

## **Collection Policy and Procedures for the Operating Engineers Local 139 Health Benefit Fund**

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### **Section I, General**

- A. Purpose.** The purpose for this Collection Policy is to provide guidelines for the Trustees, the Administrative Manager and staff of the Operating Engineers Local 139 Health Benefit Fund (Fund) in identifying delinquent employers and applying approved procedures for ensuring compliance with the employers' obligation to submit timely and accurate contributions and to recover amounts which are owed to each of the respective Funds. It is acknowledged that the Fund's Administrative Manager also acts as the collection agent for other multi-employer funds to which employers bound to agreement with the International Union of Operating Engineers Local 139 are required to contribute. As such, these policies will apply when the Administrative Manager, the Fund's staff, or an agent of Local 139 assists in the collection process for all funds to which signatory employers are required to contribute.
- B. Limitations.** The policy and the procedures contained herein were prepared as internal guidelines to be used by the administrative staff, fund auditors, and fund counsel. These guidelines are not legally binding on the Fund, administrative staff, fund auditors and fund counsel and it is anticipated that these guidelines may be modified from time to time for good cause and in order to address unique circumstances which may arise in the collection and compliance process. Nothing contained in this Collection Policy and Procedures is intended to supersede the terms contained in the Funds' Trust Agreements, Plan Documents or associated collective bargaining agreements (CBAs).
- C. Restatement.** It is understood that these guidelines are meant to revise the prior collection policy set forth in the "Summary of Policies and Procedures for Collection of Employer Accounts" that was historically recognized by the Trustees and followed by Administrative Managers, staff, fund auditors and fund counsel.

### **Section II, Administrative Manger's Responsibilities**

- A.** The Administrative Manager shall be responsible for overseeing the collection process and ultimately enforcing the terms of the Collection Policy and ensuring compliance with the applicable terms of the trust agreements. The

Administrative Manager shall have the authority to act as the Funds' representative in referring matters to fund auditors and fund counsel, and shall provide the necessary information to the Trustees, fund auditors and legal counsel for action against delinquent employers.

- B.** The Administrative Manager shall have the authority to recommend to the Trustees or a committee appointed by the Trustees, a compromise on all claims for contributions for good cause when compromise is in the best interest of the plan participants.
- C.** The Administrative Manager shall review and approve the payment of bills of service providers.
- D.** The Administrative Manager shall report directly to the Board of Trustees.

### **Section III, Delinquencies**

#### **A. Delinquent Reports and Contributions**

1. Under the terms of the applicable collective bargaining agreements, employers are required to submit payments to the Health Fund by the end of each month in which the work was performed, but no later than the 15<sup>th</sup> day of the following month.
2. Remittance reports and contribution payments must be made using the Fund's iRemit online system. Any remittance report or contribution payment that is mailed to the Fund office or the Fund's financial institution shall be subject to a \$100 processing fee per work month.
3. Contributions submitted after the 15<sup>th</sup> day of the month following the month in which the work was performed shall be considered delinquent. If the employer remits contributions by the end of the month following the month that the work was performed, the Funds shall not pursue liquidated damages and interest. However, if the employer fails to remit contributions by the end of the month following the month that the work was performed, the Funds shall pursue liquidated damages and interest going back to the 15<sup>th</sup> day of the month following the month in which the work was performed.
4. All employers who are determined to be one or more months delinquent in submitting monthly reports and/or monthly contributions will be

placed on the Delinquent Employers List. The list will be reviewed on a monthly basis by the Board of Trustees.

5. The Administrative Manager shall be responsible for reviewing the Delinquent Employers List each month to determine if there has been a change in the status of any employer on the list.
6. An employer will remain on the Delinquent Employers List until payments are current, the Trustees have determined that the debt is uncollectible, or it is determined that the employer is not delinquent.

**B. Employer Delinquency-One Month Past Due**

The Administrative Manager shall run a collection report each month and shall send a delinquency letter to each employer determined to be delinquent. A copy of the report may be given to the Union and employer group associations who are parties to the CBAs. The delinquency letter may be sent via first class mail or by facsimile transmission. The delinquency letter shall state the months for which reports were not received to the Funds and request payment. The letter should also inform the employer about the Funds' ability to assess liquidated damages and interest and the impact their failure to pay may have on its employees' eligibility for health benefits.

**C. Employer Delinquency-Two Months Past Due**

After two successive months on the Delinquent Employers List, the Administrative Manager will send a second notice of the delinquency and demand that the employer submit its contribution report and/or payment. The Administrative Manager will inform the employer about the impact of their failure to pay may have on their employees' eligibility and will also explain liquidated damage assessments and interest. The Administrative Manager will inform the employer that if these amounts are not paid, the Funds will refer the matter to the Funds' attorneys for collection proceedings and that the employer will be responsible for attorney fees and court costs.

**D. Employer Delinquency-Three Months Past Due**

If the delinquency remains, the matter may be scheduled for a payroll audit and/or referred to Fund counsel for collection. . The Administrative Manager may also elect to send correspondence to the individual plan participants regarding the status of their employer's delinquency and the possibility of the Union removing its members from the employer's job(s).

### **E. Liquidated Damages and Interest.**

A delinquent employer who fails to pay contributions by the last day of the month following the month the work was performed, shall be assessed liquidated damages at the rate of 2.5% per month of the delinquent amount due up to a maximum of 20% of the delinquent amount due. The liquidated damages rate shall automatically accelerate to 20% of the delinquent amount due if, in the discretion of the Administrative Manager, the delinquency is referred to legal counsel for collections. Additionally, a delinquent employer who fails to pay contributions by the last day of the month following the month the work was performed, shall be assessed interest at the maximum rate allowed by law or the rate set forth in the collective bargaining and trust agreements.

Effective for contributions due on or January 1, 2016.

### **F. Referrals to Fund Counsel.**

The number and frequency of referrals to legal counsel shall be within the discretion of the Administrative Manager working in conjunction with the Trustees. The types of referrals may include:

1. Recovering delinquent reports and/or contributions
2. Audit delinquencies / audit refusals
3. Preparing and enforcing Mechanic Liens
4. Enforcing the terms of settlement agreements
5. Recovering bond proceeds
6. Pursuing claims in bankruptcy
7. Sending demand letters

## **Section IV, Audit Program**

### **A. Types of Audits**

1. New agreements after six (6) months
2. Three month delinquency – reports or contributions
3. Random audits
4. Insurance audit when the Wage and Fringe Benefit Bond company sends notice of cancellation of the bond
5. Contract termination / closed account

6. Special audits when there is a concern for potential delinquencies

**B. Scheduling audits.**

The Administrative Manager shall be responsible for contacting the field audit staff to conduct an audit of an employer's payroll books and records.

All audits completed by the Field Audit Staff will be handled as follows:

1. Where an audit has been completed and the auditor has determined that amounts are due, the employer shall be notified by the Administrative Manager of the results of the audit, including a copy of the audit and a breakdown of all amounts due. The notification letter to the employer will contain a written request that payment be made within thirty (30) days.
2. If payment has not been made or there has been no contact made by the delinquent employer, the Administrative Manager will send a second letter informing the employer that if no payments are made within ten (10) days, the matter may be forwarded to the Funds' attorneys for collection proceedings and that the employer may be responsible for attorneys' fees and court costs. A copy of the letter will be forwarded to the Funds' attorney and the Union.
3. When an employer has overpaid contributions, a request for refund must be made to the Administrator Manager within twenty-four (24) months after the overpayment or three (3) months after an audit is issued documenting the overpayment, except that no refund shall be given for contributions made to the Operating Engineers Local 139 Defined Contribution Annuity Fund where such contributions have already been transferred to John Hancock Retirement Plan Services, LLC.
4. When, as a result of a field audit, the employer claims that certain work is not covered by the CBA, the Administrative Manager is authorized to obtain verification or clarification from the employer and/or Union. Such verification or clarification may include, but is not limited to, payroll records, CBA requirements, apprenticeship reports, and affidavits from participants and/or the management of the employer.
5. Audit refusals. Audit refusals are instances where the employer refuses to provide its books and records for an audit or where the employer fails

to provide sufficient books and records which will enable the fund auditor to make a determination on compliance. The books and records necessary to complete an audit shall be determined by the Field Audit Staff in accordance with its current payroll audit program.

- a. In the event that thirty (30) days after the initial request for books and records the employer fails to respond, the matter may be referred to fund counsel with instructions to pursue compliance and to pursue any amounts which are found to be owed. If ten (10) days after the initial request for books and records the employer fails to fully comply, the matter may be referred to fund counsel with instructions to pursue full compliance and collection of any amounts which are found to be owed.

### **Section V, Resolution and Compromise**

- A. The Delinquent Accounts Committee was formed by the appointment of the full Board of Trustees. The Administrative Manager and Fund counsel will report on the status of all delinquencies to the Delinquent Accounts Committee at its regularly scheduled meetings or when requested. The Delinquent Accounts Committee will review delinquencies and circumstances surrounding non-payment of fringe benefits and recommend to the full Board of Trustees specific action to be taken.
- B. The Administrative Manager and Fund counsel shall, when necessary, provide to the Delinquent Accounts Committee recommendations to compromise and settle any and all collection claims. The decision to compromise shall be in the best interests of the plan participants and plan beneficiaries. The compromise may include the total amount of contributions claimed, delinquent payment assessments, interest, attorney fees, auditor fees and costs.

The decision to compromise and settle collection claims is based upon the totality of circumstances, which may include some of the following criteria:

1. Relative merits of the claim for contributions;
2. Defenses to the claim which the employer has or may avail itself;
3. Costs of proceeding to or through litigation and the anticipated chances of succeeding with the claim;
4. The financial stability of the company and the Funds' ability to collect the amounts being sought;
5. Credible threats of or actual bankruptcy filings, receivership, assignment for the benefit of creditors, corporate dissolution, current operation of the company;

6. Cost of pursuing the claim when compared with the likelihood of recovering the amounts sought;
  7. The findings and recommendations of Fund counsel, the Fund auditor and judges;
  8. All other factors which may arise and provide further basis to compromise or settle the collection claims.
- C.** Delinquencies totaling less than \$5,000 may be compromised by the Administrative Manager and Fund counsel consistent with the criteria set forth in Section V.B. The Administrative Manager and Fund counsel shall report all such compromised delinquencies to the Delinquent Accounts Committee.

## **Section VI, Reports**

- A.** Audit Status Report: An audit status report will be maintained by the Administrative Manager and will reflect the status of all open audit files. The report will be updated and distributed on a monthly basis to the Trustees and the Funds' attorneys.
- B.** Field Auditors Reports: The Field Audit Staff will furnish the Trustees with a monthly report on the status of requested, scheduled and completed audits.
- C.** Attorney Report: The Funds' attorneys will furnish the Trustees with a quarterly report, or other reports as needed, on the status of the collection files referred for legal action.
- D.** Delinquency Report: A Delinquent Employers List which identifies all employers who are determined to be one or more months delinquent in remitting fringe benefit remittance reports and/or have any outstanding indebtedness, will be furnished to all Trustees.