U.S. DEPARTMENT OF
LABOR
LM-10 AND LM-30
FAQ'S
RELATING TO TRUSTEE
GIFTS AND EXPENSES
Office of Labor-Management Standards (OLMS)

Note: These Frequently Asked Questions apply to the new Form LM-30. If you choose to file the old Form LM-30, please visit here.

Form LM-30 - Labor Organization Officer and Employee Report

Frequently Asked Questions

Note: For more information concerning the reporting requirements for the Form LM-30 send a message to olms-public@dol.gov, call the DOL Help Line at 1-866-487-2365, or contact the nearest OLMS field office, which can be located at http://www.dol.gov/esa/contacts/olms/makeup.htm.

A. Introduction

Q1. Who must file Form LM-30?

A. As described in more detail in the Form LM-30 Instructions and throughout these FAQs, Labor Organization Officers and Employee Report Form LM-30 must be filed by any person who meets the following conditions during the fiscal year:

1. Is an officer or employee of a labor organization (other than an employer performing exclusively clerical or custodial services) as defined by the Labor-Management Reporting and Disclosure Act (LMRDA), and
2. Is the official or the official’s spouse or minor child, directly or indirectly, held any legal or equitable interest in, received any payments or benefits with monetary value from, or engaged in any transactions or arrangements (including loans) with:
   a. Employers whose employees the official’s labor organization represents or actively seeks to represent, or
   b. Certain other categories of employers as described in FAQ 45 through FAQ 56 below, or
   c. Businesses that make sales to, or otherwise have dealings with, the official’s labor organization, with a trust in which the labor organization is interested, or with an employer whose employees the labor organization represents or is actively seeking to represent as discussed above in FAQ 32.

D. Reporting Exceptions in General/Scope of Labor Organization

Q24. Is there a de minimis exception where I don’t have to report payments under a certain amount?

A24. Yes. While the LMRDA does not include a de minimis level, the Department has historically not required reports of payments or gifts of insubstantial value. For purposes of Form LM-30, labor organization officers and employees do not have to report any payments or gifts totaling $250 or less from any one source. Payments or gifts valued at $20 or less do not need to be included in determining whether the $250 threshold has been met. For example, if a labor organization officer or employee receives an employer two gifts worth $20 each and two restaurant meals worth $150 each, the official need only keep records of this $300 value. However, a series of payments or gifts designed to circumvent the $20 threshold must be reported.

Q25. I am an officer of a labor organization and was appointed a trustee of a pension plan. I attended a reception sponsored by a service provider at a convention of representatives of union and non-union plans. The reception was open to all convention attendees. Must I report the value of the reception?

A25. Labor organization officers and employees do not have to include the benefits, such as food and entertainment, received while in attendance at one or two widely-attended receptions, meetings, or gatherings in a single fiscal year for which an employer or business has spent $125 or less per attendee per gathering. Also, the value of those gatherings does not have to be included in determining whether the $250 threshold has been met. However, if an officer or employee attends three or more such widely-attended gatherings provided by an employer or business, the value of all such events must be counted. Also, if the benefit received for a single gathering exceeds $125, the officer or employee must include the value of the gathering in determining whether the $250 threshold has been met.

A gathering is widely attended if a large number of persons are in attendance and the attendees include labor organization officers and employees and a substantial number of individuals with no relationship to a labor organization or a section 501(c)(3) trust of the union (see FAQ 47 for a definition of a trust in which a labor organization is interested/funding a (c)(3) trust). For a gathering to qualify as widely attended, those with a relationship to a labor organization must be treated the same as others when the employer or business advertises or distributes invitations for the event and must be treated alike at the event.

Q47. How do I know if a trust is one in which my labor organization is interested?

A47. A trust in which a labor organization is interested means a trust or other fund or organization (1) which was created or established by the labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by the labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

Q66. A benefit manager who is seeking our labor organization's business provided me and several other officers with dinner, a golf outing, and tickets to a sporting event (totaling over $250). Must we report these items even though the benefit manager is only seeking our business?

A66. Yes. The dinner, golf outing, and sporting event tickets must be reported. Potential vendors or service providers engaging in active and direct solicitation of a labor organization or a trust in which the labor organization is interested in an attempt at winning business with the labor organization or trust will be considered to be "dealing" with the labor organization to the same extent as vendors who are already doing business with the labor organization. Members deserve to know if the labor organization's purchases of goods and services were based on merit rather than the financial interest of the labor organization officers.

Q67. Are Form LM-30 reports required for payments received from attorneys who are designated legal counsel?

A67. Yes. Labor organization officers and employees must report payments and benefits received from an attorney who is an employer and who is or seeks to become a designated legal counsel for the labor organization. A designated legal counsel is a lawyer recommended by the labor organization to its members for representation in workers' compensation, personal injury, or other matters. Labor organization members have the right to evaluate whether a lawyer's presence on a list of designated legal counsel is based on merit rather than a financial relationship between the lawyer and labor organization officials.
FORM LM-10 — Employer Reports Frequently Asked Questions

The following series of questions and answers responds to inquiries received by the Department of Labor on the Form LM-10 (Employer Report), a reporting and disclosure form issued by the Department of Labor pursuant to the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA).

This guidance describes the Form LM-10 requirements, provides for a de minimis exemption that excludes from reporting payments of $250 or less, explains the steps employers should take if they have not maintained records relevant to the Form LM-10, and addresses frequently asked questions for fiscal years beginning on or after January 1, 2005. This guidance is intended as compliance assistance. It is not legal advice, and should not be relied upon as legal advice. If you have additional questions about the Form LM-10 or your reporting obligations, you may wish to contact the Office of Labor-Management Standards (OLMS) directly at olms-public@ dol.gov. If you require legal advice, you may wish to consult a private attorney.

Q6. What transactions must be reported on Form LM-10?

A6. Employers must file a Form LM-10 to disclose any:

- Payments and loans made to a union or union official, other than payments of the kind referred to in section 302(c) of the Labor Management Relations Act, 1947, and payments and loans in the regular course of business by insurance companies and credit institutions.

Under section 302(c) of the Labor Management Relations Act, employers do not have to report, among others, the following types of payments:

- With respect to money paid to their employees as compensation for, or by reason of, service as an employee — In satisfaction of a court or administrative judgment, or in settlement of a dispute — With respect to the sale or purchase of an article of commerce at the prevailing market price in the regular course of business; — With respect to money deducted from the wages of employees in payment of union dues; — With respect to money paid to certain health and welfare trust funds or labor management committees.

Q7. May payments be excluded from the Form LM-10 if they are made by an employer that is not acting in the capacity of an employer, but instead as a service provider?

A7. No. The fact that a payment is not made in relation to a direct employment relationship, or in the context of collective bargaining, is not relevant to whether the payment is reportable under section 302(c)(1). 29 U.S.C. § 432(a)(1).

Q7. Are service providers to labor organizations and Taft-Hartley funds agents of a labor organization?

A7(A). A person or entity who is an "employer" under the LMRDA makes "any payment or loan, direct or indirect, in money or other thing of value (including reimbursed expenses), or any promise or agreement therefor, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization" must file a report, unless a specific exemption is applicable. 29 U.S.C. § 433. As a result, by its terms, the statute requires reports of payments from an employer to an agent of a union.

Q7(B). Are service providers to the employer of union members agents of that employer?

A7(B). The definition of "employer" includes "any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee." 29 U.S.C. § 402(e); see also 29 U.S.C. § 402(d) (emphasis added). A person or entity who is an "employer" under the LMRDA makes "any payment or loan, direct or indirect, in money or other thing of value (including reimbursed expenses), or any promise or agreement therefor, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization" must file a report, unless a specific exemption is applicable. 29 U.S.C. § 433. As a result, by its terms, the statute requires a report when an agent of an employer makes a payment to a union or union official. A question, therefore, arises: whether a service provider or vendor to the employer of the union members also constitutes an "agent" of the employer. See FAQs. Question 17. Such a service provider or vendor might be required to file a Form LM-10 when it makes a payment to a union or union official — irrespective of its agency relationship — if substantial part of its business is derived from the employer of the union members. See FAQs. Question 10. But for those service providers who do not meet this "substantial part" test, would such a service provider or vendor be required to file a Form LM-10 based solely on its status as an agent of the employer of the union members?

The Department will not require service providers to employers, except in unusual circumstances, to file Form LM-10 reports based solely on their agency relationship unless the payment is made as a result of, or pursuant to, the agency relationship. For example, secure the official's support in the vendor's bid to maintain its commercial relationship with the employer of the union members, if the vendor has an agency relationship with the employer. On the other hand, such a vendor and agent need not report a payment to a union official made to secure a contract with the union official's family business.

Q8. Unions are often affiliated with trusts, such as pension and welfare plans. Union officers frequently serve as trustees to these trusts. Are service providers to trusts, such as broker-dealers, investment advisors, investment companies, and Investment banks, required to file a Form LM-10?

A8. Yes. If a service provider to a trust has one or more employees and makes a payment to a union or a union official that is not subject to a specific reporting exemption, the service provider must file a Form LM-10. For example, an investment management firm offers a union official the use of a vacation home or paid travel and lodging in an effort to establish a business relationship between the firm and a pension plan for which the union official is a trustee. The firm would be required to file a report disclosing the gift. See the response to questions 73 and 74 for more information in regard to Form LM-10 filing obligations for service providers to trusts.
Q15. Does an investment manager who pays $300 for business meals for a Taft-Hartley pension plan trustee who is not appointed by the union have to report the amount on a Form LM-10? What if the investment manager does not know whether or not a particular plan trustee is appointed by the union?

A15. The investment manager does not have to report payments to a trustee who is not appointed by the union.

For reports covering payments in fiscal years beginning on or before December 31, 2005, if the investment manager does not know whether the plan trustee is appointed by the union, the investment manager should make reasonable inquiry and exercise due diligence to determine the status of the individual who received the meal by, for example, querying the pension and welfare plan, its trustees, or the affiliated union. See FAQ, Question 66, which explains what employers should do when adequate records have not been maintained. For reports covering subsequent fiscal years, it is the responsibility of the employer to institute procedures to record the information necessary to accurately complete the form.

Q16. An employer in the sports and entertainment industry sought to build a new venue for its business. In the employer's attempt to obtain financial assistance from various governments in building the new venue, it obtained assistance from a number of organizations, including several unions. The unions providing assistance would have benefited from the construction and the hotel/service sector jobs created. However, none of these unions represent workers that were or ever would be employed by the employer. During the course of building, the employer paid transportation, food, and lodging expenses for those unions and their officers. Is the employer required to submit a Form LM-10?

A16. No. Under the facts precisely as presented, the employer is not one that is obligated to file a Form LM-10. See FAQ, Question 10.

Q17. The LMRA's definition of "employer" contains a phrase including "any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee." Under this definition, would a law firm that provides legal representation to an employer in collective bargaining with the union be obligated to file a Form LM-10 for gifts/lunches it provides to union officials? Does this depend on whether the cost is ultimately borne by the employer?

A17. Yes. The gifts and lunches provided to union officials by the law firm would be reportable, unless these payments are of the kind referred to in section 302(c) of the Labor Management Relations Act, or some other exception to the LMRA reporting requirements apply. Here, the law firm is acting for, or as an agent, of the employer in relation to its employees.

If the law firm is reimbursed by the employer-client for the gifts/lunches within the same fiscal year, the payments would only be reported by the employer-client. See FAQ, Question 56.

Q26. From time to time, a law firm pays for certain costs that are then billed to the client union. For example, a meal may be provided for a meeting that takes place to prepare for or engage in collective bargaining or to prepare for or conduct arbitration over a grievance under a collective bargaining agreement. Is this a transaction that should be reported on Form LM-10 if a union officer is a recipient of the meal?

A26. The law firm would not owe a report if it is reimbursed by the client union within the same fiscal year. FAQ, Question 56. If the payment is made near the end of the fiscal year, the law firm would not owe a report if it is reimbursed promptly, even if the reimbursement occurs in the next fiscal year. The union's payment would be accounted for on its Form LM-2, LM-3, or LM-4, but the union would not be required to file a Form LM-10. FAQ, Question 12. If timely reimbursement is not made, the law firm would owe a report unless the meal is covered by an exemption such as the de minimis exemption.

Q21(A). An employer pays a labor organization $1,000 for a full-page advertisement in a commemorative booklet that is given to all of the officers of local unions attending a union conference. The same employer also pays $2,000 to conduct marketing activities from a trade booth at the conference. Are these payments reportable on Form LM-10?

A21(A). Yes. The employer must file a Form LM-10 reporting the $1,000 paid for the advertisement in the commemorative booklet, and the $2,000 for the conference trade booth.

Under section 203(a), and subject to multiple exceptions, employers must report payments to labor organizations and their officials. 29 U.S.C. § 433(a)(1). Section 203(c)(1)(B) exempts payments of the kind referred to in section 302(c) of the Labor Management Relations Act (LMRA). 29 U.S.C. § 433(a)(1)(B). Section 302(c) covers payments "with respect to the sale or purchase of an article of commodity in the regular course of business." 29 U.S.C. § 186(c)(1). The purchase of "advertising" in a newspaper or magazine for a labor organization is not reportable under the regular course of business, but the purchase of the advertisement is reportable as an "active solicitation."

Such payments to a labor organization are of interest to union members, regulators, and the public. Because a prevailing market price cannot be determined, an employer's purchase of advertising or use of a booth could be, for example, a mechanism for a payment intended to persuade the union to its collective bargaining demands, to enhance the union's effectiveness, or to favorably influence the union in the case of a labor dispute. To avoid the appearance of accepting payments from a labor organization, the law firm's solicitation must be in the regular course of business, not an "advertising" expenditure.

Such payments would still be subject to the de minimis test as outlined in this guidance.

However, the Department recognizes that the LMRA Interpretative Manual provision could also be read as creating a blanket rule that such payments, no matter how large, are not reportable under section 203(c)(1)(A). The Department has never applied a blanket rule and has considered these questions on a case-by-case basis to determine whether the payments meet the de minimis test of being sporadic or occasional and insubstantial. It is not correct to assume that all expenditures for employer advertisements are invariably sporadic and insubstantial, without regard to the frequency of the expenditure or its amount. Nevertheless, in light of the requirement to not track or report these types of payments, the Department, as a matter of enforcement discretion, will not seek to require Form LM-10 reports of expenditures for employer advertisements in labor organization journals or payments for booths at union conferences for fiscal years commencing on or before December 31, 2006.

Q32. Must an employer file a Form LM-10 for donations to a union scholarship fund?

A32. No. Ordinarily the scholarship fund will meet the conditions set forth in section 302(c)(5) and (7) of the Labor Management Relations Act, and the payments will not be reportable. See 29 U.S.C. 433(a)(1). The LMRA contains an exception for payments for the kind referred to in this section of the Labor Management Relations Act. If the fund does not meet these conditions, the payments are considered to be payments to a union or union official and must be reported. See also FAQ, Question 62, which addresses payments made in tax-exempt organizations at the request of a union or union officer.
Q21. A union sponsored a golf outing attended by union members and their families. Each golfer paid his or her own greens fees. Two employers of the union members contributed golf bags and clubs to the union to be awarded to golfers who won in various categories. The sporting goods cost each employer more than $250. Must Form LM-10 be filed in this situation?

A21. Yes. Each employer would be required to file a Form LM-10 because each is giving something of value to a labor organization, and the dollar-threshold criterion for the de minimis exemption is not met.

Q22. A union officer, who is also a trustee of a related benefit plan, attends a $300 golf outing that the benefit fund’s investment advisor pays for. Should the investment advisor file a Form LM-10? Should the officer file a Form LM-30? How should the Form LM-30 be completed?

A22. Yes. The investment advisor, if an employer, would file a Form LM-10. The union officer should file a Form LM-30. The officer would enter the investment advisor in Item 8 on Form LM-30, check the ‘trust’ box in Item 9, because the investment advisor deals with the benefit fund, and then enter the benefit fund in Item 10. In Item 11, the officer would describe the dealings between the fund and the investment advisor and enter the amount the fund pays for investment services. In Line 12 the officer would enter a description of the golf outing and its value.

Q23. Must an investment advisor file a Form LM-10 if the advisor occasionally buys dinner for trustees (labor and management) of plans for which the advisor manages funds (that is, clients), or for which the advisor wishes to manage funds (that is, prospective clients)?

A23. Employers doing business with, or actively and directly seeking business with, pension or welfare plans who provide dinners for trustees who are union officers or other union representatives are reportable unless they are covered by the de minimis exemption. FAQ Question 50 explains in detail the de minimis exemption. Also see FAQ Questions 45 and 46, for further details concerning payments by credit institutions and employers for marketing purposes.

C. Who Must Receive the Payments?

Q35. Are employee benefit plan trustees who are appointed by a union considered to be union representatives?

A35. Yes. An individual appointed by a union to serve on the board of trustees of a Taft-Hartley plan is a "union official" for purposes of the reporting requirements.

Q36. Does an employer have to report payments to individuals who are officers or employees of unions composed entirely of state, county, or municipal employees not covered by the LMRLA? How would an employer know if a union included a small number of members who are employed by private employers?

A36. No. The LMRLA excludes from the definition of employer the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof, 29 U.S.C. § 402(c). The LMRLA’s definition of "employee" and "labor organization" rely on the definition of "employer," 29 U.S.C. §§ 402(f) and (g). Thus, unions representing exclusively public sector workers are not LMRLA covered labor organizations. Payments to officers or employees of such unions are not reportable on Form LM-10. Under 29 U.S.C. § 402(c), and the regulations promulgated thereunder, payments to any officer of such unions are not considered "labor representing payments" subject to reporting requirements.

Q37. What are LMRLA recordkeeping requirements?

A37. LMRLA recordkeeping requirements require each employer to maintain records that may be examined by the Board or the Department of Labor. The records must include information about each payment or loan to a labor organization or individual, such as the amount, purpose, and recipient. These records must be kept as long as there is a possibility of a future investigation or audit. The employer must also maintain records of all payments made to a labor organization for which a Form LM-10 or LM-30 was filed.

Q38. Union employees who perform exclusively clerical or custodial services are not required to report employer payments on the Form LM-30. Must payments to such employees be reported on Form LM-10?

A38. Yes. The payments are reportable if they are not within the $250 de minimis exemption or another reporting exemption. There is no statutory exclusion for payments by an employer to a union clerical or custodial employee. Section 202(a)(1) requires employers to report "any payment or loan, direct or indirect, of money or other thing of value (including reimbursement expenses), or any promise or agreement therefor" to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization. No exceptions to the Form LM-10 reporting requirements are made based on the type of work performed by the union employee receiving the payment, loan, or other thing of value.
F. Reporting Exemption for De Minimis Payments

Q56. Must a filer report infrequent, insubstantial offers of hospitality, such as coffee and donuts at a meeting, restaurant meals, or gifts at holidays?

A56. No. Under section 203(a) of the LMROA, employers who make payments to a labor organization or its officials must file a report, subject to multiple exceptions. 29 U.S.C. § 203(a). The Form LM-10 informs filers that they may exclude from their reports "sporadic or occasional gifts, gratuities, or favors of insubstantial value, given under circumstances and terms unrelated to the recipient's status in a labor organization." Form LM-10 Instructions, Part A, Item 8a. This test has been referred to as a "de minimis exemption." If the test is satisfied, the filer need not report the gift or gratuity on Form LM-10. If the test is not satisfied, the gift or gratuity must be reported on Form LM-10.

For the de minimis exemption to be available, the gift or gratuity must be "insubstantial." Consistent with the recent guidance for union officer and employee reporting on Form LM-30, gifts and gratuities with an aggregate value of $250 or less provided by an employer will be considered insubstantial for the purposes of Form LM-10 reporting. If the aggregate value of multiple gifts or loans

Q51. Assume that meals are served at a trustees' meeting. For the purposes of the de minimis reporting exemption on Form LM-10, should the breakfast, lunch, snack, and dinner expenses be combined?

A51. Yes. All expenses in a single fiscal year to a single union official should be combined to determine whether the de minimis exemption is available. See FAQ, Question 50. Meals provided to different union officials are not aggregated when applying the de minimis exemption. See FAQ, Question 2, for examples of persons acting for an employer.

Q52. Does the answer change if different caterers provide each meal? Does the answer change if one caterer provides all meals? What if the caterer bills one amount for all of the meals without itemizing the cost for each meal?

A52. No. The number of caterers or their billing practices is not relevant. The employer should instead focus on the total value of the meals it provided the union official. If the invoice is not itemized, reasonable good faith estimates may be used to determine the overall value of the meals that each official received.

Q53. Is a company required to file a Form LM-10 if it provides refreshments at a series of labor-management meetings that cost the employer a total of $300, but the cost per union official is less than $250?

A53. No. Form LM-10 is not required as long as the aggregate cost per person is $250 or less, and the other requirements of the de minimis exemption are met. See FAQ, Question 50.

Q54. A company provides meals to union officials, all of whom belong to the same union. Each official received meals worth less in total than $250. Is the de minimis exemption not applicable because all the officials belong to the same union and the total payments to this single union's officials exceed the $250 threshold?

A54. No. The de minimis exemption would still be applicable. When determining the de minimis threshold, employers should calculate the amount received by each union or union official and determine whether each of these amounts exceeds $250. The fact that each union official is affiliated with the same union is not relevant because the gifts were provided to the union officials, not the union.

Q55. An employer conducts educational conferences designed to educate and explain employee benefit issues and products to no employee pension or welfare plan personnel, including union officials who are trustees. In holding the conference, the employer provides conference rooms, audio-visual equipment, refreshments, meals, travel, and lodging. What must be reported on Form LM-10?

A55. The employer must calculate the value of the conference to each union official in attendance to determine whether the de minimis exemption applies, and, if not, how much to report on Form LM-10. The cost to the employer of the refreshments, meals, travel, and lodging must be included in this calculation. The costs of the conference rooms and audio-visual equipment need not be included. Once the employer has derived a figure representing the value of the conference, it must determine the value received by each union official. One reasonable approach would be to divide the total cost of refreshments, meals, travel, and lodging for the conference by the number of attendees to determine the value received by each. At that point, the employer will have a reasonable estimate of the value received by each union official, and be able to determine the applicability of the de minimis exemption, and the amount, if any, to be reported.

G. Reimbursement by and Allocation among Employers

Q56. Where Employer A makes a reportable payment that is reimbursed by Employer B, who files the Form LM-10?

A56. Employer B must file the Form LM-10. Generally speaking, the employer that makes the final payment without reimbursement from another employer should report the transaction. If, however, the reimbursement is from a person or company that is not an employer, the employer making the payment must file a Form LM-10, but may note the fact of reimbursement on the form. For example, a service provider to a pension and welfare plan hires a marketing firm to generate new business for the service provider. The marketing firm makes a covered payment to a union official. If the marketing firm is an employer, it must report the payment. If the service provider is an employer and reimburses the marketing firm, only the service provider must file the report. If the service provider is not an employer, however, the marketing firm must report the payment.

Q57. Where multiple employers pay a portion of a single reportable payment, who files the Form LM-10?

A57. Each employer must file a separate Form LM-10 for the amount it paid. For example, where an employer that provides services to a pension and welfare plan takes a union official who is also a trustee of the plan to dinner, and divides the cost among two other investment management firms, each firm must file a Form LM-10 because each is an employer that has provided a thing of value to a union official, unless an exemption, such as the $250 de minimis exemption, is applicable. In determining the applicability of the de minimis exemption for payments to union officials, described in the question 15, the employer should consider only the amount it individually contributed. Form LM-10 Instructions, Part A, Item 8a.
Q58. Where an employer pays for the meals of multiple individuals, but only half are union officials, what should be reported in the Form LM-10?

A58. If the actual cost of the meals for the labor organization officials can reasonably be determined, the employer should report those amounts. If not, the employer may report a good faith per-participant estimate by, for example, reporting an amount based on the average cost of each meal multiplied by the number of union-official attendees. For example, an employer who pays a $1,004 restaurant bill hosting four individuals, two of whom are union officials, may estimate that each union official's meal was $251 and report those amounts on Form LM-10.

Q59. If an employer paid amounts that are otherwise reportable on a Form LM-10 but which are subsequently repaid by the recipient within the same year, must those amounts be reported on a Form LM-10?

A59. No. Employers need not report gifts that are rejected and returned and payments that are repaid by the recipient. 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. If the payment is made near the end of the fiscal year, however, the employer need not file a report if it is reimbursed promptly, even if the reimbursement occurs in the next fiscal year. Where timely reimbursement is not made, the payment must be reported, although the filer may note that reimbursement was made.

Cash payments not promptly reimbursed must include interest, or the forgone interest will be reportable as a gift. Similarly, a gift of a car or a boat, for example, must be returned with compensation for their use at the fair market rate and any diminution in value or the forgone compensation must be reported as a gift.

In particular cases concerning serious conflicts of interest or attempts by employers to circumvent or evade the filing requirements, the Department may, by specific request, require reports of payments and gifts, etc., despite return or reimbursement. For example, a series of numerous, high-value payments made by an employer to a union official must be reported even where each payment is promptly reimbursed, to avoid the nondisclosure of the substantial value that is conferred on an individual who has even short-term use of very large amounts of money.

H. Parties, Receptions, and Widely Attended Gatherings

Q60. An investment manager hosts a large holiday reception to which its clients, including labor union officials, are invited. How should this be reported on Form LM-10? What should the employer do if it did not keep track of the attendees?

A60. In reporting payments for receptions, employers should consider the applicability of the de minimis exemption, discussed in the response to question 50. In situations where the de minimis exemption is not applicable because, for example, the reception or other event results in expenditures of more than $250 to one or more union officials, or are related to the union officials' status in the union, the expenditures for the event are reportable on Form LM-10.

Employers have represented to the Department that records for current and past fiscal years may not be sufficient to support detailed reporting for large group events. In such instances, the Department will accept as compliant with the reporting requirements of section 203(a) any reasonable estimate that is made in good faith and based on available and reconstructed records when completing the reports for a fiscal year commencing on or before December 31, 2005.

Q61. An employer hosts a large reception and invites more than a thousand attendees of an educational conference. Many of the attendees are union officials and many are not. The employer pays for catering stations, an open bar, musical entertainment, and the rental of the hall. How should the employer track and report this event?

A61. For all receptions attended by union officials, an employer must first determine the value of the reception. In making this calculation, the employer must include the costs of the food, beverage, service, and entertainment, but not the cost of the hall in which the reception is held, security for the event, or the time spent by its employees in planning or running the reception. The employer should then determine the value of the benefit conferred on each individual attendee. The figure may be derived by summing the covered costs and dividing by the number of attendees, but any reasonable, good faith method of making this determination will be acceptable. An employer who pays travel expenses for a union official to attend a widely-attended gathering may not treat this expense as part of the cost of the widely-attended gathering. Travel expenses must be tracked and reported on Form LM-10 separately, subject to the de minimis exemption and any other applicable exemption.

The following guidance applies only to 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. For a gathering to qualify as a widely-attended gathering, union officials must be treated the same as individuals not affiliated with a union when the employer advertises or distributes invitations for the event. Union officials and individuals without union status must be treated alike at the reception. An employer holding a widely-attended gathering may take advantage of the recordkeeping and reporting exemptions discussed below.

Employers who hold receptions that do not constitute widely-attended gatherings must identify and keep records of each attendee who is a union official and include the amount in any Form LM-10 that may be required. When determining whether a Form LM-10 is actually required, the employers should always consider the applicability of the reporting exemptions, including the de minimis exemption.
$20 Exemption for All Widely-Attended Gatherings

If an event is a widely-attended gathering, the employer may take advantage of a $20 recordkeeping and reporting exemption. That is, 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 these costs. By way of example, if an union official attends four widely-attended gatherings hosted by a single employer costing it $20 or less and, in the same fiscal year, receives $300 worth of sporting event tickets from the same employer, the employer would be required to report only the $300 tickets.

On the other hand, if the benefit conferred on each individual exceeds $20, and the $25 exemption discussed below is not applicable, the employer must identify and keep records of each attendee who is a union official. At the end of the fiscal year, the employer must determine whether a Form LM-10 must be filed based on payments to the union attendees, after considering the applicability of the reporting exemptions, including the de minimis exemption, discussed in Form LM-10 Frequently Asked Questions, Question 50. An employer, for example, who in a single fiscal year hosted a union official at three receptions that cost it $35 per attendee and also provided the union official a $220 jacket, would be required to file a Form LM-10 reporting $375 in payments. Under other circumstances, the de minimis exemption may result in no report being filed, such as when the $105 value of the receptions is the only gratuity provided to the union official.

By the same token, a union officer or employee who attends a widely-attended gathering that costs the employer $20 or less per attendee need not maintain records or report the value of the reception on Form LM-30. On the other hand, if the benefit conferred on the union officer or employee exceeds $20, and the $25 exemption discussed below is not available, the union official must track and maintain records on the value of the reception. When determining whether a Form LM-30 is actually required, union officers and employees should always consider the applicability of the reporting exemptions, including the de minimis exemption.

$125 Exemption for One or Two Widely-Attended Gatherings

The following guidance applies to widely-attended gatherings where the employer spends more than $20 per attendee. For one or two widely-attended gatherings in a single fiscal year an employer may take advantage of a $125 recordkeeping and reporting exemption. If an employer holds one or two widely-attended gatherings and spends $125 or less per attendee per gathering, it has no Form LM-10 obligation with regard to tracking or disclosing these costs.

Specifically, this exemption is available for any widely-attended gathering where the employer has not previously held, in the same fiscal year, more than one prior gathering costing it more than $20 per attendee, at which the same union official or officials are in attendance. In other words, an employer may hold one widely-attended gathering attended by a group of union officials costing it $125 per attendee without incurring a Form LM-10 filing obligation. An employer may then, in the same fiscal year, hold a second widely-attended gathering attended by the same group of union officials costing it $125 per attendee and still incur no Form LM-10 filing obligations. An employer who holds a third such widely-attended gathering that is attended by one or more of the same union officials will be required 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. To track the identity of the union officials at each gathering, the employer may need to use sign-in sheets or another method of determining the union status of the individuals in attendance.

An employer who chooses to take advantage of the $125 exemption for one or two widely-attended gatherings must, therefore, determine at the start of the fiscal year that they will not hold more than two such gatherings at which one or more of the same union officials will be in attendance. If so, they need to keep no records of the attendees at the two gatherings. If the employer is unable to make this determination at the start of the year, the employer 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 made necessary by its holding a third widely-attended gathering.

By the same token, a union officer or employee who attends one or two widely-attended gatherings that cost the employer $125 or less per attendee need not maintain records or report the value of the reception on Form LM-30. On the other hand, if the benefit conferred on the union officer or employee exceeds $125, the union official must track the value of the reception. When determining whether a Form LM-30 is actually required, union officers and employees should always consider the applicability of the reporting exemptions, including the de minimis exemption.

NEW Q61(A). A number of employers sponsor a union-conducted meeting attended by many union officers and employees (the meeting does not meet the definition of a widely-attended gathering). The employers make payments directly to the vendors leasing the space for the meeting and who are supplying the food and beverages to those attending the meeting. The union that is conducting the meeting does not require individuals to sign-in or register. How can a participating employer obtain the required information to complete Form LM-10?

A61(A). When an employer makes a payment to a vendor or to a union itself for a union-conducted meeting, the issue of whether the payment should be reported as a payment to the union or as a payment to the union officers and employees in attendance depends on whether the union controls who attends or if the employer has a role in that decision. If the union determines who will attend, the employer should report the payment as either a direct or indirect payment to the union, as appropriate. The employer does not have to maintain records of those in attendance and the union officers and employees do not have to file Form LM-30 to report such payment. If, on the other hand, the employer has a role in determining which union officers and employees attend the meeting, the employer must maintain a record of the amount that it contributed to the meeting and the names of the union officers and employees who attended. In this last instance, it is the employer's responsibility to request that the union use reasonable methods, such as a sign-in sheet, to ensure that it records and can provide the employers with the names of the attendees and their union status. An employer who does not make such arrangements with the union prior to the meeting will have failed to establish procedures necessary to file an accurate and complete Form LM-10. See also FAQ 61. When determining whether a Form LM-10 is actually required, the employer should always consider the applicability of the reporting exemptions, including the de minimis exemption.
Q64. Is an investment manager that purchases, at the request of an officer of a labor organization, a $500 ticket to a dinner banquet held for the benefit of a 501(c)(3) tax exempt entity required to report that amount on a Form LM-10?

A64. No. 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. 29 U.S.C. § 433. See FAQ, Question 62, for further details concerning payments to tax exempt organizations solicited by labor organization officials. If the investment manager gives the banquet ticket to a union official, that gift is reportable on a Form LM-10.

Q65. Under what circumstances would a payment to a charitable event run by a union be reportable on Form LM-10?

A65. Payments of cash or gifts of goods made to a tax exempt organization are generally not reportable on Form LM-10. See FAQ, Question 62. If the cash or gifts are provided to a union the payment is reportable on Form LM-10, even where the union ultimately directs the donations to a tax exempt organization.

J. Filing and Signing Form LM-10 When Records Have Not Been Maintained

Q66. Some service providers to Taft-Hartley trusts, such as broker-dealers, investment advisors, investment companies, and investment bankers, have never before considered themselves required to file a Form LM-10. These companies have employees who have made payments to union officials, but these companies have no systems in place to track and record the data. The Form LM-10 must be signed by the president and treasurer of the employer, and it must be signed under penalty of perjury. Under what circumstances are the president and treasurer of the employer obligated to sign a Form LM-10?

A66. In general, the LMRDA provides that the Form LM-10 must be signed "by [the employer's] president and treasurer or corresponding principal officers." 29 U.S.C. § 433(a). When signing, the filer must swear to the following: "Each of the undersigned, duly authorized officers of the above employer declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct and complete."

Representatives of some service providers have asserted that they have considered themselves exempt from the Form LM-10 reporting requirements, and that they have not instituted procedures to capture the payments required to be reported on the form. They have asserted that it is not possible to file an accurate and complete report absent procedures that were implemented prior to the commencement of the fiscal year to track the relevant payments throughout the fiscal year. OLRMS has noted that certain union officials and employers have indicated that they could not obtain financial information from employers, and Form LM-30s have been filed with "disclaimers," indicating that, despite diligent efforts, they are based on incomplete data.

The following guidance applies to cases where an employer has employees who may have made payments that are reportable on the Form LM-10, where the employer did not institute procedures for tracking and reporting such payments for a fiscal year commencing on or before December 31, 2005 based on a belief that the LMRDA did not require such reporting of it, where the employer has acted diligently and in good faith to reconstruct the records and identify all covered transactions, and where the employer has prepared a report that discloses all the transactions revealed by its good faith inquiry. In such cases, the employer may strike out the attestation and substitute the following: "Each of the undersigned, duly authorized officers of the above employer declares, after good faith investigation and diligent inquiry, that all of the information submitted in this report (including the information in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, as complete as possible based on existing and reconstructed records."

The president and treasurer may themselves have limited knowledge of the results of the good faith Investigation. The Department recognizes that any good faith search will be necessarily ad hoc. In contrast to records maintained contemporaneously through established internal procedures. In the circumstances described in the previous paragraph, employers may authorize key officials in their organization who supervised or conducted the good faith search to sign the Form LM-10 in their place.