage	Paperwork Burden per Establishment	Paperwork Burden (millions)	
Form 10	5 or more employees	3,813,802	0.5 to 1	\$104.33	\$52.17 to \$104.33	\$199 to \$398	
	50 or more	1,732,552	1.5 to 3	\$104.33	\$156.50 to \$312.99	\$271 to \$542	
	500 or more employees	1,176,422	14 to 28	\$104.33	\$1,460.62 to \$2,921.24	\$1,718 to \$3,437	
	<i>Subtotal Form 10 hours costs</i>						<i>\$2,188 to \$4,377</i>
		Number of Establishments	Establishments Seeking Legal Counsel	Cost	Legal Burden per Establishment	Legal Burden (millions)	
	5–49 employees	2,081,250	104,063	\$2,500	\$2,500.00	\$260	
	50–499 employees	556,130	55,613	\$2,500	\$2,500.00	\$139	
	500 or more employees	1,176,422	588,211	\$2,500	\$2,500.00	\$1,471	
	<i>Subtotal Form 10 legal costs</i>						<i>\$1,870</i>
	<i>Subtotal Form 10 total costs</i>						<i>\$4,058 to \$6,247</i>
Form 20		Number of Establishments	Hours per Establishment	Wage	Paperwork Burden per Establishment	Paperwork Burden (millions)	
	Human-Resources Firms' Establishments	7,932	50	\$104.33	\$5,216.50	\$41	
	Law Firms' Establishments	19,041	50	\$104.33	\$5,216.50	\$99	
<i>Subtotal Form 20 total costs</i>						<i>\$140</i>	
Form 21		Number of Establishments	Hours per Establishment	Wage	Paperwork Burden per Establishment	Paperwork Burden (millions)	
	Human-Resources Firms' Establishments	7,932	50	\$104.33	\$5,216.50	\$41	
	Law Firms' Establishments	19,041	50	\$104.33	\$5,216.50	\$99	
<i>Subtotal Form 21 total costs</i>						<i>\$140</i>	
Total Annual Compliance Cost						\$4,338 to \$6,527	

Source: Source: Author's calculations and U.S. Census Bureau, Statistics of U.S. Businesses, 2010 Annual Data (detailed employment less than 500 employees), <http://www.census.gov/econ/subb>; and Martindale-Hubbell, law-firm search, <http://www.martindale.com/Find-Lawyers-and-Law-Firms.aspx?s=2>

ENDNOTES

- ¹ Codified in 29 U.S.C. § 433(b).
- ² 29 U.S.C. § 433(c).
- ³ S. Rep. No. 187 on S. 1555, 86th Cong., 1st sess., 40 (1959), U.S. Code Cong. & Adm. News, p. 2356.
- ⁴ Cong. Rec. 5889-5890, daily ed., April 23, 1959.
- ⁵ Memorandum from Mario A. Lauro, Jr., acting deputy assistant secretary for Labor-Management Standards (March 24, 1989) (“Lauro Memorandum”), Federal Register, vol. 76, no. 119, June 21, 2011, <http://www.gpo.gov/fdsys/pkg/FR-2011-06-21/pdf/2011-14357.pdf>, p. 36181.
- ⁶ *Ibid.*, p. 36183.
- ⁷ Barry Hirsch and David Macpherson, “Union Membership and Coverage Database from the CPS,” *U.S. Historical Tables: Union Membership, Coverage, Density and Employment, 1973–2012*, www.unionstats.com.
- ⁸ Federal Register, vol. 76, no. 168, August 30, 2011, <https://www.federalregister.gov/articles/2011/08/30/2011-21724/notification-of-employee-rights-under-the-national-labor-relations-act>.
- ⁹ *Noel Canning v. National Labor Relations Board*, D.C. Circuit Court, no. 12-1115, January 25, 2013, [http://www.cadc.uscourts.gov/internet/opinions.nsf/D13E4C2A7B33B57A85257AFE00556B29/\\$file/12-1115-1417096.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/D13E4C2A7B33B57A85257AFE00556B29/$file/12-1115-1417096.pdf).
- ¹⁰ Federal Register, vol. 76, no. 119, June 21, 2011, <http://www.gpo.gov/fdsys/pkg/FR-2011-06-21/pdf/2011-14357.pdf>, p. 36204.
- ¹¹ U.S. Department of Labor, Office of Labor-Management Standards, Instructions for Form LM-21 Receipts and Disbursements Report, http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-21_Instructions.htm.
- ¹² American Bar Association, letter to U.S. Department of Labor, “Re: Department of Labor Proposed Rule on the Labor-Management Reporting and Disclosure Act; Interpretation of ‘Advice’ Exemption; RIN 1215-AB79 and 1245-AA03, 76 Fed. Reg. 36178,” June 21, 2011.
- ¹³ U.S. Department of Labor, Office of Labor-Management Standards, “Instructions for Form LM-21 Receipts and Disbursements Report,” http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-21_Instructions.htm.
- ¹⁴ U.S. Census Bureau, Statistics of U.S. Businesses, 2010 Annual Data (detailed employment less than 500 employees), <http://www.census.gov/econ/susb>.
- ¹⁵ U.S. Census Bureau, Statistics of U.S. Businesses, 2010 Annual Data, Number of Establishments NAICS 541612, U.S., all industries, <http://www.census.gov/econ/susb>; and Martindale-Hubbell, law-firm search, <http://www.martindale.com/Find-Lawyers-and-Law-Firms.aspx?s=2>, accessed April 1, 2013.
- ¹⁶ Bureau of Labor Statistics, Occupational Employment Statistics, “Occupation Employment and Wages, May 2011, 11-1011 Chief Executives,” March 27, 2012, <http://www.bls.gov/oes/current/oes111011.htm>. Note: Benefits generally make up 30 percent of employers’ cost of employee compensation. See, e.g., Bureau of Labor Statistics, “Employer Costs for Employee Compensation—December 2012,” March 12, 2013, <http://www.bls.gov/news.release/pdf/ecec.pdf>.
- ¹⁷ See n. 14 above.
- ¹⁸ Martindale-Hubbell (see n. 15 above).