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DOL EXTENDS DEADLINE FOR LM-10 REPORTING

For many employers with reporting obligations under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), the Department of Labor's (DOL) initial guidance regarding Form LM-10, issued in November 2005, generated more questions than it answered, especially for employers that sell goods and services to unions or to multiemployer benefit funds. The DOL's updated Form LM-10 guidance, issued on March 8, 2006, answers many of these questions and expands the de minimis rule, thereby easing the filing burden on service providers.

To give employers an opportunity to review and apply the DOL's updated Form LM-10 guidance, the DOL has extended the deadline for filing Form LM-10 from March 31, 2006, until May 15, 2006, for employers whose fiscal year ended on December 31, 2005.

SIGNIFICANT UPDATES TO DOL'S FORM LM-10 GUIDANCE

The following revisions and additions are among the most significant to appear in the DOL's updated Form LM-10 guidance:

Widely Attended Gatherings

The DOL has created two new recordkeeping and reporting exemptions for widely attended gatherings. A gathering is widely attended if it is expected that a large number of persons will attend and that attendees will include both union officials and a substantial number of individuals with no relationship to a union. In addition, union officials must be treated the same as individuals not affiliated with a union (1) when the employer advertises or distributes invitations for the event and (2) at the reception.

\$20 exemption for all widely attended gatherings. If an employer holds a widely attended gathering and spends \$20 or less per attendee, it has no Form LM-10 obligations with regard to tracking or disclosing the costs for the gathering. For example, if a union official attends four widely attended gatherings, each costing an employer \$20 or less and, in the same fiscal year, receives \$300 worth of tickets to sporting events from the same employer, the employer would only be required to report the \$300 worth of tickets.

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\$125 exemption for one or two widely attended gatherings. If an employer holds one or two widely attended gatherings in a single fiscal year and spends \$125 or less per attendee per gathering, it has no Form LM-10 obligations with regard to tracking or disclosing the costs for those gatherings. Thus, the employer need not keep records of the attendees at these gatherings. However, an employer that holds a third such widely attended gathering that is attended by one or more of the same group of union officials may be required, provided the *de minimis* threshold is satisfied, to file a Form LM-10 that identifies the name of the union official and the amount expended on that individual at all three widely attended gatherings. Thus, an employer that is unsure whether it will hold more than one or two widely attended gatherings in a single fiscal year will need to track and maintain records of the union officials in attendance at the first two gatherings. Only then will the employer have sufficient information to file an accurate report in the event it holds a third widely attended gathering.

Reimbursement of Payments by Recipients

Employers need not report gifts that are rejected and returned or payments that are repaid by recipients. The same rule applies to hospitality items, such as meals, beverages, vacations, etc. The items are not reportable when reimbursement is made. The recipient must reimburse the employer for the gift, payment, or hospitality in the same fiscal year in which it was received for there to be no reporting requirement.

In particular cases concerning serious conflicts of interest or attempts by employers to circumvent or evade the filing requirements, the Department may, upon specific request, require reports of payments, gifts, etc., despite return or reimbursement.

Payments to Tax-Exempt Organizations

The guidance offers the following example: an employer that purchases, at the request of a union official, a \$500 ticket to a dinner held for the benefit of a tax-exempt entity is not required to report that amount on a Form LM-10. The DOL explained that, assuming the entire donation is remitted directly to the tax-exempt organization, the payment would not be reportable because it is not a payment or loan to any union or union official. However, if the employer gives the dinner ticket that is received in return for the donation to a union official, it is a gift and is reportable on a Form LM-10.

In addition, payments to charitable events run by a union are generally not reportable on Form LM-10. However, if the cash or gifts are provided to a union, the payment is reportable even when the union ultimately directs the donations to a tax-exempt organization.

Payments to Spouses of Union Officials

Ordinarily, payments to spouses of union officials are not reportable. Thus, for example, an employer who purchases a meal for a union official and his or her spouse need only report the value of the meal purchased for the union official. (However, a union official who is subject to the Form LM-30 reporting requirements must report payments received by the union official *and* his or her spouse).

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Under unusual circumstances, a payment to a union official's spouse may be reportable as an indirect payment to a union official. For example, if an employer provides two Super Bowl tickets to a spouse of a union official several weeks before a collective bargaining agreement between the employer and the official's union is to be negotiated, and the employer has no meaningful, independent relationship with the spouse, the DOL would require the employer to report the value of the tickets provided to the spouse.

Office Space Provided to a Union

The value of office space provided by an employer without cost to a union is reportable. However, an employer need not report the union's temporary and episodic usage of office space where permission, timing, and location are entirely within the employer's discretion.

CONCLUSION

The DOL's updated Form LM-10 guidance offers many important clarifications and even a few significant changes. Thus, employers with Form LM-10 reporting obligations should carefully review the more than 60 FAQs added to the updated guidance, which now includes a total of 87 FAQs. Fortunately, to allow employers a chance to consider the updated guidance, the DOL has extended the filing deadline for employers whose fiscal year ended on December 31, 2005, from March 31, 2006, until May 15, 2006.

The full text of the DOL's updated Form LM-10 guidance is available online at the DOL's Web site, http://www.dol.gov/esa/regs/compliance/olms/LM10_FAQ.htm.

For general information regarding the LMRDA and Form LM-10 reporting requirements, please refer to the EBG Client Alert issued on February 6, 2006: "New DOL Enforcement Initiative on LM-10 Reporting Aimed at a Broad Class of Employers," available at http://www.ebglaw.com/article_1229.pdf.

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If you have any questions regarding LM-10 reporting or your obligations thereunder, please contact **Michael F. McGahan** at 212/351-3768, mmcgahan@ebglaw.com, or **Steven M. Swirsky** at 212/351-4640, sswirsky@ebglaw.com.

Matthew S. Banner, an associate in EBG's **New York** office, assisted with the preparation of this *ALERT*.

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorney in connection with any specific questions or issues that may impose additional obligations on you and your company under any applicable local, state, or federal laws.

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