

Mechanical and Service Contractors Association of Eastern Pennsylvania, Inc.

Guidelines for Employers Participating in the Steamfitters Local Union No. 420 Benefit Funds as of September 2017

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Who is responsible to make payments?

- Employers who are members of the Mechanical and Service Contractors Association of Eastern Pennsylvania, Inc.
- Employers who signed letters of assent.
- Employers who have signed participation agreements.

What are Funds?

The ERISA funds include the pension plan, welfare plan, supplemental retirement plan, USERRA fund, scholarship fund and apprenticeship fund. All of these funds are jointly administered by trustees appointed by the M&SCA and by the Union, respectively.

There are also non-ERISA funds to which contributions are required under the collective bargaining agreement. These include union working assessment, piping industry political education fund, organizing and market recovery fund, and M&SCA industry fund.

What are participation agreements?

The Funds' trustees have adopted policies mandating Employers to report and pay contributions to funds for owners and certain relatives of owners who engage in employment covered by the CBAs. For each month an unincorporated owner, stock holder, who directly or indirectly holds more than one half of one percent of the stock of any entity which is an Employer or any other employee directly related by blood or marriage to such owner or stock holder, engages in Covered Employment, the Employer is required to report hours and pay contributions to the Funds on their behalf equal to actual hours payed but not less than a minimum of 40 hours per week or 160 hours per month.

What contributions are Employers required to make?

Employer contributions to funds are calculated pursuant to the applicable collective bargaining agreement ("CBA"), using the hourly contribution rate set forth in the agreement and the total number of reportable hours compensated for each employee covered by the applicable agreement.

Federal laws require Employers to timely remit contributions withheld from employees' compensation. Contributions for ERISA Funds that are withheld from employees'

compensation are required to be remitted to the funds as soon as possible once the monies are segregable from the employees' compensation.

To whom are contributions paid?

Each Employer employing employees performing work covered by the CBAs is required to contribute as described in the CBAs to the ERISA and non-ERISA funds by check to the order of Steamfitters Local Union No. 420 Benefit Funds or to such bank as the Trustees of the Fund shall determine (the "Depository").

What information should be reported?

Contributions and payments are required on or before the tenth working day following the end of each calendar month accompanied by a report containing: (1) names and social security numbers of employees during the report period, (2) the number of hours compensated for the report period for which compensation (including reporting, waiting and other reportable time) was payable for each person, (3) the total gross wages during the report period paid or payable to each person and such other information as is required on forms designated by the Trustees which include: (i) the payroll dates, from and to, included in the report, (ii) total hours paid in the month for all persons reported, (iii) total gross wages paid in the month for all persons reported, (iv) the Employer's proper legal name, (v) the Employer's Federal Identification Number, (vi) the Employer's street address, telephone number, fax number, and email address, (vii) the manual signature of an appropriately authorized representative of the Employer, (viii) whether the Employer is paying contributions to the M&SCA Industry Fund or if, instead, paying these amounts to the Apprenticeship Fund, and, (ix) if no persons have been employed for the period covered by the report, the Employer is required to indicate on the transmittal form that no persons have been employed for the period covered by the report, (x) if the Employer is no longer in the jurisdiction of the Union, (xi) if the address reported on the form is a new address, and (xii) if the Employer is a national Employer reporting per a national agreement.

How are contributions calculated for straight time, time-and-one-half and double-time?

Hours must be reported to the Funds by determining the number of hours paid and not the number of hours worked. Hours paid are used to calculate the contributions to be paid to the funds. Contributions are double (2) or one and a half (1-1/2) times the straight time hourly rate for each overtime hour, or the straight time hourly rate plus fifteen percent times the straight time hourly rate for each shift work hour, as the case may be.

Accordingly, if an employee works 50 hours in one week comprised of forty (40) hours worked at straight time, eight (8) hours at time-and-one-half and two (2) hours at double time, then the number of hours to be reported to the funds for that week is 56. The calculation is forty (40) hours straight plus eight (8) hours at time-and-one-half ($8 \times 1.5 = 12$) plus two (2) hours at double time ($2 \times 2 = 4$), forty (40) plus twelve (12) plus four (4) equals fifty-six (56) hours.

What if a service mechanic performs building trades work?

For building trades work, a service mechanic must be paid the building trades, and not the service, rate. It is critical that accurate record keeping of construction work performed by service mechanics be maintained at all time.

How are payments ensured?

Employers are required in the CBAs to provide a payment bond in form acceptable to the trustees. If an Employer is unable to procure a bond, the trustees may, as an alternative, require an irrevocable letter of credit or cash deposit as security for prompt future payments.

What happens if an Employer doesn't report and pay when required?

The trustees have adopted policies to ensure diligent and systematic efforts to collect all Employer contributions which include, but are not limited to:

- The right to establish a date on which contributions are due,
- The right to audit the financial records of the Employers,
- The right to inform employees of delinquent Employers that such employees' Supplemental Retirement Plan and Vacation Benefit Fund accounts are not being funded, and
- The right to take any other steps and to perform all other acts that are necessary in order to collect contributions due the Union/Funds.

What procedures are used to collect delinquencies?

- If Contributions are not received by the tenth working day of the month for hours paid in the preceding calendar month (the "Due Date") the Employer is liable for liquidated damages at the rate of ten percent (10%) of the unpaid Contributions.
- If Contributions are received more than thirty (30) days after the Due Date, the Employer is liable for an additional ten percent (10%) in liquidated damages.
- In addition to liquidated damages, interest will be assessed based on Contributions not received by the last day of the month for hours paid in the preceding calendar month at an annualized rate equal to one percent (1%) simple interest per month.
- The trustees may direct legal counsel to initiate legal action.
- In addition to liquidated damages and interest, the Employer will also be liable for attorneys' fees and costs incurred in the collections of Contributions.

What are payroll audits?

Accountants may be engaged to perform payroll audits selected for cause or random audit. In addition to payroll audit selected for cause, the trustees have instituted a random payroll audit policy under which the auditor will payroll audit Employers each year with

the general goal that each Employer is audited at least once every five years. The period audited is normally the current year through the date of the payroll audit as well as the prior two years starting with January 1 of the first year. If an Employer ceases to have an obligation to contribute to the funds, the Employer shall remain subject to these payroll audit procedures. After a payroll audit of an Employer is conducted, the auditor reviews with the Employer their findings and provides the Employer with a reasonable time to respond to the auditor's findings. Thereafter, the auditor issues a final report to the trustees. Upon receipt of the auditor's report, the benefit funds administrator sends a letter to the Employer demanding payment of any amounts found to be due by the auditor and enclosing the auditor's findings. If the trustees find there is a pattern of substantial underpayment or failure to comply with the Contribution obligation by an Employer, the Employer is required to pay for the cost of the payroll audit. In the event an Employer refuses to permit a payroll audit, or if the Employer refuses to provide the auditor access to pertinent records, the matter is referred to legal counsel, whose costs and attorneys' fees are the responsibility of the Employer.

How can Employers best prepare for payroll audits?

Have in readiness for the audit period the following:

- Documents listing payroll amounts and hours worked (e.g., payroll registers)
- Hourly rates of pay for employees
- Federal tax returns and forms
 - o Forms 941 and 940
 - o Forms W-2 and W-3
 - o Forms 1099-MISC and 1096
 - o State unemployment compensation returns
 - o Support for proper name of the Employer
 - o Support for form of organization of the Employer (e.g., corporation, partnership, etc.)
 - o Employers copies of monthly contribution reports
 - o Listing of paid holidays and paid vacations
 - o Contribution reports for other employee benefit plans
 - o Any other information considered appropriate under the circumstances

After testing to determine the continuity of reports for every month during the audit period, and to ascertain the accuracy of hours reported on the contribution reports by tracing data from the payroll records to the contribution reports, in the event there is a determination of a lack of continuity or accuracy the auditor is authorized to proceed to expanded audit procedures and obtain appropriate additional records and information including:

- Employee prepared time cards/tickets
- Federal tax returns and forms
 - o Corporate tax return – Form 1120 or 1120 – S

- Partnership tax return – Form 1065
- Similar entity tax return and related filings
- State tax returns and related forms
 - Returns of state income tax withheld
 - Unemployment compensation returns
- Employee personnel files and related information
- Cancelled checks, and bank statements related to the payment of:
 - Contributions and related amounts to the Plans
 - Payroll and related amounts
 - “General fund account” checks, the general fund account being the bank account used to pay general expenditures (e.g., heat, light, power, supplies, etc.) of the Employer
 - Names and titles of principals or officers of the Employer
 - Names of the owners of the Employers and support of ownership
 - Certified payrolls
 - Job-order cost records
 - Financial statements, general ledger or excerpts thereof
 - Any other information considered appropriate under the circumstances

Upon receipt of the auditor’s report, the Benefit Funds Administrator shall send a letter to the Employer demanding payment of any amounts found to be due by the auditor and enclosing the auditor’s findings.

In the event the Boards of Trustees, in their sole discretion, find that there is a pattern of substantial underpayment or failure to comply with a Contribution obligation by an Employer, the Employer shall pay for the cost of the payroll audit.

If an Employer makes a contribution to the Funds in excess of the amount required by the CBA?

A written request for refund must be received within two years after the date that such excess contributions were received by the funds. No refund will be granted for that portion of an excess contribution that a participant has withdrawn from his supplemental retirement plan or vacation fund benefit account. Refunds may be offset by any investment losses incurred in a participant’s individual account. No refund will be granted for that portion of an excess contribution that has been paid to the Welfare Fund’s insurance carrier on behalf of the participants for whom the excess contributions were made. The written request of the Employer must contain copies of all documentation upon which the Employer relies to substantially substantiate its request which may be required by the funds to verify the exact amount of the excess contributions. The refund of such contributions is routinely made within six months after the trustees determine the contributions were made by mistake.