

PIPE TRADES SERVICES MN

POLICY FOR COLLECTION OF DELINQUENT EMPLOYER CONTRIBUTIONS

Background:

The Pipe Trades Services MN (Service Association) is a Minnesota non-profit corporation established by the Boards of Trustees of the Pipe Trades Services MN Pension Trust and the Pipe Trades Services MN Welfare Fund to provide administrative services to the founding funds and other benefit funds and programs (all of which are collectively referred to as the Benefit Funds) and to collect and disperse contributions required to be made by employers subject to certain collective bargaining agreements (CBAs) and other agreements. Multiple CBAs and other agreements require contributions to the Benefit Funds from numerous employers that are to be paid to the Service Association to facilitate the collection and distribution of contribution obligations. In addition, certain other amounts, both taxable and non-taxable, are required to be paid by employers to the Service Association, including a portion of covered employees' taxable compensation.

The Benefit Funds for which contributions are required from employers are generally subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA). ERISA makes clear that the collection of contributions to benefit plans is a fiduciary obligation. In meeting that obligation on behalf of the Benefit Funds, the Service Association has maintained a policy for collection of delinquent contributions, and this version updates and restates that policy.

Purpose:

The purpose of this policy is to provide workable guidelines for the effective and efficient collection of contributions from employers who fail to pay required contributions to the Service Association in a timely manner. The Service Association recognizes that the security and welfare of the Benefit Funds and the employees on whose behalf required contributions are to be made depends upon a diligent and systematic procedure to collect as much of the payments due to the Service Association as possible. At the same time, pursuing and collecting delinquent contributions involves factors and processes that make the ultimate result less than certain, and often requiring expenditures of resources to pursue potential collections. The guidelines are further intended to protect the Service Association and Benefit Funds from issues related to perceived extensions of credit to delinquent employers and prohibited transactions while allowing the

Service Association and the Trustees of the Benefit Funds to meet their fiduciary duties.

Policy:

The policy employed by the Service Association is designed to provide consistent parameters for collection of contributions due as well as to provide for reasonable flexibility in dealing with difficult and dynamic situations.

Section 1. Core Requirements.

- 1.1 All contributions and payments required from employers shall be in the amount and manner specified in the CBA or other agreement applicable to the employer and in accordance with the rules and interpretations of the Service Association.
- 1.2 Contributions and payments are due on the 15th of the month following the month for which the hours were worked, unless the employer is required to make contributions more frequently than monthly.
- 1.3 Reports documenting hours worked and contributions due shall be submitted not later than the applicable due date for the contributions.

Section 2. Failure to Pay or Report.

- 2.1 The failure of an employer to pay the contributions required under Section 1.1 by the applicable due date shall be a violation of the collective bargaining agreement between the employer and the applicable Union, as well as a violation of the employer's obligations under the trust agreements for the Benefit Funds. The Service Association shall be free to utilize any remedy otherwise available for the collection of delinquent contributions and any unpaid interest or liquidated damages assessment, including initiation of legal proceedings pursuant to Sections 302 and 515 of ERISA.
- 2.2 An employer's nonpayment of any contributions on time shall not relieve any other employer from its obligation to make payments.
- 2.3 An employer that fails to pay contributions when due is obligated to immediately pay all delinquent contributions together with interest on those amounts at the prime rate.

- 2.4 An employer that fails to pay contributions when due is obligated to pay liquidated damages of 3% of the amount due if received after the 20th of the month following the month for which the contributions are attributable (or after three working days if on weekly payments), and liquidated damages of 10% of the amount due instead of 3% if payment is received more than ten days after the 20th of the month following the month for which the contributions are attributable (or the third working day if on weekly payments). Liquidated damages assessed pursuant to this Section shall be deemed to be additional employer contributions due and shall be paid not later than the 20th of the month which next follows the date on which such late payment resulted in the assessment of the liquidated damage. **Benefits checks received within 3 business days of the End-of-Month closing dates as posted on the PTSMN website (www.ptsmn.org) must be paid with a cashier's check in order to be processed within that month.**
- 2.5 In addition to any other remedies to which the Benefit Funds may be entitled, the Service Association shall be entitled to all expenses of collection, including reasonable attorneys' fees and court costs.
- 2.6 The Service Association shall have the discretion to reduce or waive interest, liquidated damages and costs (including attorneys' fees) in those situations where the employer is voluntarily working out its non-compliance. The Service Association, in consultation with legal counsel as appropriate, shall be guided by the principals of business judgment in determining whether and to what extent to compromise on assessments due from an employer.

Section 3. Collection Action.

- 3.1 The Service Association shall monitor the status and timing of employer contributions on an on-going basis. The Service Association shall periodically report to the Benefit Funds the status of employers who are late making payments or have failed to pay contributions. The Executive Administrator of the Service Association shall act as representative of the Benefit Funds unless the Trustees have appointed another as representative of the respective Trust. The Executive Administrator or other designated representative shall also act as representative of employees of a delinquent Employer in any arbitration or legal proceeding, including the filing of mechanics liens on any property where

employees of a delinquent employer have furnished labor or for recovery on a payment bond, and for the additional purpose of acting as such representative in any court foreclosure proceeding to enforce payment of a lien.

- 3.2 The Service Association shall have the discretion to determine to refrain from collections, or to terminate collections, if in its discretion, after consultation with legal counsel, it concludes that an obligation is uncollectable or any potential recovery would exceed the expenditure of resources required to pursue such claim.
- 3.3. The Service Association will regularly attempt to contact delinquent employers by phone and or by mail after determining that contributions have not been paid when due, to facilitate voluntary payment of amounts due. The Service Association may arrange meetings with employers or consult with trustees on aspects of resolving a contribution claim. If an employer requires a payment plan to become current, the Service Association will ordinarily require that such a plan be in writing and ordinarily includes consequences for noncompliance with the plan. As a general rule, payment arrangements need to be for a sufficiently short duration so as to not be construed as extending credit. Payment periods for outstanding contributions should not ordinarily extend longer than six months, taking into consideration the likelihood of recovering the outstanding contributions.
- 3.4 In addition to matters where a work out plan is required, the Service Association will refer to legal counsel for formal action any delinquent contractor who has failed to pay for two consecutive months, or other required reporting period.
- 3.5 The Service Association will also refer to legal counsel those delinquent contractors who have issued payment that has been dishonored by the employer's bank, or who has filed for bankruptcy protection.
- 3.6 Legal counsel shall coordinate any resolution of a contribution or security issue with the Service Association, and shall act consistent with the objectives and parameters established by the Service Association.
- 3.7 The Service Association shall retain, at all times, the discretion to reduce, waive or hold in abeyance any portion of a claim against a

delinquent employer to the extent it determines is reasonably necessary to maximize the recovery of contributions due.

Section 4. Security Requirements.

- 4.1 The Service Association, in order to compel and enforce the payment of ongoing contributions, may require a delinquent contractor to post a bond in cash or through a surety in a form acceptable to the Service Association. The Service Association may also require such delinquent contractor to make all contribution payments and submit reports on a weekly basis, not later than three (3) working days (excluding Saturdays, Sundays, and holidays) after the close of the period for which contributions are due.
- 4.2 The bond and weekly payment requirements under this Section shall continue for a period of not less than twenty-four (24) months of consistent compliance with the timely and complete payment obligation by the delinquent employer. If the Service Association is required to seek an injunction from the United States District Court to impose the bond and weekly payment obligations, then such bonding and weekly payment requirements shall be permanent, and the bond shall be in an amount sufficient to fund three months of future contributions.
- 4.3 The Service Association may allow, in its discretion, funding of a cash bond through a series of installments in those cases where the employer is voluntarily complying with the security obligation and financial conditions indicate to the Service Association that such structure is required.
- 4.4 If an employer is required to commence weekly payments and or post a bond to secure future contributions, compliance with those requirements shall be completed within seven (7) calendar days of notice from the Service Association.
- 4.5 The Service Association is authorized, in its sole and exclusive discretion, to require an employer who is late in making any required contribution payments to post a bond or the cash equivalent in an amount that is less than the amount required to secure three months future contributions, the amount of such alternative bond to be determined in the sole discretion of the Service Association, and may be imposed without requiring weekly contributions. The

employer shall post the required bond or cash equivalent with in seven (7) days of a demand by the Service Association or its designee (or such longer period as the Service Association may authorize in their sole discretion). If the employer fails to post such bond or to maintain it, including if the Trust is required to draw against it for the employer's contribution obligations, then the Service Association is authorized to obtain an injunction requiring a bond for three months future contributions and weekly contribution payments.

- 4.6 The Service Association is authorized, in its sole and exclusive discretion, to require an employer who has not been delinquent in making contributions but who has incurred an event of financial insecurity to post a bond or the cash equivalent in an amount of up to two months future contributions, such amount to be determined in the sole discretion of the Service Association. The employer shall post the required bond or cash equivalent with in seven (7) days of demand by the Service Association (or such longer period as the Service Association may authorize in its sole discretion) by delivering the bond to the Service Association. If the employer fails to post such bond, or maintain it, including if it must be replenished because the Service Association is required to draw against it for the employer's contribution obligations, then the Service Association is authorized to obtain an injunction requiring a bond for three months contributions and weekly contribution payments. Events of financial insecurity mean events which include, but are not limited to, missing employee payrolls, having checks issued by the employer dishonored at a financial institution, being subject to a tax lien, loosing credit at a supplier, or making a fringe benefit contribution payment late.

Section 5. Periodic Compliance Examinations.

- 5.1 The Service Association or its authorized representative(s) shall have the right to examine, in accordance with the rules of the Service Association, pertinent business records, including, but not limited to, payroll books and records, at the office of the employer, and the employer shall make such books, records and reports available during business hours after at least one-day's notice in advance. Such examinations shall not exceed one in each calendar year, unless the Service Association has a reasonable basis based upon facts indicating that the employer is not paying the required contributions

properly, or the employer is delinquent in its contributions, in which case the examinations, and the nature and extent thereof, shall be made as frequently as the Service Association determines.

- 5.2 If it is determined that any employer has made an excess contribution in any Plan Year, such excess shall be held by the Service Association in a suspense account, to be applied to the employer's contribution in the following Plan Year.
- 5.3 If an employer fails to cooperate in any examination authorized by this Section, such employer shall be responsible for the costs and attorneys fees incurred in compelling the employer's compliance.

This revised policy is adopted by action of the Twin City Pipe Trades Service Association, Inc. board on September 29, 2010, and is effective immediately.