



PIPE TRADES SERVICES MN

HEALTH & PENSION FUNDS

4461 White Bear Parkway, Suite 1 - White Bear Lake, MN 55110 • Phone: 651-645-4540 • Fax: 651-645-8119 • www.PTSMN.org

Restated Policy for Collection of Delinquent Employer Contributions

Effective May 25, 2023

Background

Pipe Trades Services MN, Inc. ("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 Restated Policy for Collection of Delinquent Employer Contributions ("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. This Policy is 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 Benefit Funds and 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 no later than the applicable due date for the contributions as set forth in Section 1.2.

Section 2: Delinquent Contributions

- 2.1 The failure of an employer to pay the contributions required under Section 1.1 by the applicable due date is a violation of the CBA, 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 assessments, including initiation of legal proceedings pursuant to Sections 302 and 515 of ERISA.
- 2.2 An employer's failure to make timely contributions 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 In addition to the interest required in Section 2.3, an employer that fails to pay contributions when due is obligated to pay liquidated damages of three percent (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 (3) working days if on weekly payments), and liquidated damages of ten percent (10%) of the amount due instead of

three percent (3%) if payment is received more than ten (10) days after the 20th of the month following the month for which the contributions are attributable (or more than ten (10) days after 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. Liquidated damages are not a penalty. Liquidated damages are a reasonable approximation of the actual damages suffered by the Benefit Funds when contributions are delinquent and the computation of actual damages to the Benefit Funds in each case of delinquency would be extremely difficult.

- 2.5 Benefits checks received within three (3) business days of the End-of-Month closing dates as posted on the Service Association's website (www.ptsmn.org) must be paid with a cashier's check in order to be processed within that month.
- 2.6 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 but not limited to reasonable attorneys' fees and costs.
- 2.7 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 noncompliance. 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. Factors that may be considered by the Service Association in determining whether to reduce or waive interest, liquidated damages, and costs include, but are not limited to: the value of the delinquent contributions, the likelihood of successful recovery, the expenses to be incurred, the employer's past contribution history, and the employer's solvency.

Section 3: Collection Actions

- 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 collection efforts, 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, email, and/or by mail after determining that contributions have not been paid when due in order to facilitate voluntary payment of amounts due. The Service Association may arrange meetings with employers or consult with trustees on aspects of resolving a claim for unpaid contributions. 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 (6) months, taking into consideration the likelihood of recovering the unpaid contributions and assessments.
- 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 have 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, as set forth in this Policy.
- 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. Factors that may be considered by the Service Association in determining whether to reduce, waive, or hold in abeyance any portion of a claim include, but are not limited to: the value of the delinquent contributions, the likelihood of successful recovery, the expenses to be incurred, the employer's past contribution history, and the employer's solvency.

Section 4: Non-Sufficient Funds ("NSF") Payments

If any payment from an employer is returned to the Service Association for the reason of insufficient funds in the employer's bank account, the Service Association shall contact legal counsel in accordance with Section 3.5. In addition, the Service Association may require the employer to submit future payments to the Service Association in the form of either a cashier's

check or a certified check for a period of time not less than six (6) months. Additionally, a returned payment is subject to the provisions relating to liquidated damages stated in this Policy. The employer will also be required to reimburse the Service Association for any fees or penalties assessed against the Service Association as a result of the employer's NSF payment.

Section 5: Security Requirements

- 5.1 The Service Association, in order to compel and enforce the payment of ongoing contributions, may require a delinquent employer 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 employer 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.
- 5.2 The bond and weekly payment requirements under this Section shall continue for a period of not less than twenty-four (24) months of consistent timely and complete payments 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 (3) months of future contributions.
- 5.3 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.
- 5.4 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.
- 5.5 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 (3) 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 within seven (7) days of a demand by the Service Association or its designee (or such longer period as the Service Association may authorize in its sole discretion). If the employer fails to post such bond or to maintain it, including if 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 (3) months future contributions and weekly contribution payments.

- 5.6 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 (2) months future contributions, such amount to be determined in the sole discretion of the Service Association. An event of financial insecurity means an event that includes, but is not limited to, missing employee payrolls, having checks issued by the employer dishonored at a financial institution, being subject to a tax lien, or losing credit at a supplier. If a bond is required under this Section, the employer shall post the required bond or cash equivalent within 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 (3) months contributions and weekly contribution payments.
- 5.7 If the Service Association is required to seek or obtain an injunction requiring a bond to secure future contributions and/or weekly contribution payments, the Service Association shall be entitled to all expenses incurred in seeking or obtaining the injunction, including but not limited to reasonable attorneys' fees and costs.

Section 6: Employer Payroll Audits

- 6.1 As set forth in the Service Association's Payroll Audit Procedures, 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 to determine whether the employer has fully performed its obligations to the Benefit Funds. Pertinent business records include, but are not limited to: payroll and employer tax information for all employees of the employer, individual earnings records for all employees of an employer, timecards for all employees of an employer, W-2's, W-3's, check registers, monthly remittance reports, Quarterly 941's, IRS Forms 1099 and 1096, and other relevant financial records. Pertinent records shall be made available during business hours after at least one-days' advance notice at the office of the employer. 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 appropriate under the circumstances in its exclusive discretion. A payroll audit will be conducted for all newly signed employers within twelve (12) months after the newly signed employer first becomes obligated to pay fringe benefit funds to the Benefit Funds.




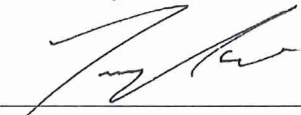
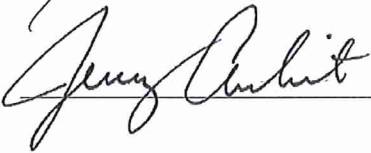
- 6.2 If it is determined that any employer has made an excess contribution in any Plan Year, such excess shall be held by the Service Association in a suspense account, to be applied to the employer's contribution in the following Plan Year.
- 6.3 The Benefit Funds may refund contributions to an employer, but only if the Trustees of the impacted Benefit Funds determine that the contributions were made due to mistake of fact or law and the employer requests the refund in writing within six (6) months of the date that the Trustees of the impacted Benefit Funds determine that the contributions were made by a mistake of fact or law. However, to the extent a benefit has already been paid based upon the claimed mistaken contribution, no refund will be allowed.
- 6.4 If an employer fails to cooperate in any examination authorized by this Section, such employer shall be responsible for all incurred in compelling the employer's compliance, including but not limited to attorneys' fees and costs.

Section 7: Miscellaneous

This Policy supersedes all prior policies and procedures pertaining to the subjects of this Policy. This Policy is effective as of May 25, 2023, and will remain in effect until superseded or rescinded by the Service Association. The Service Association will review this Policy at least once every two years to ensure its continued appropriateness and applicability. The Service Association has sole and absolute authority to interpret this Policy, to apply this Policy, and to determine facts relevant to the application of this Policy. The Service Association may deviate from the specific terms of this Policy if the Service Association determines in its sole discretion that such deviation is prudent under the relevant circumstances. Nothing in this Policy is intended to limit the Service Association to a greater extent than applicable law.

The Service Association hereby adopts this Policy effective as of the date provided herein:

Union Directors

Employer Directors

