

IMPORTANT NOTICE TO ALL PARTICIPATING EMPLOYERS

May 15, 2006

In order to address several common problems identified during EIT's payroll auditing process, EIT has compiled the following information to clarify the most common mistakes employers commit when making fringe benefit contributions to EIT. Some of these practices, although unintentional or intended solely to help employees, have significant consequences for employers. This notice contains important information about the payroll reporting process and should be retained for future reference.

Owner in Fact. Employees who are related to one of the owners of the employer and employees who exercise significant control over the management or operations of the employer's business as set forth in Section 18.14 of the Principal Agreement (Section 16.12 of the Communication Agreement, Section 8.09 of the Residential Agreement) are referred to as "Owner(s) in Fact". If an employee is subject to one of these provisions, the employer should pay wages and make fringe benefit contributions on behalf of such employee on a full-time basis of not less than 40 hours per week for 48 weeks per calendar year (i.e. not less than 1920 hours per year). If an Owner in Fact works more than 1920 hours, fringe benefit contributions must be made on behalf of such employee for all hours worked.

Other Employees. Except for the above provisions, it is a violation of the agreement and a violation of federal law to report any hours which were not actually worked by an employee. Consequently, payroll reports should include only the actual hours worked and wages

paid under the collective bargaining agreement. The following practices are prohibited:

- **Over-reporting hours: reporting more hours than were actually worked.**
- **Under-reporting hours: reporting fewer hours than were actually worked.**
- **Reporting non-employees: reporting individuals who are not employed by a participating employer.**
- **Reporting employees who do not receive wages: e.g., reporting volunteers, unpaid family members or any worker who is not compensated by hourly wages.**
- **Reporting employees who have been transferred to an employee leasing company or a "Professional Employer Organization." Note that the Principal Agreement includes the following definition:**

"Employee" or "Employees" refers to Journeyman, General Foreman, Foreman, or Apprentices working for a contributing Employer who is issued a Form W-2 by that Employer for purposes of Federal payroll taxes.

Maintaining Records. All employers are required to keep and maintain records which substantiate the payroll reports submitted to the Trustees. The Employee Retirement Income Security Act ("ERISA") requires employers to keep records which are "sufficient to determine the benefits due or which may become due" to each employee. 29 U.S.C. 1059(a)(1). If an employer fails to substantiate the hours reported to the Trustees, or fails to schedule an audit requested by the Trustees, the Trustees may cancel all hours reported by that employer.

Additional Compensation. If an employer wishes to reward an employee for good work, loyalty, longevity, etc., the employer should do so in the form of a one-time per year or annual bonus, which is excludable from gross wages for fringe benefit contribution purposes only. The employer should clearly document the bonus for payroll auditing purposes.

Apprentices. Apprentices should be reported at their corresponding wage rate as established by the applicable collective bargaining agreement (i.e. 55%, 65%, etc) and as maintained by the IBEW-NECA Technical Institute ("INTECH"). If Apprentices are paid a "premium" over their established rate, the percentage contribution made to the Trustees must be based on the actual gross wages paid to the apprentice including any "premium" rate. When you are notified by INTECH of a change in an apprentice's level, please contact the Fund Office for payroll reports corresponding to the new apprentice level.

Foremen and General Foremen. The "premium" over the journeyman's wage rate for foremen and general foremen is excludable from gross wages for fringe benefit contribution purposes. In other words, for foremen and general foremen, do not include the hourly amounts (or "premiums") paid above the journeymen's wage rate in gross wages when calculating EIT's percentage of gross wage contributions.

False Reporting. Please note that submitting false reports may subject the Employer and its principals to prosecution under 18 U.S.C. 1027, which provides for fines and imprisonment for up to five years.

EIT Resolutions. Attached to this notice are three resolutions adopted by the Trustees. Please review them carefully. The first resolution addresses intentional over-reporting. The second resolution describes the Trustees' refund policy with respect to the over-payment of

contributions due to mistake. The third resolution addresses intentional over-reporting and individual account plans (Pension Plan No. 5, the Additional Security Benefit Plan for Construction Workers, and the Retirement HRA for Communication Participants).

Collection Policy. The Trustees' Delinquency Collection Policy is set forth in Article XXI of the Principal Agreement (Article XVIII of the Communication Agreement, Article XI of the Residential Agreement). The Delinquency Collection Policy describes the payroll audit procedure and the Trustees' remedies for delinquent contributions, and it provides for liquidated damages, interest, and attorneys' fees. Please review these sections of the agreements carefully. If you need a copy of any of the agreements, please contact the Electrical Contractors Association at (708) 531-0022 or I.B.E.W. Local 134 at (312) 454-1340. The agreements are also available on the Internet at www.local134chicago.com under "Forms".

If you would like a copy of EIT's Delinquency Collection Policy, or if you have any other questions, please call Mike Krantz at the Fund Office. He can be reached at (312) 782-5442, ext. 279.

ELECTRICAL INSURANCE TRUSTEES

REFUND POLICY: INTENTIONAL OVER-REPORTING

WHEREAS, the Principal Agreement, by and between the Electrical Contractors' Association of City of Chicago and Local Union No. 134, International Brotherhood of Electrical Workers, requires Employers to submit monthly payroll reports to the Electrical Insurance Trustees; and

WHEREAS, payroll reports should include only the actual hours worked and wages earned under the Principal Agreement; and

WHEREAS, federal law prohibits the Trustees from accepting contributions from an Employer unless those contributions are made in accordance with the terms of the Principal Agreement; and

WHEREAS, it appears that some Employers have over-reported hours with the result that Employees and their dependents who would not otherwise be eligible for benefits appear to qualify for coverage and have been paid benefits by the Trustees; and

WHEREAS, providing benefits to persons who do not qualify for benefits is a violation of federal law, undermines the actuarial assumptions upon which contribution rates are based and imposes additional costs on the funds administered by the Trustees which are difficult to quantify; and

WHEREAS, the Insurance Agreement provides the Trustees with plenary power to make and enforce rules and regulations for the proper collection and handling of the funds administered by the Trustees and the conditions under which benefits shall be provided and forfeited, it is

RESOLVED, that whenever an Employer submits a payroll report which reports hours as worked under the Principal Agreement which were not so worked, with the result that one or more Employees is improperly shown as eligible for benefit coverage under any plan administered by the Trustees, the Trust office shall determine the costs thereby imposed on the plan and require reimbursement of the Trustees therefore as follows:

(1) The Trust office shall determine (a) the total benefits paid to Employees and their dependants while they were ineligible for coverage and (b) the amount of contributions made by the Employer on behalf of the Employees during their period of ineligibility.

(2) If, during a period of ineligibility, the sum of the benefits paid to ineligible Employees and their dependents is greater than the amount of the contributions made by the Employer on their behalf, the Trust office shall require the Employer to reimburse the Trustees for the difference.

(3) If the Employer fails to pay the difference to the Trustees within 30 days after written notice of the amount due is sent by the Trust office to the Employer, the Trust office will refer the claim to Fund Counsel for legal action. Notice of the referral will be provided to the Chicago and Cook County Chapter, N.E.C.A., the Local 134 Business Manager and affected Employees. If, following the referral, Fund Counsel files suit to collect any delinquent amount, the Employer and the ineligible Employees shall be liable for the delinquent amount plus liquidated damages, interest and all costs of recovery, including but not limited to attorneys' fees and court costs.

(4) An administrative charge of \$5,000 shall be assessed against any Employer (a) found by the Trustees to have intentionally over-reported hours worked under the

Principal Agreement or (b) who fails to reimburse the Trustees for the difference between the sum of the benefits paid and the amount of contributions received within 30 days after written notice of the amount due is sent by the Trust office to the Employer. The administrative charge is intended to reimburse the Trustees for lost managerial time, extra staff work, additional record-keeping and related expenses.

(5) An Employer who fails to pay an administrative charge assessed by the Trustees by the 15th day of the month following the month of assessment shall be deemed delinquent. The Employer shall be liable for liquidated damages and interest on the amount of the assessment, and its Employees shall be subject to suspension of coverage under the Insurance Agreement, all in accordance with Section 21.01 of the Principal Agreement.

(6) The Trust office shall cancel all hours reported as worked under the Principal Agreement which it determines were not worked.

ELECTRICAL INSURANCE TRUSTEES

REFUND POLICY: OVERPAYMENTS DUE TO MISTAKE

WHEREAS the Principal Agreement by and between the Electrical Contractors' Association of City of Chicago and Local Union No. 134 International Brotherhood of Electrical Workers requires Employers to submit monthly payroll reports to the Electrical Insurance Trustees; and

WHEREAS Employers occasionally remit contributions to the Trustees which appear to be the result of a mistake or which are subsequently claimed to be the result of a mistake; and

WHEREAS federal law does not prohibit the return, to a contributing employer, of contributions to plans administered by the Trustees, within six months after the plan administrator determines that the contributions were made by a mistake of fact or law; and

WHEREAS the Insurance Agreement provides the Trustees with plenary power to make and enforce rules and regulations for the proper collection and handling of the funds administered by the Trustees and the conditions under which benefits shall be provided;

NOW THEREFORE it is RESOLVED to adopt the following Refund Policy with respect to contributions which are the result of a mistake:

1. Fund Office Responsibility:

The Fund Office shall investigate all claims regarding mistaken contributions to confirm whether an Employer remitted excess contributions and, if so, to determine the reason for the excess contributions. If the amount of mistaken contributions is \$1,000 or less, the Collections Supervisor is authorized to verify the correct sum and issue a credit memorandum to the Employer. If the amount is more than \$1,000 but less than \$5,000, the Fund Administrator is

authorized to refund that amount to the Employer or to issue a credit memorandum in that amount to the Employer. Overpayments or claims for refunds which involve \$5,000 or more shall be referred to the Board of Trustees or to any committee authorized by the Trustees to rule on such claims.

If the Trustees determine that a contribution was the result of a mistake, the Trustees shall have the discretion to decide whether to refund the contributions or to provide the Employer with a credit which may be used against future contributions.

The Trustees' decision shall be final and shall bind all parties to the Insurance Agreement, the contributing Employer, and all individuals claiming benefits under any plan administered by the Trustees.

2. Employer Responsibility

No refund or credit shall be permitted in connection with any payment made to the Trustees unless a claim or demand is presented to the Trustees within one year after the payment is made. All claims for mistaken overpayments must be in writing and directed to the Collections Supervisor. The claim must include an explanation of the mistake and copies of all documents which support the claim. The Employer shall have the burden of establishing that a contribution was the result of a mistake and must provide evidence of a mistake which is satisfactory to the Trustees.

3. Limitations on Refunds:

No contributions shall be returned to an Employer, nor shall an Employer be entitled to a credit or set-off, more than six months after the Fund Administrator determines that the contributions were made by a mistake. No contributions shall be returned to an Employer, nor

shall an Employer be entitled to a credit, (1) to the extent that such contributions enabled an individual to qualify for and receive coverage under any health or welfare plan administered by the Trustees; or (2) if the Trustees determine that the contributions were intentional rather than the result of a mistake, or were part of a design or scheme to obtain coverage; or (3) to the extent contributions have been allocated to any individual accounts, even if it is determined that the contributions are the result of a mistake. Employers are not entitled to interest on mistaken contributions.

ELECTRICAL INSURANCE TRUSTEES

REFUND POLICY: INDIVIDUAL ACCOUNT BALANCE PLANS

WHEREAS, the Principal Agreement, the Communication Agreement and the Residential Agreement ("the Agreements") by and between the Electrical Contractors' Association of the City of Chicago and Local 134, International Brotherhood of Electrical Workers all require Employers to submit monthly payroll reports to the Electrical Insurance Trustees; and

WHEREAS, payroll reports should include only the actual hours worked and wages earned under the Agreements; and

WHEREAS, federal law prohibits the Trustees from accepting contributions from an Employer unless those contributions are made in accordance with the terms of the Agreements; and

WHEREAS, it appears that some Employers have over-reported hours with the result that some participants have been credited with contributions under The Electrical Contractors Association and Local Union 134, I.B.E.W Joint Pension Trust of Chicago Pension Plan No. 5 ("Pension Plan No. 5") or under the Additional Security Benefit Plan ("ASBP") to which they were not entitled; and

WHEREAS, the Amended Pension Agreement provides the Trustees with the authority to formulate and promulgate any and all necessary rules and regulations which they deem necessary or desirable to facilitate the proper administration of the Trust, it is

RESOLVED, that whenever an Employer submits a payroll report which reports hours worked under the Agreements which were not so worked, with the result that one or more

Employees has improperly been credited with contributions under Pension Plan No. 5 or under the ASBP, each hour so reported shall not be treated as an "hour of service" under the relevant federal regulations (29 C.F.R. 2530.200b-2) and all hours so reported shall be cancelled; each hour so reported shall not be treated as an hour worked under the Agreements or the relevant plan, nor shall any wages paid for any hours so reported be considered part of gross productive electrical labor payroll, productive electrical payroll, or gross monthly labor payroll; and the Fund Office shall promptly correct participants' account balances and adjust improperly reported hours and improperly allocated credits, and improper contributions allocated to any individual account plan, including Pension Plan No. 5 and the ASBP, shall be forfeited.