



Service Providers to Taft-Hartley/Union-Affiliated Pension or Welfare Trusts Alert!

DOL Issues Long-Awaited LM-10 Employer Reporting and Disclosure Guidance

November 11, 2005

In a shift from its longstanding policy, the Department of Labor (DOL) has expressed renewed zeal in enforcing the reporting requirements contained in the Labor-Management Reporting Disclosure Act (LMRDA). The LMRDA requires employers to disclose to the DOL nearly all payments made, or benefits (including gifts, meals, lodging, paid travel, golf outings, tickets to sporting events, and access to educational conferences) provided to labor organizations, union officials and union employees. As a general matter, the term “employer” is broadly defined to include every private sector business or organization within the United States that has one or more employees.

All service providers that make payments to or confer benefits upon trustees, officers and employees of Taft-Hartley trusts (e.g., pension and welfare plans affiliated with a union) who also are union officials, employees or agents for business development or other reasons may be required to report such payments and benefits on Form LM-10 (Employer Report). Service providers include broker-dealers, investment advisors, pension consultants, investment companies, investment banks, insurance companies, other financial institutions, and third-party recordkeepers and administrators. Recipients of such payments or benefits who are union officials, employees or agents may be required to report the cost of such efforts on Form LM-30 (Labor Organization Officer and Employee Report). The DOL has indicated that it will compare the disclosures made on Form LM-10 with the union recipient’s LM-30. Additional background materials on Form LM-10 and LM-30 may be obtained from our Web site by clicking [here](#).

The following is a brief summary of the significant aspects of the guidance relevant to service providers. The firm plans to issue more detailed reports on this subject and intends to hold a webinar on the new guidance in the near future.

- Clarification for Vendors, Financial Service Providers, and Non-Union Employers – The DOL guidance confirms the broad definition of “employer” under the LMRDA and clarifies that vendors, financial service providers, and non-union employers are subject to the LMRDA’s reporting and disclosure requirements.

- Reports Due for 2005 and After; No 2004 Reports Required – The DOL has effectively eliminated employer filing requirements for fiscal year 2004, and is now requiring a 2005 report for employers whose fiscal years begin on or after January 1, 2005. Under a special enforcement policy and absent “extraordinary circumstances,” new filers of Form LM-10 will not have to submit reports or maintain records for fiscal years beginning prior to January 1, 2005, even if such reports should have been filed, if the new filer submits its report for the first fiscal year beginning on or after January 1, 2005 within 90 days after the end of the employer’s fiscal year.
- Increase of *De Minimis* Exception – The DOL has increased the dollar amount for the *de minimis* exception from \$25 to \$250. Under this new exception, payments need not be reported if (1) the total value of payments provided to a labor organization or any one officer, agent, or employee of a labor organization is less than \$250 in any fiscal year; and (2) the payment is unrelated to the recipient’s status in a labor organization. Although this latter element is unchanged from the prior *de minimis* exception, the DOL’s guidance provides additional explanation and examples that help clarify this requirement.
- Relaxation of Signature Requirements and Attestation Standards for Initial Filing – Recognizing that employers may not have had policies and procedures in place for tracking and reporting such payments in a fiscal year commencing prior to January 1, 2006, the DOL has relaxed the signature requirement and the attestation standard for the initial filing. Specifically, where the employer acts diligently and in good faith to reconstruct records and identify reportable payments, the DOL has eliminated the requirement that the president and treasurer of the reporting employer sign the initial LM-10 reports. Under such circumstances, such employer may also strike out the “under penalty of perjury” attestation on Form LM-10 and replace it with substitute language set forth in the DOL guidance. Both of these accommodations would apply only to reports for fiscal years commencing between January 1, 2005 and December 31, 2005. Thus, appropriate policies and procedures (including document retention procedures) will have to be established and maintained for fiscal years beginning after December 31, 2005 for the purposes of identifying and documenting reportable payments.

As noted above, we anticipate providing a more detailed analysis of the DOL’s LM-10 guidance and plan on holding a webinar on this topic in the near future. In the meantime, if you would like further information concerning the issues raised in this Morgan Lewis LawFlash, please contact any of the following Morgan Lewis attorneys:

Los Angeles

John F. Hartigan	213.612.2630	jhartigan@morganlewis.com
Peter J. Hurtgen	213.612.7400	phurtgen@morganlewis.com

New York

Craig A. Bitman	212.309.7190	cbitman@morganlewis.com
-----------------	--------------	--

Philadelphia

Robert L. Abramowitz	215.963.4811	rabramowitz@morganlewis.com
I. Lee Falk	215.963.5616	ilfalk@morganlewis.com
Steven D. Spencer	215.963.5714	sspencer@morganlewis.com

Pittsburgh

John G. Ferreira 412.560.3350
Richard W. Grant 412.560.3340

jferreira@morganlewis.com
rgrant@morganlewis.com

Washington, D.C.

Charles I. Cohen 202.739.5710
Daniel R. Kleinman 202.739.5143
Steven W. Stone 202.739.5453
John F. Ring 202.739.5096

ccohen@morganlewis.com
dkleinman@morganlewis.com
sstone@morganlewis.com
jring@morganlewis.com

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as imparting legal advice on any specific matter.
© 2005 Morgan, Lewis & Bockius LLP. All Rights Reserved.