# EMPLOYER AND CONSULTANT REPORTING WEBINAR

September 28, 2022



#### OLMS MISSION

The Office of Labor-Management Standards (OLMS) helps ensure that workers have a voice in the workplace.

Our office promotes labor-management transparency as well as labor union democracy and financial integrity through standards for union officer elections, union trusteeships, and safeguards for union assets.



#### MEETING AGENDA

- I. Overview of LM-10, LM-20, and Reporting Triggers
- II. Persuader Reporting
- III. Surveillance Reporting
- IV. Unfair Labor Practice Expenditures
- V. Electronic Filing
- VI. Common Reporting Errors
- VII.Education and Outreach
- VIII.Questions

#### FORM LM-10 AND FORM LM-20: OVERVIEW OF LM-10, LM-20, AND REPORTING TRIGGERS



#### EMPLOYER AND CONSULTANT REPORTING FORMS

• Form LM-10 Employer Report – filed by employers within 90 days of the end of their fiscal year in which they entered into a reportable transaction or agreement.

 Form LM-20 Agreement and Activities Report — filed by consultants within 30 days of entering into the reportable agreement.

#### REPORTING TRIGGERS - GENERAL OVERVIEW

1. Persuader Agreements/Arrangements and Expenditures

2. Surveillance Agreements/Arrangements and Expenditures

- 3. Unfair Labor Practice Expenditures
- \*\*Expenditures to Labor Unions and Labor Union Representatives

### FORM LM-10 AND FORM LM-20: PERSUADER REPORTING



### PERSUADER PAYMENTS TO EMPLOYER'S OWN STAFF (LMRDA SECTION 203(A)(2):

 Only reportable by an employer on the Form LM-10 for payments to own staff for the purpose of persuading other employees

 Exemption: contemporaneous disclosure to all employees

Exemption: regular wages to regular employees

#### PERSUADER PAYMENTS TO EMPLOYER'S OWN STAFF

#### Examples of Reportable Expenditures Under Section 203(a)(2):

• If an employer brings in replacement employees for striking employees and the replacement employees are instructed to persuade employees to abandon a union or a strike, or otherwise instruct employees how to exercise their right to organize and bargain collectively, then the employer must report expenditures attributable to such persuader activity.

#### (REPORTABLE EXPENDITURES): CONTINUE-

#### Examples of Reportable Expenditures Under Section 203(a)(2):

- The employer pays any of its employees to persuade other employees to join or not to join a union or to affect the negotiation of a collective bargaining agreement, whether such persuasion is to occur during or after regular work hours.
- The employer provides free use of the employer's facility or property (e.g., special parking privileges, use of photocopier, etc.) in order to help certain of its employees prepare or disseminate materials designed to persuade their fellow employees in the exercise of their organizing and collective bargaining rights.

#### REPORTABLE EXPENDDITURES (EXAMPLE)

#### Examples of Reportable Expenditures Under Section 203(a)(2):

- The employer called in one of his longtime and trusted employees who
  works as a drill press operator and asked him to persuade his fellow
  employees. The employer must report payments to the drill press
  operator for preparing for and engaging in the persuasion of fellow
  employees.
- The employer makes payments to employee "front organizations" or "organizing committees" set up for the purpose of persuading employees regarding their collective bargaining rights.

### PERSUADER AGREEMENTS BETWEEN EMPLOYER AND A CONSULTANT OR OTHER THIRD PARTY

 Employers and labor relations consultants are required to file reports when a consultant, pursuant to an agreement or arrangement with an employer, engages in activities with an object to persuade, directly or indirectly, employees concerning their rights to organize or bargain collectively.

#### "ADVICE" EXEMPTION

- LMRDA Section 203(c) exempts "advice" activities, as well as representation in legal proceedings and collective bargaining negotiations, from triggering the reporting requirements
- A fact-driven question
- "Accept or Reject" Test

### FORM LM-10 AND FORM LM-20: SURVEILLANCE REPORTING



#### SURVEILLANCE OF EMPLOYEES OR LABOR UNION:

- Under section 203(a)(3), employers must report expenditures made to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute, including during an organizing effort, involving such employer, except for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding.
- Exemption: No employer shall be required to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for service as a regular officer, supervisor, or employee of such employer.
- Employers must also report agreements with consultants pursuant to which the consultant undertakes activities with an object to supply an employer with certain information concerning the activities of employees or a labor organization in connection with a labor dispute involving the employer.
- Consultants also report such surveillance agreements on the Form LM-20.

### SURVEILLANCE OF EMPLOYEES OR LABOR UNION: (CONTINUED)

These expenditures generally include, but are not limited to, the following areas:

- 1. Surveillance equipment or other technology used to surveil and the time spent on installing, operating, and monitoring it, as well as analyzing the information the equipment produces.
- 2. Direct spying on employees or a labor organization.
- Efforts to obtain "inside information."

### SURVEILLANCE OF EMPLOYEES OR LABOR UNION: (EXAMPLE)

#### Examples of Non-Reportable Expenditures under Section 203(a)(3):

- Information Solely for Legal Proceedings
- Labor dispute in which the employer is not involved.
- Regular wages as compensation for service as a regular officer, supervisor, or employee of such employer.

### SURVEILLANCE OF EMPLOYEES OR LABOR UNION: (MORE EXAMPLES)

#### Examples of Reportable Surveillance Expenditures:

- Bonus to one of employer's regular officers, supervisors, or employees to secretly collect and report information.
- Payments to employee for "inside information" concerning the bargaining demands of a labor organization.
- Computer software, surveillance cameras, or audio recording devices.

# FORM LM-10 REPORTING: UNFAIR LABOR PRACTICE EXPENDITURES



#### UNFAIR LABOR PRACTICE (ULP) EXPENDITURES:

 Under section 203(a)(3), employers must report any expenditure where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing (i.e., commit an "unfair labor practice" under the NLRA).

### UNFAIR LABOR PRACTICE (ULP) EXPENDITURES: CONT-

These expenditures generally include, but are not limited to, the following areas:

1. Additional compensation

2. Expenditures for equipment, materials, or any other tool or method

### UNFAIR LABOR PRACTICE (ULP) EXPENDITURES: (NON REPORTABLE)

#### **Examples of Non-Reportable Expenditures:**

- An employer has a regular monthly newsletter it distributes to its employees. The newsletter reports neutrally on the facts surrounding a strike in one of its warehouses. The costs of the newsletters are not reportable, provided the newsletters contain no direct or indirect threat of reprisal or force, or promise of benefit.
- A packaging facility spends \$10,000 on posters and pamphlets urging employees to reject an organizing drive. The expenditures for the posters and pamphlets are not reportable, provided they contain no direct or indirect threat of reprisal or force or promise of benefit.

### UNFAIR LABOR PRACTICE (ULP) EXPENDITURES: (REPORTABLE)

#### **Examples of Reportable Expenditures:**

- An employer makes expenditures for the printing and dissemination of pamphlets, advertisements, or other printed materials, which threaten to move or close the plant if organized.
- An employer gives gifts or provides services to employees on the condition that they will or will not join a union, regardless whether the condition is explicit or implicit.
- An employer makes payments to a supervisory employee who, as consideration for such payments, verbally threatens employees with a reduction in vacation days or a later vesting of retirement benefits unless the employees reject organizing.

#### REPORTABLE: CONT

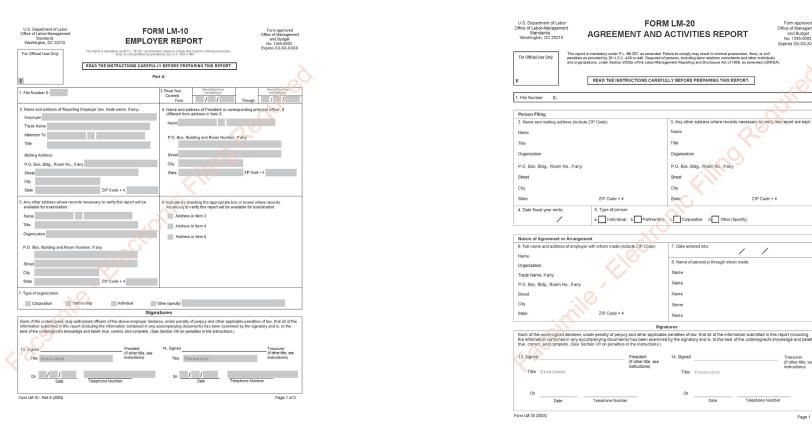
#### Examples of Reportable Expenditures (Continued):

- An employer makes payments in assistance of a "Grievance Committee" (or similar entity) established in connection with an organizational drive run by a union to organize the employees.
- An employer makes expenditures for an ad in a newspaper if the substance of that ad amounts to "interference with, restraint, or coercion" in connection with the employees' rights to bargain collectively through representatives of their own choosing, such as a threat to dismiss employees if they organize.

HOW TO FILE THE
FORMS LM-10 AND LM20 AND COMPLY WITH
RECORDKEEPING
REQUIREMENTS



#### FORM LM-10 AND FORM LM-20

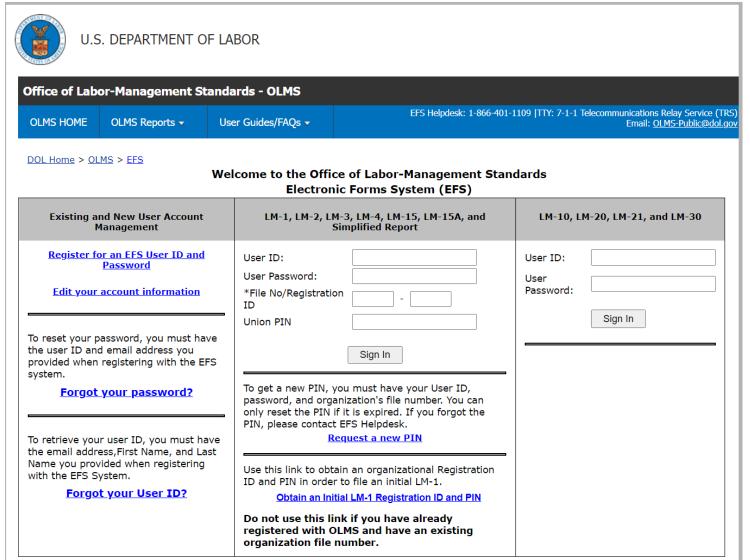


OLMS website: www.dol.gov/olms

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### HOW ENTITIES FILE WITH OLMS: ELECTRONIC FORMS SYSTEM (EFS)



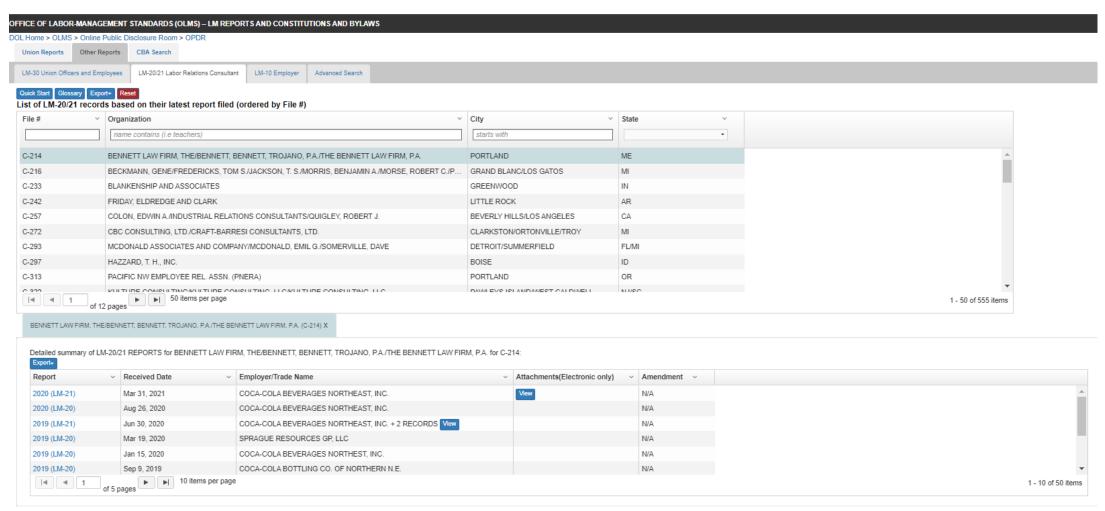
Recommended browsers are - Microsoft Edge or Google Chrome

### ONLINE PUBLIC DISCLOSURE ROOM (OPDR): SEARCH PORTAL



www.dol.gov/olms | Telephone: 1-866-401-1109 | TTY: 7-1-1 Telecomi

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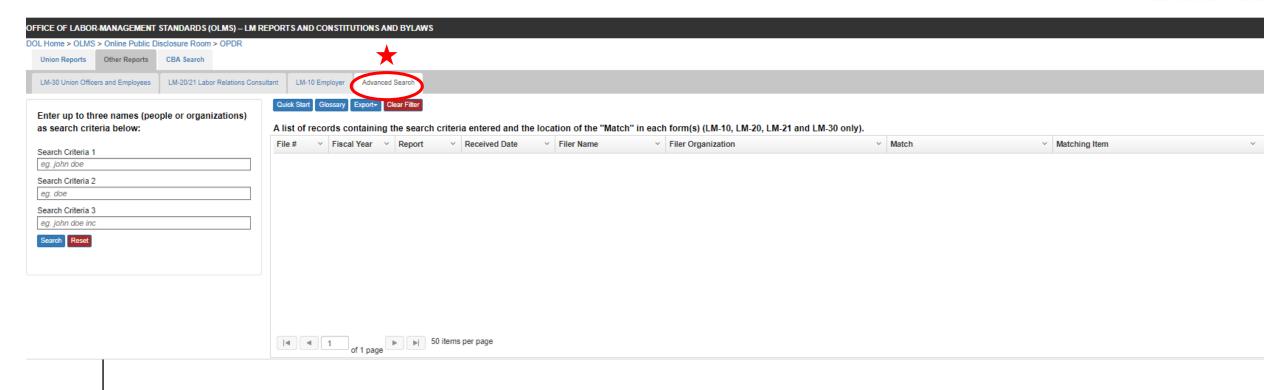


### ONLINE PUBLIC DISCLOSURE ROOM (OPDR): ADVANCED SEARCH



www.dol.gov/olms | Telephone: 1-866-401-1109 | TTY: 7-1-1 Telecommunications

\*\* Data refreshed as of 09/26/202



#### RECORDKEEPING REQUIREMENTS

 Section 206 of the LMRDA requires that Form LM-10 and LM-20 filers must maintain for a period of 5 years records to verify, explain or clarify items required to be reported on the forms.

• LMRDA Title VI, Section 601, gives OLMS the authority to inspect the records.

#### COMMON REPORTING ERRORS



#### COMMON REPORTING ERRORS-EXAMPLES

 Form LM-20 reports not filed within 30 days of agreement or arrangement.

Consultant and sub-consultant must both file.

Provide complete information and dates for Items 6-8.

Persuader and surveillance reporting.

#### COMMON REPORTING ERRORS (CONTINUED)

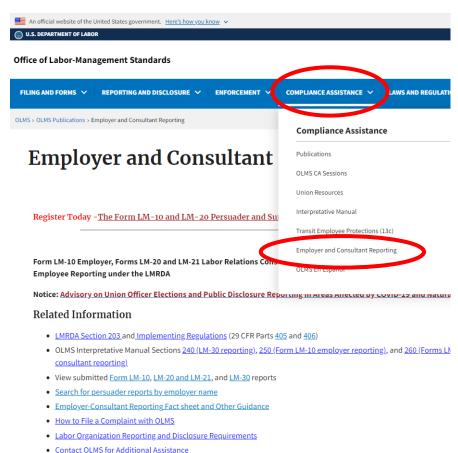
- Attach written agreement.
- A "detailed" description in Item 10 and Item 11.a (Specific Activities to be Performed) must contain details.
- Provide in Item 11.d who engaged in the persuader or surveillance activities.
- Must provide full names.
- Amended reports.

## EDUCATION AND OUTREACH



#### COMPLIANCE ASSISTANCE

- Online Compliance
   Assistance Publications
- Periodic CA Sessions
- Outreach Letters



### OUTREACH AND CONTACT INFORMATION

- OLMS National Office 202-693-0123 EFS Technical support: 1-866-401-1109
- OLMS-Public@dol.gov
- OLMS Listserv sign up at the OLMS main page under **About Us** drop down and **Email Subscriptions**

OLMS website: www.dol.gov/olms

### OFFICE OF LABOR-MANAGEMENT STANDARDS



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Questions?