

PACE INDUSTRY
UNION-MANAGEMENT PENSION FUND

POLICY FOR COLLECTION OF
DELINQUENT CONTRIBUTIONS

This condensed version of the Policy includes those portions of the Policy that describe obligations of contributing employers.

Introduction

The Board of Trustees (“Board”) of the PACE Industry Union-Management Pension Fund (“Fund”) has a fiduciary obligation to seek to collect all money that is due and owing to the Fund so that it may be used for the benefit of the Fund’s participants.

In addition, ERISA defines as a “prohibited transaction” any extension of credit from the Fund to an employer. A failure to collect contributions (including surcharges under the Pension Protection Act of 2008 (“Contributions”)) when they are due may be treated as such an extension of credit from the Fund to an employer with a current or previous contribution obligation (“Employer”). In 1976, the Department of Labor (DOL) issued guidance, in the form of a class exemption from the prohibited transaction rules, that permits reasonable business decisions to be made on unpaid Contributions. That guidance is Prohibited Transaction Class Exemption 76-1 (“PTCE 76-1”).

The fundamental principles of PTCE 76-1 are the following:

- Any compromise of a claim for unpaid Contributions, or any arrangement permitting payment later than the normal due date, must be made for the “exclusive purpose of facilitating the collection of such Contributions” (and not, for example, to ease the Employer’s cash-flow problems).
- Any such compromise or arrangement and any decision to write off a claim for unpaid Contributions as uncollectible must be “reasonable under the circumstances based on the likelihood of collecting such Contribution or the approximate expenses that would be incurred” if the plan persisted in trying to collect the Contribution by other means.
- All such compromises, arrangements, or write-offs must be preceded by “such reasonable, diligent and systematic efforts as are

appropriate under the circumstances to collect such Contribution or any part thereof.”

It is the Fund’s policy to collect all Contributions as they are due and to make such reasonable, diligent, and systematic collection efforts as are appropriate under the circumstances, in accordance with PTCE 76-1 and the Amended and Restated Agreement and Declaration of Trust of the Fund (“Trust Agreement”).

In compliance with the applicable principles governing collection, and in accordance with Section 5.3(b) of the Trust Agreement, the Board has adopted this Policy for the Collection of Delinquent Contributions (“Policy”). Capitalized terms that are used but not defined in this Policy have the meanings the Trust Agreement assigns to them.

GENERAL POLICY

The Board has the legal right to exercise all remedies allowable under the Trust Agreement and ERISA and other applicable law.

This Policy will be followed unless the Board determines that it should be waived in a particular instance. Failure of the Board to enforce or follow any procedure is not a waiver of the rights of the Fund. The purpose of this Policy is to set a general policy for collection of delinquent Contributions, and nothing herein confers any rights on any Employer.

All questions or disputes relating to the interpretation, meaning and/or application of this Policy, will be finally and exclusively resolved by the Board in the exercise of its discretion and in the performance of its fiduciary obligations to the Fund's Participants and Beneficiaries, in the protection of the financial integrity and soundness of the Fund and the efficient and effective administration of the Fund. All actions taken and decisions or determinations made under this policy will be made by the Board in its complete discretion.

If an Employer ceases to have an obligation to contribute to the Fund under its Standard Form of Agreement for Participation in the PACE Industry Union-Management Pension Fund ("SFA"), a Collective Bargaining Agreement ("CBA"), or applicable law, the Employer will remain subject to this Policy for the time period during which the Employer was obligated to contribute to the Fund.

The Board may, from time to time, appoint a Committee of at least one

Employer and one Union Trustee to act on behalf of the Board as provided for under this Policy and may delegate certain responsibilities under this policy to the Fund Office. Such Committee will, to the extent the Board delegates, have the discretion to take any actions, resolve any matters, interpret this Policy, or make any decisions provided for under this Policy.

COLLECTION PROCEDURE

1. Unless there is an SFA to the contrary, Contributions and the supporting remittance report (collectively, "Remittances") are due on the tenth day of the month following the payroll periods ending in the preceding month ("Due Date"). For example, Contributions for payroll periods ending in January are due February 10th.

2. Remittance reports will be made either electronically or on paper and must include (a) the Employer's name, (b) the date of the report, (c) the beginning and end dates of the period the report covers, and (d), for each Participant reflected on the report, the (i) name, (ii) full social security number, (iii) status, (iv) hours of work for the period covered by the report, (v) applicable contribution rate and (vi) total amount remitted. Remittance reports must be filled in completely or the report may be considered delinquent.

3. Remittances will become delinquent, and interest will be assessed if the Remittances are not received by the tenth day of the second month following the payroll period ("Delinquent Date"). For example, Remittances relating to work performed in payroll periods that end in January would be delinquent if received on or after March 11th.

4. In the event that the Fund has not received Remittances by the Delinquent Date, to the extent practicable, in addition to the other procedures described herein, the Fund Office will contact the Employer and the USW or local USW union that is party to the CBA (the "Union") by telephone, to attempt to effectuate submission of Remittances.

5. In the event that the Fund has not received remittance reports by the Delinquent Date, the Fund may compute the Contributions due for any month by adding 10 percent to the number of hours for the month in which the largest number of hours were reported in the previous 12 months for which reports reflecting all hours called for under the collective bargaining agreement for which contributions were due were received by the Fund Office ("Base Month"). In the event an audit disclosed unreported hours for the Base Month, the amount of the unreported hours plus 10 percent will be added to arrive at the total. The total number of hours for the unreported period will be

multiplied by the contribution rate(s) applicable to that period and the amount of contributions so computed will be binding on the Employer and will be deemed the amount due from the Employer for the purpose of any legal proceeding. In the event there is no Base Month because the Employer has not submitted remittance reports in the previous 12 months, the Employer shall be deemed to have the number of Employees that the Union reports, in writing, that the Employer employs, with each Employee deemed to be working 40 hours per week for the entire unreported period.

6. Unless there is an SFA to the contrary, interest will accrue on delinquent Contributions beginning on the Due Date and will be assessed if a Contribution is not received by the Delinquent Date. The applicable interest rate for delinquent Contributions is 12% per year, calculated from the Due Date until the date paid. Notwithstanding the foregoing, if there is a contrary provision in an SFA regarding the applicable interest rate, the provisions of the SFA will prevail.

7. One month's interest will be charged for each month or part of a month that the delinquency continues, i.e., a full month's interest will be charged on the Due Date and an additional month's interest will be charged for each following month or part of a month thereafter on any portion of the Contributions that remain unpaid.

8. If a check provided by an Employer is dishonored by the Employer's bank, or an ACH or other money transfer demand is not paid, the Fund will not redeposit the check but will notify the Employer and demand payment. That notice will advise the Employer of the amount of the dishonored check or rejected transfer, will demand payment of the amount of the check or rejected transfer, any bank fee charged to the Funds, and interest, calculated on the amount of the check or transfer beginning on the Due Date.

AUDIT POLICY

1. The Board may at any time audit the pertinent books and records of any Employer. Pertinent books and records include, but are not limited to, the types of records and documents listed below for all individuals who perform work for the Employer or for any business described in paragraph 2 below, including individuals who are not members of a bargaining unit covered by a CBA or Employees as defined in the Trust Agreement:

- (1) Individual earnings records or similar documents reflecting gross wages paid and hours worked each week to all employees during the audit period;

- (2) Quarterly Payroll Tax Reports;
- (3) Form 941-F.I.C.A., Federal Social Security Tax;
- (4) Form UC3-Unemployment Compensation to the State;
- (5) Annual wage and tax statements including forms W-2 and W-3;
- (6) All pertinent personnel file information, including hire and termination dates as well as job classifications for all individuals;
- (7) Employer copies of monthly contribution reports to all fringe benefit funds to which the company contributes;
- (8) Check registers for all operating and payroll accounts;
- (9) All 1099/1096 forms;
- (10) Time cards; and
- (11) All other documents deemed necessary by the Board.

2. Pertinent books and records of an Employer include the books and records of any business entity which is affiliated with the Employer and which either a) has employed persons who have performed the same type of work that employees of the Employer covered by the Employer's CBA have performed, or b) is part of a group of trades or businesses "under common control," as that term is used in 29 U.S.C. § 1301(b)(1) for withdrawal liability purposes, that includes the Employer.

3. If requested by the Board, an Employer must provide the books and records required to complete the audit in electronic form. If an Employer nevertheless will agree only to an in-person audit, the Employer will be responsible for the auditor's travel costs, including airfare, lodging, meals, transfers, and any other incidental costs.

4. Interest on delinquent contributions revealed by an audit will be calculated as set forth in the Collection Procedure section, calculated separately as to each person the Employer is delinquent in making contributions on behalf of, for the specific time period the employer was delinquent for that employee.

5. Costs for audits are paid by the Fund, except that where an Employer underpaid Contributions during the Audit Period in an amount that is the greater of \$5,000 or 5% of the overall Contributions that were due from the Employer for the Audit Period, audit costs will be charged to the Employer. For purposes of this paragraph, the cost of the audit includes any and all audit costs incurred, including any audit costs incurred after the Fund Office sends the letter described in paragraph 6 below or the cost of calculating estimated contributions due pursuant to paragraph 8 below. Payment of audit costs is due on the Delinquent Date as described in paragraph 4 above. If payment of the

audit costs is not received by the Delinquent Date, interest on the audit costs will be assessed at a rate of 12%, calculated from the Delinquent Date until the date paid.

6. Upon receipt of the auditor's report, the Fund Office will send a letter to the Employer demanding payment of any amounts found to be due by the auditor.

7. In the event an Employer refuses to permit an audit upon request by the Board, or if the Employer refuses to give the Fund's auditor access to pertinent records, the Fund Office will refer the matter to legal counsel. Legal counsel will thereafter demand in writing that the Employer make available such books and records as are necessary for the Fund's auditor to conduct an audit. If the records are still not made available, upon approval of the Board, counsel will institute legal action to enforce the Board's right to conduct an audit and the Employer will pay to the Fund all costs and attorneys' fees incurred as a result of the Employer's refusal to permit an audit or refusal to make available all pertinent records.

8. If the Fund is unable to complete an audit due to an Employer's (a) refusal to permit an audit, (b) refusal to give the Fund's auditor access to pertinent records, or (c) failure to maintain sufficient records, it may compute additional contributions due for any month during the Audit Period by multiplying 50 percent of the number of hours reported for that month by the applicable contribution rate for that month. The amount of contributions so computed will be binding on the Employer for the purposes of any legal proceeding, in addition to any contributions based on work the Employer reported to the Fund on remittance reports or attributed to the Employer.

9. If an audit identifies a mistaken contribution, as defined in the Mistaken Contributions section, the auditor will advise the Employer that (a) to receive a refund, the Employer must submit a request to the Board in writing, stating the nature of the mistake that resulted in the mistaken contribution, within the later of (i) three years after the date such mistaken contribution was received by the Fund or (ii) 90 days of receiving the audit report; (b) the Board will decide whether a refund will be granted, except that, for mistaken contributions of \$5,000 or less, the Board authorizes the Fund Office to make such determination; (c) any such refund will be recovered by the Employer through a credit against future Contributions, or, in the case of a withdrawn employer, other amounts that come due, as communicated to the Employer in writing; and (d) any attempt by the Employer to recoup any mistaken contribution through a procedure other than the one described in this paragraph (for instance, by the Employer unilaterally taking a credit or offsetting the mistaken contribution against Contributions that come due) will result in the

automatic forfeiture of the refund and the treatment of any credit taken by an Employer as a delinquent Contribution. In determining the amount to be refunded, interest or earnings attributable to the mistaken contribution will not be returned to the Employer, and any losses attributable to a mistaken contribution must reduce the amount returned to the Employer.

MISTAKEN CONTRIBUTIONS

1. A mistaken contribution occurs where an Employer makes a contribution to the Fund in excess of the amount required by the terms of the Employer's SFA, or the CBA to the extent not inconsistent with the SFA, the Trust, or applicable law, and under a mistake of fact or law. Subject to the terms and conditions of this Policy, an Employer that makes a mistaken contribution may request a refund of the amount of such mistaken contribution.

2. No refund of mistaken contributions will be granted by the Fund unless a written request for such refund is received by the Fund Office within three years after the date that such mistaken contributions were received by the Fund, unless the mistaken contributions were discovered pursuant to an audit conducted on behalf of the Fund.

3. Where mistaken contributions are discovered pursuant to an audit conducted on behalf of the Fund, the process described in paragraph 9 of the Audit Policy section will apply.

4. Any refund of mistaken contributions will not include interest or investment earnings attributable to the mistaken contributions, and will be reduced by the amount of any investment losses attributable to the mistaken contributions. If the Fund incurred a direct or indirect cost, expense or liability as a result of a mistaken contribution, any refund of such mistaken contribution may be reduced by the full value of such cost, expense or liability.

5. The obligation to discover and delineate the amount of mistaken contributions within the time limits provided within this Policy is the sole and exclusive responsibility of the Employer.

6. The request of the Employer for a refund of mistaken contributions must be in writing and will not be effective until it is received by the Fund Office. The request of the Employer must contain copies of all documentation upon which the Employer relies to substantiate its request or which may be required by the Fund to verify the exact amount of the mistaken contributions. The Board or its delegee will determine whether a mistaken

contribution has occurred. Where the Board or its delegee determines that a refund of mistaken contributions is due, the Employer will be credited with a refund by offsetting the mistaken contributions against future Contributions or, in the case of a withdrawn employer, all amounts due, as provided in paragraph 8, within six (6) months after the date on which the Board or its delegee determines that a mistake occurred. All determinations relating to mistaken contributions are within the Board's exclusive discretion.

7. The failure and/or refusal of the Employer promptly and fully to comply with any or all of the provisions of this Policy will result in the denial of the request for the refund of mistaken contributions.

8. As used in this Policy, the term "refund" means the offset of previously submitted mistaken contributions against future Contributions, or, in the case of a withdrawn employer, all amounts due ("credits"). Any Employer attempt to recoup any mistaken contribution through a procedure other than the one described in this section (for instance by the Employer unilaterally taking a credit) will result in the automatic forfeiture of the refund and the treatment of any credit taken by the Employer as a delinquent Contribution.

LIQUIDATED DAMAGES, ATTORNEYS' FEES AND COSTS

1. After an action is filed for delinquent Contributions, liquidated damages will be calculated from the Due Date. The amount of the liquidated damages will be the greater of:

- a. Interest on the delinquent Contributions determined in accordance with paragraphs 6 and 7 of the Collection Procedure or paragraph 4 of the Audit Policy; or
- b. 20% of the delinquent Contributions.

2. The Fund may seek to recover actual damages caused by an Employer's delinquency in any case in which actual damages exceed the applicable liquidated damages.

3. After an action is filed for delinquent Contributions, attorneys' fees will be due to the Fund from a delinquent Employer at the hourly rate charged to the Fund for such services, for all time spent by counsel in collection efforts or in enforcing the Board's' right to conduct audits.

4. All costs (including but not limited to attorneys' and accountants'

fees) incurred 1) to determine, discover, and collect delinquent Contributions, 2) to obtain the information necessary or to properly allocate, credit, and record such Contributions, as necessary to administer the Fund, and/or 3) to enforce the Board's right to audit the Employer's books and records will be due to the Fund from the delinquent Employer, including, but not limited to, routine audit fees incurred to verify that Contributions are properly made to the Fund, any other fees incurred in determining, discovering, and collecting Contributions from the Employer, arbitration fees, filing fees, arbitrator's fees, fees for service of process, travel, copying charges, postage, expert fees, and such other costs as would otherwise be charged to the Board to determine, discover and collect any of the amounts described herein.