

# 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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# LM-10 Reporting Why Do We Care?

# LM-10 Reporting – Why Do We Care?

- The broad definition of “Employer”
- President and treasurer must sign completed LM-10 reports (exception for initial report)
  - Criminal and monetary penalties apply
- Detailed reports required
- Information contained on LM-10 reports implicates other statutes with potential penalties
- Disclosures are available to the public and compared with LM-30 union reports

# Test Your LM-10 Knowledge

1. Your firm sponsors a free golf outing and dinner each summer for customers and business partners, and a union official that sits on a board of trustees of a Taft-Hartley fund attends. Reportable?
2. Your firm hosts a conference designed to educate and explain investment issues, products and strategies at no cost to your customers, including Taft-Hartley fund trustees. Your firm provides conference rooms, audio-video equipment, refreshments, meals, travel and lodging. Reportable?
3. Your firm has been doing business with Taft-Hartley fund for years. Does it have to file LM-10s for prior years?

# Question #1

Your firm sponsors a free golf outing and dinner each summer for customers and business partners, and a union official that sits on a board of trustees of a Taft-Hartley fund attends. Reportable?

# 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
  - Social events/parties
  - Fees paid to attend union-sponsored events
  - Payments to charities (other than direct payments to IRC 501(c)(3)s)

# \$250 *De Minimis* Exception

- DOL recent guidance:
  - Changed *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

## \$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

## Question #2

Your firm hosts a conference designed to educate and explain investment issues, products and strategies at no cost to your customers, including Taft-Hartley fund trustees. Your firm provides conference rooms, audio-video equipment, refreshments, meals, travel and lodging. Reportable?

# 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
- Certain overhead costs not reportable

## Question #3

Your firm has been doing business with Taft-Hartley fund for years. Does it have to file LM-10s for prior years?

# 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

# 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?

# Other Statutes Implicated

- Section 302 of the LMRA
- 18 U.S.C. § 1954
- Prohibited transaction provisions under ERISA and the Code

# What Now? LM-10 Reporting Compliance

# LM-10 Reporting Compliance

- General reporting/disclosure considerations
- Initial reporting
  - Meeting reporting obligations without previously having recordkeeping procedures in place
- 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
  - Employee 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 customers/clients

## Future Reporting Compliance - Developing Policies and Procedures

- Consider modifying payment practices
  - Balancing legal risk and 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
  - *De Minimis* exception
- Additional LM-10 guidance
- DOL audit of submitted reports



# Participant Questions

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