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A Special Alert from Dechert's Labor and Employment and Employee Benefits and Executive Compensation Groups

Department of Labor Issues New LM-10 Guidelines

On March 7, 2006, the Department of Labor (Office of Labor-Management Standards) ("DOL") released significantly revised guidelines (in the form of questions and answers) governing an employer's LM-10 reporting obligations.[1]

Overview of LM-10 Requirements

Under the Labor-Management Reporting and Disclosure Act ("LMRDA"), employers must annually report on an LM-10 form payments made to unions and their officials, subject to various exceptions, including a *de minimis* exception that excludes payments of $250 or less in a given year. The reporting obligation under the LMRDA covers not only actual monetary payments to union and union officials, but also the provision of food and drinks at social functions, lodging, entertainment, and a host of other social gratuities, unless they fall under the *de minimis*, or some other, exception. Reports must generally be filed within 90 days of the end of the employer's fiscal year.

Last Year's DOL Guidelines

Last year, the DOL issued controversial enforcement guidelines in which it adopted an interpretation of the LMRDA so expansive as to impose reporting obligations on any entity that employs even a single employee and makes a covered payment to a union or union official that does not fall within one of the recognized exceptions. The DOL took the position that a reporting obligation does not depend on whether the union to which the payment is made represents (or even seeks to represent) the employees of the employer making the payment. The principal effect of this expansive interpretation was to impose reporting obligations on service providers that deal with unions and union officials outside the collective bargaining context—among them financial service providers to Taft-Hartley funds that may provide social gratuities to union trustees at seminars, lectures, social outings, and other events.

A number of associations representing employers in the financial services industry have appealed to the DOL to rescind its imposition of a reporting obligation on financial service providers whose employees are not union-represented and otherwise do not deal with unions outside the Taft-Hartley context. A key objection has been that the LMRDA does not authorize the DOL's enforcement position. As the March 7 guidelines make clear, though, the DOL has not backed off on its position.

New Guidelines

A successful court challenge to the DOL's enforcement position is certainly possible given the DOL's dubious interpretation of the LMRDA. (Several associations have already made noise about mounting a legal challenge.) In the interim, though, employers subject to a reporting obligation under the DOL's new guidelines will probably decide to file LM-10 reports within the required time period. Dechert advises employers to review the DOL's March 7 guidelines carefully and not to rely upon last year's similar guidelines on the subject. While the new and old guidelines substantially

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[1] *See Form LM-10 – Employer Reports* – Frequently Asked Questions at www.dol.gov/esa/regs/compliance/olms/LM10_FAQ.htm.

overlap, the new guidelines clarify several key points and offer guidance on previously unaddressed matters—including whether a group of affiliated corporations (*e.g.*, a parent and several subsidiaries) may file a single, consolidated report, and the special provisions governing first-time filers.

Filing Deadline

LM-10 forms are due 90 days after the end of the employer's fiscal year. A DOL advisory that accompanied publication of the March 7 guidelines, however, establishes an enforcement grace period: *employers whose fiscal year 2005 reports are due by March 31, 2006, may file by March 15, 2006*. The DOL "will not take any enforcement action until May 15, 2006, to compel the filing of delinquent" filings.

New filers of Form LM-10's generally need not, according to the DOL's guidelines, "submit reports or maintain records for fiscal years beginning prior to January 1, 2005, even if such reports should have been filed." A new filer must, however, file its 2005 report by May 15, 2006, to avail itself of this "grace period" if it has something to report for 2005. If "an employer does not have a reportable transaction for its first fiscal year beginning on or after January 1, 2005, but wishes to take advantage of the grace period, the employer must maintain or create records [and maintain them for five years] sufficient to verify that it identified no reportable interests for the fiscal year despite established internal procedures or reasonable good faith efforts." Such an employer should *not* file a 2005 report.

Members of Dechert's Labor and Employment Group and Employee Benefits and Executive Compensation Group are available to advise employers as to their LM-10 reporting obligations and answer any questions about the new guidelines.

Practice group contacts

If you have questions regarding the information in this update, please contact the Dechert attorney with whom you regularly work, or any of the attorneys listed. Visit us at www.dechert.com/employment.

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