

# Doing Business Under The Department of Labor's LM-10 Requirements:

Compliance and Practical Guidelines  
for Employers and Certain Service Providers

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Charles I. Cohen  
John F. Ring  
Philip A. Miscimarra  
Daniel P. Bordoni

**Morgan Lewis**  
C O U N S E L O R S   A T   L A W



# Recent LM-10 Guidance

# DOL's Recent LM-10 Guidance

1. Initial Filing Deadlines/Requirements
2. Clarification of Broad Reporting Requirements
3. New *De-Minimis* Exception
4. Payments to Charities
5. Calculating Value of Meals and Other Reportable Events
6. Payments from Employee Personal Funds
7. Section 302 Criminal Implications

# Initial Reports – Filing Deadlines

- Initial reports must be filed to cover fiscal years beginning on or after January 1, 2005
- Initial reports due “on-time”
  - Within 90 days of the close of the reporting employer’s fiscal year
- Timely initial filing effectively eliminates filing obligation for prior years

# Initial Reports – Signing the Reports

- President and Treasurer not required to sign initial report; signed by individual who prepared report
  - Available only for employers previously *“unaware of reporting obligation”*
- Substitution of attestation (“penalty of perjury”) language
  - Available only for employers that did not institute tracking procedures for prior fiscal years
- Modified requirements applicable only for initial reports

# Broad Employer Reporting Obligations

- Definition of covered “employer” interpreted broadly
  - Any entity that has an employee
- Broad range of payments potentially covered
  - Meals (*e.g.*, lunches and dinners)
  - Travel expenses and/or reimbursements
  - Gifts
  - Tickets to sporting or other entertainment events
  - Products or services (including food and other consumer goods)
  - Social events/parties (*e.g.*, contract-signing parties)
  - Fees paid to attend union-sponsored events

# New \$250 *De Minimis* Exception

- Elements of exception:
  - (1) Total value of payments provided to any one union, union officer, union agent, or union employee is \$250 or less in any fiscal year; and
  - (2) Payment is unrelated to the recipient's status in a labor organization.
- Frequency of payments no longer a relevant consideration
- All payments reportable if \$250 threshold exceeded

## New \$250 *De Minimis* Exception (cont.)

- Understanding “unrelated to the recipient’s status in a labor organization”
  - Depends on whether the Company ordinarily provides such payments to individuals in similar circumstances who are not union officials
  - Mere fact that union official would not be present to receive the payment “but for” his or her official position is not relevant to the inquiry

# Payments to Charities

- Requirements limit scope of exclusion:
  - (1) 501(C)(3) charity; and
  - (2) Payment made directly to the charity.
- Reporting and explaining other charitable payments

# Calculating Value of Meals and Other Reportable Events

- No single “right” way
- Estimating the payment or benefit provided to each individual
- Per person cost for a meal or event

# Payments Out of Employee Personal Funds

- Reluctance of DOL to adopt capacity analysis
- Limited circumstances where personal expenditure is not reportable:
  - (1) Does the employee hold a key position with the employer, such as a manager?
  - (2) It is within the employee's job responsibilities to generate or maintain business relationships with unions or affiliated trusts?
  - (3) Is it within the employee's job responsibilities to engage in labor relations activity for the employer?
  - (4) Is the employee acting, directly or indirectly, for the employer when giving the gift?

# Section 302 Implications

- DOL declines to interpret Section 302 of the LMRA or comment on prosecutorial standards
- Potential for prosecution under Section 302 not impacted by exceptions and accommodations in DOL guidance
- Employers left to assess risk

# What Now? LM-10 Reporting Compliance

# LM-10 Reporting Compliance

1. General Reporting/Disclosure Considerations
2. Initial Reporting
  - Meeting reporting obligations without previously having recordkeeping procedures in place
3. Future Reporting Compliance
  - Heightened compliance expectation in future years
  - Need to develop policies and procedures

# General Compliance Considerations

- Separate versus consolidated reports for subsidiaries or related companies
- Collection methods
  - Scope of information collected
  - Privilege considerations
- Records must be maintained for 5 years
- Potential for DOL audit

# Initial Reporting

- Determining filing deadline
- Making reasonable efforts/good faith estimates
  - Searching existing electronic databases
  - Manager/Supervisor communications to solicit information
- Developing consistent, defensible positions
- Utilizing explanatory language on LM-10 reports

## Initial Reporting (cont.)

- Allocating responsibility for collecting and compiling information
- Considering privilege issues
- Communicating with union

# Future Reporting Compliance - Developing Policies and Procedures

- Consider modifying payment practices
  - Balancing legal risk and labor-management relations/  
customer-client relations
  - Analyzing the choices:
    - Prohibiting all covered payments and gratuities
    - Allowing payments up to \$250
    - Permitting all payments and gratuities
  - Implementing tighter controls/authorization  
requirements
- Developing recordkeeping procedures

## Future Reporting Compliance - Developing Policies and Procedures (cont.)

- Tracking expenses
  - Modification of existing electronic/paper expense tracking system
  - Periodic collection of expense information
- Assigning responsibility for tracking expenses and compiling LM-10 report
- Considering privilege issues
- Communicating new policy

# Anticipated Future Developments

- LM-30 rulemaking
  - Caterpillar-type payments
  - *De Minimis* exception
- Additional LM-10 guidance
- DOL audit of submitted reports



# Participant Questions

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# Contact Information

- Charles I. Cohen, Labor Partner, Washington, D.C.
  - 202.739.5710; [ccohen@morganlewis.com](mailto:ccohen@morganlewis.com)
- John F. Ring, Labor Partner, Washington, D.C.
  - 202.739.5096; [jring@morganlewis.com](mailto:jring@morganlewis.com)
- Philip A. Miscimarra, Labor Partner, Chicago
  - 312.324.1165; [pmiscimarra@morganlewis.com](mailto:pmiscimarra@morganlewis.com)
- Daniel P. Bordoni, Labor Associate, Washington, D.C.
  - 202.739.5249; [dbordoni@morganlewis.com](mailto:dbordoni@morganlewis.com)