

Client Advisory

July 2005

DOL To Enforce Disclosure of Payments, Gifts and Entertainment Involving Union Officials

< Even Non-Union Employers Are Required to File DOL Form LM-10

In recent guidance issued June 22, 2005, the Department of Labor ("DOL") has indicated an intent to expand its enforcement of the Labor-Management Reporting and Disclosure Act ("LMRDA"). Disclosure may now be required of virtually all service providers to unions, including investment managers, brokerage firms, accounting firms, consulting firms and other "employers," who provide entertainment or give gifts or other things with a value of \$25 or more to union-affiliated individuals.

The LMRDA requires "employers" who have engaged in certain activities with any labor organization, union official (including a trustee of a Taft-Hartley or a multi-employer pension or welfare fund), union employee or labor relations consultant (each a "Union Individual") to file a report with the DOL detailing the "payments" made to officers and employees of labor organizations. For this purpose, the terms "employer" and "payment" have been broadly construed. Employer is defined as almost all employers who employ employees—regardless of whether their employees are unionized. "Payments" include cash payments, but also business related expenses and disbursements such as the cost of meals and gifts and other things of value received, if they exceed \$25. The employer is required to file a Form LM-10 no later than ninety days after the close of each fiscal year of the employer. The requirement to file the Form LM-10 is separate from any other restrictions or prohibitions that may exist under labor law, including certain prohibitions on employers giving gifts or other things of value to union representatives.

The LMRDA also requires Union Individuals to file a corresponding Form LM-30 detailing the payments received from employers during the year. It is expected that the DOL will cross-reference employer and union disclosures to confirm complete compliance with the LMRDA. Once filed, Forms LM-10 and Forms LM-30 are made available for public viewing on the DOL's Web site.

Who Must File a Form LM-10

As noted above, the LMRDA broadly defines "employer." Under this definition as interpreted in recent DOL guidance, the term "employer" would include virtually any organization with at least one employee, including, but not limited to, service providers to unions such as investment managers, accounting firms and consulting firms, and Taft-Hartley trust funds themselves.

What Must Be Reported on a Form LM-10

An employer must report any payment, loan or other thing of value (including reimbursed expenses), or any promise or agreement to make such payments or loans, to a Union Individual. The report must include (1) the date and amount of each 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 all payments made.

The LMRDA specifically excludes certain transactions from the reporting requirements, including: (1) sporadic or occasional gifts of insubstantial value (less than \$25) given under circumstances unrelated to the recipient's status in a labor organization; (2) payments or loans made in the regular course of business to a Union Individual without regard to his or her union status or whose union status is unknown; (3) payments made to Union Individuals as wages; (4) payments made in satisfaction of a judgment or settlement; (5) payments to a trust fund for employee benefits.

As an example, recent guidance indicates that if a business, such as an accounting firm, consulting firm or investment manager, took a Union Individual to lunch or a golf outing, or if it provided tickets to a sporting event, it would have to report such transactions on a Form LM-10, unless the transaction qualifies for one of the exceptions. Service providers and other employers who entertain or give gifts to Union Individuals (even if such activities are part of client development or an ongoing client relationship) will need to review their activities to determine whether a Form LM-10 will need to be filed in order to comply with the LMRDA.

Record Retention

Employers required to file Forms LM-10 are responsible for retaining the information necessary to complete the form for at least five years. Such records include anything necessary to verify, explain or clarify the Form LM-10, including vouchers, worksheets, receipts and applicable resolutions.

Penalties for Failure to Report

Violating the filing requirements of the LMRDA may subject an employer to criminal and civil prosecution. The president and treasurer (or other corresponding principal officers) of the employer are required to sign the completed Form LM-10 and are personally liable for its filing and accuracy. Under the LMRDA, these individuals are subject to civil enforcement and criminal penalties of up to a \$10,000 fine and imprisonment of up to one year for knowingly making a false statement or for willfully withholding information.

Corresponding Reporting Obligation of Union Individuals On Form LM-30

As noted above, Union Individuals are expected to disclose receipt of reportable amounts on Form LM-30. The DOL apparently intends to cross-reference the Form LM-10 and Form LM-30 filings to ensure that filers on both sides of a transaction have correctly reported.

Potential Form LM-10 Filing Relief

Recognizing its heightened enforcement effort may have been unexpected by Union Individuals, the DOL recently issued a grace period for filing the Form LM-30. Under the LM-30 grace period, as long as a new filer of a Form LM-30 completes the fiscal year 2004 filing by August 15, 2005, the filer is excused from filing for fiscal years prior to 2004. Importantly, a corresponding grace period has not been granted by the DOL for the Form LM-10—although the DOL has unofficially indicated to us that a similar grace period may be issued by the DOL this summer for the Form LM-10 for fiscal year 2004.

Recommended Actions

1. Identify Disclosable Information for Fiscal Year 2004

It is recommended that you take prompt action to identify all qualifying transactions or gifts to a Union Individual from fiscal year 2004 that may need to be reported on a Form LM-10.

2. Communicate With Union Officials and Employees

Union Individuals have a grace period until August 15, 2005 to file Form LM-30. You may want to communicate with the appropriate Union Individuals (for example, in the case of a consulting firm, union individuals that are clients of yours) to assist them in identifying any "reportable transactions" that took place in 2004.

3. File Your Form LM-10 for 2004

While the DOL has not yet formally announced any corresponding grace period for filing Form LM-10 for 2004, DOL staff members have indicated to us an intent to offer a grace period later this summer. Please note, if the DOL determines that no grace period is to be offered for the Form LM-10, reporting for the previous five years may be required.

We Can Help

If you would like assistance in identifying and addressing issues regarding the reporting requirements of the LMRDA, please contact your preferred attorney contact or any of the following Katten Muchin Rosenman LLP attorneys:

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