



PIPE TRADES SERVICES MN

HEALTH & PENSION FUNDS

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Payroll Audit Policy and Procedures

Effective November 1, 2023, this Payroll Audit Policy and Procedures is restated and adopted by the Board of Directors (“Directors”) of the Pipe Trades Services Minnesota, Inc. (the “Service Association”).

Background

The Service Association is a Minnesota corporation established by the Trustees of the Pipe Trades Services MN Pension Trust and the Pipe Trades Services MN Welfare Trust to provide administrative services to the founding funds and related benefit funds and programs (collectively, the “Benefit Funds”) and to collect and disperse contributions required to be made by employers subject to certain collective bargaining agreements (“CBAs”), participation agreements, and other agreements. The CBAs and other agreements require contributions to the Benefit Funds from employers (“Contributing Employers”) 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 Contributing Employers to the Service Association, including a portion of covered employees’ taxable compensation.

The Benefit Funds for which contributions are required from Contributing 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 and the Trustees of the Benefit Funds have delegated such responsibility to the Service Association. In meeting that obligation on behalf of the Benefit Funds, the Service Association maintains the payroll audit procedures provided herein, which may be updated at any time at the discretion of the Directors of the Service Association.

Purpose and Policy

The purpose of the Restated Payroll Audit Policy and Procedures (“Procedures”) is to provide workable and consistent guidelines for the examination of pertinent business records of Contributing Employers to determine whether the Contributing Employers have fully performed their obligations to the Benefit Funds.

All Contributing Employers shall be audited periodically for the purpose of verifying compliance with the applicable CBAs, participation agreements, other agreements, and rules,

procedures, and policies adopted by the Service Association's Directors, as well as with the Trust Agreements for the Benefit Funds and any rules, procedures, and policies adopted by the Boards of Trustees for the Benefit Funds.

The Service Association shall perform audits on approximately 20-33% of the Contributing Employers each year and shall maintain records and correspondence regarding the selection, scheduling, and performance of audits. The Service Association may engage an external auditing firm with experience in performing payroll audits to complete audits pursuant to these Procedures ("Auditor").

A random process shall be used to select Contributing Employers for audit, with each Contributing Employer being audited approximately once every three (3) to five (5) years.¹ Any Contributing Employer whose contributions account at least 20% of the total contributions collected by the Service Association may be audited on a more frequent basis. Special audits may also be performed when requested by the Service Association's Directors or the Trustees of the Benefit Funds, or on the recommendation of the Service Association's management, Fund Counsel, or the Auditor. Special audits are typically requested when a Contributing Employer has a pattern of delinquent contributions or has regularly submitted incorrect payment amounts, when a Contributing Employer has a significant decrease in reported hours, when complaints have been received from participants about a Contributing Employer's failure to make contributions on his/her behalf, or when a Contributing Employer is withdrawing from participation in a CBA or is closing its business, but may be requested for other reasons. A Contributing Employer should not be audited more than one time in each calendar year, unless the Service Association has a reasonable basis based upon facts indicating that the Contributing Employer is not paying the required contributions properly, or the employer is delinquent in its contributions, in which case the payroll audits 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 Contributing Employers, including newly signed Contributing Employers who are making contributions pursuant to a Participation Agreement related to the participation of non-bargaining unit employees, after twelve (12) months of contributions have been submitted in order to ensure the newly signed Contributing Employer understands and is in compliance with the applicable agreements and policies.

A Contributing Employer with no issues found in its most recent prior audit may, in the discretion of the Service Association, be deferred for an audit cycle.

¹ The Directors have discretion to adjust the audit cycle or the audit procedures in the event of a public state of emergency or other event that impacts the performance of payroll audits.

Procedures

The following Procedures shall be applied for each audit unless, in the judgment of the Service Association, its Auditor, or Fund Counsel, a variation from the standard procedure is necessary to determine whether the Contributing Employer has fully complied with its contribution obligations.

1. The Auditor shall send a letter to the Contributing Employer requesting that the Contributing Employer schedule a time for an audit to be performed. In general, the audit should take place within thirty (30) days of the audit request.
2. If the Contributing Employer fails to respond to the audit request or refuses to allow an audit, the Auditor shall notify the Service Association in writing. The Service Association will instruct Fund Counsel to send a demand letter to the Contributing Employer advising that failure to cooperate with the requested audit will result in a Federal District Court lawsuit. If the Contributing Employer does not comply with the audit demand, Fund Counsel may commence a lawsuit in Federal District Court to obtain a Court Order compelling the production of payroll records and to recover any delinquency identified during the audit, as well as liquidated damages, interest, attorneys' fees and costs.
3. If the audit is allowed, the Auditor shall request that the Contributing Employer provide all pertinent business records to determine whether the Contributing Employer has fully performed its obligations to the Benefit Funds by submitting complete and accurate contributions. The audit period typically runs from the date a prior audit was completed through the date of present audit but may be a different period in the Service Association's sole discretion. For newly signed Contributing Employers, the audit period shall encompass the Contributing Employer's full contribution history. Pertinent business records may include, but are not limited to: payroll and employer tax information for all employees of the Contributing Employer, individual earning records for all employees of the Contributing Employer, timecards for all employees of the Contributing Employer, I-9 (Employee Eligibility Verification) records for all employees of the Contributing Employer, personnel records showing the date of hire and termination dates for all employees of the Contributing Employer, Quarterly 941's, Quarterly MUTA or unemployment insurance reports, W-2's, W-3's, IRS Forms 1099 and 1096, check registers, monthly remittance reports, invoices for a Contributing Employer's subcontractors and consultants, monthly remittance reports related to other benefit plans to which the Contributing Employer makes contributions, and any other records deemed necessary to complete the audit, including general ledgers, job sheets, and similar records to verify that actual hours worked are captured. Pertinent business records shall be made available during business hours after at least one-days' advance notice at the office of the Contributing Employer.

4. The Auditor shall note which pertinent business records were provided by the Contributing Employer and what time period those records cover.
5. The Auditor shall determine the classification of work performed by each employee by examining the pertinent business records provided and, if necessary, interviewing the Contributing Employer and/or the employees.
6. Employees not performing covered work for which contributions are owed to the Benefit Funds shall be excluded from further consideration in the audit. The Auditor shall note the reasons for excluding an employee from audit consideration and the source of that information.
7. The Auditor shall then determine the actual number of hours worked for which contributions are due. That determination shall be made directly from payroll records if possible. If such records do not provide a sufficient basis to determine the actual number of covered hours performed by an employee, the Auditor shall make a reasonable estimate of covered hours based upon existing data, records, and information obtained during interviews of the Contributing Employer and the employee(s). The basis for the estimate and the manner in which it was computed shall be noted in the Auditor's work papers. In the absence of reasonable alternatives, the Auditor shall divide gross pay by the appropriate wage scale in the applicable CBA or agreement in order to determine the number of covered hours for which contributions are owed. If the results of this procedure appear unreasonable, the Auditor shall attempt to determine whether mitigating factors exist to explain the findings.
8. The Auditor shall then compare the total covered hours to the total hours actually reported to the Service Association by the Contributing Employer. Any discrepancies identified through the audit shall be invoiced by the Auditor on an invoice to the Contributing Employer. The Auditor shall provide the Contributing Employer with notice that if the invoice amount is not paid within thirty (30) days from the date of the invoice, legal action may be commenced to collect the invoiced amount, as well as interest, attorneys' fees and costs. The Contributing Employer may appeal the audit findings to the Service Association's Directors within thirty (30) days of the payroll audit invoice.
9. If payment is not received within the thirty (30) day period, the Service Association shall refer the case to Fund Counsel for appropriate legal action in accordance with the Service Association's Restated Policy for Collection of Delinquent Employer Contributions.
10. If it is determined that any Contributing Employer has made an excess contribution in any period, such excess shall be held by the Service Association in a suspense account, to be credited toward the Contributing Employer's contribution obligation in a subsequent period. The Benefit Funds may refund contributions to a Contributing 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 Contributing 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.

11. A schedule of Contributing Employers to be audited, as well as the results of each audit performed, shall be provided to the Service Association's Directors on a regular basis.

Miscellaneous

These Procedures supersede all prior policies and procedures pertaining to the subjects of these Procedures. These Procedures are effective as of October 1, 2023, and will remain in effect until superseded or rescinded by the Service Association. The Directors of the Service Association will review these Procedures at least once every two years to ensure their continued appropriateness and applicability. The Service Association has sole and absolute authority to interpret these Procedures, to apply these Procedures, and to determine facts relevant to the application of these Procedures. The Service Association may deviate from the specific terms of these Procedures if the Service Association determines in its sole discretion that such deviation is prudent under the relevant circumstances. Nothing in these Procedures is intended to limit the Service Association to a greater extent than applicable law.

The Directors of the Service Association hereby adopt the Procedures effective as of November 1, 2023.

Union Directors

Employer Directors


















