

**AUTOMOBILE MECHANICS' LOCAL 701 UNION AND  
INDUSTRY WELFARE FUND  
AUTOMOBILE MECHANICS' LOCAL 701 UNION AND  
INDUSTRY PENSION FUND**

**COLLECTION POLICY AND PAYROLL AUDIT PROCEDURES**

Revised Effective July 1, 2020

In order to coordinate the collection of delinquent employer contributions, payroll compliance audits and alleged overpayment of employer contributions, the Board of Trustees of the Automobile Mechanics' Local 701 Union and Industry Welfare Fund ("Welfare Fund") pursuant to the powers vested in them through Article III, Section 1 of the Welfare Fund's Agreement and Declaration of Trust (As Amended) and the Board of Trustees of the Automobile Mechanics' Local 701 Union and Industry Pension Fund ("Pension Fund") pursuant to the powers vested in them through Article III, Section 1 of the Pension Fund's Agreement and Declaration of Trust (As Amended) (herein the "Welfare Fund" and the "Pension Fund" sometimes referred to collectively as "Funds") hereby adopt the following procedures and policies relating to the collection of monies owed to the Funds:

**A. Timely Payment of Contributions to the Funds**

1. Contributions to the Funds shall be received by the Fund Office or the Funds' designated agent by the due date set forth in the Employer's collective bargaining agreement or Participation Agreement.
2. If an Employer's collective bargaining agreement or participation agreement fails to identify a due date, the Employer's Contribution Reports and contribution payments shall be due by tenth (10<sup>th</sup>) of the month following the month in which the work was performed.
3. If an Employer's Contribution Reports and contribution payments are due on or before the tenth (10<sup>th</sup>) of the month following the month in which the work was performed, the Trustees allow for a Grace Period of five (5) business days from the specified date on which contributions are due. However, the Trustees do not provide any Grace Period for Employers with due dates after the tenth (10<sup>th</sup>) of the month following the month in which the work was performed.

**B. Fund Administrator's Collection Report**

1. The Fund Administrator will report to the Board of Trustees at its quarterly meetings the following information whenever possible:

- (a) A listing of the Employers that have not been referred to Collection Counsel, but are known to be thirty (30) days or more delinquent or have failed to submit Contribution Reports for any period; and
- (b) The aggregate estimated amount of contributions, liquidated damages and/or interest owed by each such delinquent Employer.

### **C. Collection Procedures**

1. For every delinquent Employer, including an Employer that fails to submit monthly Contribution Reports for any period or owes deficiencies found in a payroll compliance audit, the Fund Office will attempt to make the following administrative collection efforts whenever feasible:
  - (a) Send an initial delinquency notice to the Employer within two (2) weeks of the original due date;
  - (b) Send a second delinquency notice to every Employer that fails to respond to the initial delinquency notice. The second notice should warn the Employer that the matter may be referred to Collection Counsel if the Employer is sixty (60) or more days delinquent and that the Employer will be held responsible for attorney's fees and litigation costs; and
  - (c) Attempt to call the Employer about the delinquency.
2. The Fund Office will refer all matters to Collection Counsel that meet one of the following criteria:
  - (a) The Employer is sixty (60) or more days delinquent and the aggregate amount of contributions, liquidated damages and/or interest owed by the Employer, including all locations of the Employer and all members of the Employer's controlled group, equals or exceeds \$2,000.00;
  - (b) The Employer has failed to remit Contribution Reports for two (2) consecutive periods; or
  - (c) For any other good cause, as determined by the Fund Administrator.
3. A one-time charge of ten percent (10%) liquidated damages is assessed against all delinquent contributions, in addition to interest at the rate of one percent (1%) per month from the due date until the contributions are paid in full.
4. In the event a delinquent Employer is referred to Collection Counsel, the Employer shall be held responsible for any and all reasonable attorney's fees and costs associated with collection.

5. The Fund Administrator will have the authority to extend the time for paying delinquent contributions, liquidated damages and/or interest through a written settlement agreement upon the advice and recommendation of Collection Counsel.
6. Any and all waivers and/or write-offs of unpaid contributions, liquidated damages, interest, attorney's fees and/or audit fees must be approved by the Board of Trustees.
7. In the event that the Fund Office discovers an underpayment (i.e., the Employer enters into a new collective bargaining agreement that provides for retroactive rate increases) or a variance (i.e., employer failed to report on an employee for a week or two because he was a new hire, etc.), the Funds shall send a notice to the Employer of the underpayment or variance giving the Employer thirty (30) days to remit payment. If the Employer fails to remit payment within thirty (30) days, then the contributions shall be considered delinquent and liquidated damages and interest in accordance with Section C.2 of this Policy.

#### **D. Payroll Compliance Audit Procedures**

1. **6 Month Audit.** The Fund Office will seek to conduct a payroll compliance audit of every new contributing Employer within approximately six (6) months after the employer becomes signatory and has contributed to the Trust Funds for approximately six (6) months.
2. **Regular Audit.** Insofar as practicable, each contributing employer will be subject to a regular payroll compliance audit once every three (3) years. The Fund Office will furnish a list of all contributing Employers to the auditor and will update that list from time to time.
  - (a) The payroll compliance auditor will select contributing Employers from a list provided by the Fund Office, and updated from time to time, and send written notification of the payroll audit to the Employer and contact the Employer to schedule the audit. That letter will identify the audit period and the documents needed to conduct the audit. The Fund Office will provide the payroll auditor with any other documents needed to conduct the audit, including the governing collective bargaining agreement, monthly remittance reports from that Employer and any additional information that may assist the auditor.
3. **Exit Audit.** The Fund Office will seek to conduct a payroll compliance audit of all Employers that cease contributing to the Trust Funds within a reasonable period of time following the cessation of contributions.
4. **Special Audit.** The Fund Administrator, in his/her discretion, may seek to conduct a payroll compliance audit of any Employer, at any time, and for any other reason not specifically enumerated above.
5. If the Employer fails to respond to the payroll auditor after reasonable attempts, the payroll auditor shall notify the Fund Administrator and Collection Counsel. Collection Counsel

will send written notification to the Employer of non-compliance and if necessary, initiate litigation to compel the Employer's compliance.

6. Upon completion of each payroll audit, the payroll auditor shall provide a report and schedule of deficiencies, including any applicable liquidated damages and interest charges to the Fund Administrator and the Fund Office will initiate collection in accordance with the Collection Procedures set forth above.
7. The payroll auditor will prepare a quarterly status report of the Employer payroll audits assigned, which shall include:
  - (a) A list of audited Employers;
  - (b) The date the necessary payroll data was received from the Fund Office;
  - (c) The date of the scheduled payroll audit;
  - (d) The date the payroll audit was completed;
  - (e) The aggregate amount of deficiencies for each Employer; and
  - (f) Any additional comments that indicate the status of each audit since the last status report.
8. **Audit Fees.** In the event a payroll audit discloses a contribution deficiency that exceeds 3% of the contributions required for that period, or in the auditor's opinion, the deficiency was caused by anything other than an inadvertent clerical error, the Employer shall be held responsible for the costs of the payroll audit, including all liquidated damages, interest charges and reasonable attorney's fees and costs, if applicable, unless otherwise waived by the Board of Trustees.

#### **E. Overpayment of Employer Contributions**

1. In the event a contributing Employer identifies and requests a refund and/or credit for an overpayment of employer contributions, the Fund Administrator will seek to verify the overpayment. After verifying the overpayment, the Fund Administrator may issue a credit to the Employer to be used against the Employer's next monthly remittance, provided the following conditions are met:
  - (a) The overpayment of Employer contributions occurred within the twelve (12) months immediately preceding the date of the Employer's request for a refund and/or credit;
  - (b) The overpayment of Employer contributions did not result in additional welfare eligibility and the payment of claims by the Welfare Fund; and

(c) The overpayment of Employer contributions did not result in additional pension credits to any person that has obtained a distribution from the Pension Fund.

2. Any and all requests to refund overpaid Employer contributions must be presented to the Board of Trustees at its next regular quarterly meeting.

The Board of Trustees hereby adopts this Policy this 8th day of July, 2020.

**UNION TRUSTEES**

  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

**EMPLOYER TRUSTEES**

  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_