



Electronic Dispatch

Labor and Employment Law Information Memo

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EMPLOYERS SHOULD PREPARE TO MEET THE REPORTING REQUIREMENTS OF THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT

The U.S. Department of Labor (“DOL”), recently announced that it will step up enforcement of employers’ reporting obligations under the Labor Management Reporting and Disclosure Act (“LMRDA”), 29 U.S.C. § 401 *et. seq.* The LMRDA requires employers to report certain payments they make to labor organizations, union officials, employees and labor relations consultants. Such disclosures are to be made on a designated DOL form – the LM-10.¹ Unions are similarly required to disclose certain payments and financial interests on a corresponding DOL form, the LM-30. The LM-10 and the LM-30 must be filed within 90 days of the close of the filer’s fiscal year.

Although employers and unions have been subject to the reporting requirements of the LMRDA since 1959, the DOL has not actively enforced them. To facilitate its new enforcement initiative, the DOL’s Office of Labor Management Standards (OLMS) recently issued guidelines for unions regarding their reporting requirements. OLMS granted unions a “grace period” until August 15, 2005 to submit the LM-30 for fiscal year 2004, and stated that unions will not be required to submit overdue reports for prior years.

In addition, on August 29, 2005, OLMS issued a notice of proposed rulemaking in the Federal Register that is intended to revise the LM-30 for future fiscal years. The proposed rule would clarify what types of payments must be reported and would eliminate certain exemptions to the disclosure requirements. For example, under the proposed rule, payments made by an employer to an employee pursuant to a “no-docking” policy (*i.e.*, a policy that the employer will not deduct from an employee’s wages for time spent processing grievances or performing other union-related tasks) would be reportable for the first time. Any comments from the public with respect to the proposed changes to the LM-30 must be received by October 28, 2005.

On July 15, 2005, OLMS issued an advisory indicating that it will soon shift its focus to employer filing requirements. Guidelines from OLMS concerning employer LM-10 filings are expected. In addition, it is expected that OLMS will propose changes to the LM-10 that will parallel the changes to the LM-30.

Are You An “Employer” Under the LMRDA?

The LMRDA covers any employer engaged in an industry affecting commerce that 1) is an employer under any employment law of the United States; or 2) deals with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. Under the DOL’s interpretation of the statute, an employer includes any individual or entity that employs one or more employees, even if the labor organization or union official receiving the payments has no connection to the employees of the entity. The DOL has also taken the position that service providers, such as investment advisory firms, consultants, and law firms, that make payments to labor organizations or union officials are covered employers. The only employers that are expressly exempt from the statute are the United States and any corporation wholly owned by the Government of the United States or any State.



What Must Be Reported?

The LM-10 Form requires employers to disclose activity in six categories. The category which will affect most employers is payments or loans or other things of value (including reimbursed expenses) given to, or any agreement concerning such payment with, any labor organization or officer, agent, or shop steward or any other representative of the labor organization.

These reportable payments can include things such as meals or hotel accommodations that are provided to union officers or employees, or contributions to union-sponsored charity events. Employers that have not made any covered payments, expenditures, agreements or arrangements during the fiscal year do not need to file an LM-10. If such reportable activities have occurred, employers must disclose specific details associated with the payments or agreements. Employers are also obligated to maintain records for a period of five years that provide the information necessary to verify the accuracy and completeness of the report.

There are certain payments that do not have to be reported on the LM-10. An employer is not obligated to report *de minimis* payments that 1) have a value of \$25 or less; 2) are sporadic or occasional; and 3) are given under circumstances unrelated to the recipient's status in a labor organization. OLMS is seeking comments with respect to this *de minimis* rule as part of its notice of proposed rulemaking with respect to the LM-30. Other exceptions to the reporting requirement include: payments for bona fide wages and other benefits for regular services; initiation fees and assessments paid to labor organizations and deducted from an employee's wages; arrangements or expenditures solely for obtaining information in connection with administrative, arbitral or court proceedings; payments to labor relations consultants for advice to the employer or representation of the employer before any court, administrative agency, or arbitral tribunal; or payments to labor relations consultants for engaging in collective bargaining on behalf of the employer.

It is anticipated that the DOL will compare the information reported in employer LM-10's to that submitted in the union LM-30's to track the accuracy and completeness of the reports. Employers should keep in mind that LM-10 reports submitted to the DOL are accessible to the public and can be viewed on the DOL's website.

What are the Penalties for Failing to Meet the Filing Obligations?

Both the President and Treasurer, or other corresponding principal officers, of the reporting employer are required to sign the LM-10. These individuals are personally liable for its filing and accuracy, and are subject to criminal sanctions for willful failure to file a required report and/or for false reporting, including a fine of up to \$10,000 or one year imprisonment, or both. These individuals are also subject to civil liability for failing to meet the reporting requirements.

Are the Payments Reportable on the LM-10 Presumed to Be Lawful?

The purpose of the LMRDA reporting requirements is to disclose potential conflicts of interest, to inhibit corrupt practices, and to disclose acts which are either illegal or questionable. The statute does not attempt to distinguish between lawful and unlawful payments, and no such presumption should be made by employers. Employers must, however, consider the legality of any payments made to unions or union officers under the restrictions of Section 302 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 186. Subject to limited exceptions, Section 302 of the LMRA generally prohibits employers from making any payments to unions, union officers, or union employees. An employer faces significant criminal penalties for violating the prohibitions of Section 302. Therefore, employers should carefully review their practices in order to ensure compliance with both the LMRA and the LMRDA.

What Should You Do to Protect Yourself and Your Business from Liability?

The DOL has announced that it will issue LM-10 reporting guidelines "in the near future" and will provide employers with a "grace period" analogous to that which was provided to unions. It is anticipated that the DOL guidance will allow employers who have not historically met their reporting requirements to submit a 2004 report without any obligation to file for prior years. Employers who fail to file reports within the designated grace period likely will be held accountable

for reports for the previous five years. The DOL has assured employers that, absent extraordinary circumstances or a pending investigation, it will not take action to enforce the employer reporting requirements until such guidance is issued and the grace period has expired. In the interim, employers are encouraged to assess any potential reportable payments for the fiscal year 2004 and to assemble any relevant information regarding these payments. In the absence of knowledge and/or records to show the value of reportable payments, the DOL encourages employers to make a good faith estimate of their value.

If you need advice regarding any reporting obligations you may have under the LMRDA or need assistance in meeting these obligations, please contact:

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¹ The DOL LM-10 Form is available on the DOL website at http://www.dol.gov/esa/regs/compliance/olms/GPEA_Forms/blanklmforms.htm.