AKIN GUMP STRAUSS HAUER & FELD LLP
Attorneys at Law

August 9, 2005

LABOR AND EMPLOYMENT ALERT

NEW LMRDA DISCLOSURE REGULATIONS MAY TRAP UNWARY EMPLOYERS

The U.S. Department of Labor's (DOL) new reporting regulations may compel employers to reevaluate many practices that are common in unionized workplaces. As DOL itself has acknowledged, many of the reporting requirements of the Labor Management Reporting and Disclosure Act (LMRDA) have been ignored for decades. DOL's recent emphasis on enforcement of these requirements raises significant questions for employers about the kind of activities that may violate labor law.

As discussed in our July 8, 2005, *Labor and Employment Alert*, DOL's revised reporting regulations will require unions to identify employers from which they received a thing of value. Many union officers, for the first time, soon will be filing Form LM-30 reports. Union officers similarly are required to identify "any payment or other thing of value" received from an employer. These filings will identify employers who must themselves report these payments on a Form LM-10. In addition, the payments by employers to unions may violate the Labor Management Relations Act (LMRA).

While most employers are aware that direct payments to union officers violate the law, employers may be surprised to learn that some routine labor relations practices also may create issues under both the LMRDA and LMRA. For example, many collective bargaining agreements allow employees who are union stewards to perform their union duties during work time. In some larger workplaces, many agreements provide for full-time non-working stewards who continue to receive their wages from the employer although they exclusively perform union business. Often, these stewards receive office space and equipment from the employer.

Arguably, the continued payment of wages to union stewards for time spent on union business is the type of payment that must be reported by an employer in an LM-10 under the LMRDA, and which may violate the LMRA. In *Caterpillar, Inc. v. UAW*, 521 U.S. 1152 (1997), the Supreme Court granted review of a decision of the 3rd Circuit Court of Appeals in order to decide whether it is lawful, under section 302(c)(1) of the LMRA, for an employer "to pay or agree to pay the current wages of full-time union officials who are former employees of the

employer but who no longer perform any work for the employer." The 3rd Circuit found lawful the employer's payments, pursuant to a collective bargaining agreement, to union stewards and committeemen exclusively performing union business. Observing that the payments were "not [for] compensation for hours worked in the past," the Court held that the payments were "by reason of" the employees' past service.

The parties agreed to dismiss the case, which rendered Supreme Court review moot. Nonetheless, the fact that the Supreme Court granted review suggests that the Court believed that the decision of the 3rd Circuit raised questions worthy of review. *See also Int'l. Ass'n. of Machinists v. BF Goodrich Aerospace*, 387 F.3d 1046 (9th Circ. 2004) (finding lawful wage payments to union steward who worked full time on grievance matters).

The *Caterpillar* decision highlights the perils created for employers by the DOL's new reporting requirements. Many commonly accepted practices may come into question as DOL presses forward with its LMRDA enforcement initiatives. Meanwhile, little guidance exists for employers attempting to determine what constitutes a "thing of value," which employers must report on their LM-10 forms to avoid criminal prosecution under the LMRDA. At the same time, because providing a "thing of value" itself is a criminal violation of the LMRA, employers will want to avoid being over-inclusive simply to avoid a potential LMRDA violation. In short, unionized employers should proceed with caution as they try to meet their obligations in this uncertain area of the law.

CONTACT INFORMATION

If you have any questions about this topic, please contact:

Joseph A. Turzi	202.887.4228	jturzi@akingump.com	Washington
James M. Gary	512.499.6297	jgary@akingump.com	Austin
Chase A. Karsman	202.887.4261	ckarsman@akingump.com	Washington