

# Labor Law Bulletin

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July 15, 2005

## The Department of Labor Issues An Expanded Interpretation of Reporting Requirements For Forms LM-10 and LM-30

For many years, union officers and employees have been required to report certain payments and financial interests which might give rise to a conflict of interest on Form LM-30 and employers have been required to report certain payments to unions and union officials on Form LM-10. These requirements arose from the Labor Management Reporting and Disclosure Act (“LMRDA”). Only a small number of people actually filed these forms and many people did not even know of their existence. The Department of Labor (“DOL”) has not been actively enforcing the filing requirement.

Now the DOL has announced a new enforcement initiative and has provided interpretive guidance which dramatically increases the scope and coverage of reporting obligations.

Union officers and employees are required to file the Form LM-30 by August 15, 2005 to report payments or other things of value (including reimbursed expenses) received in 2004. If they file timely, the DOL has stated that it will not require filing of past due forms for prior years.

The primary focus of this bulletin is on the obligation of companies and other employers (including certain Taft-Hartley benefit plans) to file Form LM-10. The information in this bulletin is based on DOL pronouncements made to date. However, the DOL has stated that it will be issuing further guidance “in the near future” and employers are not expected to file the form until such guidance has been issued and a “grace period” deadline for filing is announced.

### *Who Must File Form LM-10?*

Any “employer” must file an LM-10 if it has made a payment or given anything of value (including reimbursed expenses) to a labor organization or officer, employee or other representative of a labor organization. Under the DOL’s interpretation, virtually any entity which has employees would be covered and would be required to report payments, even if the labor organization or union official receiving the payments has no connection to the employees of the entity. The DOL’s definition of employer would include a Taft-Hartley employee benefit plan which has employees, so that such a plan must report expense reimbursements to union trustees who are required to file a Form LM-30. Organizations which provide services to employee benefit plans, such as investment managers, consultants, banks and law firms also must file an LM-10, reporting on any payments or other things of value which were provided to a union or its officials or employees.

### *What Must Be Reported on Form LM-10?*

With certain narrow exceptions, any payment, loan or other thing of value (including expense reimbursements) to a union or its officers, employees or representatives must be reported. Examples of covered items, according to the DOL website ([www.dol.gov/esa/regs/compliance/olms/LM30\\_LM10\\_Trusts\\_Info.htm](http://www.dol.gov/esa/regs/compliance/olms/LM30_LM10_Trusts_Info.htm)), include meals, travel expenses, tickets to sporting events, an entry fee for a charity golf tournament or other golf event in which a union official participates or a charitable contribution to the union. The cost of a business reception which is open

to all clients and potential clients may be reportable to the extent that union officials attend. The DOL recognizes an exception for small gifts which meet all of the following requirements: (1) they have a value of \$25 or less; (2) they are sporadic or occasional and (3) they are given under circumstances unrelated to the recipient's status in a labor organization.

### ***When Must the Form Be Filed?***

The DOL has created a "grace period" for union officials and employees to file the Form LM-30 by August 15, 2005.

The DOL also has stated that it intends to issue further guidance on LM 10 reporting requirements "in the near future" and to create an "analogous grace period." The DOL advises that, "until such guidance is issued and the full grace period has expired, as an exercise of enforcement discretion, the Department will not take action to enforce the Form LM 10 reporting requirements unless there is already a pending investigation." Although employers generally need not file the Form LM 10 until the DOL issues further guidance, they may receive inquiries from union officials who are subject to the August 15 deadline.

When the grace period ends, the LM-10, if required, must be filed within 90 days of the close of an employer's fiscal year.

### ***What Are the Penalties for Failing to Comply?***

Willful violations of the LMRDA's reporting requirements carry a fine of up to \$10,000 and/or one year imprisonment. The president and treasurer, or equivalent officers, of an organization are required to sign the forms and are personally liable for failure to file or improper filing.

### ***If a Payment Must Be Reported, Does That Mean That the Payment Was Unlawful?***

No. The DOL has stated that "the reporting requirements of the LMRDA only relate to the disclosure of specified financial transactions and interests. The reporting requirements do not address whether such economic interests are lawful or unlawful." Other statutes, notably the Taft-Hartley Act and ERISA, do address the legality of payments to a union or its officials and employees. The DOL's enforcement initiative under the LMRDA should cause employers to reexamine their business practices with respect to these other statutes, as well.

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