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LABOR AND EMPLOYMENT ALERT

NEW REPORTING REQUIREMENTS MAY EXPOSE EMPLOYERS TO CRIMINAL LIABILITY

New Department of Labor (DOL) regulations set to take effect in the coming weeks and months create significant issues for employers. On October 9, 2003, DOL revised the reporting obligations of unions under the Labor Management Reporting and Disclosure Act (LMRDA). A lawsuit brought by the AFL-CIO temporarily delayed implementation of the regulations. That lawsuit has been resolved favorably to DOL, clearing the way for the implementation of the regulations. Because employers and unions share parallel reporting obligations under the LMRDA, the new regulations raise questions concerning the reporting obligations of employers.

From an employer's perspective, the most significant change in the regulations is the obligation of unions to itemize on form LM-2 all major receipts.[1] A "major receipt" is a single receipt or aggregate receipts from one person of $5,000 or more during the reporting period. *See* 68 Fed. Reg. 58374. Major receipts must be itemized into six functional categories: (1) representational activities, (2) political activities and lobbying, (3) contributions, gifts and grants, (4) general overhead, (5) union administration and (6) other receipts. The Instructions for Schedule 14 (Other Receipts) require unions to report their "receipts from all sources during the reporting period," and to list the name of the entity from which the union received a receipt. The result of the changes is that unions and their representatives will, for the first time, be identifying the employers from which they received "anything of value."

The level of detail required by the new LM-2 requirements is likely to encourage individual union representatives to exercise greater care in reporting receipts from employers. Under the LMRDA regulations, union representatives must file Form LM-30 on an annual basis. The form requires disclosure of receipts by these individuals of "any payment of money or other thing of value." Individuals must report all receipts, not just "major receipts." Because unions will be providing greater detail about receipts from employers, union officials and employees are likely to include correspondingly detailed information on their Form LM-30.[2] In addition,

[1] Form LM-2 must be completed by unions with gross receipts of $250,000 or more.

[2] Recently, the DOL announced that it will propose amendments to Form LM-30. *See* 29 C.F.R. 404.3.

union representatives who may not have filed Form LM-30 in the past are likely to do so this year because DOL will grant amnesty for first-time filers. Originally, DOL set the filing deadline for July 15, 2005. Recently, DOL extended the deadline to August 15, 2005.

Such detailed union reporting necessarily will identify payments from employers that trigger the employers' own filing obligation. Under the LMRDA, employers who engage in certain financial transactions with unions, union officials, union employees or labor consultants are required to file Form LM-10. 29 U.S.C. § 433. Similar to Form LM-30, there is no threshold amount limiting disclosure of receipts covered by Form LM-10. If a union or union representative files a form LM-2 or LM-30 identifying a transaction with an employer, then the employer should similarly have identified that transaction in its own LM-10 filing, unless the transaction is exempt under Section 186(c). The LMRDA imposes significant penalties, including fines up to $10,000 and imprisonment for up to one year, on anyone who willfully violates the Act.

Merely filing a form LM-10 does not eliminate the liability risk to an employer. Broadly speaking, Section 186 of the Labor Management Relations Act (LMRA) prohibits employers from giving anything of value to a union or its representatives. Depending on the amounts involved, a violation of the LMRA could result in fines of up to $15,000 and imprisonment for up to five years.

The result of the new DOL reporting requirements is that employers may be in a "catch-22." More detailed filings by unions are likely to expose employers that have reporting obligations under the LMRDA. If the employer fails to file a Form LM-10, the employer may face criminal penalties under the LMRDA. However, if the employer complies with its reporting obligations under the LMRDA, it may be admitting to a violation of the LMRA. In addition, such violations may provide a basis for an action under the Racketeer Influenced and Corrupt Organizations Act.

On April 20, 2005, DOL and the Department of Justice (DOJ) announced a joint enforcement initiative. DOL will focus on identifying and investigating criminal violations of LMRDA Title II, which requires labor organizations to file annual financial reports. DOJ will focus on identifying and investigating criminal violations of LMRA Section 302, which prohibits employers from making payments or giving things of value to any labor organization or employee. *See* 70 Fed. Reg. 20601 (April 20, 2005).

In sum, DOL's revised reporting requirements are fraught with peril for employers. Any employer that has engaged in reportable transactions with a union or its representatives would be well-advised to proceed with great caution in complying with its LMRDA obligations.

CONTACT INFORMATION

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