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## CLIENT ADVISORY

### The Department of Labor Revises LM-30 Reporting Requirements Under the Labor Management Reporting and Disclosure Act

#### Introduction

On July 2<sup>nd</sup> 2007, the Department of Labor (DOL) issued its final rule revising the LM-30 disclosure form that must be filed annually by union officials and union employees who receive payments from, or have other financial arrangements with, union represented employers, businesses with employees the union actively is seeking to represent, or other entities. The new rule will take effect on August 16<sup>th</sup>, 2007, forty-five days after its publication in the *Federal Register*. The most salient change from the prior rule is the expansion of the *de minimis* rule so that payments of less than \$250 will not trigger a reporting obligation.

#### Summary of Regulations

The Department of Labor's Office of Management Standards requires virtually all employers who have engaged in any financial transaction with a union, union officers, union employees, or labor consultants to report such transactions. An employer satisfies the reporting requirement by filing a Form LM-10 within 90 days of the completion of the employer's fiscal year. Failure to file Form LM-10, or filing it inaccurately, may subject the employer and those who sign the form to criminal and civil penalties. The LM-30 is the analog to the employer's LM-10 form. Thus since the Form LM-30 and the Form LM-10 have similar *de minimis* standards, the changes enumerated by the DOL in the Form LM-30 will likely apply to the Form LM-10.

#### Specific Reportable Activities

Reportable activities are listed under Part A, Item 8 of Form LM-10 and include, but are not limited to:

- Payments or loans made to any labor organization, or representative of a labor organization.
- Payments made to any employees for the purpose of persuading them to exercise or not to exercise their rights to organize and bargain collectively through representative of their own choosing without previously or at the same time disclosing such payment to all such other employees
- Payments made for the purpose of interfering with employee NLRA rights.
- Payments made for the purpose of obtaining information concerning employee activities during a labor dispute.

- Agreements with consultants for the purpose of persuading employees to exercise or not exercise their NLRA rights.
- Agreements with consultants for the purpose of obtaining information concerning employee activities during a labor dispute.

#### New De Minimis Rules

Under the final rule, payments of \$250 or less over a year's span from a single source need not be reported, and individual payments of \$20 or less do not count in calculating such annual payments. This dollar-specific test was adopted to clarify when a filing is required. Furthermore, unions are not required to notify their officials of the obligation to file LM-30 forms if they engaged in covered transactions. The final rule excludes from reporting requirements a union official or union employee's participation in a "widely attended gathering" for which an employer or other business entity has paid less than \$125 per person per gathering. A "widely attended gathering" is defined as a meeting where it is expected that a large number of people will attend and that attendees will include both union officials and a substantial number of people with no relationship to the union or its trusts.

#### Further Changes

Director's fees and reimbursed expenses for a union officer who sits on an employer's board of directors must also be reported as must gifts to a union officer or employee from a business that competes with the union-represented employer. If a union's collective bargaining agreement contains a "no docking provision," then union officers must report pay in excess of 250 hours per year from their employer. Under a "no docking" provision, employers allow union officials to devote part of their work time to union business with no loss of pay.

The rule also adopts a "top down" approach to reporting requirements. Union officials with international or national labor organizations must now report payments or financial transactions with employers or business entities connected to subordinate local unions as well as those connected to the national or international. However, a local union officer or employee only has to report financial transactions concerning employers or businesses connected to the local union.

The final rule narrows some DOL-created exceptions to the former LM-30 form. Specifically, the DOL has narrowed the "regular course of business exception." Union officers and employers must now report stock holdings in a covered employer or business, transaction in such holdings, loans to and from such an entity, and income or any other benefit with monetary value received from such an entity. The DOL has also eliminated the 'special reports' language because of the department's express statutory mandate to conduct investigations under the LMRDA.

Previously, the DOL provided a reporting exemption for "bona fide loans, interests, or dividends" from a bank, insurance company, or other enumerated financial institutions. The final rule retains this "general exemption" but limits its scope. The exemption will not apply to banks or other financial institutions that "constitute a 'trust in which your labor organization is interested.'" However, when the financial institution is an employer whose employees the filer's union represents or is actively seeking to represent, the exception would not apply nor would it apply where the financial institution is a business that buys, sells leases or

otherwise deals with the union, a trust in which the union is interested, or in substantial part with the employer of the union members.

Lastly, the final rule also eliminates a former LM-30 form provision that had excused union officials from reporting certain matters under the proviso the department could demand such information through a "special report." The elimination of the special report does not diminish the department's authority to assess each LM-30 report for sufficiency, require amended reports, and to commence investigations.

Please feel free to contact us with any questions.

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