

Labor Law Bulletin

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Additional Guidance Issued by the Department of Labor Regarding Union-Related Payments Reported on Forms LM-10 and LM-30

Last month, the Department of Labor (“DOL”) issued further guidance regarding the reporting of certain interests held by union officers or employees and payments between employers and unions. Regulations issued under the Labor Management Reporting and Disclosure Act (“LMRDA”) require this reporting. Specifically, union officers and employees report certain payments or interests that could give rise to a conflict of interest on Form LM-30. Employers, including service providers to Taft-Hartley benefit plans, report certain payments or gifts made to unions and union officials or employees on Form LM-10.

As discussed in Vedder Price’s July 15, 2005 LABOR LAW BULLETIN, in the past, knowledge of and compliance with these reporting requirements was minimal, as was the DOL’s enforcement of the requirements. However, over this past summer the DOL provided interpretive guidance and announced a new enforcement initiative that has increased the scope and coverage of employers’ and unions’ reporting obligations. Since that guidance, the DOL has reported a significant increase in the level of reporting by unions and their officers and employees. Now, after fielding comments from the public and reviewing recently filed LM-30 Forms, the DOL is modifying and clarifying its earlier guidance on this topic. This bulletin will briefly recap the highlights of the DOL’s most recent action, will then review developments related to the Form LM-30, and finally will focus on employer obligations related to the Form LM-10, including the DOL’s most recent guidance.

Highlights of DOL’s Most Recent Guidance

The most significant recent developments are:

- 1) Employers are **not** required to file a Form LM-10 for fiscal years beginning prior to January 1, 2005, absent extraordinary circumstances. For calendar year companies, the report for 2005 will be due on March 31, 2006.
- 2) Taft-Hartley benefit plans will not be required to file reports, pending completion of the DOL’s rulemaking procedures.
- 3) The de minimis exception for small payments has been increased from \$25 to \$250 as further discussed below.

Form LM-30

The Form LM-30 is an annual report on which union officers and employees report interests (such as holding stock) in, or payments or gifts received from, an “employer” (defined below). Previous guidance set forth a “de minimis” reporting exemption—a threshold value of a gift or payment below which the union officer or employee did not have to report the item. The de minimis value was set at \$25. The most recent advisory from the DOL has elevated the de minimis ceiling to \$250. This threshold applies to a single gift or payment or the combined value of a series of gifts or payments from an employer to a union officer or employee within the fiscal year. As an example, if the value of meals

provided by an employer to a union official at monthly meetings does not exceed \$250 in aggregate over the course of the fiscal year, the union official may omit the meals from his or her Form LM-30 report.

Form LM-10

Who must file? Employers must file the Form LM-10. An “employer” is virtually any entity that provides payments, loans, gifts or reimbursements to unions or its officials or employees. This broad definition includes organizations that provide services to Taft-Hartley employee benefit plans, such as investment managers, banks, consultants and law firms. The definition is not limited to employers whose employees are represented by the union in question.

What must be reported? Aside from limited exceptions set forth in the Form LM-10 instructions, any payment, loan, or other thing of value (such as an expense reimbursement) given to a union or its officers, employees, or representatives must be reported. Examples provided by the DOL include meals, travel expenses, sporting event tickets, receptions or parties, and entry fees to charitable golf tournaments where the union official participates. Contributions to charities or union relief funds generally do not have to be reported, even where solicited by a union official. Note that the mere requirement of reporting a transaction on the Form LM-10 does not mean that the transaction is unlawful.

Similar to guidelines for the Form LM-30, the DOL earlier recognized a “de minimis” exemption for small gifts that: (1) have a value of \$25 or less; (2) are sporadic or occasional; and (3) are provided unrelated to the recipient’s status in a labor organization. Now, under its most recent guidance, the DOL has raised the de minimis amount from \$25 to \$250. The other two elements remain the same except, however, that gifts not exceeding \$250 in the aggregate over the course of the fiscal year, such as coffee and donuts at regular meetings, may be excluded from reporting even though they may not be “sporadic.”

The information to be reported on a Form LM-10 includes: the date and amount of each arrangement or

transaction; the name, address, and position of the individual with whom the arrangement was made; and a complete account of the circumstances of any payments, including any special terms or agreements. The DOL recognizes that employers may not have complete records of reportable expenses incurred for 2005, so diligent, good-faith efforts to search for records will be acceptable.

When must the Form LM-10 be filed? Employers must file reports for fiscal years beginning on or after January 1, 2005. The Form LM-10 report must be filed within 90 days after the close of the fiscal year. For example, an employer with a December 31, 2005 fiscal year end must file the Form LM-10 by March 31, 2006. (Note that unions and union officials were required to file Form LM-30 for 2004 by August 15, 2005. Employers who timely file their 2005 reports will not be required to file a Form LM-10 for 2004.)

The foregoing deadlines represent a “grace period” for new filers of the Form LM-10. Even if earlier reports should have been filed, employers who timely file the 2005 report will not have to maintain records or submit reports for fiscal years beginning prior to January 1, 2005. Only under extraordinary circumstances will an employer be required to file prior-year reports, such as when the financial interest is subject to an existing, ongoing investigation or where there is evidence of attempts to bribe or purchase favors.

Who must sign the Form LM-10? The president and treasurer, or a company’s equivalent officers, must sign the Form LM-10, personally attesting to the report’s accuracy under penalty of perjury. Criminal penalties could ensue for these individuals if they willfully fail to file the report or file false information.

Under the DOL’s latest guidance, for fiscal years beginning on or before December 31, 2005 only, the president’s and treasurer’s signatures “under penalty of perjury” may not be necessary. In cases where the employer did not have record-keeping procedures in place for tracking union-related payments, believing the LMRDA did not apply, the employer may make a good-faith investigation of covered transactions and report them on the Form LM-10. Because this report is prepared outside of an established procedure, the signatories may

cross out the “under penalty of perjury” clause and substitute language to be provided by the DOL. Also, if either the president or treasurer is not directly involved in the good-faith investigation, a key official who oversaw the investigation may sign the Form.

For Forms LM-10 covering future fiscal years (beginning after December 31, 2005), record-keeping procedures must be in place and the president and treasurer must attest to the accuracy of the Form under penalty of perjury.

What records must be maintained? The instructions to the Form LM-10 state that an employer must maintain records that “provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report.” This could include items such as vouchers, receipts, worksheets and resolutions. The employer must maintain the records for five years following the filing of the report. Again, note that if an employer has not been previously filing a Form LM-10 believing that the LMRDA did not apply, the DOL would not expect complete records for the 2005 fiscal year.

If you have any questions, please call Charles B. Wolf (312/609-7888), Michael C. Joyce (312/609-7627), or any Vedder Price attorney with whom you work.

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