



Electronic Dispatch

Labor and Employment Law Information Memo

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THE U.S. DEPARTMENT OF LABOR ISSUES GUIDELINES FOR EMPLOYERS REGARDING FILING OF LM-10 FORMS

As part of its recent focus on stepping up enforcement of reporting obligations under the Labor Management Reporting and Disclosure Act ("LMRDA"), the U.S. Department of Labor ("DOL") recently issued guidelines for employers regarding the filing of the LM-10 Form.¹

Under the LMRDA, employers are required to file the LM-10 Form each fiscal year to report certain payments they make to labor organizations, union officials, employees, and labor relations consultants. Unions are similarly required to disclose certain payments and financial interests on a corresponding form – the LM-30 Form. (For information regarding the DOL's 2005 guidelines regarding the LM-30 Form, please see our firm's August 2005 Labor and Employment Law Information Memo, which can be found on our web site at www.bsk.com). Although employers and unions have been subject to the reporting requirements of the LMRDA since 1959, the DOL has not actively enforced them until now.

This Information Memo summarizes the LMRDA reporting requirements and discusses the DOL's recent guidelines.

Are You An "Employer" Under The LMRDA?

The DOL's recent guidelines do not affect the definition of "employer" under the LMRDA. The LMRDA covers any employer engaged in an industry affecting commerce that: (1) is an employer under any Federal employment law; or (2) deals with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. The guidelines confirm that, except in rare cases, every private sector employer with one or more employees is considered an "employer" under the LMRDA. The only employers that are expressly exempt from the reporting requirements of the LMRDA are the United States and any corporation wholly owned by the Government of the United States or any State.

When Must The LM-10 Form Be Filed?

The LM-10 and LM-30 Forms must be filed within 90 days of the close of the filer's fiscal year. Under the DOL's recent guidelines, employers that file their LM-10 Forms in a timely manner for their fiscal years beginning on or after January 1, 2005 will be excused from filing any past-due LM-10 Forms for prior fiscal years, absent extraordinary circumstances. The extraordinary circumstances that may result in an employer having to file past-due LM-10 Forms despite timely compliance during the current fiscal year include: (1) the existence of an ongoing investigation with respect to the employer; or (2) evidence of egregious conflicts of interest or attempts to purchase favors from union officials. Employers that do not file their LM-10 Forms for the current fiscal year in a timely manner may be required to submit LM-10 Forms for the five prior fiscal years.

What Must Be Reported?

The LM-10 Form requires employers to disclose the following types of activities: (1) payments or loans of money or other things of value (including reimbursed expenses) to any labor organization or any officer, agent, shop steward, or other representative of the labor organization; (2) payments to any employees or consultants for the purpose of persuading employees to exercise or not to exercise the right to organize and bargain collectively; (3) expenditures for the purpose of interfering with, restraining, or coercing employees in the right to organize and bargain collectively; and (4) payments to consultants or other expenditures for the purpose of obtaining information concerning the activities of employees or of a labor organization in connection with a labor dispute.



Reportable payments can include items 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 or expenditures (and that have not entered into any agreements or arrangements to make such covered payments or expenditures) need not file an LM-10 Form. If such reportable activities have occurred, employers must disclose specific details associated with each transaction, including: (1) the date of the transaction; (2) the name, address, and position of the person with whom the transaction was made; and (3) a full explanation of the circumstances of the transaction. Employers are also obligated to maintain records for a period of at least five years that provide the information necessary to verify the accuracy and completeness of the LM-10 Form.

The LM-10 Form filing instructions provide that employers may exclude from their reports "sporadic or occasional gifts, gratuities, or favors of insubstantial value, given under circumstances and terms unrelated to the recipients' status in a labor organization." This exclusion is known as the *de minimis* exception. The DOL's recent guidelines provide that any gifts, gratuities, or favors to a union official with an aggregate value over the course of the fiscal year of \$250 or less will meet the *de minimis* exception, as long as they are sporadic or occasional and are unrelated to the union official's status in a labor organization. For example, an employer that occasionally provides meals or beverages for union officials during meetings would not be required to report those payments on the LM-10 Form, as long as the total value of the meals and beverages provided to each individual over the course of the fiscal year is \$250 or less.

Some of the other exceptions to the reporting requirement include: (1) payments for *bona fide* wages and other benefits for regular services; (2) initiation fees and assessments paid to labor organizations and deducted from an employee's wages; (3) arrangements or expenditures solely for obtaining information in connection with administrative, arbitral, or court proceedings; (4) payments to labor relations consultants for advice to the employer or representation of the employer before any court, administrative agency, or arbitral tribunal; and (5) 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 on the LM-10 Forms to the information reported on the corresponding LM-30 Forms to track the accuracy and completeness of the reports. Employers should keep in mind that LM-10 Forms submitted to the DOL are accessible to the public and can be viewed on the DOL's web site.

Who Must Sign The LM-10 Form?

Both the President and Treasurer (or other corresponding principal officers) of the employer are required to sign the LM-10 Form, and attest under penalty of perjury that the information contained on the LM-10 Form has been examined and is accurate and complete to the best of their knowledge and belief. The DOL's recent guidelines contain a limited exception to this requirement for certain service providers to Taft-Hartley trusts (such as broker-dealers, investment advisors, investment companies, and investment banks) that had previously considered themselves to be exempt from the LMRDA reporting obligations. Key officials of these types of service providers who have conducted a good faith investigation of reportable payments may sign the LM-10 Form, and may replace the standard attestation with the following language: "Each of the undersigned, duly authorized officers of the above employer declares, after good faith investigation and diligent inquiry, that all of the information submitted in this report (including the information in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, complete as possible based on existing and reconstructed records."

This limited exception for these types of service providers is available only with respect to LM-10 Forms filed for fiscal years commencing on or before December 31, 2005. LM-10 Forms filed by all types of employers for fiscal years commencing on or after January 1, 2006 must be signed by the employer's President and Treasurer (or other corresponding principal officers) with an unaltered attestation.

What Are The Penalties For Failing To Meet The Filing Obligations?

Both the President and Treasurer (or other corresponding principal officers) of an employer are personally liable for the filing and accuracy of the LM-10 Form, and are subject to potential criminal sanctions for willful failure to file the LM-10 Form and/or for false reporting. These potential sanctions could include a fine of up to \$10,000 or one year of imprisonment, or both. These individuals could also be subject to civil liability for failing to meet the reporting requirements.

What Should Employers Do In Response To The DOL's Enforcement Initiative?

Employers should promptly assess whether they have made any payments (or entered into any agreements to make payments) so far during the current fiscal year that would be reportable on an LM-10 Form, and should continue to maintain records of reportable payments for the remainder of the fiscal year. If no such payments or agreements have been made, there is no obligation to file an LM-10 Form. However, if such payments or agreements have been made, an LM-10 Form must be filed within 90 days after the close of the employer's fiscal year. If the LM-10 Form is filed in a timely manner for the current fiscal year, any failure to file LM-10 Forms for prior fiscal years will be excused, absent extraordinary circumstances.

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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We Are Pleased To Announce That The New York State Society For Human Resource Management Has Selected A BS&K Attorney As Its First General Counsel



The New York State Society for Human Resource Management has selected **John M. Bagyi**, a Member (Partner) in the firm's Albany office, to serve as its first General Counsel. Mr. Bagyi will provide legal advice to the Society's leadership, and serve as an *ex officio* member of it's governing body. Mr. Bagyi will also advise the local chapters throughout the state.

Mr. Bagyi, a certified Senior Professional in Human Resources (SPHR), received his law degree, *magna cum laude*, from Albany Law School of Union University and received his B.A. degree from the University at Albany, State University of New York. Mr. Bagyi frequently presents at national, state and local conferences and is a guest lecturer at Albany Law School, the College of St. Rose and the School of Business at the University at Albany.

With nearly 60 Labor and Employment Law and Employee Benefits attorneys located in offices throughout New York State, BS&K has one of the largest workplace practices in the Northeast. In addition, 14 of these attorneys have been selected for *The Best Lawyers in America® 2006**, giving BS&K more "Best" Labor and Employment Law attorneys than any other firm in the State.

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